

(File Ref.: L/M(5) to CPA CLU 5037/7/3C)

## **LEGISLATIVE COUNCIL BRIEF**

Mainland Judgments in Matrimonial and Family Cases  
(Reciprocal Recognition and Enforcement) Ordinance (Chapter 639)

### **MAINLAND JUDGMENTS IN MATRIMONIAL AND FAMILY CASES (RECIPROCAL RECOGNITION AND ENFORCEMENT) RULES**

### **MAINLAND JUDGMENTS IN MATRIMONIAL AND FAMILY CASES (RECIPROCAL RECOGNITION AND ENFORCEMENT) ORDINANCE (COMMENCEMENT) NOTICE**

#### **INTRODUCTION**

For the purpose of implementing the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Chapter 639) (“**Ordinance**”) –

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- (a) the Chief Judge of the High Court made the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Rules (“**Rules**”) (at **Annex A**) under section 40 of the Ordinance; and
  - (b) the Secretary for Justice made the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Commencement) Notice (“**Commencement Notice**”) (at **Annex B**) under section 1(2) of the Ordinance.
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2. The Rules and the Commencement Notice are subject to negative vetting by the Legislative Council (“**LegCo**”).

## BACKGROUND AND JUSTIFICATIONS

3. The Ordinance, passed by the LegCo on 5 May 2021, seeks to implement 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》 (“**Arrangement**”)<sup>1</sup> in Hong Kong. The Arrangement will be implemented in the Mainland by way of judicial interpretation to be promulgated by the Supreme People’s Court (“**SPC**”).

4. The Arrangement was entered into by the Government and the SPC in view of the 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 matrimonial and family matters.

5. The Ordinance establishes mechanisms in respect of –

(a) the registration in Hong Kong of specified orders in effective Mainland Judgments given in matrimonial or family cases;<sup>2</sup>

(b) the recognition in Hong Kong of Mainland divorce certificates; and

(c) the application for certified copies of and issue of relevant certificates for effective Hong Kong Judgments given in matrimonial or family cases,<sup>3</sup> for the purpose of facilitating a party in seeking recognition and enforcement of such Hong Kong Judgments in the Mainland.

6. According to section 1(2) of the Ordinance, the Ordinance comes into operation on a day to be appointed by the Secretary for Justice by notice published

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<sup>1</sup> The Arrangement was signed between the Government and the Supreme People’s Court on 20 June 2017. The English translation of the title of the Arrangement is “*Arrangement on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases by the Courts of the Mainland and of the Hong Kong Special Administrative Region*”.

<sup>2</sup> Mainland Judgments given in matrimonial or family cases are set out in Schedule 1 to the Ordinance. There are three types of specified orders as set out in Schedule 2 to the Ordinance, namely, care-related orders (such as orders relating to custody and guardianship), status-related orders (such as orders granting a divorce and for the annulment of a marriage) and maintenance-related orders (such as orders in relation to maintenance (including spousal maintenance) and for the division of property between parties to a marriage).

<sup>3</sup> Hong Kong Judgments given in matrimonial or family cases are set out in Schedule 3 to the Ordinance.

in the Gazette. The Government and the SPC have agreed for the Arrangement to come into operation on 15 February 2022. The Ordinance will come into operation on the same day as the Arrangement.

7. It is necessary to make the Rules to complement the operation of the mechanisms established under the Ordinance. Under section 40 of the Ordinance, the Chief Judge of the High Court may make rules to provide for the practice and procedure relating to applications under the Ordinance and the execution of registered orders, to prescribe the fees payable under the Ordinance and to provide generally for the better carrying out of the purposes and provisions of the Ordinance.

## **THE PROPOSALS**

### ***(a) The Rules***

8. The key provisions of the Rules are set out as follows –

- (a) Rule 1 provides that the Rules come into operation on the day on which the Ordinance comes into operation, namely, 15 February 2022;
- (b) Part 2 of the Rules (rules 4 to 15) provides for matters relating to applications for the registration in Hong Kong of Mainland Judgments given in matrimonial or family cases. Division 1 provides for registration applications to be made *ex parte* unless directed by the District Court to be made by originating summons. Division 2 sets out the information and documents required to be stated in and exhibited to the affidavit in support of a registration application. Division 3 provides that the court may order the applicant of a registration application to give security for costs. Division 4 provides for matters relating to registration, including registration orders, registers of specified orders and notices of registration. Division 5 provides for matters relating to setting aside applications;
- (c) Part 3 of the Rules (rules 16 to 21) provides for matters relating to

applications for the recognition in Hong Kong of Mainland divorce certificates. Similar to Part 2, the provisions in Part 3 provide for the mode of application and the contents of the affidavit in support of a recognition application, security for costs, matters relating to recognition orders, registers of recognition orders, notices of recognition orders as well as setting aside applications;

- (d) Part 4 of the Rules (rules 22 to 23) provides for matters relating to the execution of registered orders in Hong Kong;
- (e) Part 5 of the Rules (rules 24 to 27) provides for matters relating to applications for certified copies of Hong Kong Judgments given in matrimonial or family cases and the issue of the relevant certificates; and
- (f) Part 6 of the Rules (rules 28 to 31) prescribes the fees payable in respect of applications made under sections 7, 29 or 38 of the Ordinance and provides for related matters.<sup>4</sup>

**(b) *The Commencement Notice***

9. Pursuant to section 1(2) of the Ordinance, the Ordinance comes into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette. The Secretary for Justice made the Commencement Notice to appoint 15 February 2022 as the day on which the Ordinance comes into operation.

## **LEGISLATIVE TIMETABLE**

### **10. The legislative timetable for the Rules and the Commencement Notice**

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<sup>4</sup> Section 7(2) of the Ordinance provides that a registration application made in relation to a specified order in a Mainland Judgment given in a matrimonial or family case must be accompanied by the prescribed fee.

Section 29(2) of the Ordinance provides that a recognition application made in relation to a Mainland divorce certificate must be accompanied by the prescribed fee.

Section 38(2)(b) of the Ordinance provides that an application for a certified copy of a Hong Kong Judgment given in a matrimonial or family case must be accompanied by the prescribed fee.

is as follows –

(a) Publication in the Gazette	27 August 2021
(b) Tabling before the LegCo (for negative vetting)	1 September 2021
(c) Commencement of the Ordinance and the Rules	15 February 2022

## **IMPLICATIONS OF THE PROPOSALS**

11. The Rules and the Commencement Notice are in conformity with the Basic Law, including the provisions concerning human rights. They will not affect the current binding effect of the Ordinance.

12. The Rules and the Commencement Notice have no economic, productivity, environmental and sustainability implications.

13. As regards financial and manpower resources implications, whether a party would seek recognition and enforcement of a Mainland Judgment given in a matrimonial or family case in Hong Kong under the Ordinance depends on a number of variables, including whether the other party voluntarily complies with or is in default of 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.

14. While it is difficult at this stage to estimate the number of registration applications and recognition applications which may be made by parties to the courts in Hong Kong, as the Ordinance has no retrospective effect and only applies to Mainland Judgments given in matrimonial or family cases, and Mainland divorce certificates issued, on or after the commencement date,<sup>5</sup> it is anticipated that the number of matrimonial or family cases requiring recognition,

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<sup>5</sup> See sections 7 and 29 of the Ordinance.

registration or certification in Hong Kong will increase over time even though there will unlikely be an upsurge of such applications to the courts in Hong Kong shortly after the Ordinance has come into operation. Taking into account the limited capacity of the Family Court (number of judges and courtroom facilities) and the need to build up operational experience, the Judiciary may not be able to handle all the new incoming cases expeditiously during the initial stage, but would adopt a prudent and incremental approach to cope with them as far as possible. The Government would also work closely with the Judiciary in monitoring the volume and complexity of the caseload, with a view to assessing any additional financial and manpower resources required for both the Judiciary and the Legal Aid Department, and if required, seek additional resources with justifications in accordance with established mechanism.

15. In any case, the implementation of the Ordinance will benefit parties to cross-boundary marriages, families and their children. By providing an expeditious and cost effective mechanism for reciprocal recognition and enforcement of judgments given in matrimonial and family cases between Hong Kong and the Mainland, the Ordinance reduces the need for re-litigation of the same disputes in both Hong Kong and the Mainland, saves time and costs, and offers better safeguards to the parties' rights. This will also help mitigate the impact and emotional stress of matrimonial proceedings on the parties to the marriage and on the children of the family.

16. As regards gender implications, in many divorce cases and related matrimonial or family matters, women are 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 Ordinance could facilitate and offer better protection to women in addressing these issues and also help reduce their emotional stress.

## **PUBLIC CONSULTATION**

17. In February 2019, the Government conducted a public consultation to invite views on the draft Rules alongside the draft Matrimonial and Family Cases

(Reciprocal Enforcement) Bill (“**Bill**”). The majority of responses received by the Government were supportive of the draft Bill and the draft Rules. The Law Society of Hong Kong made no comments on the draft Rules. The Hong Kong Bar Association was in principle supportive of the draft Rules while offering some suggestions.

18. The Government then consulted the LegCo Panel on Administration of Justice and Legal Services (“**AJLS Panel**”) on the draft Bill and the draft Rules issued for the public consultation. Members of the AJLS Panel indicated in-principle support for the draft Bill and the draft Rules.

## **PUBLICITY**

19. We will issue a press release upon the publication of the Rules and the Commencement Notice in the Gazette, and arrange for a spokesman to answer media enquiries.

20. We will also launch publicity programmes to familiarise the legal practitioners and the general public with the mechanisms established under the Ordinance. Such publicity programmes may include workshop to be co-organised with the SPC, a “one-stop shop” dedicated webpage to be set up on the departmental website as well as distribution of promotional leaflets.

## **ENQUIRIES**

21. Enquiries on this brief can be addressed to Miss Deneb CHEUNG, Senior Assistant Solicitor General (China Law), at 3918 4069.

**Department of Justice**

**25 August 2021**

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

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

(Made by the Chief Judge under section 40 of the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639))

### **Part 1**

#### **Preliminary**

##### **1. Commencement**

These rules come into operation on the day on which the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639) comes into operation.

##### **2. Interpretation**

(1) In these rules—

*Court* (法庭) means the Court of First Instance or District Court;

*identity card* (身分證) has the meaning given by section 1A(1) of the Registration of Persons Ordinance (Cap. 177);

*recognition application* (尋求承認申請) means an application under section 29(1) of the Ordinance;

*recognition order* (承認令) means an order made under section 30(1) of the Ordinance;

*setting aside application* (尋求作廢申請) means—

(a) in Part 2—an application under section 15 of the Ordinance; or

(b) in Part 3—an application under section 32 of the Ordinance.

(2) In these rules, a reference to an Order and rule, prefixed by the letters “RHC”, is a reference to that Order and rule in the Rules of the High Court (Cap. 4 sub. leg. A).

**3. Application of Rules of High Court to proceedings under Ordinance**

Except as provided by these rules, the practice and procedure under the Rules of the High Court (Cap. 4 sub. leg. A) apply, with necessary modifications, in relation to all proceedings under the Ordinance before the Court.

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**Part 2**

**Registration of Mainland Judgments Given in Matrimonial or Family Cases**

**Division 1—Registration Applications**

**4. Registration applications**

- (1) A registration application may be made ex parte to the District Court.
- (2) Despite subrule (1), the District Court may direct the registration application be made by originating summons.
- (3) An originating summons under this rule must be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).
- (4) The registration application must be supported by an affidavit made in compliance with Division 2.

**Division 2—Affidavits in Support**

**5. Affidavits in support of registration applications: general**

- (1) An affidavit in support of a registration application must exhibit the following documents—
  - (a) a copy of the identity card of the applicant or, if the applicant is not a holder of an identity card, a copy of the identification document of the applicant notarized or otherwise duly authenticated in accordance with the law of the place in which the document was issued;
  - (b) a copy of the Mainland Judgment concerned duly sealed by the original Mainland court; and

- (c) a certificate issued by the original Mainland court certifying that the Judgment is a Mainland Judgment given in a matrimonial or family case and is effective in the Mainland.
- (2) The affidavit must state the following particulars in relation to the applicant and, so far as known to the applicant, each of the other parties to the Judgment—
  - (a) the name;
  - (b) the usual or last known address;
  - (c) the number of the identity card or, if the applicant or the party is not a holder of an identity card, the type and number of any other identification document; and
  - (d) a means of contact.
- (3) The affidavit must also state—
  - (a) all specified orders in the Judgment; and
  - (b) whether the application is made in relation to all of the specified orders and, if not, the ones in relation to which the application is made.
- (4) The applicant must also state in the affidavit, to the best of the applicant's information or belief—
  - (a) that the Judgment is enforceable in the Mainland;
  - (b) that the Judgment 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; and
- (c) whether the Judgment is given according to the trial supervision procedure of the Mainland.
- (5) The applicant must also state in the affidavit, to the best of the applicant's information or belief—
  - (a) that the Judgment is a Mainland Judgment given in a matrimonial or family case;
  - (b) that the Judgment is not one given by a court in a place outside the Mainland that is recognized in the Mainland under the law of the Mainland; and
  - (c) that the order in relation to which the application is made is a specified order.
- (6) The applicant must also state in the affidavit, to the best of the applicant's information or belief—
  - (a) whether proceedings are pending before a court in Hong Kong in respect of the same cause of action between the same parties; and
  - (b) that, if the specified order were registered, the registration would not be, or be liable to be, set aside under section 16 of the Ordinance.
- (7) The affidavit must also specify—

- (a) to the extent that they relate to a specified order in relation to which the application is made—
    - (i) the interest that, under the law of the Mainland, has become due under the Judgment up to the time of the registration; and
    - (ii) the costs duly certified by the original Mainland court;
  - (b) the fine or charge payable by a party to another party to the Judgment for failing to comply with a specified order within the time stipulated in the Judgment; and
  - (c) the reasonable costs of, or incidental to, the registration of the specified order that the applicant intends to claim.
- (8) The affidavit must be accompanied by—
- (a) evidence relevant to the enforceability of the Judgment; and
  - (b) if the interest, costs, fine or charge mentioned in subrule (7) is specified in the affidavit—evidence of the law of the Mainland under which the interest, costs, fine or charge has become due.
6. **Affidavits in support of registration applications: care-related orders**
- (1) This rule applies to an affidavit in support of a registration application made in relation to a care-related order in a Mainland Judgment.
  - (2) The applicant must also state in the affidavit, to the best of the applicant's information or belief—
    - (a) that the applicant is entitled to enforce the order in the Mainland;

- (b) whether there has been non-compliance with the order; and
  - (c) if there has been non-compliance with the order—
    - (i) the date on which non-compliance first occurred; and
    - (ii) whether any action has been taken to enforce the order and, if so, the details of the enforcement.
- (3) If there has been non-compliance with the order and the registration application is made after the expiry of the 2-year period mentioned in section 8(1)(b)(i) of the Ordinance, the applicant must also state in the affidavit—
- (a) that the applicant applies for the permission mentioned in section 8(1)(b)(ii) of the Ordinance; and
  - (b) to the best of the applicant's information or belief—
    - (i) the reasons why the registration application is not made within the 2-year period; and
    - (ii) the actions or steps taken by the applicant to assert his or her rights.
7. **Affidavits in support of registration applications: maintenance-related orders requiring non-periodical payment or performance**
- (1) This rule applies to an affidavit in support of a registration application made in relation to a maintenance-related order in a Mainland 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).
  - (2) The applicant must also state in the affidavit, to the best of the applicant's information or belief—

- (a) that the applicant is entitled to enforce the order in the Mainland;
  - (b) whether any action has been taken to enforce the order and, if so, the details of the enforcement;
  - (c) the details of the property of the party against whom the Judgment is enforceable under the law of the Mainland and the financial status of that party (as the case requires);
  - (d) whether the order specifies a date by which the payment is to be made, or the act is to be performed, and—
    - (i) if so—the date so specified; or
    - (ii) if not—the date on which the Judgment becomes effective; and
  - (e) the following (as the case requires)—
    - (i) the amount that remains unpaid as at the date of the registration application;
    - (ii) the particulars of the act, or the part of the act, that remains unperformed as at the date of the registration application.
- (3) If the registration application is made after the expiry of the 2-year period mentioned in section 8(2)(a)(iii)(A) or (b)(ii)(A) of the Ordinance, the applicant must also state in the affidavit—
- (a) that the applicant applies for the permission mentioned in section 8(2)(a)(iii)(B) or (b)(ii)(B) of the Ordinance; and
  - (b) to the best of the applicant's information or belief—
    - (i) the reasons why the registration application is not made within the 2-year period; and
    - (ii) the actions or steps taken by the applicant to assert his or her rights.

- 8. Affidavits in support of registration applications: maintenance-related orders requiring periodical payment or performance**
- (1) This rule applies to an affidavit in support of a registration application made in relation to a maintenance-related order in a Mainland Judgment requiring a payment or an act to be made or performed periodically.
  - (2) The applicant must also state in the affidavit, to the best of the applicant's information or belief—
    - (a) that the applicant is entitled to enforce the order in the Mainland;
    - (b) whether any action has been taken to enforce the order and, if so, the details of the enforcement;
    - (c) the details of the property of the party against whom the Judgment is enforceable under the law of the Mainland and the financial status of that party (as the case requires);
    - (d) the date (*due date*) under the order by which each payment or act is required to be made or performed and the amount of each payment or the particulars of each act; and
    - (e) the following (as the case requires)—
      - (i) which of those payments has not been made or fully made and, for each such payment, the amount that remains unpaid as at the date of the registration application;
      - (ii) which of those acts has not been performed or fully performed and, for each such act, the particulars of the act, or the part of the act, that remains unperformed as at the date of the registration application.

- (3) The applicant must also state in the affidavit whether the registration application is made in relation to a payment or an act the due date for the making or performance of which falls on a day before the 2-year period mentioned in section 8(4)(a) of the Ordinance.
  - (4) If the registration application is made in relation to a payment or an act mentioned in subrule (3), the applicant must also state in the affidavit—
    - (a) that the applicant applies for the permission mentioned in section 8(4)(b) of the Ordinance; and
    - (b) to the best of the applicant's information or belief—
      - (i) the reasons why the registration application is not made within 2 years after the due date for making the payment or performing the act; and
      - (ii) the actions or steps taken by the applicant to assert his or her rights.
9. **Affidavits in support of registration applications: Mainland Judgments given in absence of party at trial**
- (1) This rule applies to an affidavit in support of a registration application made in relation to a specified order in a Mainland Judgment given in the absence of a party at the trial concerned.
  - (2) The applicant must also state in the affidavit, to the best of the applicant's information or belief, any one or more of the following matters—
    - (a) that the absent party was summoned to appear according to the law of the Mainland;
    - (b) that the Judgment states that the absent party was so summoned;
    - (c) the absent party is the applicant.

- (3) If the affidavit states only the matter mentioned in subrule (2)(a), the affidavit must also exhibit documents showing that the party was summoned to appear according to the law of the Mainland.
10. **Affidavits in support of registration applications where specified orders were registered previously**
- (1) This rule applies if—
    - (a) a registration application (*current application*) is made in relation to a specified order in a Mainland Judgment; and
    - (b) the Court has on a previous registration application made a registration order (*previous registration order*) for the registration of any of the specified orders (*previous registered order*) in the Judgment.
  - (2) The applicant must also state in the affidavit in support of the current application, to the best of the applicant's information or belief—
    - (a) whether the registration of any previous registered order has been set aside under section 16 of the Ordinance; and
    - (b) whether the current application is made in relation to any previous registered order the registration of which has been set aside under that section and, if so, the ground for setting aside the registration.
  - (3) The affidavit must also exhibit a copy of—
    - (a) all previous registration orders; and
    - (b) all orders made under section 16 of the Ordinance for setting aside the registration of any previous registered order.

### Division 3—Security for Costs

#### 11. Security for costs

The Court may order the applicant of a registration application made in relation to a specified order to give security for the costs of—

- (a) the registration application; and
- (b) any setting aside application in relation to the registration of the specified order.

### Division 4—Registration

#### 12. Registration orders

- (1) A registration order for the registration of a specified order in a Mainland Judgment made on a registration application must be drawn up by or on behalf of the applicant.
- (2) The registration order must specify the period within which a setting aside application may be made in relation to the registration.
- (3) The registration order must contain a notification to the effect that the period mentioned in subrule (2) may be extended under section 14(2) of the Ordinance.
- (4) The registration order must also contain a notification to the effect that—
  - (a) if the specified order is a care-related order or maintenance-related order—an action to enforce the specified order may be taken only after the expiry of the period within which a setting aside application may be made or after such an application has been finally disposed of; or

- (b) if the specified order is a status-related order—the specified order is recognized as valid in Hong Kong only after the expiry of the period within which a setting aside application may be made or after such an application has been finally disposed of.
- (5) Except where the registration order is made on a registration application made by originating summons, the order is not required to be served on any other party to the Judgment.

#### 13. Registers of specified orders

- (1) The Registrar of the High Court must keep in the Registry of that Court a register of specified orders registered in accordance with a registration order made by the Court of First Instance.
- (2) The Registrar of the District Court must keep in the Registry of that Court a register of specified orders registered in accordance with a registration order made by that Court.
- (3) The register must contain the particulars of any execution issued on a specified order.

#### 14. Notices of registration

- (1) If a registration order for the registration of a specified order in a Mainland Judgment is made on a registration application, the applicant must serve a notice of registration (*the notice*) of the specified order on all other parties to the Judgment—
  - (a) by delivering it to those parties personally;
  - (b) by sending it to those parties at their usual or last known address; or
  - (c) in such other way as the Court may direct.

- (2) Service of the notice out of jurisdiction is permissible without leave, and RHC Order 11, rules 5, 5A, 6, 8 and 8A apply in relation to the notice as if the notice were a writ.
- (3) The notice must set out—
  - (a) the full particulars of the registration order and of the specified order registered in accordance with the registration order;
  - (b) the applicant’s name and address for service, which may be the address of the applicant’s solicitor or agent for the purpose;
  - (c) the right of the other parties to the Judgment to apply under section 15 of the Ordinance to have the registration set aside; and
  - (d) the period within which a setting aside application may be made.
- (4) The notice must contain a notification to the effect that the period mentioned in subrule (3)(d) may be extended under section 14(2) of the Ordinance.
- (5) The notice must also contain a notification to the effect that—
  - (a) if the specified order is a care-related order or maintenance-related order—an action to enforce the specified order may be taken only after the expiry of the period within which a setting aside application may be made or after such an application has been finally disposed of; or
  - (b) if the specified order is a status-related order—the specified order is recognized as valid in Hong Kong only after the expiry of the period within which a setting aside application may be made or after such an application has been finally disposed of.

## Division 5—Setting Aside Registrations

### 15. Setting aside applications

- (1) A setting aside application in relation to the registration of a specified order (*original registration*) must be made by summons supported by affidavit.
  - (2) The Court may order any issue between the parties to be tried in any way in which an issue in an action may be ordered to be tried.
  - (3) The Court may, either on its own initiative or on an application made by the person who made the registration application for the original registration, impose any terms (whether as to giving security or otherwise) the Court considers appropriate as a condition of the further conduct of the setting aside application if, having regard to all the circumstances of the case, the Court considers it just to do so.
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### Part 3

#### Recognition of Mainland Divorce Certificates

##### 16. Recognition applications

- (1) A recognition application may be made ex parte to the District Court.
- (2) Despite subrule (1), the District Court may direct the recognition application be made by originating summons.
- (3) An originating summons under this rule must be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).
- (4) The recognition application must be supported by an affidavit made in compliance with rule 17.

##### 17. Affidavits in support of recognition applications

An affidavit in support of a recognition application must—

- (a) exhibit the following documents—
  - (i) a copy of the identity card of the applicant or, if the applicant is not a holder of an identity card, a copy of the identification document of the applicant notarized or otherwise duly authenticated in accordance with the law of the place in which the document was issued; and
  - (ii) a copy of the Mainland divorce certificate concerned notarized in accordance with the law of the Mainland;

- (b) state the name and the usual or last known address of the applicant and, so far as known to the applicant, the other party to the divorce specified in the certificate; and
- (c) state that, to the best of the applicant's information or belief, the certificate is valid in the Mainland.

##### 18. Security for costs

The District Court may order the applicant of a recognition application to give security for the costs of—

- (a) the recognition application; and
- (b) any setting aside application in relation to a recognition order made on the recognition application.

##### 19. Recognition orders

- (1) A recognition order for the recognition of a Mainland divorce certificate made on a recognition application must be drawn up by or on behalf of the applicant.
- (2) The recognition order must specify the period within which a setting aside application may be made in relation to the recognition order.
- (3) The recognition order must contain a notification to the effect that—
  - (a) the period mentioned in subrule (2) may be extended under section 31(2) of the Ordinance; and
  - (b) the recognition order takes effect only after the expiry of the period within which a setting aside application may be made or after such an application has been finally disposed of.
- (4) Except where the recognition order is made on a recognition application made by originating summons, the order is not

required to be served on the other party to the divorce specified in the certificate.

- (5) The Registrar of the District Court must keep in the Registry of that Court a register of recognition orders made by that Court.

## 20. Notices of recognition orders

- (1) If a recognition order for the recognition of a Mainland divorce certificate is made on a recognition application, the applicant must serve a notice of the recognition order (*the notice*) on the other party to the divorce specified in the certificate (*respondent*)—
- (a) by delivering it to the respondent personally;
  - (b) by sending it to the respondent at the respondent's usual or last known address; or
  - (c) in such other way as the District Court may direct.
- (2) Service of the notice out of jurisdiction is permissible without leave, and RHC Order 11, rules 5, 5A, 6, 8 and 8A apply in relation to the notice as if the notice were a writ.
- (3) The notice must set out—
- (a) the full particulars of the recognition order and of the Mainland divorce certificate;
  - (b) the applicant's name and address for service, which may be the address of the applicant's solicitor or agent for the purpose;
  - (c) the right of the respondent to apply under section 32 of the Ordinance to have the recognition order set aside; and
  - (d) the period within which a setting aside application may be made.
- (4) The notice must contain a notification to the effect that—

- (a) the period mentioned in subrule (3)(d) may be extended under section 31(2) of the Ordinance; and
- (b) the recognition order takes effect only after the expiry of the period within which a setting aside application may be made or after such an application has been finally disposed of.

## 21. Setting aside applications

- (1) A setting aside application in relation to a recognition order must be made by summons supported by affidavit.
- (2) The District Court may order any issue between the parties to be tried in any way in which an issue in an action may be ordered to be tried.
- (3) The District Court may, either on its own initiative or on an application made by the person who made the recognition application for the recognition order, impose any terms (whether as to giving security or otherwise) the District Court considers appropriate as a condition of the further conduct of the setting aside application if, having regard to all the circumstances of the case, the District Court considers it just to do so.
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## Part 4

### Execution of Registered Orders

**Note (with no legislative effect)—**

Section 20 of the Ordinance provides that an action to enforce a registered order may be taken only after the expiry of the period within which a setting aside application may be made or after such an application has been finally disposed of.

#### 22. Practice and procedure that apply to execution of registered orders

- (1) Except as provided by this Part, the practice and procedure under the Rules of the High Court (Cap. 4 sub. leg. A) apply, with necessary modifications, in relation to proceedings for the execution of a registered order.
- (2) If the registered order requires the payment of money to a person, rules 86, 87 and 88 of the Matrimonial Causes Rules (Cap. 179 sub. leg. A) apply, with necessary modifications, in relation to the registered order as if it were an order for the payment of money in relation to which those rules apply.
- (3) Rule 90 of the Matrimonial Causes Rules (Cap. 179 sub. leg. A) applies, with necessary modifications, in relation to an order of committal in proceedings for the enforcement of a registered order as if it were an order of committal in matrimonial proceedings in relation to which that rule applies.

#### 23. Issue of execution

- (1) A party to a Mainland Judgment wishing to issue execution on a registered order in the Judgment must produce to the Registrar—
  - (a) an affidavit of service of the notice of registration of the order under rule 14;

- (b) an affidavit mentioned in subrule (2); and
  - (c) any order made by the Court in relation to the registered order.
- (2) The affidavit must state—
    - (a) the registered order in relation to which the party wishes to issue execution;
    - (b) that, to the best of the party's information or belief, as at the date of the affidavit—
      - (i) the Mainland Judgment concerned is still effective in the Mainland; and
      - (ii) the Judgment has not been varied or revoked in the Mainland;
    - (c) to the best of the party's information or belief, as at the date of the affidavit—
      - (i) that the registered order has not been complied with; and
      - (ii) whether any action has been taken to enforce the order further to what has been stated in the affidavit in support of the registration application and, if so, the details of the enforcement; and
    - (d) to the best of the party's information or belief, the details of the property of the party against whom the Judgment is enforceable under the law of the Mainland and the financial status of that party.
  - (3) In subrule (1)—

**Registrar** (司法常務官)—

    - (a) in relation to a registered order for which execution is sought in the Court of First Instance—means the Registrar of the High Court; and

- (b) in relation to a registered order for which execution is sought in the District Court—means the Registrar of the District Court.
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## Part 5

### Certified Copies of and Certificates for Hong Kong Judgments

#### 24. Interpretation of Part 5

In this Part—

*Registrar* (司法常務官)—

- (a) in relation to a Hong Kong Judgment given by the Court of Final Appeal—means the Registrar of the Court of Final Appeal;
- (b) in relation to a Hong Kong Judgment given by the Court of Appeal or Court of First Instance—means the Registrar of the High Court; and
- (c) in relation to a Hong Kong Judgment given by the District Court—means the Registrar of the District Court;

*relevant order* (有關命令) means an order specified in Schedule 3 to the Ordinance.

#### 25. Applications for certified copies of Hong Kong Judgments

- (1) An application under section 38(1) of the Ordinance for a certified copy of a Hong Kong Judgment given in a matrimonial or family case must be made ex parte to the Registrar on affidavit.
- (2) The affidavit must—
  - (a) state the particulars of the proceedings in which the Judgment was obtained;

- (b) state that the Judgment is a Hong Kong Judgment given in a matrimonial or family case and is effective in Hong Kong;
- (c) state all relevant orders granted or made in the matrimonial or family case;
- (d) if the Judgment relates to a relevant 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), state the following—
  - (i) the date under the order by which the payment is to be made, or the act is to be performed; and
  - (ii) the following (as the case requires)—
    - (A) the amount that remains unpaid as at the date of the application;
    - (B) the particulars of the act, or the part of the act, that remains unperformed as at the date of the application;
- (e) if the Judgment relates to a relevant order requiring a payment or an act to be made or performed periodically, state the following—
  - (i) the date under the order by which each payment or act is required to be made or performed and the amount of each payment or the particulars of each act; and
  - (ii) the following (as the case requires)—
    - (A) which of those payments has not been made or fully made and, for each such payment, the amount that remains unpaid as at the date of the application;

- (B) which of those acts has not been performed or fully performed and, for each such act, the particulars of the act, or the part of the act, that remains unperformed as at the date of the application;
- (f) state whether any action has been taken to enforce the Judgment and, if so, the details of the enforcement;
- (g) state that the Judgment is not subject to any stay of execution;
- (h) state—
  - (i) that the time limit for appeal against the Judgment has expired or, if the time limit has not expired, the date on which it will expire; and
  - (ii) whether any notice of appeal against the Judgment has been entered; and
- (i) if applicable, state the rate at which the Judgment carries interest (if any).

**26. Certified copies of Hong Kong Judgments**

- (1) This rule applies if, on an application mentioned in rule 25, the Registrar issues a certified copy under section 39(1) of the Ordinance in respect of a Hong Kong Judgment given in a matrimonial or family case.
- (2) The certified copy must—
  - (a) be an office copy sealed with the seal of—
    - (i) for a Hong Kong Judgment given by the Court of Final Appeal—the Court of Final Appeal;
    - (ii) for a Hong Kong Judgment given by the Court of Appeal or Court of First Instance—the High Court; or

- (iii) for a Hong Kong Judgment given by the District Court—the District Court; and
- (b) be indorsed with a certificate signed by the Registrar certifying that the copy is—
  - (i) a true copy of a Hong Kong Judgment obtained in the Court of Final Appeal, Court of Appeal, Court of First Instance or District Court; and
  - (ii) issued under section 39(1) of the Ordinance.

**27. Certificates for Hong Kong Judgments**

- (1) This rule applies if, on an application mentioned in rule 25, the Registrar issues a certificate under section 39(2) of the Ordinance in respect of a Hong Kong Judgment given in a matrimonial or family case.
- (2) The following documents must be annexed to the certificate—
  - (a) a copy of the petition, originating application, originating summons or other process by which the case were begun (*originating process*); and
  - (b) a copy of the sealed reasoned Judgment (if any).
- (3) The certificate must state—
  - (a) what pleadings, if any, were served;
  - (b) either—
    - (i) the way in which the originating process was served on the other party or parties to the case; or
    - (ii) that the other party or parties acknowledged service of the originating process;
  - (c) all relevant orders granted or made in the matrimonial or family case;

- (d) if the Judgment relates to a relevant 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)—the amount that remains unpaid, or the act that remains unperformed, as at the date of the application, as stated in the affidavit made in compliance with rule 25(2)(d);
  - (e) if the Judgment relates to a relevant order requiring a payment or an act to be made or performed periodically—the amount of each payment that remains unpaid, or each act that remains unperformed, as at the date of the application, as stated in the affidavit made in compliance with rule 25(2)(e);
  - (f) that the Judgment is a Hong Kong Judgment given in a matrimonial or family case and is effective in Hong Kong;
  - (g) the date on which the Judgment takes effect;
  - (h) whether any action has been taken to enforce the Judgment and, if so, the details of the enforcement;
  - (i) that the time limit for appeal against the Judgment has expired or, if the time limit has not expired, the date on which it will expire;
  - (j) whether any notice of appeal against the Judgment has been entered;
  - (k) the rate at which the Judgment carries interest (if any); and
  - (l) such other particulars as it may be necessary to give to the court in the Mainland in which it is sought to obtain execution of the Judgment.
- (4) The certificate must—
    - (a) be signed by the Registrar; and

- (b) be sealed with the seal of—
- (i) in relation to a Hong Kong Judgment given by the Court of Final Appeal—the Court of Final Appeal;
  - (ii) in relation to a Hong Kong Judgment given by the Court of Appeal or Court of First Instance—the High Court; or
  - (iii) in relation to a Hong Kong Judgment given by the District Court—the District Court.
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## Part 6

### Fees

#### 28. Interpretation of Part 6

In this Part—

*application document* (申請文件), in relation to an application specified in column 2 of the Schedule, means a document prepared for the purpose of the application.

#### 29. Fees prescribed for purposes of Ordinance

The fee prescribed for an application specified in column 2 of the Schedule is the amount specified in column 3 of that Schedule opposite the application.

#### 30. Method of payment of fees

The fee prescribed for an application specified in column 2 of the Schedule must be paid—

- (a) by means of an adhesive stamp; or
- (b) by causing the application document to be franked with the amount paid.

#### 31. Reduction etc. of fees

- (1) The Registrar may reduce, remit or defer payment of a fee paid or payable for an application specified in column 2 of the Schedule as the Registrar considers appropriate in a particular case.
- (2) If the Registrar reduces, remits or defers payment of a fee under subrule (1), the Registrar must endorse on the application

document a note of the reduction, remission or deferment and the reason for doing so.

(3) In this rule—

*Registrar* (司法常務官)—


- (a) in relation to an application made to the Court of Final Appeal—means the Registrar of the Court of Final Appeal;
- (b) in relation to an application made to the Court of Appeal or Court of First Instance—means the Registrar of the High Court; and
- (c) in relation to an application made to the District Court—means the Registrar of the District Court.

**Schedule**

[rr. 28, 29, 30 & 31]

**Fees**

Column 1	Column 2	Column 3
Item	Application	Amount
1.	A registration application	\$1,045
2.	A recognition application	\$1,045
3.	An application under section 38(1) of the Ordinance for a certified copy of a Hong Kong Judgment	\$125



Chief Judge

23 August 2021



### Explanatory Note

The main purpose of these rules is to provide for the practice and procedure relating to—

- (a) applications under the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639); and
  - (b) the execution of registered orders (as defined by section 2 of that Ordinance).
2. Part 2 deals with matters relating to an application for the registration in Hong Kong of a Mainland Judgment given in a matrimonial or family case.
  3. Part 3 deals with matters relating to an application for the recognition in Hong Kong of a Mainland divorce certificate.
  4. Part 4 deals with matters relating to the execution in Hong Kong of a registered order.
  5. Part 5 deals with matters relating to an application for a certified copy of a Hong Kong Judgment given in a matrimonial or family case and for a certificate for the Judgment.
  6. Part 6 provides for matters relating to the fees payable for a registration application, a recognition application and an application for a certified copy of a Hong Kong Judgment given in a matrimonial or family case.

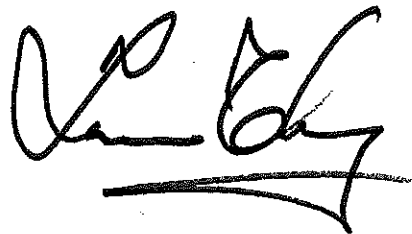
Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Commencement) Notice

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**Mainland Judgments in Matrimonial and Family Cases  
(Reciprocal Recognition and Enforcement) Ordinance  
(Commencement) Notice**

Under section 1(2) of the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639), I appoint 15 February 2022 as the day on which the Ordinance comes into operation.

A handwritten signature in black ink, appearing to be 'V. Tang', written over a horizontal line.

Secretary for Justice

23 August 2021