

For information

**Legislative Council Panel on
Administration of Justice and Legal Services**

**Arrangement on Reciprocal Recognition and Enforcement of Judgments in
Civil and Commercial Matters by the Courts of the Mainland and of the
Hong Kong Special Administrative Region**

PURPOSE

This paper informs Members that the Government signed the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region (“**Arrangement**”) with the Supreme People’s Court (“**SPC**”) on 18 January 2019.

BACKGROUND

2. Previously, Hong Kong has entered into five arrangements with the Mainland on mutual legal assistance in civil and commercial matters¹. Among them, two arrangements provide for reciprocal recognition and enforcement of judgments (“**REJ**”). These two arrangements are the **Choice of Court Arrangement**² signed in July 2006 and took effect on 1 August 2008 and **Matrimonial Arrangement**³ signed in June 2017⁴.

¹ The five arrangements respectively deal with mutual service of judicial documents, reciprocal enforcement of arbitral awards, taking of evidence, reciprocal recognition and enforcement of civil and commercial judgments wherein parties have entered into choice of court agreements, and reciprocal recognition and enforcement of civil judgments in matrimonial and family cases.

² The full title of the **Choice of Court Arrangement** signed in July 2006 is “關於內地與香港特別行政區法院相互認可和執行當事人協議管轄的民商事案件判決的安排” and the title translated to English is “Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region Pursuant to Choice of Court Agreements between Parties Concerned”. The Choice of Court Arrangement is implemented in Hong Kong through the enactment of the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) and in the Mainland by way of judicial interpretation issued by the SPC.

³ The full title of the **Matrimonial Arrangement** signed in June 2017 is “關於內地與香港特別行政區法院相互認可和執行婚姻家庭民事案件判決的安排” and the title translated to English is “Arrangement

3. The Arrangement is the sixth arrangement with the Mainland on mutual legal assistance in civil and commercial matters, and among them, the third arrangement for REJ.

4. By establishing a more comprehensive framework for REJ with the Mainland covering civil and commercial judgments beyond the scope of the Choice of Court Arrangement and the Matrimonial Arrangement, the Arrangement will reduce the need for re-litigation of the same disputes in both places and offer better protection to the parties' interests. The Arrangement will better address the need for a more comprehensive framework for REJ with the Mainland arising from the increasingly close interaction and cooperation between the two places in terms of trade and economic activities as well as social interactions.

5. The Government briefed Members on the proposal to enter into an arrangement with the Mainland to provide for a more comprehensive REJ framework in civil and commercial matters in November 2017, and further briefed Members in November 2018 on the outcome of the public consultation exercise and the details of the proposed Arrangement.

THE ARRANGEMENT

6. The Arrangement as attached at the Annex was signed by the Government and the SPC on 18 January 2019 in Beijing. The key features of the Arrangement are set out below.

I. Scope

7. The Arrangement covers matters which are considered to be of a “civil and commercial” nature under both Hong Kong and Mainland law.

on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases by the Courts of the Mainland and of the Hong Kong Special Administrative Region”.

⁴ The Matrimonial Arrangement will be implemented in Hong Kong by way of legislation and in the Mainland by way of judicial interpretation to be issued by the SPC. The Department of Justice aims to conduct a public consultation exercise on the proposed legislation in February 2019 or before and to consult this Panel on the proposed legislation in February 2019.

Non-judicial proceedings and judicial proceedings relating to administrative or regulatory matters would be excluded⁵.

II. Specific types of matters to be covered or excluded

Corporate insolvency and debt restructuring as well as personal bankruptcy

8. The Arrangement does not cover judgments on corporate insolvency and debt restructuring as well as personal insolvency⁶.

Succession of the estate of a deceased person and other related matters

9. The Arrangement excludes matters in relation to the succession, administration or distribution of the estate of a deceased person⁷.

Matrimonial or family matters not covered by the Matrimonial Arrangement

10. Judgments in matrimonial or family matters already covered by the Matrimonial Arrangement will be governed by the Matrimonial Arrangement and the Arrangement does not apply to those matters⁸.

11. Moreover, decrees of judicial separation made by Hong Kong courts and the following types of disputes categorised in the Mainland as matrimonial or family related⁹ are also excluded from the Arrangement¹⁰:

- (a) disputes on maintenance arising out of a legal obligation of a son/daughter to support his/her parent(s) or a grandchild to support his/her grandparent(s);

⁵ Article 2 of the Arrangement. By way of non-exhaustive examples, the following matters are excluded from the Arrangement: (a) judicial review cases; (b) cases brought by the Securities and Futures Commission under section 214 of the Securities and Futures Ordinance (Cap. 571); (c) appeals before the Court of Appeal under sections 266 and 267 of the Securities and Futures Ordinance; (d) appeals before the Court of First Instance under section 84 of the Trade Marks Ordinance (Cap. 559); and (e) applications brought by the Competition Commission before the Competition Tribunal under section 92 of the Competition Ordinance (Cap. 619). However, follow-on actions brought before the Competition Tribunal under section 110 of the Competition Ordinance by a person who has suffered loss or damage as a result of any act that has been determined to be a contravention of a conduct rule are covered by the Arrangement.

⁶ Article 3(1)(5) of the Arrangement.

⁷ Article 3(1)(2) of the Arrangement.

⁸ Article 31 of the Arrangement.

⁹ These types of disputes are excluded from the Matrimonial Arrangement.

¹⁰ Article 3(1)(1) of the Arrangement.

- (b) disputes on maintenance between siblings;
- (c) disputes on dissolution of an adoptive relationship;
- (d) disputes on guardianship rights over adults;
- (e) disputes after divorce on liability for damages; and
- (f) disputes on division of property arising from a co-habitation relationship.

12. Be that as it may, the following two types of disputes categorised in the Mainland as matrimonial or family disputes and excluded from the Matrimonial Arrangement may arise in Hong Kong as disputes of general “civil and commercial” nature. They are therefore covered by the Arrangement:

- (a) disputes between family members on division of property¹¹; and
- (b) disputes on property arising from engagement agreements¹².

Intellectual property rights

13. The Arrangement covers judgments involving intellectual property rights. It provides for a definition for “intellectual property rights”¹³ mirroring the types of such rights provided for under Article 1(2) of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* with an additional reference to the plant variety rights provided under Hong Kong’s Plant Varieties Protection Ordinance (Cap. 490) and Article 123(2)(7) of the General Provisions of the Civil Law of the People’s Republic of China (中華人民共和國民法總則) as the case may be.

14. The specific scope of judgments involving intellectual property rights covered or excluded (as the case may be) by the Arrangement are as follows¹⁴:

- (a) judgments ruling on contractual disputes involving intellectual

¹¹ Such disputes are described as “分家析產糾紛” under Mainland law.

¹² Such disputes are described as “婚約財產糾紛” under Mainland law.

¹³ Article 5 of the Arrangement.

¹⁴ Articles 3(1)(3) and 15 of the Arrangement.

property rights are covered;

- (b) judgments ruling on tortious claims for infringement of intellectual property rights are covered, except for infringement of invention patents and utility models in the Mainland and infringement of standard patents (including “original grant” patents) and short-term patents in Hong Kong;
- (c) judgments ruling on the licence fee rate of standard essential patents in both the Mainland and Hong Kong are excluded;
- (d) judgments ruling on intellectual property rights which are not within the definition of “intellectual property rights” set out under paragraph 13 above are excluded;
- (e) a ruling on the validity, establishment or subsistence of intellectual property rights is not recognised or enforced under the Arrangement; and
- (f) notwithstanding sub-paragraph (e) immediately above, a judgment on liability based on a ruling on the validity, establishment or subsistence of intellectual property rights as a preliminary issue shall still be recognised and enforced under the Arrangement, provided the requirements under the Arrangement are satisfied.

Maritime matters

15. Judgments on marine pollution, limitation of liability of maritime claims, general average, emergency towage and salvage, maritime liens and carriage of passengers by sea are excluded from the Arrangement¹⁵.

Arbitration matters

16. Judgments on the validity of an arbitration agreement and the setting aside of an arbitral award are excluded from the Arrangement¹⁶. The

¹⁵ Article 3(1)(4) of the Arrangement.

¹⁶ Article 3(1)(7) of the Arrangement.

Arbitration Arrangement¹⁷ continues to be relevant to these matters.

Other matters

17. The following matters are excluded from the Arrangement¹⁸:

- (a) judgments ruling on a natural person's qualification as a voter;
- (b) judgments declaring the disappearance or death of a natural person;
- (c) judgments ruling on the legal incapacity of a natural person for civil acts; and
- (d) judgments ruling on the recognition and enforcement of judgments and arbitral awards made by other countries or places.

Findings on preliminary issues

18. The Arrangement includes a provision to the effect that the requested court shall not refuse recognition and enforcement under the Arrangement solely for the reason that the judgment is based on a ruling on a preliminary issue on a matter outside the scope of the Arrangement¹⁹.

III. Principle of enforceability and level of courts to be covered

19. In relation to the Mainland, legally enforceable Mainland judgments given by the Primary People's Courts or above in the following circumstances are covered by the Arrangement²⁰:

¹⁷ The full title of the **Arbitration Arrangement** signed in 1999 and which took effect in February 2000 is “關於內地與香港特別行政區相互執行仲裁裁決的安排” and the title translated to English is “Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region”.

¹⁸ Articles 3(1)(6) and 3(1)(8) of the Arrangement.

¹⁹ Article 14 of the Arrangement. For instance, if the requesting court, having decided whether a natural person had the legal capacity to enter into a contract, proceeded to make a judgment on the contractual liability of that person, the requested court should not refuse to recognise and enforce the judgment on contractual liability simply because the ruling by the requesting court on the issue of legal capacity would fall outside the scope of the Arrangement.

²⁰ Article 4(2)(1) of the Arrangement.

- (a) any judgment of the second instance;
- (b) any judgment of the first instance from which no appeal is allowed, or the time limit for an appeal has expired and no such appeal has been filed; and
- (c) any judgment of (a) or (b) above made in accordance with the procedure for trial supervision.

20. In respect of Hong Kong, legally enforceable Hong Kong judgments given by the following courts are covered by the Arrangement²¹:

- (a) the Court of Final Appeal;
- (b) the Court of Appeal and the Court of First Instance of the High Court;
- (c) the District Court;
- (d) the Labour Tribunal;
- (e) the Lands Tribunal;
- (f) the Small Claims Tribunal; and
- (g) the Competition Tribunal.

21. The term “judgment” in the Arrangement includes²²:

- (a) in the case of the Mainland, any judgment, ruling, conciliatory statement and order of payment, but excludes ruling on preservation measures; and
- (b) in the case of Hong Kong, includes any judgment, order, decree and allocator, but excludes anti-suit injunction and interim relief.

²¹ Article 4(2)(2) of the Arrangement.
²² Article 4(1) of the Arrangement.

IV. Jurisdictional Basis

22. Subject to the relevant dispute not being under the exclusive jurisdiction of the courts of the requested place, the requesting court shall be considered to have jurisdiction for the purpose of the Arrangement if one of the following conditions is satisfied²³:

- (a) at the time the requesting court accepted the case, the defendant's "place of residence"²⁴ was in the requesting place;
- (b) at the time the requesting court accepted the case, the defendant maintained a representative office, branch, office, place of business or other establishment without separate legal personality at the requesting place, and the claim on which the judgment is based arose out of the activities of that establishment;
- (c) the proceeding was brought on a contractual dispute and the place of performance of the contract is in the requesting place;
- (d) the proceeding was brought on a tortious dispute and the act of infringement was committed in the requesting place;
- (e) the parties to a contractual dispute or other disputes related to interests in property had expressly agreed in writing that the courts of the requesting place shall have jurisdiction over the relevant proceedings, and where the "place of residence" of all the parties to the judgment was at the requested place, the requesting place was the place where the contract was performed or signed, where the subject matter was situated etc., being a place which has an actual connection with the dispute; or
- (f) the parties did not raise any objection as to the jurisdiction of the requesting court and participated in the proceedings in defence or reply, and where the "place of residence" of all the parties to the judgment was at the requested place, the requesting place was the place where the contract was performed or signed, where the

²³ Article 11(1) of the Arrangement.

²⁴ The term "place of residence" is defined in Article 6 of the Arrangement and discussed in paragraph 24 of this paper.

subject matter was situated etc., being a place which has an actual connection with the dispute.

23. Apart from the provisions specified in the preceding paragraph, where the requested court considers that the requesting court had jurisdiction over the dispute according to the law of the requested place, the requested court may also determine that the requesting court has jurisdiction over the dispute²⁵.

24. The term “place of residence” is defined to mean in relation to a natural person, one’s household residence, permanent residence or habitual residence; and in relation to a legal person, its place of incorporation or registration, place of principal office, principal place of business or place of central management²⁶.

Judgments on intellectual property rights

25. The jurisdictional grounds set out in paragraph 22 above are not applicable to a judgment ruling on a tortious claim for an infringement of an intellectual property right²⁷. For such a judgment, the requesting court shall be considered to have jurisdiction only if the act of infringement²⁸ of intellectual property right was committed in the requesting place and the intellectual property right or interest concerned is subject to protection under the law of the requesting place²⁹.

26. On the other hand, judgments ruling on a contractual claim relating to an intellectual property right will still be subject to the jurisdictional grounds set out in paragraph 22 above.

V. Grounds for refusal

27. The Arrangement provides the following mandatory grounds for refusal in respect of an application for recognition and enforcement of a relevant judgment³⁰:

²⁵ Article 11(4) of the Arrangement.

²⁶ Article 6 of the Arrangement.

²⁷ Including acts of unfair competition prohibited under Article 6 of the Anti-Unfair Competition Law of the People’s Republic of China (中華人民共和國反不正當競爭法) (Article 6 relates to acts of confusion causing one’s products to be mistaken for the products of another or as having specific connection with another) as well as claims for passing off under Hong Kong law.

²⁸ *Ibid.*

²⁹ Article 11(3) of the Arrangement.

³⁰ Article 12 of the Arrangement.

- (a) the judgment does not meet the jurisdictional requirement(s) as set out under paragraphs 22 to 26 above (as the case may be);
- (b) the respondent was not summoned in accordance with the law of the requesting place, or although the respondent was duly summoned, was not given a reasonable opportunity to make representations or defend his/her case;
- (c) the judgment was obtained by fraud;
- (d) the judgment was rendered in a cause of action which was accepted by the requesting court after a court of the requested place has already accepted the cause of action on the same dispute;
- (e) a court of the requested place has rendered a judgment on the same cause of action, or has recognised a judgment on the same cause of action given by a court of another country or place;
- (f) an arbitral award was already given in the requested place on the same cause of action, or a court of the requested place has recognised an arbitral award on the same cause of action given in another country or place; or
- (g) the requested Mainland court considers that the recognition and enforcement of the judgment is manifestly contrary to the basic legal principles of Mainland law or the social and public interests of the Mainland; or the requested Hong Kong court considers that the recognition and enforcement of the judgment is manifestly contrary to the basic legal principles of Hong Kong law or the public policy of Hong Kong.

28. The Arrangement also provides a discretionary ground for refusal in respect of an application for recognition and enforcement of a relevant judgment where the proceedings in the court of the requesting place were contrary to a valid arbitration agreement or a valid agreement designating a court (not being a court of the requesting place) as having jurisdiction for

resolving the same cause of action³¹.

VI. Types of relief

29. Subject to paragraph 30 below, the Arrangement covers both monetary (excluding exemplary or punitive damages) and non-monetary relief.

30. In respect of judgments ruling on tortious claims for infringement of intellectual property rights³², the Arrangement only covers monetary relief (but including exemplary or punitive damages) determined with reference to the infringing act committed in the requesting place³³, but judgments ruling on tortious claims for infringement of trade secrets will additionally cover non-monetary relief³⁴.

VII. Relationship with the Choice of Court Arrangement

31. The Arrangement will, upon its commencement, supersede the Choice of Court Arrangement. This is except for a “choice of court agreement”³⁵ made between the parties before the commencement of the Arrangement and, in which case, the Choice of Court Arrangement will continue to apply³⁶.

VIII. Procedural matters

32. The Arrangement provides that the time limits, procedures and means for a party to apply for recognition and enforcement of a judgment shall be governed by the law of the requested place³⁷.

33. The Arrangement allows simultaneous applications for enforcement in

³¹ Article 13 of the Arrangement.

³² Including acts of unfair competition prohibited under Article 6 of the Anti-Unfair Competition Law of the People’s Republic of China (中華人民共和國反不正當競爭法) (Article 6 relates to acts of confusion causing one’s products to be mistaken for the products of another or mistaken as having specific connection with another) as well as claims for passing off under Hong Kong law.

³³ Article 17(1) of the Arrangement.

³⁴ Article 17(2) of the Arrangement.

³⁵ A “choice of court agreement” is defined in the Choice of Court Arrangement to mean “*any agreement in written form made, as from the day of commencement of this Arrangement, by the parties concerned in which a people’s court of the Mainland or a court of the Hong Kong Special Administrative Region is expressly designated as the court having sole jurisdiction for resolving any dispute which has arisen or may arise in respect of a particular legal relationship*”.

³⁶ Article 30 of the Arrangement.

³⁷ Article 10 of the Arrangement.

both Hong Kong and the Mainland if the assets of the party against whom enforcement is sought are situated in both Hong Kong and the Mainland³⁸. The total amount recovered, however, shall not exceed the sum specified in the relevant judgment.

IX. Implementation

34. The Arrangement will only take effect on a date to be announced by the two sides, after both places have completed the necessary procedures to enable implementation and will apply to judgments made on or after the commencement date of the Arrangement³⁹.

35. Specifically, we understand that the Arrangement will be implemented in the Mainland by way of judicial interpretation. On the Hong Kong side, the Arrangement will need to be implemented by local legislation in Hong Kong. This will require amendments to existing legislation and/or the enactment of new legislation. The Department of Justice will prepare a draft bill for public consultation in due course.

Department of Justice
18 January 2019

³⁸ Article 21 of the Arrangement.
³⁹ Article 29 of the Arrangement.

(Courtesy English Translation)

**Arrangement on Reciprocal Recognition and Enforcement of Judgments
in Civil and Commercial Matters by the Courts of the Mainland
and of the Hong Kong Special Administrative Region**

In accordance with the provisions of Article 95 of the *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*, the Supreme People's Court and the Government of the Hong Kong Special Administrative Region (HKSAR), after consultation, hereby make the following arrangement on reciprocal recognition and enforcement of judgments in civil and commercial matters:

Article 1

This Arrangement applies to the reciprocal recognition and enforcement of legally effective judgments in civil and commercial matters between the courts of the Mainland and of the HKSAR.

This Arrangement also applies to the reciprocal recognition and enforcement of legally effective judgments in relation to civil damages awarded in criminal cases.

Article 2

“Civil and commercial matter” referred to in this Arrangement means a matter which is considered to be civil and commercial in nature under both Mainland law and Hong Kong law. It does not include judicial review cases and any other cases heard by the courts of the HKSAR arising directly out of the exercise of administrative powers.

Article 3

This Arrangement, for the time being, does not apply to judgments in the following civil and commercial matters:

(1) cases heard by a people's court of the Mainland on maintenance of parent(s) or grandparent(s), maintenance between siblings, dissolution of adoptive relationship,

guardianship of adults, disputes after divorce on liability for damages, or division of property arising from a co-habitation relationship; or cases heard by a court of the HKSAR on whether a decree of judicial separation should be granted;

(2) cases on succession, administration or distribution of estate;

(3) cases on the tortious infringement of invention patents and utility model patents heard by a people's court of the Mainland; cases on the tortious infringement of standard patents (including "original grant" patents) and short-term patents heard by a court of the HKSAR; cases on the confirmation of the licence fee rate of a standard-essential patent heard by a court of the Mainland or a court of the HKSAR; and cases concerning intellectual property rights not covered under Article 5 of this Arrangement;

(4) cases on marine pollution, limitation of liability for maritime claims, general average, emergency towage and salvage, maritime liens, and carriage of passengers by sea;

(5) bankruptcy (insolvency) cases;

(6) cases on the determination of a natural person's qualification as a voter, declaration of disappearance or death of a natural person, or the determination of limited or lack of legal capacity of a natural person for civil acts;

(7) cases on the confirmation of the validity of an arbitration agreement or the setting aside of an arbitral award;

(8) cases on the recognition and enforcement of judgments or arbitral awards of other countries or regions.

Article 4

A "judgment" referred to in this Arrangement includes, in the case of the Mainland, any judgment, ruling, conciliatory statement and order of payment, but does not include a ruling concerning preservation measures; in the case of the HKSAR, includes any judgment, order, decree and allocator, but does not include an anti-suit injunction or an order for interim relief.

A “legally effective judgment” referred to in this Arrangement:

(1) in the case of the Mainland, means a judgment of the second instance, a judgment of the first instance from which no appeal is allowed according to law or no appeal has been filed by the expiry of the statutory time limit for appeal, as well as the above types of judgments given in accordance with the trial supervision procedure;

(2) in the case of the HKSAR, means a legally effective judgment given by the Court of Final Appeal, the Court of Appeal and the Court of First Instance of the High Court, the District Court, the Labour Tribunal, the Lands Tribunal, the Small Claims Tribunal or the Competition Tribunal.

Article 5

“Intellectual property right” referred to in this Arrangement means an “intellectual property” as stipulated in Article 1(2) of the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, as well as an intellectual property right enjoyed by an owner in respect of new plant varieties as stipulated in Article 123(2)(7) of the *General Provisions of the Civil Law of the People’s Republic of China* and the *Plant Varieties Protection Ordinance* of Hong Kong.

Article 6

“Place of residence” referred to in this Arrangement means, in the case of a natural person, his/her place of household registration, place of permanent residence or place of habitual residence; and in the case of a legal person or other organisation, its place of incorporation or registration, place of principal office, principal place of business or principal place of management.

Article 7

An application for recognition and enforcement of a judgment stipulated in this Arrangement:

(1) in the case of the Mainland, should be filed with an Intermediate People's Court of the place of residence of the applicant or the respondent, or the place where the property of the respondent is located;

(2) in the case of the HKSAR, should be filed with the High Court.

An applicant shall apply to a people's court of the Mainland which meets the requirement in sub-paragraph (1) of the preceding paragraph. If an application is made to two or more people's courts having jurisdiction, the people's court which accepts the case first shall exercise jurisdiction.

Article 8

An applicant applying for recognition and enforcement of a judgment stipulated in this Arrangement shall submit the following documents:

(1) an application;

(2) a copy of the legally effective judgment affixed with the seal of the court which gave the judgment;

(3) a certificate issued by the court which gave the legally effective judgment certifying the judgment to be a legally effective judgment and, if the judgment has content which requires enforcement, certifying the judgment to be enforceable in the requesting place;

(4) where the judgment is a default judgment, a document certifying that the party concerned has been legally summoned, unless the judgment expressly states the same, or the absent party is the party applying for recognition and enforcement;

(5) documents of identity :

1. where the applicant is a natural person, a copy of the identity card shall be submitted;

2. where the applicant is a legal person or other organisation, copies of the certificate of incorporation or registration and of the identity card of the legal representative or the principal responsible person shall be submitted;

The above identity documents, if issued in a place outside the requested place, shall be certified in accordance with the law of the requested place.

Where a document submitted to a people's court of the Mainland is not in the Chinese language, the applicant shall submit an accurate Chinese translation.

Article 9

An application shall specify the following:

(1) particulars of the parties: where the party is a natural person, his/her name, address, particulars of identity documents, means of contact, etc.; where the party is a legal person or other organisation, its name, address as well as the name, position, address, particulars of identity documents, means of contact, etc. of its legal representative or principal responsible person;

(2) details of the request and justifications for the application, and in the case of an application for enforcement, also the status and location of the property of the respondent;

(3) whether an application has been made for the enforcement of the judgment in any other court, and the status of its enforcement.

Article 10

The time limits, procedures and manner for making an application for recognition and enforcement of a judgment shall be governed by the law of the requested place.

Article 11

The court of the requested place shall consider the original court to have jurisdiction over the relevant action if one of the following conditions is satisfied and if, according to the law of the requested place, the courts of the requested place do not have exclusive jurisdiction over the action:

(1) at the time the original court accepted the case, the place of residence of the defendant is within the requesting place;

(2) at the time the original court accepted the case, the defendant maintained in that place a representative office, branch, office, place of business or such other establishment without separate legal personality, and the action arose out of the activities of that establishment;

(3) the action was brought on a contractual dispute and the place of performance of the contract is in the requesting place;

(4) the action was brought on a tortious dispute and the infringing act was committed in the requesting place;

(5) the parties to a contractual dispute or other dispute concerning interests in property had expressly agreed in writing that the courts of the requesting place shall have jurisdiction over the relevant proceeding, but where the place of residence of all the parties to the judgment was in the requested place, the requesting place should be the place where the contract was performed or signed, or where the subject matter was situated etc., being a place which has an actual connection with the dispute;

(6) the parties did not raise objection to the jurisdiction of the original court and appeared before and defended in the proceedings, but where the place of residence of all the parties to the judgment was in the requested place, the requesting place should be the place where the contract was performed or signed, or where the subject matter was situated etc., being a place which has an actual connection with the dispute.

“In written form” referred to in preceding paragraph means a form in which the contents may be displayed in a visible form, such as a written contract, a letter or an electronic data message (including a telegram, a telex, a facsimile, an electronic data interchange or an e-mail).

For tortious claims for infringement of an intellectual property right, civil disputes over acts of unfair competition under Article 6 of the *Anti-Unfair Competition Law of the People's Republic of China* heard by a people's court of the Mainland, and disputes over passing off heard by a court of the HKSAR, the original court shall be considered to have jurisdiction only if the act of infringement, unfair competition or passing off was committed in the requesting place, and the intellectual property right or interest concerned is subject to protection under the law of the requesting place.

Apart from as stipulated under the first and third paragraphs above, the original court may be considered to have jurisdiction if the requested court considers that the exercise of jurisdiction over the relevant action by the original court is consistent with the law of the requested place.

Article 12

With respect to an application for recognition and enforcement of a judgment, a court of the requested place shall refuse to recognise and enforce a judgment if, having examined the evidence adduced by the respondent to show any of the following, it is satisfied that:

(1) the exercise of jurisdiction by the original court over the action does not meet the requirements stipulated in Article 11 of this Arrangement;

(2) the respondent was not legally summoned in accordance with the law of the place of the original court; or although the respondent was legally summoned, the respondent was not given a reasonable opportunity to make representations or defend the respondent's case;

(3) the judgment was obtained by fraud;

(4) the judgment was rendered in an action which was accepted by the original court after a court of the requested place has already accepted an action on the same dispute;

(5) a court of the requested place has rendered a judgment on the same dispute, or has recognised a judgment on the same dispute given by another country or place;

(6) the requested place has made an arbitral award on the same dispute or has recognised an arbitral award on the same dispute made in another country or place.

Where a people's court of the Mainland considers that the recognition and enforcement of a judgment given by a court of the HKSAR is manifestly contrary to the basic principles of the law of the Mainland or the social and public interests of the Mainland, or where a court of the HKSAR considers that the recognition and enforcement of a judgment given by a people's court of the Mainland is manifestly contrary to the basic principles of the law of the HKSAR or the public policy of the HKSAR, the judgment shall not be recognised or enforced.

Article 13

With respect to an application for recognition and enforcement of a judgment, the court may refuse to recognise and enforce a judgment if, upon examination of the evidence adduced by the respondent, the requested court is satisfied that the action in the original court was contrary to a valid arbitration agreement or a valid jurisdiction agreement entered into by parties on the same dispute.

Article 14

A court of the requested place may not refuse to recognise or enforce a judgment solely because a preliminary issue determined in the judgment does not fall within the scope of application of this Arrangement.

Article 15

Rulings by the original court on the validity of an intellectual property right or whether an intellectual property right is established or subsists are not recognised or enforced. However, a ruling on liability based on such rulings and which complies with the relevant requirements of this Arrangement, shall be recognised and enforced.

Article 16

Reciprocal recognition and enforcement of judgments includes both monetary and non-monetary rulings.

Where the judgment provides for punitive or exemplary damages, the punitive or exemplary part of the damages would not be recognised and enforced except as provided under Article 17.

Article 17

For tortious claims for infringement of intellectual property rights and civil disputes over acts of unfair competition under Article 6 of the *Anti-Unfair Competition Law of the People's Republic of China* heard by a people's court of the Mainland, or disputes over passing off heard by a court of the HKSAR, reciprocal recognition and enforcement of the judgments of the courts of the Mainland and of the HKSAR is confined to rulings on monetary damages, including punitive or exemplary damages, for acts of infringement which were committed in the requesting place.

Reciprocal recognition and enforcement of a judgment concerning disputes over the infringement of trade secrets shall include both monetary (including punitive or exemplary damages) and non-monetary rulings.

Article 18

In respect of judgments for the award of property, the scope of recognition and enforcement by the courts of the Mainland and of the HKSAR shall include the property awarded, the corresponding interest, costs, payment for late compliance, or interest for late compliance awarded in the judgment, but shall not include taxes and penalties.

“Costs” referred to in the preceding paragraph, in the case of the HKSAR, means the costs taxed in an allocator or the costs awarded under an order.

Article 19

Where a court of the requested place cannot recognise and enforce a judgment in whole, it may recognise and enforce it in part.

Article 20

Where, in the case of a judgment given by a court of the HKSAR, a party has lodged an appeal, a people's court of the Mainland may, upon examination and verification of the above, suspend the recognition and enforcement proceeding. After the appeal, the

recognition and enforcement proceeding shall be resumed if the original judgment is upheld in whole or in part, or terminated if the original judgment is reversed.

Where, in the case of a judgment given by a people's court of the Mainland, a decision of retrial has been made by a people's court of the Mainland, the court of the HKSAR may, upon examination and verification of the above, suspend the recognition and enforcement proceeding. After the retrial, the recognition and enforcement proceeding shall be resumed if the original judgment is upheld in whole or in part, or terminated if the original judgment is reversed upon retrial.

Article 21

Where the respondent has property in both the Mainland and the HKSAR which may be subject to enforcement, the applicant may file applications for enforcement with the courts of the two places respectively.

The court of one place shall, at the request of the court of the other place, provide information on the status of the enforcement of the judgment.

The total amount to be recovered from enforcing the judgment in the courts of the two places respectively must not exceed the amount determined in the judgment.

Article 22

If in the course of adjudicating a civil and commercial case, the court of one place receives an application brought by a party for the recognition and enforcement of a judgment made by the court of the other place in respect of the same dispute, the application shall be accepted, and the action shall be suspended thereafter. The action shall be terminated or resumed depending on the ruling or order made in respect of the application for recognition and enforcement.

Article 23

If in the course of examining an application for recognition and enforcement of a judgment, a party brings another action in respect of the same dispute, the action shall not be accepted, and any such action so accepted shall be dismissed.

If the judgment has been recognised and enforced in whole by the court, another action brought by a party in respect of the same dispute shall not be accepted.

Where the recognition and enforcement of a judgment has been refused in whole or in part, the applicant shall not file another application for recognition and enforcement, but the applicant may bring an action regarding the same dispute before the court of the requested place.

Article 24

A court of the requested place may, before or after accepting any application for recognition and enforcement of a judgment, impose property preservation or mandatory measures in accordance with the law of that place.

Article 25

The court shall examine the application for recognition and enforcement as soon as possible and make a decision or order.

Article 26

Where any party is aggrieved by a decision or an order made by a court of the requested place on an application for recognition and enforcement of a judgment, the party may, in the case of the Mainland, apply to a people's court at the next higher level for review within 10 days from the date of service of the decision or, in the case of the HKSAR, lodge an appeal according to its law.

Article 27

A party who applies for the recognition and enforcement of a judgment shall pay the fees in accordance with the laws and requirements on costs of the requested place.

Article 28

After this Arrangement is signed, the Supreme People's Court and the HKSAR Government may, after consultation, sign supplementary documents regarding the recognition and enforcement of judgments on the matters stipulated in Article 3 and assistance in preservation measures and interim relief referred to in Article 4.

Any problem arising from the implementation of this Arrangement or any amendment to be made to this Arrangement shall be resolved through consultation between the Supreme People's Court and the HKSAR Government.

Article 29

Following the promulgation of a judicial interpretation by the Supreme People's Court and the completion of the relevant procedures in the HKSAR, both sides shall announce a date on which this Arrangement shall commence.

This Arrangement shall apply to judgments made by the courts of the Mainland and of the HKSAR on or after the date of commencement of this Arrangement.

Article 30

Upon commencement of this Arrangement, the *Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region Pursuant to Choice of Court Agreements between Parties Concerned* shall be terminated.

However, the *Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region Pursuant to Choice of Court Agreements between Parties Concerned* remains applicable to a "choice of court agreement in writing" within the meaning of that arrangement and signed before the commencement of this Arrangement.

Article 31

After the commencement of this Arrangement, the *Arrangement on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases by the Courts of the Mainland and of the Hong Kong Special Administrative Region* shall continue to apply.

This Arrangement is signed in duplicate in Beijing, this 18th day of January 2019.