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By Fax (2543 9197)

19 February 2021

Mr Lemuel WOO
Clerk to Bills Committee
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Mr Woo,

**Bills Committee on Mainland Judgments in Matrimonial and
Family Cases (Reciprocal Recognition and Enforcement) Bill**

Proposed Committee Stage amendments

Please be advised that the Government would like to move Committee Stage amendments (“CSAs”) to the Bill to the effect that:

- (a) clause 11 be amended;
- (b) the Chinese equivalent terms of certain defined terms, namely “status-related order”, “care-related order” and “maintenance-related order”, be amended; and
- (c) the term “child” and its Chinese equivalent term “子女” which appear in certain provisions of the Bill be amended.

A marked-up copy of the Bill showing the proposed amendments (at **Annex A**) as well as the Government’s Explanations on the CSAs (at **Annex B**) are enclosed.

We should be grateful if you could bring this to the attention of the Chairman and other Members of the Bills Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Deneb CHEUNG', written in a cursive style.

(Deneb CHEUNG)

Senior Assistant Solicitor General (China Law)

Encl.

c.c. Ms Vanessa CHENG, Assistant Legal Adviser

#528191 v2

**Mainland Judgments in Matrimonial and Family Cases
(Reciprocal Recognition and Enforcement) Bill**

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A BILL

To

Provide for the recognition and enforcement in Hong Kong of judgments in matrimonial and family cases given in the Mainland, for facilitating the recognition and enforcement in the Mainland of such judgments given in Hong Kong, and for the recognition of Mainland divorce certificates, so as to give effect to 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 made between the Supreme People's Court of the People's Republic of China and the Government of the Hong Kong Special Administrative Region; and to provide for related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette.

2. Interpretation

In this Ordinance—

Arrangement (《安排》) means 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 (a translation of “《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》”) made between the Supreme People’s Court of the People’s Republic of China and the Government of the Hong Kong Special Administrative Region signed on 20 June 2017;

care-related order (攸關看顧相關命令) means an order set out in Part 1 of Schedule 2;

effective (生效)—

- (a) in relation to a Mainland Judgment—see section 5; and
- (b) in relation to a Hong Kong Judgment—see section 6;

Hong Kong Judgment (香港判決) means a judgment, order, decree, allocatur, or certificate of fixed costs, however described, given or made by a court in Hong Kong;

Hong Kong Judgment given in a matrimonial or family case (香港婚姻或家庭案件判決)—see section 4(1);

Mainland (內地) means the part of China other than Hong Kong, Macao and Taiwan;

Mainland divorce certificate (內地離婚證) means a divorce certificate issued by a civil affairs department in the Mainland;

Mainland Judgment (內地判決) means a judgment, ruling or conciliatory statement given by a court in the Mainland but does not include a judgment given by a court in a place outside the Mainland that is recognized in the Mainland under the law of the Mainland;

Mainland Judgment given in a matrimonial or family case (內地婚姻或家庭案件判決)—see section 3(1);

maintenance-related order (攸關贍養相關命令) means an order set out in Part 3 of Schedule 2;

matrimonial or family case (婚姻或家庭案件)—

(a) in relation to a Mainland Judgment—see section 3(2); and

(b) in relation to a Hong Kong Judgment—see section 4(2);

original Mainland court (內地判案法院), in relation to a Mainland Judgment, means the court in the Mainland by which the Judgment was given;

prescribed fee (訂明費用), in relation to a matter, means the fee prescribed for that matter in the rules made under section 40;

property (財產) means—

(a) real or personal property;

(b) an estate or interest in any real or personal property;

(c) money;

(d) a negotiable instrument;

(e) a prescribed instrument within the meaning of section 137B of the Banking Ordinance (Cap. 155);

(f) a debt or other chose in action; or

(g) any other right or interest whether in possession or not;

registered order (已登記命令) means a specified order registered in accordance with a registration order;

registering court (登記法院), in relation to a specified order, means the Court of First Instance or District Court that makes a registration order for the specified order to be registered;

registration application (登記申請) means an application under section 7(1) for an order to register a specified order or orders;

registration order (登記令) means an order made under section 10(1);

specified order (指明命令) means an order set out in Schedule 2 in a Mainland Judgment;

status-related order (攸關狀況相關命令) means an order set out in Part 2 of Schedule 2.

3. Mainland Judgments given in matrimonial or family cases

- (1) For the purposes of this Ordinance, a Mainland Judgment given in a matrimonial or family case is a Mainland Judgment that—
 - (a) is given in a matrimonial or family case; and
 - (b) contains at least one specified order.
- (2) For the purposes of this Ordinance, in relation to a Mainland Judgment, matrimonial or family cases are those set out in paragraphs 1 to 10, 12, 13 and 14 of Article 3(1)(1) of the Arrangement.
- (3) The Chinese text of paragraphs 1 to 10, 12, 13 and 14 of Article 3(1)(1) of the Arrangement is reproduced in the Chinese text of Schedule 1. An English translation of those paragraphs is set out in the English text of that Schedule.

4. Hong Kong Judgments given in matrimonial or family cases

- (1) For the purposes of this Ordinance, a Hong Kong Judgment given in a matrimonial or family case is a Hong Kong Judgment that is given in or in respect of a matrimonial or family case.
- (2) For the purposes of this Ordinance, in relation to a Hong Kong Judgment, matrimonial or family cases are proceedings in which one or more orders specified in Schedule 3 are granted or made.

5. Effective Mainland Judgments

- (1) For the purposes of this Ordinance, a Mainland Judgment is effective if—
 - (a) it is enforceable in the Mainland; and
 - (b) it is—
 - (i) a Mainland Judgment given by the Supreme People's Court;
 - (ii) a Mainland Judgment of the second instance given by a Higher People's Court or an Intermediate People's Court; or
 - (iii) a Mainland Judgment of the first instance given by a Higher People's Court, an Intermediate People's Court or a Primary People's Court, and—
 - (A) no appeal is allowed from the Judgment according to the law of the Mainland; or
 - (B) the time limit for appeal in respect of the Judgment has expired according to the law of the Mainland and no appeal has been filed.
- (2) A Mainland Judgment mentioned in subsection (1)(b)(i), (ii) or (iii) includes a Mainland Judgment given according to the trial supervision procedure of the Mainland.

6. Effective Hong Kong Judgments

- (1) For the purposes of this Ordinance, a Hong Kong Judgment is effective if—
 - (a) it is enforceable in Hong Kong; and
 - (b) it is given or made by—
 - (i) the Court of Final Appeal;
 - (ii) the Court of Appeal;

Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill

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6

- (iii) the Court of First Instance; or
 - (iv) the District Court.
- (2) To avoid doubt, subsection (1) applies also to a judgment that may be varied by a court in Hong Kong after the judgment has taken effect according to the law of Hong Kong.
-

Part 2

Registration in Hong Kong of Mainland Judgments Given in Matrimonial or Family Cases

Division 1—Registration Applications

7. Requirements for registration applications

- (1) Subject to section 8, a party to a Mainland Judgment given in a matrimonial or family case may apply to the District Court for a registration order to register a specified order, or any one or more of the specified orders, in the Judgment if the Judgment is—
 - (a) given on or after the commencement date of this Ordinance; and
 - (b) effective in the Mainland.
- (2) The registration application must be accompanied by the prescribed fee.

8. Additional requirements for particular registration applications

- (1) A party to a Mainland Judgment given in a matrimonial or family case may make a registration application in relation to a care-related order in the Judgment only if—
 - (a) there has not been non-compliance with the order as at the date of the registration application (*application date*); or
 - (b) where there has been non-compliance with the order as at the application date—

-
- (i) the party makes the registration application within 2 years after the date on which non-compliance first occurred; or
 - (ii) the District Court, on the application of the party, has given permission for the registration application to be made after the expiry of the 2-year period mentioned in subparagraph (i).
 - (2) A party to a Mainland Judgment given in a matrimonial or family case may make a registration application in relation to a maintenance-related order in the Judgment requiring the payment of a sum of money or the performance of an act (other than a payment or an act required to be made or performed periodically) only if—
 - (a) where the order specifies a date (*that date*) by which the payment is to be made, or the act is to be performed—
 - (i) that date is a date before the application date;
 - (ii) the payment has not been made or fully made, or the act has not been performed or fully performed, by the application date; and
 - (iii) either—
 - (A) the registration application is made within 2 years after that date; or
 - (B) the District Court, on the application of the party, has given permission for the registration application to be made after the expiry of the 2-year period mentioned in sub-subparagraph (A); or
 - (b) where the order does not specify a date by which the payment is to be made, or the act is to be performed—

-
- (i) the payment has not been made or fully made, or the act has not been performed or fully performed, by the application date; and
 - (ii) either—
 - (A) the registration application is made within 2 years after the date on which the Judgment becomes effective; or
 - (B) the District Court, on the application of the party, has given permission for the registration application to be made after the expiry of the 2-year period mentioned in sub-subparagraph (A).
- (3) Subject to subsection (4), a party to a Mainland Judgment given in a matrimonial or family case may make a registration application in relation to a maintenance-related order in the Judgment requiring a payment or an act to be made or performed periodically only if, as at the application date, any payment or act (*relevant payment or act*) required to be made or performed by a date (*due date*) before the application date has not been made or fully made or has not been performed or fully performed.
- (4) The registration application mentioned in subsection (3) may be made in relation to a relevant payment or act only if—
- (a) the due date for making the payment or performing the act falls on a day within 2 years before the application date; or
 - (b) the due date for making the payment or performing the act falls on a day before the 2-year period mentioned in paragraph (a) and the District Court, on the application of the party, has given permission for the registration application to be made in relation to that payment or act.

9. Transfer of registration applications to Court of First Instance

- (1) The District Court may, on its own initiative, make an order (*transfer order*) to transfer a registration application to the Court of First Instance.
- (2) The District Court may make the transfer order only if it considers that the registration application can more conveniently be dealt with by the Court of First Instance.
- (3) A registration application transferred by a transfer order is regarded as having been transferred to the Court of First Instance on the date on which the order is made, unless the Court of First Instance otherwise directs.
- (4) On the transfer of the registration application—
 - (a) a document issued, served, filed or lodged in relation to the registration application before the transfer is regarded as having been issued, served, filed or lodged for the purpose of the application in the Court of First Instance on the date on which it was issued, served, filed or lodged; and
 - (b) a step taken by a party in relation to the registration application before the transfer is regarded as having been taken for the purpose of the application in the Court of First Instance on the date on which it was taken.
- (5) On the transfer of the registration application, unless the Court of First Instance otherwise directs, a decision made by the District Court in relation to the application before the transfer has effect in the Court of First Instance as if the decision were made by the Court of First Instance on the date on which it was made by the District Court.

Division 2—Registration Orders and Registration

10. Registration orders

- (1) On a registration application in relation to any specified order in a Mainland Judgment, the District Court or (if a transfer order under section 9(1) has been made) Court of First Instance may order the specified order to be registered in accordance with this Division if it is satisfied that—
 - (a) the Judgment is given in a matrimonial or family case on or after the commencement date of this Ordinance; and
 - (b) the Judgment is effective in the Mainland.
- (2) For the purposes of subsection (1), until the contrary is proved, a Mainland Judgment is presumed to be given in a matrimonial or family case and effective in the Mainland if a certificate certifying those matters is issued by the original Mainland court.
- (3) On the making of a registration order in relation to a specified order, the specified order is taken as registered in accordance with the registration order.

11. Further provisions for registration orders concerning maintenance-related orders

- (1) ~~Subsection (2)~~ This section applies to a registration application in relation to a maintenance-related order requiring the payment of a sum of money or the performance of an act (~~other than a payment or an act required to be made or performed whether~~ whether periodically or not).
- (2) ~~Subject to subsection (3), if the payment or act has been made or performed in part,~~ the registering court may only order under section 10(1) that the maintenance-related order is to be

registered to the extent that it relates to a payment or an act, or
the part of the a payment or an act, that—

(a) is required by the maintenance-related order to be made
or performed by a date that falls before the date of the
registration application (*application date*); and

(b) has not been made or performed.

~~(3) Subsection (4) applies to a registration application in relation to a maintenance-related order requiring a payment or an act to be made or performed periodically.~~

~~(43) If the maintenance-related order is an order requiring a payment or an act to be made or performed periodically, the~~
The registering court may, in addition, order only order under
section 10(1) that the maintenance-related order is also to be registered in relation to a payment or an act that—

(a) is required by the maintenance-related order to be made or performed by a date that falls on a day—

~~(i) before the date of the registration application (*application date*); or~~

~~(ii) on or after the application date; and~~

(b) has not been made or performed.

12. Sums to be included on registration of specified orders

(1) This section applies to a specified order in a Mainland Judgment registered in accordance with a registration order.

(2) The specified order must also be registered for the following sums as if they were required to be paid under the specified order—

(a) to the extent that they relate to the specified order—

- (i) any interest that, under the law of the Mainland, becomes due under the Judgment up to the time of the registration; and
 - (ii) any costs duly certified by the original Mainland court;
 - (b) any fine or charge payable by a party to another party to the Judgment for failing to comply with the specified order within the time stipulated in the Judgment; and
 - (c) any reasonable costs of, or incidental to, the registration of the specified order, including the costs of obtaining a copy of the Judgment duly sealed by the original Mainland court.
- (3) To avoid doubt, the specified order must not be registered for the following sums—
- (a) taxes or other charges of a like nature; and
 - (b) a fine or other penalty, other than a fine or charge described in subsection (2)(b).

13. Sums denominated in currency other than Hong Kong dollars

- (1) This section applies if—
 - (a) a sum of money is required to be paid under a specified order; and
 - (b) the sum payable is denominated in a currency other than Hong Kong dollars.
- (2) The specified order, when registered in accordance with a registration order, must be registered as if the specified order required the payment of a sum denominated in Hong Kong dollars that, on the basis of the rate of exchange prevailing at the date of registration, is equivalent to the sum payable under the specified order.

Division 3—Setting Aside Registration

14. Court to specify time limit for setting aside registration

- (1) The registering court must, when making a registration order for a specified order to be registered, specify the period within which an application for setting aside the registration may be made.
- (2) The registering court may extend the period (either as originally specified or as subsequently extended) within which an application mentioned in subsection (1) may be made.

15. Applications for setting aside registration

If a specified order in a Mainland Judgment is registered in accordance with a registration order, a party to the Judgment (other than the party who applied for the registration) may, within the period specified under section 14(1) (or as extended under section 14(2)), apply to the registering court to set aside the registration of the specified order.

16. Grounds on which registration must be set aside

- (1) The registering court must, on an application made under section 15 for setting aside the registration of a specified order in a Mainland Judgment, set aside the registration if it is satisfied that—
 - (a) a provision in Division 1 or 2 has not been complied with;
 - (b) the respondent to the Judgment was not summoned to appear according to the law of the Mainland;
 - (c) the respondent to the Judgment was summoned to appear according to the law of the Mainland, but was not given a reasonable opportunity to make submissions or defend the proceedings;

- (d) the Judgment was obtained by fraud;
 - (e) the proceedings in which the Judgment was given were accepted by a court in the Mainland after proceedings in respect of the same cause of action between the same parties were started in a court in Hong Kong;
 - (f) a court in Hong Kong has given a judgment on the same cause of action between the same parties;
 - (g) a court in a place outside Hong Kong has given a judgment on the same cause of action between the same parties, and the judgment has already been recognized by a court in Hong Kong;
 - (h) the recognition of the specified order, or the enforcement of the specified order, is manifestly contrary to the public policy of Hong Kong; or
 - (i) the Judgment has been reversed or otherwise set aside pursuant to an appeal or a retrial under the law of the Mainland.
- (2) For the purposes of subsection (1)(h), if the Judgment containing the specified order involves a child-person under the age of 18 years, in deciding whether the recognition of the order, or the enforcement of the order, is manifestly contrary to the public policy of Hong Kong, the registering court must take into account the best interests of the child person.
- (3) To avoid doubt, for the purposes of subsection (1)(e), (f) and (g), the cause of action on which the Judgment was given (*Mainland cause of action*) and the cause of action (*non-Mainland cause of action*)—
- (a) in respect of which the proceedings were started in a court in Hong Kong; or

- (b) on which a court in Hong Kong or a court in a place outside Hong Kong has given a judgment,
- are not the same if the circumstances giving rise to the non-Mainland cause of action are materially different from the circumstances giving rise to the Mainland cause of action.

17. Court may adjourn applications for setting aside registration

- (1) This section applies if, on an application made under section 15 for setting aside the registration of a specified order in a Mainland Judgment, the registering court is satisfied that—
- (a) an appeal against the Judgment is pending; or
- (b) the case on which the Judgment was based is ordered to be retried.
- (2) The registering court may, on the terms it considers just, adjourn the application until after the expiry of the period that appears to the registering court to be reasonably sufficient to enable the applicant to take the necessary steps to have the appeal or retrial disposed of.
- (3) Without limiting subsection (2), the registering court may impose any terms it considers just for any one or more of the following purposes—
- (a) maintaining or restoring the status quo during the period of adjournment;
- (b) ensuring the welfare and best interests of a child-person under the age of 18 years;
- (c) preventing an irremediable injustice.

18. Restriction on further registration applications

- (1) Except as provided by subsections (2) and (3), if the registration of a specified order (*original registration*) is set aside under

section 16, the person who made the registration application for the original registration may not make a further registration application to register the order.

- (2) If the registration of a specified order in a Mainland Judgment is set aside solely on the ground that the Judgment is not effective in the Mainland, a further registration application may be made to register the order if and when the Judgment becomes effective in the Mainland.
- (3) If the registration of a specified order is set aside solely on the ground that—
 - (a) the order requires the payment of a sum of money, or the performance of an act; and
 - (b) despite the fact that part of the payment had been made, or part of the act had been performed, the order was registered in respect of the whole sum or act,a further registration application may be made to register the order to the extent that it relates to the part of the payment or act that has not been made or performed.

Division 4—Effect etc. of Registration

19. Effect of registration of care-related orders or maintenance-related orders

- (1) Subject to sections 20 and 22, a care-related order or a maintenance-related order that is a registered order may be enforced in Hong Kong as if—
 - (a) it were an order originally made by the registering court and the registering court had jurisdiction to make it; and
 - (b) it were made on the day of registration of the order.
- (2) Without limiting subsection (1)—

- (a) proceedings may be brought for, or with respect to, the enforcement of the order;
- (b) if a sum of money is required to be paid under the order, the sum carries interest; and
- (c) the registering court has the same control over the execution of the order,

as if it were an order originally made by the registering court on the day of registration of the order.

- (3) Sums of money required to be paid or acts required to be performed under the order are to be paid or performed in accordance with the order as from the date on which they are required to be paid or performed under the order.

20. No enforcement before end of setting aside procedure

- (1) An action to enforce a registered order may be taken only after the expiry of the period within which an application for setting aside the registration of the order may be made under section 15.
- (2) However, if an application under section 15 is made during the period mentioned in subsection (1), an action to enforce the order may be taken only after the application has been finally disposed of.

21. Transfer of registered orders to Court of First Instance

- (1) This section applies if the registering court is the District Court.
- (2) A person entitled to enforce a registered order may make an ex parte application to the District Court for the order to be transferred to the Court of First Instance.

- (3) On an application under subsection (2), the Registrar of the District Court may direct the transfer of the registered order to the Court of First Instance.
- (4) However, the Registrar may make the direction only if the Registrar is satisfied that the registered order cannot be conveniently enforced in the District Court.
- (5) If the registered order is transferred to the Court of First Instance, the order has the same force and effect and the same proceedings may be brought on it as if it had been originally registered by the Court of First Instance on the date on which it was registered by the District Court.

22. Transfer of property between parties to marriage

- (1) This section applies in relation to a registered order in a Mainland Judgment that is a specified order set out in item 4 of Part 3 of Schedule 2.
- (2) If the registered order requires any property to be vested in or delivered to a party to the Judgment (*transferee*), or declares that any property belongs to the transferee, the order is taken to be an in personam order for the transfer of the property from one party to the Judgment to the transferee.
- (3) If—
 - (a) the registered order requires the transfer of any property from one party to the Judgment to the other party; or
 - (b) the registered order is taken under subsection (2) to be an in personam order for the transfer of any property from one party to the Judgment to a transferee,

the court in which the registered order is enforced may direct the party who is to transfer the property (*transferor*) to execute any conveyance, contract or other document, or to endorse any negotiable instrument.

- (4) If the transferor neglects or refuses to comply with the direction or cannot, after reasonable inquiry, be found, the court in which the registered order is enforced—
 - (a) for the Court of First Instance—may exercise the power under section 25A(1) of the High Court Ordinance (Cap. 4) and section 25A(2) and (3) of that Ordinance applies accordingly; or
 - (b) for the District Court—may exercise the power under section 38A(2) of the District Court Ordinance (Cap. 336) and section 38A(3) and (4) of that Ordinance applies accordingly.

23. Payment of maintenance: attachment of income order

- (1) If a registered order is an order against a person for the payment of maintenance, section 20 of the Guardianship of Minors Ordinance (Cap. 13) (*that Ordinance*) and the Attachment of Income Order Rules (Cap. 13 sub. leg. A) (*those Rules*) apply, with necessary modification, in relation to the order as if the order were a maintenance order as defined by section 2 of that Ordinance.
- (2) However, the court may not vary the registered order pursuant to that Ordinance, or those Rules, as applied under subsection (1).

24. Effect of registration of status-related orders

- (1) A status-related order that is a registered order is recognized as valid in Hong Kong only after the expiry of the period within which an application for setting aside the registration of the order may be made under section 15.
- (2) However, if an application under section 15 is made during the period mentioned in subsection (1), the order is recognized as

valid in Hong Kong only after the application has been finally disposed of.

- (3) This section is not to be interpreted as requiring the recognition of any findings of fault made in any proceedings.

25. Recognition of judgments under common law not affected

The registration of a specified order in a Mainland Judgment under this Part does not prevent a court in Hong Kong from recognizing the Judgment as conclusive of any matter of law or fact decided in the Judgment if the Judgment would be recognized as conclusive under the common law before the commencement date of this Ordinance.

Division 5—Restriction on Hong Kong Court Proceedings

26. Stay of Hong Kong proceedings if registration applications are made

- (1) This section applies if—
 - (a) a registration application is made in relation to any specified order in a Mainland Judgment given on a cause of action between particular parties;
 - (b) proceedings (*HK proceedings*) are pending before a court in Hong Kong (*adjudicating court*) in respect of the same cause of action between the same parties; and
 - (c) the HK proceedings are not proceedings under Part IIA of the Matrimonial Proceedings and Property Ordinance (Cap. 192).
- (2) The applicant for the registration application must notify the adjudicating court of the application as soon as the application is made.
- (3) On receiving the notification, the adjudicating court must order that the HK proceedings be stayed.

- (4) When the stay order is made under subsection (3), the HK proceedings are stayed until the adjudicating court, on its own initiative or on the application of a party to the HK proceedings, orders that the HK proceedings (or any part of them) be resumed or terminated.
- (5) Despite the HK proceedings being stayed, the adjudicating court may at any time make any order as it considers necessary for any one or more of the following purposes—
 - (a) maintaining or restoring the status quo while the HK proceedings are stayed;
 - (b) ensuring the welfare and best interests of a child-person under the age of 18 years;
 - (c) preventing an irreparable injustice.
- (6) The adjudicating court may make a resumption or termination order under subsection (4) only if—
 - (a) the registration application has been finally disposed of; and
 - (b) if a registration order to register any specified order to which the registration application relates is made—
 - (i) the period within which an application for setting aside the registration may be made under section 15 has expired and no such application has been made; or
 - (ii) an application for setting aside the registration is made under section 15 and the application has been finally disposed of.
- (7) To avoid doubt, the cause of action on which the Judgment was given (*Mainland cause of action*) and the cause of action in respect of which the proceedings are pending before a court in Hong Kong (*Hong Kong cause of action*) are not the same if

the circumstances giving rise to the Hong Kong cause of action are materially different from the circumstances giving rise to the Mainland cause of action.

27. Restriction on bringing proceedings on same cause of action in Hong Kong

- (1) Subject to subsections (2) and (3), a party to a Mainland Judgment given in a matrimonial or family case may not bring in a court in Hong Kong proceedings in respect of the same cause of action on which the Judgment was given if—
 - (a) a registration application in relation to any specified order or orders in the Judgment is pending; or
 - (b) any specified order or orders in the Judgment is or are registered in accordance with a registration order.
- (2) Subsection (1) does not apply if the proceedings to be brought in a court in Hong Kong are proceedings under Part IIA of the Matrimonial Proceedings and Property Ordinance (Cap. 192).
- (3) If the registration of the specified order or orders as mentioned in subsection (1)(b) has been set aside under section 16, that subsection does not prevent the party from bringing the proceedings in a court in Hong Kong.
- (4) To avoid doubt, the cause of action on which the Judgment was given (*Mainland cause of action*) and the cause of action in respect of which the proceedings are intended to be brought in a court in Hong Kong (*Hong Kong cause of action*) are not the same if the circumstances giving rise to the Hong Kong cause of action are materially different from the circumstances giving rise to the Mainland cause of action.

28. Restriction on bringing proceedings for execution of Mainland Judgments other than by way of registration

A court in Hong Kong may not entertain any proceedings for the recovery of a sum of money required to be paid or the execution of a relief ordered under a Mainland Judgment in a matrimonial or family case that is given on or after the commencement date of this Ordinance and that is effective in the Mainland, other than—

- (a) proceedings for registration under section 10(1); or
 - (b) proceedings for the execution of a registered order.
-

Part 3

Recognition in Hong Kong of Mainland Divorce Certificates

Division 1—Recognition Applications and Recognition Orders

29. Requirements for recognition applications

- (1) A party to a divorce specified in a Mainland divorce certificate issued on or after the commencement date of this Ordinance may apply to the District Court for an order to have the certificate recognized.
- (2) The application must be accompanied by the prescribed fee.

30. Recognition orders

- (1) On an application made under section 29 in respect of a Mainland divorce certificate, the District Court may, if it is satisfied that the certificate is valid in the Mainland, order that the certificate be recognized.
- (2) For the purposes of subsection (1), until the contrary is proved, a Mainland divorce certificate is presumed to be valid in the Mainland if the certificate is notarized in accordance with the law of the Mainland.

Division 2—Setting Aside Recognition Orders

31. Court to specify time limit for setting aside recognition orders

- (1) The District Court must, when making an order under section 30(1) for the recognition of a Mainland divorce certificate,

specify the period within which an application for setting aside the order may be made.

- (2) The District Court may extend the period (either as originally specified or as subsequently extended) within which an application mentioned in subsection (1) may be made.

32. Applications for setting aside recognition orders

If an order is made under section 30(1) for the recognition of a Mainland divorce certificate, a party to the divorce specified in the certificate (other than the party who applied for the recognition) may, within the period specified under section 31(1) (or as extended under section 31(2)), apply to the District Court to set aside the order.

33. Grounds on which recognition orders must be set aside

The District Court must, on an application made under section 32 for setting aside an order for the recognition of a Mainland divorce certificate, set aside the order if it is satisfied that—

- (a) the certificate was obtained by fraud;
- (b) the certificate is invalid; or
- (c) the recognition is manifestly contrary to the public policy of Hong Kong.

34. Effect of setting aside recognition orders

If an order for the recognition of a Mainland divorce certificate is set aside under section 33, the parties to the divorce specified in the certificate may not make a further application under section 29(1) for an order to have the certificate recognized.

Division 3—Effect of Recognition

35. Recognition orders take effect at end of setting aside procedure

- (1) An order made under section 30(1) takes effect only after the expiry of the period within which an application for setting aside the order may be made under section 32.
- (2) However, if an application under section 32 is made during the period mentioned in subsection (1), the order takes effect only after the application has been finally disposed of.

36. Divorce recognized as valid in Hong Kong

On the taking effect of an order for the recognition of a Mainland divorce certificate in accordance with section 35, the divorce specified in the certificate is recognized as valid in Hong Kong.

Part 4

Facilitation of Recognition and Enforcement in Mainland of Hong Kong Judgments Given in Matrimonial or Family Cases

37. Hong Kong Judgments to which this Part applies

This Part applies to a Hong Kong Judgment given in a matrimonial or family case that is—

- (a) given on or after the commencement date of this Ordinance; and
- (b) effective in Hong Kong.

38. Applications for certified copy of Hong Kong Judgments

- (1) Subject to subsection (3), a party to a Hong Kong Judgment may apply for a certified copy of the Judgment.
- (2) The application must—
 - (a) be made to—
 - (i) if the Judgment was given by the Court of Final Appeal—the Court of Final Appeal;
 - (ii) if the Judgment was given by the Court of Appeal or Court of First Instance—the High Court; or
 - (iii) if the Judgment was given by the District Court—the District Court; and
 - (b) be accompanied by the prescribed fee.
- (3) If the execution of a Hong Kong Judgment is stayed for any period pending an appeal or for any other reason, an application

may not be made under this section in respect of the Judgment until the expiry of that period.

39. Issue of certified copy of Hong Kong Judgments and certificate for Hong Kong Judgments

- (1) The Court of Final Appeal, High Court or District Court must, on an application made under section 38, issue to the applicant a certified copy of a Hong Kong Judgment.
- (2) When issuing a certified copy of the Judgment, the Court of Final Appeal, High Court or District Court must also—
 - (a) issue to the applicant a certificate—
 - (i) certifying that the Judgment is given in a matrimonial or family case and is effective in Hong Kong; and
 - (ii) containing the particulars that may be prescribed by the rules made under section 40; and
 - (b) annex to the certificate the documents that may be prescribed by the rules made under section 40.

Part 5

Miscellaneous

40. Rules

The Chief Judge may make rules—

- (a) to provide for the practice and procedure relating to—
 - (i) an application under this Ordinance; and
 - (ii) the execution of a registered order;
- (b) to prescribe the fees payable under this Ordinance;
- (c) to prescribe any matter that under this Ordinance is to be prescribed by rules made under this section; and
- (d) to provide generally for the better carrying out of the purposes and provisions of this Ordinance.

41. Amendment of Schedules 1, 2 and 3

The Secretary for Justice may, by notice published in the Gazette, amend Schedule 1, 2 or 3.

42. Related amendment

The Matrimonial Causes Ordinance (Cap. 179) is amended as set out in Schedule 4.

Schedule 1

[ss. 3 & 41]

Relevant Paragraphs of Article 3(1)(1) of Arrangement

(English Translation)

1. dispute over division of the property of parties to a marriage during the subsistence of the marriage
2. dispute over divorce
3. dispute over property after divorce
4. dispute over invalidity of a marriage
5. dispute over annulment of a marriage
6. dispute over a matrimonial property agreement
7. dispute over custody or maintenance of a child arising from cohabitation
8. dispute over confirmation of parentage
9. dispute over custody or maintenance of a child
10. dispute over spousal maintenance

...

12. dispute over right of guardianship (limited to guardianship of a minor child)
 13. dispute over right of access to a child
 14. application for an order for the protection of a person
-

Schedule 2

[ss. 2, 22 & 41]

Specified Orders in Mainland Judgments

Part 1

Care-related Orders

1. An order in relation to the custody of a child-person under the age of 18 years
2. An order in relation to the custody of a child person aged 18 years or above, whether or not under the age of 18 years, who cannot live independently
3. An order in relation to the guardianship of a child-person under the age of 18 years
4. An order for right of access in relation to a child-person under the age of 18 years
5. An order for the protection of a person from violence in a domestic relationship

Part 2

Status-related Orders

1. An order granting a divorce
2. An order declaring that a marriage is invalid
3. An order for the annulment of a marriage
4. An order in relation to the parentage of a person

Part 3

Maintenance-related Orders

1. An order in relation to the maintenance of a child person under the age of 18 years
2. An order in relation to the maintenance of a child person aged 18 years or above, whether or not under the age of 18 years, who cannot live independently
3. An order in relation to spousal maintenance
4. An order for the division of property between parties to a marriage (including parties to a marriage which has been declared invalid or annulled), and includes—
 - (a) an order—
 - (i) for the delivery or transfer of property to one party to the marriage;
 - (ii) for the payment of a sum of money to one party to the marriage; or
 - (iii) for the vesting of property in one party to the marriage; or

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Schedule 2—Part 3

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- (b) a declaration that property belongs to one party to the marriage

Schedule 3

[ss. 4 & 41]

Matrimonial or Family Cases in Hong Kong

1. A decree absolute of divorce granted under Part III of the Matrimonial Causes Ordinance (Cap. 179)
2. A decree absolute of nullity granted under Part IV of the Matrimonial Causes Ordinance (Cap. 179)
3. An order under the Matrimonial Proceedings and Property Ordinance (Cap. 192) for maintenance pending the determination of a suit
4. A maintenance order made under—
 - (a) the Guardianship of Minors Ordinance (Cap. 13);
 - (b) the Separation and Maintenance Orders Ordinance (Cap. 16); or
 - (c) Part II or IIA of the Matrimonial Proceedings and Property Ordinance (Cap. 192)
5. An order for the transfer or sale of property made under—
 - (a) the Guardianship of Minors Ordinance (Cap. 13); or
 - (b) Part II or IIA of the Matrimonial Proceedings and Property Ordinance (Cap. 192)
6. An order made under the Married Persons Status Ordinance (Cap. 182) with respect to property

7. An order made under the Matrimonial Proceedings and Property Ordinance (Cap. 192) for the alteration of a maintenance agreement during the lives of the parties
8. An adoption order made under the Adoption Ordinance (Cap. 290)
9. A declaration regarding the legitimacy of a person, or for the legitimation of a person made under the Matrimonial Causes Ordinance (Cap. 179)
10. A declaration regarding the parentage or the legitimacy of a person, or a declaration for the legitimation of a person, made under the Parent and Child Ordinance (Cap. 429)
11. An order in relation to custody made under—
 - (a) the Guardianship of Minors Ordinance (Cap. 13);
 - (b) the Separation and Maintenance Orders Ordinance (Cap. 16); or
 - (c) the Matrimonial Proceedings and Property Ordinance (Cap. 192)
12. An order in relation to custody made in respect of a child-person under the age of 18 years who has been made a ward of court
13. An injunction granted under the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189)

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Schedule 3

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14. An order made under the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189) for varying or suspending the execution of a custody or access order
-

Schedule 4

[s. 42]

Related Amendment to Matrimonial Causes Ordinance (Cap. 179)

1. Section 61A added

After section 61—

Add

“61A. Non-application to divorces in Mainland

- (1) Sections 55, 56, 57 and 58 do not apply in relation to divorces obtained by means of judicial or other proceedings in the Mainland on or after the commencement date of the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (of 2020).
 - (2) Section 61 does not apply in relation to a divorce the validity of which is recognized because of the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (of 2020).
 - (3) In this section—
Mainland (內地) means the part of China other than Hong Kong, Macao and Taiwan.”
-

Explanatory Memorandum

The purpose of this Bill is to give effect to 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 made between the Supreme People's Court of the People's Republic of China and the Government of the Hong Kong Special Administrative Region signed on 20 June 2017 (*Arrangement*). The Arrangement provides for the following matters—

- (a) the reciprocal recognition and enforcement of civil judgments in matrimonial or family cases between the Mainland and Hong Kong; and
 - (b) the recognition in Hong Kong of divorce certificates issued in the Mainland and the recognition in the Mainland of agreements or memorandums for dissolution of a marriage under the Marriage Reform Ordinance (Cap. 178).
2. The Bill contains 5 Parts and 4 Schedules to provide for—
- (a) the recognition and enforcement in Hong Kong of Mainland Judgments (as defined by clause 2) in matrimonial or family cases;
 - (b) the recognition in Hong Kong of divorce certificates issued in the Mainland;
 - (c) the facilitation of the recognition and enforcement in the Mainland of Hong Kong Judgments (as defined by clause 2) in matrimonial or family cases; and
 - (d) a related amendment to the Matrimonial Causes Ordinance (Cap. 179).

Part 1—Preliminary

3. Clause 1 sets out the short title and provides for commencement.
4. Clause 2 contains the definitions for the interpretation of the Bill. Clauses 3, 4, 5 and 6 explain what is meant by a judgment given in a matrimonial or family case and what effective means in relation to Mainland Judgments and Hong Kong Judgments.

Part 2—Registration in Hong Kong of Mainland Judgments Given in Matrimonial or Family Cases

5. Part 2 deals with matters relating to the registration in Hong Kong of an order (*specified order*) in a Mainland Judgment given in a matrimonial or family case. That Part contains 5 Divisions.

Division 1—Registration Applications

6. Division 1 (clauses 7 to 9) of Part 2 deals with registration applications. In particular, clause 7 provides that a registration application may only be made for specified orders in a Mainland Judgment in a matrimonial or family case given on or after the commencement date of the Ordinance and that is effective in the Mainland. Clause 8 imposes (subject to certain exceptions) a 2-year time limit for certain registration applications. Clause 9 empowers the District Court to transfer a registration application to the Court of First Instance.

Division 2—Registration Orders and Registration

7. Division 2 (clauses 10 to 13) of Part 2 deals with the registration of specified orders in a Mainland Judgment by the District Court or Court of First Instance, including—
 - (a) the power of the District Court or Court of First Instance to make an order for the registration of a specified order (clause 10);

- (b) the extent to which a maintenance-related order may be registered (clause 11);
- (c) the inclusion of certain sums (such as interest) in the registration (clause 12); and
- (d) the registration of a specified order requiring the payment of a sum of money denominated in a currency other than Hong Kong dollars (clause 13).

Division 3—Setting Aside Registration

8. Division 3 (clauses 14 to 18) of Part 2 deals with the procedure for setting aside the registration of a specified order and the effect of setting aside. In particular, clause 16 provides for the grounds on which the registration of a specified order must be set aside.

Division 4—Effect etc. of Registration

9. Division 4 (clauses 19 to 25) of Part 2 deals with the effect of registration. Clause 19 provides that a registered care-related order or a registered maintenance-related order may be enforced in Hong Kong as if it were an order originally made by the registering court. Clauses 20 to 23 provide for matters relating to the enforcement in Hong Kong of a registered order. Clause 24 provides that a registered status-related order is recognized as valid in Hong Kong. Clause 25 provides that the registration of a specified order in a Mainland Judgment does not prevent a court in Hong Kong from recognizing the Judgment as conclusive of any matter of law or fact decided in the Judgment if the Judgment would be recognized as conclusive under the common law before the commencement date of the Ordinance.

Division 5—Restriction on Hong Kong Court Proceedings

10. Division 5 (clauses 26 to 28) of Part 2 provides for restriction on Hong Kong proceedings. Clause 26 provides that certain ongoing Hong Kong proceedings must be stayed when an application to

register a Mainland Judgment is made. Clause 27 restricts (subject to certain exceptions) a party to a Mainland Judgment from bringing in Hong Kong proceedings in respect of the same cause of action. Clause 28 restricts the bringing of proceedings for the execution of a Mainland Judgment other than by way of registration.

Part 3—Recognition in Hong Kong of Mainland Divorce Certificate

11. Part 3 deals with matters relating to the recognition of a divorce certificate issued in the Mainland. That Part contains 3 Divisions.

Division 1—Recognition Applications and Recognition Orders

12. Division 1 (clauses 29 and 30) of Part 3 provides for the application requirements and the District Court’s power to order the recognition of a divorce certificate.

Division 2—Setting Aside Recognition Orders

13. Division 2 (clauses 31 to 34) of Part 3 deals with the procedure for setting aside an order for the recognition of a divorce certificate and the effect of setting aside. In particular, clause 33 provides for the grounds on which the order must be set aside.

Division 3—Effect of Recognition

14. Division 3 (clauses 35 and 36) of Part 3 deals with the effect of recognition. In particular, on the order for the recognition of a divorce certificate taking effect, the divorce specified in the certificate is recognized as valid in Hong Kong (clause 36).

Part 4—Facilitation of Recognition and Enforcement in Mainland of Hong Kong Judgments Given in Matrimonial or Family Cases

15. Part 4 (clauses 37 to 39) provides for the issue of a certified copy of a Hong Kong Judgment and also a certificate for the Judgment. The purpose of issuing the certified copy and the certificate is to facilitate

a party to the Judgment to seek recognition and enforcement of the Judgment in the Mainland.

Part 5—Miscellaneous

16. Part 5 (clauses 40 to 42) provides for the following miscellaneous matters—
- (a) the Chief Judge’s power to make rules for the carrying into effect of the Ordinance;
 - (b) the Secretary for Justice’s power to amend Schedules 1, 2 and 3; and
 - (c) the making of a related amendment (see also Schedule 4).

Schedules

17. The Chinese text of Schedule 1 reproduces paragraphs 1 to 10, 12, 13 and 14 of Article 3(1)(1) of the Arrangement for the purpose of the meaning of matrimonial or family cases in relation to Mainland Judgments. The English text of Schedule 1 contains the English translation of those paragraphs.
18. Schedule 2 contains a list of specified orders.
19. Schedule 3 contains a list of orders granted or made by a Hong Kong court for the purpose of the meaning of matrimonial or family cases in relation to Hong Kong Judgments. Amongst others, an order in relation to custody that may be made by the court under the enactments mentioned in item 11 of Schedule 3 or in the exercise of its wardship jurisdiction (as mentioned in item 12 of that Schedule) may include an order relating to access to a child or an order for the return or delivery of a child who has been wrongfully removed from Hong Kong to the Mainland or wrongfully retained in the Mainland (other than in the context of an international child abduction case). Such order may also be an interim order.

Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill

Explanatory Memorandum

Paragraph 20

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20. Schedule 4 contains a related amendment to the Matrimonial Causes Ordinance (Cap. 179).

Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill

The Government's Explanations on the proposed Committee Stage amendments

The Government would like to move Committee Stage amendments (“CSAs”) to the Bill to the effect that:

- (a) clause 11 be amended;
- (b) the Chinese equivalent terms of certain defined terms, namely “status-related order”, “care-related order” and “maintenance-related order”, be amended; and
- (c) the term “child” and its Chinese equivalent term “子女” which appear in certain provisions of the Bill be amended.

Clause 11

2. As mentioned in our response to the issues raised by the Bills Committee at the meeting on 11 January 2021 (LC Paper No. CB(4)389/20-21(02)), the policy intent to be achieved by clause 11(4) of the Bill is to provide that the registration by a court of a maintenance-related order which requires periodic payment or periodic performance of acts covers not only those payments or acts which have become overdue before the date of the registration application, but also periodic obligations to pay or perform an act which becomes due on or after the application date.

3. After reviewing the provisions concerned, we propose to revise clause 11 to better reflect the policy intent.

Chinese equivalent terms of certain defined terms, namely “status-related order”, “care-related order” and “maintenance-related order”

4. “攸關狀況命令”, “攸關看顧命令” and “攸關贍養命令” are used in the Bill as the Chinese equivalent terms of the defined terms of “status-related order”, “care-related order” and “maintenance-related order” respectively.

5. At the meetings held on 11 and 19 January 2021, the Chairman of the Bills Committee commented that the expression of “攸關” might not be as frequently used as “相關” or “有關” in everyday language. Taking into account the comment and having reviewed the provisions of the Bill as a whole, we propose replacing the said Chinese equivalent terms with “狀況相關命令”, “看顧相關命令” and “贍養相關命令” respectively. The proposed amendments cover the defined terms in clause 2 of the Bill as well as provisions of the Bill where the defined terms appear.

The term “child” and its the Chinese equivalent term “子女”

6. The term “child” is used in the Bill in the broad sense of referring to *any* child who may or may not be the child of a party to a dispute. The Chinese equivalent term in the Bill is “子女” which may connote that the “child” is the “son” (“[兒]子”) or “daughter” (“女[兒]”) of a party to the dispute. Such connotation may not sit well in certain contexts in the Bill. An example is item 1 in Part 1 and item 1 in Part 3 of Schedule 2 of the Bill, under which the Mainland courts can make an order that provides for a grandparent (“祖父母” or “外祖父母”) to bear the obligations of custody or maintenance to a minor grandchild (“孫子女” or “外孫子女”), instead of their own child “子女”.

7. Those items where the term “子女” appears in Schedules 2 and 3 are items 1, 2, 3 and 4 in Part 1 and items 1 and 2 in Part 3 of Schedule 2 as well as item 12 in Schedule 3. As the use of the Chinese equivalent term “子女” may connote that these items are restricted to orders in relation to custody, guardianship, right of access or maintenance of a party’s own “son” (“[兒]子”) or “daughter” (“女[兒]”) only, we consider it desirable to replace the term “未滿 18 歲子女” as used under items 1, 3 and 4 in Part 1 and item 1 in Part 3 of Schedule 2 as well as item 12 in Schedule 3 of the Chinese text of the Bill with the term “未滿 18 歲的人”. The amended term connotes a broader interpretation to cover *any* person under 18 years. These amendments will not have the effect of widening the scope of the Bill but would, instead, better and more effectively reflect what the Bill should, as a matter of fact, cover. In this connection, we also propose corresponding amendments to the English text of the Bill, such that the term of “a child under the age of 18 years” as used in the said items in Schedules 2 and 3 be replaced with the term of “a person under the age of 18 years”. In addition, consequential amendments are also made to clauses 16(2), 17(3)(b) and 26(5)(b) of the Bill.

8. As for item 2 in Part 1 and item 2 in Part 3 of Schedule 2, there is a degree of overlapping with item 1 of the same Part to the extent that both of items 1 and 2 in the said Parts can cover a person under the age of 18 years who cannot live independently. For better clarity, we suggest amending item 2 in Part 1 of Schedule 2 to read “An order in relation to the custody of a person aged 18 years or above who cannot live independently” (“關於年滿 18 歲而不能獨立生活的人的撫養權的命令”). Similarly, item 2 in Part 3 of Schedule 2 be amended to read “An order in relation to the maintenance of a person aged 18 years or above who cannot live independently” (“關於年滿 18 歲而不能獨立生活的人的撫養費的命令”).

9. On the other hand, the term “子女” as used in items 7 and 12 of Schedule 1 in the Chinese text of the Bill shall be retained as the said items have been reproduced from Article 3(1)(1)(7) and (12) of the Arrangement¹, wherein the term “子女” is used. The use of the term “child” in the corresponding items in the English text shall be retained accordingly.

Department of Justice
19 February 2021

#526381 v3A

¹ i.e. The arrangement titled 《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》 signed between the Government and the Supreme People’s Court on 20 June 2017. The English translation of the title of the Arrangement is “*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*”.