

LEGISLATIVE COUNCIL BRIEF

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

INTRODUCTION

At the meeting of the Executive Council on 24 November 2020, the Council ADVISED and the Chief Executive ORDERED that the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Enforcement) Bill (“**Bill**”), at **Annex A**, should be introduced into the Legislative Council (“**LegCo**”).

JUSTIFICATIONS

2. On 20 June 2017, 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》¹ (“**Arrangement**”) was signed between the Government and the Supreme People’s Court (“**SPC**”). A copy of the Arrangement is at **Annex B**.

3. The Arrangement was entered into having regard to the following considerations -

- (a) Currently, Mainland judgments on matrimonial or family matters are generally not recognised and enforceable in Hong Kong². Nor does Mainland law expressly provide for the recognition and enforcement

¹ 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*”.

² The few exceptions include non-Hong Kong divorces recognised under Part IX of the Matrimonial Causes Ordinance (Cap. 179) and non-Hong Kong adoptions given legal effect under section 17 of the Adoption Ordinance (Cap. 290).

of Hong Kong judgments in matrimonial or family matters in the Mainland.

- (b) In view of the large number of cross-boundary marriages and related matrimonial and family matters³, there exists a pressing need to establish and implement a bilateral arrangement between Hong Kong and the Mainland to provide for reciprocal recognition and enforcement of judgments in such matters.
- (c) Such an arrangement will be in the interest of parties and families of cross-boundary marriages as it will offer better safeguards to the parties' rights, as well as reduce the need for re-litigation of the same disputes, and hence save time and cost and reduce emotional distress of the parties.

4. There have been calls from the public, the legal sector and the Judiciary⁴ for the early implementation of the Arrangement. In particular, the Court of Appeal stated in the judgment of *黎 v. 凌* (CACV 204/2016) delivered in November 2017 that cross-boundary marriages between Hong Kong and Mainland residents are common occurrence nowadays and the Arrangement has been long overdue. The Court of Appeal noted at paragraph 91 of the judgment that “[a]bsent formal arrangement of this nature, there can be a lack of effective judicial redress for problems arising from the breakdown of such marriages”. It further urged that in the interest of society, the “preparation and enactment of the legislative scheme [for implementing the Arrangement] be proceeded diligently and expeditiously”.

5. The Bill seeks to implement the Arrangement in Hong Kong. In the Mainland, it will be implemented by way of judicial interpretation to be promulgated by the SPC.

³ Based on statistics provided by the Judiciary, a total of 68,374 divorce cases were filed in the Family Court in the period from 2017 to 2019. Amongst those cases, around 18% were related to marriages in the Mainland.

⁴ See, for example, *YBL v LWC* (CACV 244/2015), reported in [2017] 1 HKLRD 823, and *黎 v. 凌* (CACV 204/2016), reported in [2017] 5 HKLRD 629.

THE BILL

6. The Bill is modelled on the Mainland Judgments (Reciprocal Enforcement Ordinance (Cap. 597) which provides for the enforcement in Hong Kong of Mainland money judgments⁵. It establishes mechanisms in respect of the following -

- (a) the registration of specified court orders in an effective Mainland judgment given in a matrimonial or family case (Part 2);
- (b) the recognition of Mainland divorce certificates (Part 3); and
- (c) the application for a certified copy of and certificate for a Hong Kong judgment given in a matrimonial or family case, to facilitate a party in seeking recognition and enforcement of the Hong Kong judgment in the Mainland (Part 4).

7. The main provisions of the Bill are as follows.

Recognition and enforcement of Mainland judgments

8. Divisions 1 and 2 of Part 2 of the Bill (Clauses 7 to 13) provide for the registration of specified orders in an effective Mainland judgment given in a matrimonial or family case. Schedule 2 to the Bill sets out three types of specified orders -

⁵ The Mainland Judgments (Reciprocal Enforcement Ordinance (Cap. 597) implements an arrangement titled 《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》 (English translation of the title: *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*) signed between the Government and the SPC on 14 July 2006. This arrangement only applies to money judgments made by the courts of either side where the parties to a commercial contract have agreed in writing that a court of one side will have exclusive jurisdiction to determine a dispute arising from that contract and matrimonial matters are expressly excluded from its scope. The Bill also makes reference to the Foreign Judgments (Reciprocal Enforcement Ordinance (Cap. 319) which provides for the enforcement in Hong Kong of foreign judgments.

- (a) **Care-related orders**, such as orders relating to custody and guardianship of a child as set out in Part 1 of Schedule 2⁶.
- (b) **Status-related orders**, such as an order granting divorce and an order for the annulment of a marriage as set out in Part 2 of Schedule 2⁷.
- (c) **Maintenance-related orders**, such as orders relating to the maintenance of a child, spousal maintenance and division of property between parties to a marriage as set out in Part 3 of Schedule 2⁸.

9. A party to a Mainland judgment given in a matrimonial or family case may make a **registration application**, accompanied by the prescribed fee, to the District Court for one or more specified order(s) in the Mainland judgment to be registered, if the judgment is given on or after the commencement of the Bill and effective in the Mainland. For this purpose, a

⁶ As set out in Part 1 of Schedule 2 to the Bill, care-related orders are as follows:

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

⁷ As set out in Part 2 of Schedule 2 to the Bill, status-related orders are as follows:

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

Adoptions in the Mainland will continue to be given legal effect in Hong Kong pursuant to section 17 of the Adoption Ordinance (Cap. 290).

⁸ As set out in Part 3 of Schedule 2 to the Bill, maintenance-related orders are as follows:

- 1. An order in relation to the maintenance of a child under the age of 18 years;
- 2. An order in relation to the maintenance of a child, whether or not under the age of 18 years, who cannot live independently;
- 3. An order in relation to spousal maintenance; and
- 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
 - (b) a declaration that property belongs to one party to the marriage.

Mainland judgment is presumed, until the contrary is proved, 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.

10. Registration application in respect of a **status-related order** or a **care-related order** may be made at any time after such order has become effective, whereas registration application in respect of a **maintenance-related order** may be made only if a sum of money required to be paid or an act required to be performed has not been paid or performed after the due date. Further, registration application in respect of both care-related orders and maintenance-related orders shall generally be made no later than within **2 years** after the breach or after the judgment has become effective, as the case may be⁹. To cater for contingencies, the court has discretion to give permission for an application to be made even though the two-year time limit has passed¹⁰.

11. If the court is satisfied that the relevant requirements for registration are met, it may order the specified order to be **registered**. In relation to a **maintenance-related order**, it may be registered only to the extent that it relates to the part of the payment or act that has not been made or performed. However, if the order requires a payment or an act to be made or performed **periodically**, the registration will cover not only those payments or acts that have become due **before** the application date, but also those that are required to be made or performed **on or after** the application date. In other words, this dispenses with the need for the party to apply for registration again in case of further defaults in future, although the party still needs to make separate applications to the court for execution upon default.

⁹ The two-year time limit seeks to reflect the fact that the enforcement of a Mainland judgment in the Mainland is generally subject to a two-year time period under the Mainland law and the Mainland side would likely impose the same time limit for application for enforcement in the Mainland of Hong Kong judgments under the Arrangement.

¹⁰ This will allow the Hong Kong court to exercise its discretion in appropriate cases where, for example, at the time when the breach of a care-related order took place, the child in question was not present in Hong Kong or the whereabouts of the child were unknown, and the child only moved to Hong Kong or was discovered to be in Hong Kong more than two years after the breach.

12. Divisions 3 and 4 of Part 2 set out the procedure for **setting aside**¹¹ the registration (Division 3, namely Clauses 14 to 18) and the **effect of registration** (Division 4, namely Clauses 19 to 25). A registered **care-related order** or **maintenance-related order** may be enforced in Hong Kong as if it were originally made by a registering court on the day of registration, but an action to enforce such orders may be taken only after the expiry of the period for application to set aside the registration of the order, or after the setting aside application has been finally disposed of, as the case may be. Similarly, a registered **status-related order** is recognised as valid in Hong Kong after the application period for setting aside the registration has expired, or after the setting aside application has been finally disposed of, as the case may be.

13. Division 5 of Part 2 of the Bill (Clauses 26 to 28) seeks to restrict and minimise parallel proceedings in Hong Kong for the same cause of action between the same parties by providing for proceedings pending before a Hong Kong court to be stayed, and by prohibiting the commencement of new proceedings in Hong Kong, pending final disposal of a registration application (or an application to set aside the registration, as the case may be).

14. To avoid doubt, Clauses 26(7) and 27(4) state that the cause of action of the two sets of proceedings would **not** be regarded as the same if the circumstances giving rise to the proceedings that are pending in Hong Kong or intended to be brought in Hong Kong (as the case may be) are **materially different** from those giving rise to the cause of action for which the Mainland judgment was given. In addition, to provide for contingencies, the court has the discretion to make orders for the purposes of maintaining or restoring the status quo, ensuring the welfare and best interests of a child or preventing an irremediable injustice. Besides, proceedings under Part IIA (Financial Relief

¹¹ The grounds on which the registration of a specified order must be set aside are set out under Clause 16 of the Bill. Examples of such grounds include, where the respondent to the Mainland judgment was not summoned to appear or summoned to appear but not given a reasonable opportunity to make submissions or defend the proceedings; where the Mainland judgment was obtained by fraud; where proceedings were started in a court in Hong Kong or judgment was given by a court in Hong Kong in respect of the same cause of action between the same parties; where the recognition or enforcement of the specified order is manifestly contrary to the public policy of Hong Kong, etc. The party applying for setting aside should bear the burden of proof.

in Hong Kong after Divorce, etc. Outside Hong Kong) of the Matrimonial Proceedings and Property Ordinance (Cap. 192) are exempted from the restrictions on parallel proceedings under this Division.

Recognition of Mainland divorce certificates

15. Part 3 of the Bill (Clauses 29 to 36) provides for recognition of Mainland divorce certificates. A party to a divorce specified in a Mainland divorce certificate issued on or after the commencement of the Bill may make an application, accompanied by the prescribed fee, to the District Court for recognition of the divorce certificate. Similar to Mainland judgments, the Mainland divorce certificate will be recognised as valid in Hong Kong after the period for applying to set aside¹² the recognition has expired, or after the setting aside application has been finally disposed of, as the case may be¹³.

Certification of Hong Kong judgments for purposes of recognition and enforcement in the Mainland

16. Part 4 of the Bill (Clauses 37 to 39) seeks to facilitate a party in seeking the recognition and enforcement by a Mainland court, pursuant to the Arrangement, of a Hong Kong judgment given in a matrimonial or family case. A party to an effective Hong Kong judgment in a matrimonial or family case given on or after the commencement of the Bill may apply to the relevant Hong Kong court for a certified copy of the Hong Kong judgment. The certified copy of the Hong Kong judgment would also be accompanied by a certificate issued by the relevant Hong Kong court certifying that the Hong Kong judgment is given in a matrimonial or family case and is effective in Hong Kong.

¹² The grounds for setting aside the recognition of a Mainland divorce certificate are set out under Clause 33 of the Bill. The party applying for setting aside should bear the burden of proof.

¹³ According to Schedule 4 to the Bill, the recognition mechanism under Part IX of the Matrimonial Causes Ordinance (Cap.179) will no longer apply to divorces in the Mainland. Applications for recognition of an order granting a divorce in a Mainland judgment and a Mainland divorce certificate shall be made pursuant to the mechanisms established under the Bill.

17. The relevant Hong Kong court orders in matrimonial or family cases are set out in Schedule 3 to the Bill¹⁴, reflecting Article 3(1)(2) of the Arrangement. To avoid doubt, the Explanatory Memorandum makes clear that the phrase “an order in relation to custody” mentioned in item 11 (orders which may be made by the court under relevant enactments) and item 12 (orders which may be made by the court in the exercise of its wardship jurisdiction) of Schedule 3 can cover 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).

¹⁴ For the purposes of the Bill, orders that may be made in matrimonial or family cases in Hong Kong are as follows:

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 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);
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.

LEGISLATIVE TIMETABLE

18. The legislative timetable will be -

- | | |
|--|------------------|
| (a) Publication in the Gazette | 27 November 2020 |
| (b) First Reading and commencement of Second Reading debate | 2 December 2020 |
| (c) Resumption of Second Reading debate, Committee stage and Third Reading | To be notified |

IMPLICATIONS OF THE PROPOSAL

19. The Bill is in conformity with the Basic Law, including the provisions concerning human rights. The Bill contains no express binding effect clause.

20. The Bill has no economic, productivity, environmental and sustainability implications.

21. Whether a party would seek recognition and enforcement of a Mainland judgment given in a matrimonial or family case in Hong Kong under the Bill depends on a number of variables, including whether the other party voluntarily complies with the Mainland judgment (partially or otherwise), whether the other party has assets or income which could be subject to execution in Hong Kong and whether the child is or will be located in Hong Kong. While it is difficult at this stage to estimate the number of Mainland judgments given in matrimonial or family cases in relation to which parties would seek to recognise and enforce in Hong Kong under the Bill, the Government would monitor the need for additional financial and manpower resources, including for the Judiciary and the Legal Aid Department.

22. In any case, the implementation of the Bill will benefit parties to cross-boundary marriages and their children as well as parties with assets in Hong Kong and the Mainland. By providing a more expeditious and cost effective mechanism for recognition and enforcement of judgments given in matrimonial and family cases and reducing the need to litigate matrimonial proceedings on divorce and custody in both Hong Kong and the Mainland, the implementation of the Bill will have a positive impact on mitigating the impact and emotional stress of a divorce on the parties to the marriage and on the children of the family. It will also provide better safeguards to families, in particular those involving cross-boundary marriages and their children. Further, in marriages and related matrimonial and family matters, women are, in many divorce cases, the recipients of maintenance payments; and in domestic violence cases, women are often the victims. By covering maintenance orders and protection orders in situations of domestic violence, the Bill could facilitate and offer better protection to women in addressing these issues and also help reduce their emotional stress.

PUBLIC CONSULTATION

23. In February 2019, the Government conducted a public consultation to invite views on the draft Bill as well as the draft Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Rules (“**Rules**”). The majority of responses received by the Government are supportive of the Bill and the Rules.

24. The Law Society of Hong Kong (“**Law Society**”) and the Hong Kong Bar Association (“**HKBA**”) are in principle supportive of the Bill while raising various comments and suggestions on it. We have since continued to engage with family law practitioners from the Law Society, the HKBA and the Hong Kong Family Law Association and have taken on board their major comments in the Bill. The Government also consulted the Family Council on the legislative proposals and members raised no objections.

25. The Government consulted the LegCo Panel on Administration of

Justice and Legal Services (“**AJLS Panel**”) on the key features of the draft legislative proposal for implementing the Arrangement in March 2018 and then on the draft Bill and Rules issued for public consultation in February 2019. Members of the AJLS Panel indicated in-principle support for the draft Bill and Rules and urged that the Bill be introduced into the LegCo as soon as possible.

PUBLICITY

26. A press release will be issued on 25 November 2020. A spokesman will be made available to handle press enquiries.

ENQUIRIES

27. Enquiries on this brief can be addressed to Miss Deneb CHEUNG, Senior Assistant Solicitor General (China Law), at 3918 4068.

Department of Justice
25 November 2020

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;

- (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.
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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) 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 periodically).
- (2) 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 the part of the payment or act that 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.
- (4) The registering court may only order under section 10(1) that the maintenance-related order is 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 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.
- (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 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 under the age of 18 years;
 - (c) preventing an irremediable 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.
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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 under the age of 18 years
2. An order in relation to the custody of a child, whether or not under the age of 18 years, who cannot live independently
3. An order in relation to the guardianship of a child under the age of 18 years
4. An order for right of access in relation to a child 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 under the age of 18 years
2. An order in relation to the maintenance of a child, 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

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

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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 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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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).

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

根據《中華人民共和國香港特別行政區基本法》第九十五條的規定，最高人民法院與香港特別行政區政府經協商，現就婚姻家庭民事案件判決的認可和執行問題作出如下安排：

第一條 當事人向香港特別行政區法院申請認可和執行內地人民法院就婚姻家庭民事案件作出的生效判決，或者向內地人民法院申請認可和執行香港特別行政區法院就婚姻家庭民事案件作出的生效判決的，適用本安排。

當事人向香港特別行政區法院申請認可內地民政部門所發的離婚證，或者向內地人民法院申請認可依據《婚姻制度改革條例》（香港法例第178章）第V部、第VA部規定解除婚姻的協議書、備忘錄的，參照適用本安排。

第二條 本安排所稱生效判決：

（一）在內地，是指第二審判決，依法不准上訴或者超過法定期限沒有上訴的第一審判決，以及依照審判監督程序作出的上述判決；

（二）在香港特別行政區，是指終審法院、高等法院上訴法庭及原訟法庭和區域法院作出的已經發生法律效力的判決，包括依據香港法律可以在生效後作出更改的命令。

前款所稱判決，在內地包括判決、裁定、調解書，在香港特別行政區包括判決、命令、判令、訟費評定證明書、定額訟費證明書，但不包括雙方依據其法律承認的其他國家和地區法院作出的判決。

第三條 本安排所稱婚姻家庭民事案件：

(一) 在內地是指：

1. 婚內夫妻財產分割糾紛案件；
2. 離婚糾紛案件；
3. 離婚後財產糾紛案件；
4. 婚姻無效糾紛案件；
5. 撤銷婚姻糾紛案件；
6. 夫妻財產約定糾紛案件；
7. 同居關係子女撫養糾紛案件；
8. 親子關係確認糾紛案件；
9. 撫養糾紛案件；
10. 扶養糾紛案件（限於夫妻之間扶養糾紛）；
11. 確認收養關係糾紛案件；
12. 監護權糾紛案件（限於未成年子女監護權糾紛）；
13. 探望權糾紛案件；
14. 申請人身安全保護令案件。

(二) 在香港特別行政區是指：

1. 依據香港法例第 179 章《婚姻訴訟條例》第 III 部作出的離婚絕對判令；
2. 依據香港法例第 179 章《婚姻訴訟條例》第 IV 部作出的婚姻無效絕對判令；
3. 依據香港法例第 192 章《婚姻法律程序與財產條例》作出的在訟案待決期間提供贍養費令；
4. 依據香港法例第 13 章《未成年人監護條例》、第 16 章《分居令及贍養令條例》、第 192 章《婚姻法律程序與財產條例》第 II 部、第 IIA 部作出的贍養令；

5. 依據香港法例第 13 章《未成年人監護條例》、第 192 章《婚姻法律程序與財產條例》第 II 部、第 IIA 部作出的財產轉讓及出售財產令；
6. 依據香港法例第 182 章《已婚者地位條例》作出的有關財產的命令；
7. 依據香港法例第 192 章《婚姻法律程序與財產條例》在雙方在生時作出的修改贍養協議的命令；
8. 依據香港法例第 290 章《領養條例》作出的領養令；
9. 依據香港法例第 179 章《婚姻訴訟條例》、第 429 章《父母與子女條例》作出的父母身份、婚生地位或者確立婚生地位的宣告；
10. 依據香港法例第 13 章《未成年人監護條例》、第 16 章《分居令及贍養令條例》、第 192 章《婚姻法律程序與財產條例》作出的管養令；
11. 就受香港法院監護的未成年子女作出的管養令；
12. 依據香港法例第 189 章《家庭及同居關係暴力條例》作出的禁制騷擾令、驅逐令、重返令或者更改、暫停執行就未成年子女的管養令、探視令。

第四條 申請認可和執行本安排規定的判決：

- (一) 在內地向申請人住所地、經常居住地或者被申請人住所地、經常居住地、財產所在地的中級人民法院提出；
- (二) 在香港特別行政區向區域法院提出。

申請人應當向符合前款第一項規定的其中一個人民法院提出申請。向兩個以上有管轄權的人民法院提出申請的，由最先立案的人民法院管轄。

第五條 申請認可和執行本安排第一條第一款規定的判決的，應當提交下列材料：

- (一) 申請書；
- (二) 經作出生效判決的法院蓋章的判決副本；
- (三) 作出生效判決的法院出具的證明書，證明該判決屬於本安排規定的婚姻家庭民事案件生效判決；
- (四) 判決為缺席判決的，應當提交法院已經合法傳喚當事人的證明文件，但判決已經對此予以明確說明或者缺席方提出申請的除外；
- (五) 經公證的身份證件複印件。

申請認可本安排第一條第二款規定的離婚證或者協議書、備忘錄的，應當提交下列材料：

- (一) 申請書；
- (二) 經公證的離婚證複印件，或者經公證的協議書、備忘錄複印件；
- (三) 經公證的身份證件複印件。

向內地人民法院提交的文件沒有中文文本的，應當提交準確的中文譯本。

第六條 申請書應當載明下列事項：

- (一) 當事人的基本情況，包括姓名、住所、身份證件信息、通訊方式等；
- (二) 請求事項和理由，申請執行的，還需提供被申請人的財產狀況和財產所在地；
- (三) 判決是否已在其他法院申請執行和執行情況。

第七條 申請認可和執行判決的期間、程序和方式，應當依據被請求方法律的規定。

第八條 法院應當盡快審查認可和執行的請求，並作出裁定或者命令。

第九條 申請認可和執行的判決，被申請人提供證據證明有下列情形之一的，法院審查核實後，不予認可和執行：

（一）根據原審法院地法律，被申請人未經合法傳喚，或者雖經合法傳喚但未獲得合理的陳述、辯論機會的；

（二）判決是以欺詐方法取得的；

（三）被請求方法院受理相關訴訟後，請求方法院又受理就同一爭議提起的訴訟並作出判決的；

（四）被請求方法院已經就同一爭議作出判決，或者已經認可和執行其他國家和地區法院就同一爭議所作出的判決的。

內地人民法院認為認可和執行香港特別行政區法院判決明顯違反內地法律的基本原則或者社會公共利益，香港特別行政區法院認為認可和執行內地人民法院判決明顯違反香港特別行政區法律的基本原則或者公共政策的，不予認可和執行。

申請認可和執行的判決涉及未成年子女的，在根據前款規定審查決定是否認可和執行時，應當充分考慮未成年子女的最佳利益。

第十條 被請求方法院不能對判決的全部判項予以認可和執行時，可以認可和執行其中的部份判項。

第十一條 對於香港特別行政區法院作出的判決，一方當事人已經提出上訴，內地人民法院審查核實後，可以中止認可和執执行程序。經上訴，維持全部或者部份原判決的，恢復認可和執执行程序；完全改變原判決的，終止認可和執执行程序。

內地人民法院就已經作出的判決裁定再審的，香港特別行政區法院審查核實後，可以中止認可和執执行程序。經再審，維持全部或者部份原判決的，恢復認可和執执行程序；完全改變原判決的，終止認可和執执行程序。

第十二條 在本安排下，內地人民法院作出的有關財產歸一方所有的判項，在香港特別行政區將被視為命令一方向另一方轉讓該財產。

第十三條 被申請人在內地和香港特別行政區均有可供執行財產的，申請人可以分別向兩地法院申請執行。

兩地法院執行財產的總額不得超過判決確定的數額。應對方法院要求，兩地法院應當相互提供本院執行判決的情況。

第十四條 內地與香港特別行政區法院相互認可和執行的財產給付範圍，包括判決確定的給付財產和相應的利息、遲延履行金、訴訟費，不包括稅收、罰款。

前款所稱訴訟費，在香港特別行政區是指訟費評定證明書、定額訟費證明書核定或者命令支付的費用。

第十五條 被請求方法院就認可和執行的申請作出裁定或者命令後，當事人不服的，在內地可以於裁定送達之日起十日內向上一級人民法院申請覆議，在香港特別行政區可以依據其法律規定提出上訴。

第十六條 在審理婚姻家庭民事案件期間，當事人申請認可和執行另一地法院就同一爭議作出的判決的，應當受理。受理後，有關訴訟應當中止，待就認可和執行的申請作出裁定或者命令後，再視情終止或者恢復訴訟。

第十七條 審查認可和執行判決申請期間，當事人就同一爭議提起訴訟的，不予受理；已經受理的，駁回起訴。

判決獲得認可和執行後，當事人又就同一爭議提起訴訟的，不予受理。

判決未獲認可和執行的，申請人不得再次申請認可和執行，但可以就同一爭議向被請求方法院提起訴訟。

第十八條 被請求方法院在受理認可和執行判決的申請之前或者之後，可以依據其法律規定採取保全或者強制措施。

第十九條 申請認可和執行判決的，應當依據被請求方有關訴訟收費的法律和規定交納費用。

第二十條 內地與香港特別行政區法院自本安排生效之日起作出的判決，適用本安排。

第二十一條 本安排在執行過程中遇有問題或者需要修改的，由最高人民法院和香港特別行政區政府協商解決。

第二十二條 本安排在最高人民法院發布司法解釋和香港特別行政區完成有關內部程序後，由雙方公布生效日期。

本安排於二零一七年六月二十日在香港簽署，一式兩份。

(Courtesy English Translation)

**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**

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 for the recognition and enforcement of judgments in civil matrimonial and family cases:

Article 1 This Arrangement applies to cases where a party applies to a court of the HKSAR for the recognition and enforcement of a legally effective judgment made by a people's court of the Mainland in a civil matrimonial and family case, and where a party applies to a people's court of the Mainland for the recognition and enforcement of a legally effective judgment made by a court of the HKSAR in a civil matrimonial and family case.

Where a party applies to a court of the HKSAR for recognition of a divorce certificate issued by a civil affairs department in the Mainland, or applies to a people's court of the Mainland for recognition of an agreement or memorandum for dissolution of a marriage under Part V or Part VA of the Marriage Reform Ordinance (Chapter 178 of the Laws of Hong Kong), this Arrangement applies correspondingly by reference.

Article 2 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 and the District Court, including any order that may be varied after a judgment has taken effect in accordance with the law of the HKSAR.

For the purposes of the preceding paragraphs, a judgment includes, in the case of the Mainland, any judgment, ruling and conciliatory statement; and in the case of the HKSAR, includes any judgment, order, decree, allocatur and certificate of fixed costs, but excludes any judgment given by a court of another country or place which is recognised in the Mainland or the HKSAR under their respective law.

Article 3 A civil matrimonial and family case referred to in this Arrangement:

(1) in the case of the Mainland, means:

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;
11. dispute over confirmation of an adoptive relationship;
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 protection of a person.

(2) in the case of the HKSAR, means:

1. a decree absolute of divorce granted under Part III of the Matrimonial Causes Ordinance (Chapter 179 of the Laws of Hong Kong);
2. a decree absolute of nullity granted under Part IV of the Matrimonial Causes Ordinance (Chapter 179 of the Laws of Hong Kong);
3. an order made under the Matrimonial Proceedings and Property Ordinance (Chapter 192 of the Laws of Hong Kong) for maintenance pending the determination of a suit;
4. a maintenance order made under the Guardianship of Minors Ordinance (Chapter 13 of the Laws of Hong Kong), the Separation and Maintenance Orders Ordinance (Chapter 16 of the Laws of Hong Kong), or Part II or Part IIA of the Matrimonial Proceedings and Property Ordinance (Chapter 192 of the Laws of Hong Kong);

5. an order for transfer or sale of property made under the Guardianship of Minors Ordinance (Chapter 13 of the Laws of Hong Kong), or Part II or Part IIA of the Matrimonial Proceedings and Property Ordinance (Chapter 192 of the Laws of Hong Kong);
6. an order made under the Married Persons Status Ordinance (Chapter 182 of the Laws of Hong Kong) with respect to property ;
7. an order made under the Matrimonial Proceedings and Property Ordinance (Chapter 192 of the Laws of Hong Kong) for the alteration of maintenance agreements during the lives of the parties;
8. an adoption order made under the Adoption Ordinance (Chapter 290 of the Laws of Hong Kong);
9. a declaration regarding the parentage, legitimacy or legitimation made under the Matrimonial Causes Ordinance (Chapter 179 of the Laws of Hong Kong), or the Parent and Child Ordinance (Chapter 429 of the Laws of Hong Kong);
10. an order in relation to custody made under the Guardianship of Minors Ordinance (Chapter 13 of the Laws of Hong Kong), the Separation and Maintenance Orders Ordinance (Chapter 16 of the Laws of Hong Kong), or the Matrimonial Proceedings and Property Ordinance (Chapter 192 of the Laws of Hong Kong);
11. a custody order made in respect of a minor child who has been made a ward of court;
12. a non-molestation, ouster or re-entry order made under the Domestic and Cohabitation Relationships Violence Ordinance

(Chapter 189 of the Laws of Hong Kong) and an order made under the Domestic and Cohabitation Relationships Violence Ordinance varying or suspending the execution of a custody or access order made in respect of a minor child.

Article 4 An application for recognition and enforcement of a judgment stipulated in this Arrangement:

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

(2) in the case of the HKSAR, shall be filed with the District 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 5 An applicant applying for recognition and enforcement of a judgment stipulated in Article 1(1) of 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 in a civil matrimonial and family case under this Arrangement;

(4) where the judgment is a default judgment, a document certifying that the party concerned has been lawfully summoned, unless the judgment expressly

states the same, or the absent party is the party applying for recognition and enforcement;

- (5) a notarised copy of the identity card.

An applicant applying for recognition and enforcement of a divorce certificate or an agreement or memorandum stipulated in Article 1(2) of this Arrangement shall submit the following documents:

- (1) an application;
- (2) a notarised copy of the divorce certificate, or a notarised copy of the agreement or memorandum;
- (3) a notarised copy of the identify card.

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 6 An application shall specify the following:

- (1) particulars of the parties, including the name, address, particulars of identity documents , means of contact, etc.;
- (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 enforcement of the judgment in any other court, and the status of its enforcement.

Article 7 The time limit, 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 8 The court shall examine the application for recognition and enforcement as soon as possible and make a decision or order.

Article 9 With respect to an application for recognition and enforcement of a judgment, the court 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 respondent was not lawfully summoned in accordance with the law of the place of the original court; or although the respondent was lawfully summoned, the respondent was not given a reasonable opportunity to make representations or defend the respondent's case;

(2) the judgment was obtained by fraud;

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

(4) a court of the requested place has rendered a judgment on the same dispute, or has recognised and enforced a judgment on the same dispute given by a court of 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.

Where an application for recognition and enforcement of a judgment concerns a minor child, in assessing and deciding whether to recognise and

enforce a judgment in accordance with the preceding paragraph, the best interests of the minor child shall be fully considered.

Article 10 Where a court of the requested place cannot recognise and enforce a judgment in whole, it may recognise and enforce it in part.

Article 11 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 proceedings. After the appeal, the recognition and enforcement proceedings 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 proceedings. After the retrial, the recognition and enforcement proceedings 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 12 For the purposes of this Arrangement, a judgment given by a people's court of the Mainland vesting a property in one party is deemed in the HKSAR to be an order for transfer of the property from one party to the other.

Article 13 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 total amount to be recovered from enforcing the judgment in the courts of the two places respectively shall not exceed the amount determined in the judgment. 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.

Article 14 In respect of judgments for the award of property, the scope of reciprocal recognition and enforcement by the courts of the Mainland and of the HKSAR shall include the property awarded, the corresponding interest, payment for late compliance and costs, 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 allocatur, allowed under a certificate of fixed costs, or the costs awarded under an order.

Article 15 Where any party is aggrieved by a decision or an order made by the court of the requested case 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 16 If in the course of adjudicating a civil matrimonial and family case, the court of one place receives an application brought by a party for recognition and enforcement of a judgment made by a 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 17 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 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, 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 18 The 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 the requested place.

Article 19 A party who applies for the recognition and enforcement of a judgment shall pay the fees in accordance with the laws and regulations on litigation fees of the requested place.

Article 20 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 21 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 22 Following the promulgation of a judicial interpretation by the Supreme People's Court and the completion of the relevant internal procedures in the HKSAR, both sides shall announce a date on which this Arrangement shall commence.

This Arrangement is signed in duplicate in the HKSAR, this 20th day of June 2017.