

**Mainland Judgments in Civil and Commercial Matters
(Reciprocal Enforcement) Bill**

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A BILL

To

Make provisions for the enforcement in Hong Kong of judgments in civil and commercial matters given in the Mainland, and for facilitating the recognition and enforcement in the Mainland of such judgments given in Hong Kong, so as to give effect to the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region 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 Civil and Commercial Matters (Reciprocal 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

- (1) In this Ordinance—

arbitral tribunal (仲裁庭) means a sole arbitrator or a panel of arbitrators, and includes an umpire;

Court means the Court of First Instance;

effective (生效)—

- (a) in relation to a Mainland Judgment—see section 8; and

- (b) in relation to a Hong Kong Judgment—see section 9;

excluded judgment (被排除的判決)—see section 5(1);

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 specified Hong Kong court, but does not include an order for interim relief or an anti-suit injunction;

Hong Kong Judgment in a civil or commercial matter (香港民商事判決)—see section 4;

judgment creditor (判定債權人), in relation to a Mainland Judgment in a civil or commercial matter or a Hong Kong Judgment in a civil or commercial matter, means the person in whose favour the Judgment was given, and includes a person in whom the rights under the Judgment have become vested by succession or assignment or otherwise;

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

Mainland Anti-Unfair Competition Law (《內地反不正當競爭法》) means the Anti-Unfair Competition Law of the People's Republic of China (a translation of “《中華人民共和國反不正當競爭法》”);

Mainland Judgment (內地判決) means a judgment, ruling, conciliatory statement or order of payment given or made by a court in the Mainland, but does not include a ruling given in respect of an interim measure;

Mainland Judgment in a civil or commercial matter (內地民商事判決)—see section 3;

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;

original proceedings (原本法律程序), in relation to a Mainland Judgment or a Hong Kong Judgment, means the proceedings in 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 35;

registered judgment (已登記判決) means a Mainland Judgment in a civil or commercial matter, or the part of such a Judgment, registered in accordance with a registration order;

registration application (登記申請) means an application under section 10(1) for a registration order;

registration order (登記令) means an order made under section 13(1);

specified Hong Kong court (指明香港法院) means—

- (a) the Court of Final Appeal;
- (b) the Court of Appeal;

- (c) the Court of First Instance;
- (d) the Competition Tribunal;
- (e) the District Court;
- (f) the Lands Tribunal;
- (g) the Labour Tribunal; or
- (h) the Small Claims Tribunal;

specified intellectual property right (指明知識產權) means—

- (a) a copyright or related right;
 - (b) a trade mark;
 - (c) a geographical indication;
 - (d) an industrial design;
 - (e) a patent;
 - (f) a layout-design (topography) of integrated circuit;
 - (g) a right to protect undisclosed information; or
 - (h) a right enjoyed by a person in respect of a new plant variety under subparagraph (7) of the second paragraph of Article 123 of the Civil Code of the People's Republic of China (a translation of “《中華人民共和國民法典》”) or under the Plant Varieties Protection Ordinance (Cap. 490).
- (2) For the purposes of this Ordinance, a reference to a requirement to perform an act includes a prohibition, or a restriction, on the performance of an act.

3. Mainland Judgments in civil or commercial matters

- (1) For the purposes of this Ordinance, a Mainland Judgment in a civil or commercial matter is a Mainland Judgment—
- (a) that—

- (i) is given in proceedings that are civil or commercial in nature under the law of the Mainland; or
 - (ii) is given in proceedings that are criminal in nature under the law of the Mainland, and contains an order for the payment of a sum of money in respect of compensation or damages by a party to the proceedings; and
- (b) that is not an excluded judgment.
- (2) Subsection (3) applies if—
 - (a) a Mainland Judgment is given in respect of different matters; and
 - (b) had separate Mainland Judgments been given in respect of each of those matters, some, but not all, of those separate Mainland Judgments (*qualifying Judgments*) would be a Mainland Judgment mentioned in subsection (1).
- (3) For the purposes of this Ordinance—
 - (a) the matter in respect of which a qualifying Judgment is given is a qualifying matter; and
 - (b) the part of the Mainland Judgment given in respect of a qualifying matter is a Mainland Judgment in a civil or commercial matter as if the part given in respect of a non-qualifying matter were not contained in the Mainland Judgment.

4. Hong Kong Judgments in civil or commercial matters

- (1) For the purposes of this Ordinance, a Hong Kong Judgment in a civil or commercial matter is a Hong Kong Judgment—
 - (a) that—

- (i) is given in civil proceedings, other than—
 - (A) proceedings brought by way of judicial review; or
 - (B) any other proceedings arising directly out of the exercise of an administrative power; or
 - (ii) is given in criminal proceedings, and contains an order for the payment of a sum of money in respect of compensation or damages by a party to the proceedings; and
- (b) that is not an excluded judgment.
- (2) Subsection (3) applies if—
 - (a) a Hong Kong Judgment is given in respect of different matters; and
 - (b) had separate Hong Kong Judgments been given in respect of each of those matters, some, but not all, of those separate Hong Kong Judgments (***qualifying Judgments***) would be a Hong Kong Judgment mentioned in subsection (1).
- (3) For the purposes of this Ordinance—
 - (a) the matter in respect of which a qualifying Judgment is given is a qualifying matter; and
 - (b) the part of the Hong Kong Judgment given in respect of a qualifying matter is a Hong Kong Judgment in a civil or commercial matter as if the part given in respect of a non-qualifying matter were not contained in the Hong Kong Judgment.

5. Meaning of *excluded judgment*

- (1) For the purposes of this Ordinance, a Mainland Judgment or a Hong Kong Judgment is an excluded judgment if—

- (a) it is given in respect of an excluded matrimonial or family case within the meaning of section 6;
- (b) it is given in respect of a matter relating to the succession to, or the administration or distribution of, an estate;
- (c) it is given in respect of an excluded intellectual property case within the meaning of section 7;
- (d) it is given in respect of a matter relating to—
 - (i) marine pollution;
 - (ii) the limitation of liability for a maritime claim;
 - (iii) general average;
 - (iv) an emergency towage or salvage;
 - (v) a maritime lien; or
 - (vi) the carriage of passengers by sea;
- (e) it is given in respect of a matter relating to the insolvency of an entity other than a natural person or the bankruptcy of a natural person;
- (f) it is given in—
 - (i) specified election proceedings;
 - (ii) proceedings for a declaration of the disappearance or death of a natural person; or
 - (iii) proceedings for a determination as to whether a natural person is a person with no or limited legal capacity for performing civil acts;
- (g) it is given in proceedings for the confirmation of the validity of an arbitration agreement or for an order to set aside an arbitral award;
- (h) it is given in proceedings for the recognition or enforcement of a judgment given by—

- (i) for a Mainland Judgment—a court in a place outside the Mainland; or
 - (ii) for a Hong Kong Judgment—a court in a place outside Hong Kong;
 - (i) it is given in proceedings for the recognition or enforcement of an arbitral award made by an arbitral tribunal in an arbitration for which—
 - (i) for a Mainland Judgment—the place of arbitration was not in the Mainland; or
 - (ii) for a Hong Kong Judgment—the place of arbitration was not in Hong Kong; or
 - (j) it is given pursuant to—
 - (i) for a Mainland Judgment—a choice of Mainland court agreement made before the commencement date of this Ordinance; or
 - (ii) for a Hong Kong Judgment—a choice of Hong Kong court agreement made before the commencement date of this Ordinance.
- (2) In subsection (1)—
- choice of Hong Kong court agreement*** (選用香港法院協議) has the meaning given by section 2 of the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597);
- choice of Mainland court agreement*** (選用內地法院協議) has the meaning given by section 2 of the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597);
- specified election proceedings*** (指明選舉法律程序)—
- (a) in relation to a Mainland Judgment—means proceedings brought under Article 181 of the Civil

Procedure Law of the People's Republic of China (a translation of “《中華人民共和國民事訴訟法》”); and

- (b) in relation to a Hong Kong Judgment—means proceedings for a determination of a natural person's qualification as an elector or a voter in an election set out in section 4(1) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554).

6. Supplementary provisions for section 5(1)(a): excluded matrimonial or family cases

- (1) For the purposes of section 5(1)(a), a Mainland Judgment is given in respect of an excluded matrimonial or family case if—
 - (a) it is given in a matrimonial or family case within the meaning of section 3(2) of the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639);
 - (b) it is given in respect of a dispute over the confirmation of an adoptive relationship; or
 - (c) it is given in respect of a matter relating to—
 - (i) the payment of maintenance arising out of the legal obligation of a person to support the person's parent or grandparent;
 - (ii) the payment of maintenance between siblings;
 - (iii) the dissolution of an adoptive relationship;
 - (iv) the guardianship over an adult;
 - (v) the liability for damages after a divorce; or
 - (vi) the division of property arising from a cohabitation relationship.

- (2) For the purposes of section 5(1)(a), a Hong Kong Judgment is given in respect of an excluded matrimonial or family case if—
 - (a) it is a Hong Kong Judgment given in a matrimonial or family case within the meaning of section 4 of the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639); or
 - (b) it is a decree of judicial separation.

7. Supplementary provisions for section 5(1)(c): excluded intellectual property cases

- (1) For the purposes of section 5(1)(c), a Mainland Judgment is given in respect of an excluded intellectual property case if—
 - (a) it is given in proceedings brought in respect of a tortious dispute over an infringement of an invention patent or utility model patent;
 - (b) it is given in proceedings for a determination of the licence fee rate of a standard-essential patent; or
 - (c) it is given in proceedings brought in respect of a dispute over an intellectual property right that is not a specified intellectual property right.
- (2) For the purposes of section 5(1)(c), a Hong Kong Judgment is given in respect of an excluded intellectual property case if—
 - (a) it is given in proceedings brought in respect of a tortious dispute over an infringement of a standard patent, or a short-term patent, as defined by section 2(1) of the Patents Ordinance (Cap. 514);

- (b) it is given in proceedings for a determination of the licence fee rate of a standard-essential patent; or
- (c) it is given in proceedings brought in respect of a dispute over an intellectual property right that is not a specified intellectual property right.

8. Effective Mainland Judgments

- (1) For the purposes of this Ordinance, a Mainland Judgment is effective in the Mainland—
 - (a) if it is enforceable in the Mainland; and
 - (b) if—
 - (i) it is a Mainland Judgment given by the Supreme People’s Court;
 - (ii) it is a Mainland Judgment of the second instance given by a High People’s Court or an Intermediate People’s Court; or
 - (iii) it is a Mainland Judgment of the first instance given by a High 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.

9. Effective Hong Kong Judgments

For the purposes of this Ordinance, a Hong Kong Judgment is effective in Hong Kong if—

- (a) it is enforceable in Hong Kong; and
 - (b) it is given by a specified Hong Kong court.
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Part 2

Registration in Hong Kong of Mainland Judgments in Civil or Commercial Matters

Division 1—Registration Applications

10. Registration applications

- (1) Subject to section 11, a judgment creditor under a Mainland Judgment in a civil or commercial matter may apply to the Court for a registration order to register the Judgment, or any part of the Judgment, if—
 - (a) the Judgment—
 - (i) was given on or after the commencement date of this Ordinance; and
 - (ii) is effective in the Mainland; and
 - (b) the following conditions are satisfied—
 - (i) the Judgment or part requires the payment of a sum of money, or the performance of an act, by a party to the original proceedings for the Judgment;
 - (ii) a default in complying with the requirement occurred within 2 years before the date of the application; and
 - (iii) the default has not been made good as at the date of the application.
- (2) The registration application must be accompanied by the prescribed fee.

11. Supplementary provisions for registration applications

- (1) If a Mainland Judgment in a civil or commercial matter requires the payment of more than one sum of money or the performance of more than one act (whether or not in stages) by a party to the original proceedings for the Judgment, a registration application may only be made for a registration order to register the Judgment to the extent that it relates to a sum of money or an act that is a qualifying sum or act.
- (2) However, if a non-qualifying sum or act becomes a qualifying sum or act after a registration application has been made, a judgment creditor may make a further registration application for a registration order to register the Judgment to the extent that it relates to the sum or act.
- (3) If a Mainland Judgment in a civil or commercial matter requires a sum of money or an act to be paid or performed in stages by a party to the original proceedings for the Judgment, a registration application may not be made for a registration order to register the Judgment to the extent that it relates to a sum of money or an act required to be paid or performed in a particular stage unless a default in complying with the requirement for that stage occurred within 2 years before the date of the application.
- (4) For the purposes of this section, a sum of money or an act is a qualifying sum or act if—
 - (a) a default in complying with the requirement to pay the sum of money, or to perform the act, occurred within 2 years before the date of the registration application concerned; and

- (b) the default has not been made good as at the date of the application.

12. Date on which default occurs

For the purposes of sections 10(1)(b)(ii) and 11(3) and (4)(a), the following date is to be regarded as the date on which a default in complying with a requirement under a Mainland Judgment in a civil or commercial matter to pay a sum of money, or to perform an act, occurs—

- (a) for a prohibition, or a restriction, on the performance of the act—the date on which a non-compliance first occurs; or
- (b) in any other case—
 - (i) if the Judgment specifies a date by which the sum of money is to be paid, or the act is to be performed—that date; or
 - (ii) if the Judgment does not specify a date by which the sum of money is to be paid, or the act is to be performed—the date on which the Judgment becomes effective in the Mainland.

Division 2—Registration Orders and Registration

13. Registration orders

- (1) On a registration application made in relation to a Mainland Judgment in a civil or commercial matter or any part of such a Judgment, the Court may order the Judgment, or any part of the Judgment, to be registered in accordance with this Division if it is satisfied that the application is made in compliance with sections 10 and 11.

- (2) For the purposes of subsection (1), until the contrary is proved, a Mainland Judgment is presumed to be a Mainland Judgment in a civil or commercial matter that is effective in the Mainland if a certificate certifying those facts is issued by the original Mainland court.
- (3) On the making of a registration order in relation to a Mainland Judgment in a civil or commercial matter or any part of such a Judgment—
 - (a) the Judgment or part is taken as registered in accordance with the registration order; and
 - (b) the applicant must serve a notice of registration of the Judgment or part on all persons, so far as known to the applicant, against whom the Judgment or part may be enforced.

14. Registration of Mainland Judgments given in criminal proceedings

- (1) This section applies if—
 - (a) a Mainland Judgment in a civil or commercial matter, or any part of such a Judgment, is ordered to be registered under section 13(1); and
 - (b) the Judgment or part—
 - (i) is given in proceedings that are criminal in nature under the law of the Mainland; and
 - (ii) contains an order for the payment of a sum of money in respect of compensation or damages by a party to the proceedings.
- (2) The Judgment or part may only be registered to the extent that it relates to the payment.

15. Registration of Mainland Judgments containing rulings on validity etc. of specified intellectual property rights

- (1) This section applies if—
 - (a) a Mainland Judgment in a civil or commercial matter, or any part of such a Judgment, is ordered to be registered under section 13(1); and
 - (b) the Judgment or part contains a ruling on the validity, establishment or subsistence of a specified intellectual property right (*subject ruling*).
- (2) The Judgment or part must not be registered to the extent that it relates to a subject ruling.
- (3) To avoid doubt, subsection (2) does not prohibit the registration of the Judgment or part to the extent that it relates to a ruling on liability based on a subject ruling.

16. Registration of certain reliefs awarded under Mainland Judgments

- (1) This section applies if—
 - (a) a Mainland Judgment in a civil or commercial matter, or any part of such a Judgment, is ordered to be registered under section 13(1); and
 - (b) the Judgment or part is given in proceedings brought in respect of—
 - (i) a tortious dispute over an infringement of a specified intellectual property right (other than an infringement of a right in a trade secret); or
 - (ii) a civil dispute over an act of unfair competition under Article 6 of the Mainland Anti-Unfair Competition Law.
- (2) The Judgment or part must not be registered to the extent that it relates to an excluded relief.

(3) In subsection (2)—

excluded relief (被排除的濟助) means a relief other than monetary damages, including punitive or exemplary damages, awarded in proceedings brought in respect of a dispute over an infringement or act of unfair competition committed in the Mainland.

17. Registration of sums payable etc. under Mainland Judgments

(1) This section applies if—

- (a) a registration application is made in relation to a Mainland Judgment in a civil or commercial matter, or any part of such a Judgment, that requires a sum of money or an act to be paid or performed by a party to the original proceedings for the Judgment (***relevant sum or act***); and
- (b) the application relates to the relevant sum or act (***a sum or an act under application***).

(2) The Court may only order under section 13(1) that the Judgment or part is to be registered to the extent that it relates to a sum or an act under application that—

- (a) is required by the Judgment or part to be paid or performed before the date of the application; and
 - (b) has not been paid or performed.
- (3) Despite subsection (2), if a relevant sum or act is required by the Judgment or part to be paid or performed in stages, the Court may, in addition, order under section 13(1) that the Judgment or part is also to be registered to the extent that it relates to any part of the relevant sum or act, whether or not it is a sum or an act under application, that—

- (a) is required by the Judgment or part to be paid or performed on or after the date of registration application; and
- (b) has not been paid or performed.

18. Sums to be included on registration of Mainland Judgments

- (1) This section applies to a Mainland Judgment in a civil or commercial matter, or any part of such a Judgment, ordered to be registered under section 13(1).
- (2) The Judgment or part must also be registered for the following sums as if they were required to be paid under the Judgment or part—
 - (a) any interest that, under the law of the Mainland, becomes due under the Judgment or part up to the time of the registration;
 - (b) any costs duly certified by the original Mainland court;
 - (c) any fine or charge payable by a party to another party to the original proceedings for the Judgment for failing to comply with the Judgment or part within the time stipulated in the Judgment or part; and
 - (d) any reasonable costs of, or incidental to, the registration of the Judgment or part, including the costs of obtaining a copy of the Judgment duly sealed by the original Mainland court.
- (3) To avoid doubt, the Judgment or part must not be registered for any of the following sums—
 - (a) a tax or other charge of a like nature;
 - (b) a fine or other penalty, other than a fine or charge described in subsection (2)(c);

- (c) punitive or exemplary damages, other than those awarded in proceedings brought in respect of—
 - (i) a tortious dispute over an infringement of a specified intellectual property right committed in the Mainland; or
 - (ii) a civil dispute over an act of unfair competition under Article 6 of the Mainland Anti-Unfair Competition Law committed in the Mainland.

19. 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 Mainland Judgment in a civil or commercial matter or any part of such a Judgment; and
 - (b) the sum payable is denominated in a currency other than Hong Kong dollars.
- (2) The Judgment or part, when registered in accordance with a registration order, must be registered as if the Judgment or part required the payment of a sum of money denominated in Hong Kong dollars that, on the basis of the rate of exchange prevailing at the day of registration of the Judgment or part, is equivalent to the sum payable under the Judgment or part.

Division 3—Setting Aside Registration

20. Applications for setting aside registration

A person against whom a registered judgment may be enforced may, within the period specified under section 21(1) or mentioned in section 21(2) (or as extended under section 21(3)), apply to the Court to set aside the registration of the judgment or any part of the judgment.

21. Time limit for making setting aside registration

- (1) The Court may, when making a registration order for a Mainland Judgment in a civil or commercial matter, or any part of such a Judgment, to be registered, specify a period within which an application for setting aside the registration may be made by a person.
- (2) Subject to subsection (3), if the Court does not specify a period under subsection (1), a person may only make an application for setting aside the registration within 14 days after the date on which a notice of registration is served on the person under section 13(3)(b).
- (3) The Court—
 - (a) may extend the period specified under subsection (1) or mentioned in subsection (2); and
 - (b) may further extend any period as extended under this paragraph or paragraph (a).

22. Setting aside registration

- (1) The Court must, on an application made under section 20 for setting aside the registration of a registered judgment or any part of such a judgment, set aside the registration if the applicant has proved to the satisfaction of the Court that—
 - (a) a provision in Division 1 or 2 has not been complied with;
 - (b) the jurisdictional requirement is not satisfied in respect of the original proceedings for the registered judgment;

Note (with no legislative effect)—

See section 23 for the circumstances in which the jurisdictional requirement is satisfied in respect of the original proceedings for a registered judgment.

- (c) the defendant to the original proceedings for the registered judgment was not summoned to appear in the original Mainland court according to the law of the Mainland, or the defendant was so summoned but was not given a reasonable opportunity to make submissions or defend the proceedings;
- (d) the registered judgment was obtained by fraud;
- (e) the original proceedings for the registered judgment 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 or enforced by a court in Hong Kong;
- (h) an arbitral tribunal has made an arbitral award on the same cause of action between the same parties in an arbitration for which the place of arbitration was in Hong Kong;
- (i) an arbitral tribunal has made an arbitral award on the same cause of action between the same parties in an arbitration for which the place of arbitration was not in Hong Kong, and the award has already been recognized or enforced by a court in Hong Kong;
- (j) the enforcement of the registered judgment is manifestly incompatible with the public policy of Hong Kong; or

- (k) the registered judgment has been reversed or otherwise set aside pursuant to an appeal or a retrial mentioned in section 24(1).
- (2) The Court may, on an application made under section 20 for setting aside the registration of a registered judgment or any part of such a judgment, set aside the registration if the applicant has proved to the satisfaction of the Court that the original proceedings for the judgment were contrary to a valid arbitration agreement or a valid jurisdiction agreement entered into by the same parties on the same cause of action.
- (3) To avoid doubt, the Court is not required by subsection (1), or authorized by subsection (2), to set aside the registration of a registered judgment, or any part of such a judgment, solely on the basis of a preliminary issue determined in the original proceedings for the judgment.
- (4) On the setting aside of the registration of a registered judgment, or any part of such a judgment, under this section, the judgment or part ceases to be registered in accordance with a registration order.

23. Jurisdictional requirement for section 22(1)(b)

- (1) For the purposes of section 22(1)(b), the jurisdictional requirement is satisfied in respect of the original proceedings for a registered judgment—
 - (a) if—
 - (i) for proceedings brought in respect of a tortious dispute over an infringement of a specified intellectual property right or a civil dispute over an act of unfair competition under Article 6 of the Mainland Anti-Unfair Competition Law—the conditions in subsection (2) are satisfied; or

- (ii) for proceedings brought in respect of a dispute that is not a dispute mentioned in subparagraph (i)—any one of the conditions in subsection (3) is satisfied, and the courts in Hong Kong do not have exclusive jurisdiction over the proceedings; or
 - (b) if the Court considers that the exercise of jurisdiction by the original Mainland court over the proceedings is consistent with the law of Hong Kong.
- (2) For the purposes of subsection (1)(a)(i), the conditions are that—
 - (a) the infringement or act of unfair competition was committed in the Mainland; and
 - (b) the specified intellectual property right or interest concerned is subject to protection under the law of the Mainland.
- (3) For the purposes of subsection (1)(a)(ii), the conditions are—
 - (a) that at the time the original Mainland court accepted the proceedings, the place of residence of the defendant to the proceedings was in the Mainland;
 - (b) that at the time the original Mainland court accepted the proceedings, the defendant to the proceedings maintained in the Mainland a representative office, branch, office, place of business or any other establishment without separate legal personality (*relevant office*), and the proceedings arose out of the activities of the relevant office;
 - (c) that the proceedings were brought in respect of a contractual dispute, and the place of performance of the contract was in the Mainland;

- (d) that the proceedings were brought in respect of a tortious dispute, and the tortious act was committed in the Mainland;
 - (e) that—
 - (i) the proceedings were brought in respect of a contractual dispute or other dispute concerning interests in property;
 - (ii) the parties to the proceedings had expressly agreed in written form that the courts in the Mainland were to have jurisdiction over the proceedings; and
 - (iii) if the places of residence of all the parties to the proceedings were in Hong Kong—there was an actual connection between the Mainland and the dispute, such as the contract was or was to be performed, or signed, in the Mainland, or the subject matter was situated in the Mainland; and
 - (f) that—
 - (i) the parties to the proceedings brought in respect of a dispute did not raise any objection to the jurisdiction of the original Mainland court over the proceedings, and appeared in the original Mainland court to defend the proceedings; and
 - (ii) if the places of residence of all the parties to the proceedings were in Hong Kong—there was an actual connection between the Mainland and the dispute, such as the contract was or was to be performed, or signed, in the Mainland, or the subject matter was situated in the Mainland.
- (4) For the purposes of subsection (3)(e)(ii), an agreement is in written form if it is concluded, or evidenced, by a

means (including an electronic means such as an electronic data message, a telegram, a telex, a fax, an electronic data interchange or an electronic mail) by which—

- (a) the agreement is capable of being displayed in visible form; and
- (b) information is accessible so as to be usable for subsequent reference.

(5) In this section—

place of residence (居住地) means—

- (a) for a natural person—the person’s place of household registration, place of permanent residence or place of habitual residence; or
- (b) for an entity other than a natural person—its place of incorporation or registration, place of principal office, principal place of business or principal place of management.

24. Court may adjourn applications for setting aside registration

- (1) This section applies if, on an application made under section 20 for setting aside the registration of a registered judgment or any part of such a judgment, the Court is satisfied that, even though the judgment is effective in the Mainland under section 8—
 - (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 Court may, on the terms it considers just, adjourn the application until after the expiry of the period that appears to the Court to be reasonably sufficient to enable the applicant to take the necessary steps to have the appeal or retrial disposed of.

25. Restriction on further registration applications

- (1) If the Court sets aside the registration of a registered judgment, or any part of such a judgment, (*original registration*) under section 22, the person who made the registration application for the original registration may not make a further registration application to register the judgment or part.
- (2) Subsection (1) does not apply if the original registration is set aside solely on the ground set out in section 22(1)(a).

Division 4—Effect of Registration etc.

26. Effect of registration of Mainland Judgments

- (1) Subject to section 27, a registered judgment may be enforced in Hong Kong as if—
 - (a) it were a judgment originally given by the Court and the Court had jurisdiction to give it; and
 - (b) it were given on the day of registration of the judgment.
- (2) Without limiting subsection (1)—
 - (a) proceedings may be brought for, or with respect to, the enforcement of the judgment;
 - (b) a sum of money required to be paid under the judgment carries interest; and
 - (c) the Court has the same control over the execution of the judgment,as if it were a judgment originally given by the Court on the day of registration of the judgment.

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

27. No enforcement before end of setting aside procedure

- (1) An action to enforce a registered judgment may be taken only after the expiry of the period within which an application for setting aside the registration of the judgment may be made under section 20.
- (2) However, if an application under section 20 is made during the period mentioned in subsection (1), an action to enforce the judgment may be taken only after the application has been finally disposed of.

28. Recognition of Mainland Judgments in proceedings

- (1) This section applies to a Mainland Judgment in a civil or commercial matter, or any part of such a Judgment, that—
 - (a) is a registered judgment; or
 - (b) is not a registered judgment but, had a registration application been made in relation to the Judgment or part, section 10(1)(a) would be complied with.
- (2) The Judgment or part is to be recognized in a court in Hong Kong as conclusive in any proceedings in respect of the same cause of action between the same parties and may be relied on by way of defence or counterclaim in any such proceedings.

- (3) Subsection (2) does not apply if—
 - (a) where the Judgment or part has been registered—the registration of the Judgment or part has been set aside under section 22 on a ground other than that set out in section 22(1)(a); or
 - (b) where the Judgment or part has not been registered—it is shown that, had it been registered, the registration of the Judgment or part would have been set aside under section 22 on a ground other than that set out in section 22(1)(a).
- (4) This section does not prevent a court in Hong Kong from recognizing a Mainland 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

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

- (1) This section applies if—
 - (a) a registration application is made in relation to a Mainland Judgment in a civil or commercial matter, or any part of such a Judgment, given on a cause of action between particular parties; and
 - (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.
- (2) The applicant of 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 a 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) The adjudicating court may only make a resumption or termination order under subsection (4) if—
 - (a) the registration application has been finally disposed of; and
 - (b) if a registration order to register the Judgment or part is made—
 - (i) the period within which an application for setting aside the registration may be made under section 20 has expired and no such application has been made; or
 - (ii) an application for setting aside the registration is made under section 20 and the application has been finally disposed of.

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

- (1) This section applies if—
 - (a) a registration application made in relation to a Mainland Judgment in a civil or commercial matter, or any part of such a Judgment, is pending; or
 - (b) the Judgment or part is registered in accordance with a registration order.

- (2) Except as provided by subsection (3), a party to the original proceedings for the Judgment may not bring in a court in Hong Kong proceedings in respect of the same cause of action on which the Judgment or part was given.
- (3) If the registration of the Judgment or part as mentioned in subsection (1)(b) has been set aside under section 22, that subsection does not prevent the party from bringing the proceedings in a court in Hong Kong.

31. 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 any other relief ordered under a Mainland Judgment in a civil or commercial matter 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 13(1); or
 - (b) proceedings for the execution of a registered judgment.
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Part 3

Facilitation of Recognition and Enforcement in Mainland of Hong Kong Judgments in Civil or Commercial Matters

32. Hong Kong Judgments to which this Part applies

This Part applies to a Hong Kong Judgment in a civil or commercial matter that is—

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

33. Applications for certified copies of Hong Kong Judgments

- (1) Subject to subsection (3), a judgment creditor under a Hong Kong Judgment in a civil or commercial matter 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 Appeal or the Court of First Instance—the High Court; or
 - (ii) if the Judgment was given by any other specified Hong Kong court—that specified Hong Kong court; and
 - (b) be accompanied by the prescribed fee.

- (3) If the execution of a Hong Kong Judgment in a civil or commercial matter 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.

34. Issue of certified copies of Hong Kong Judgments and certificates for Hong Kong Judgments

- (1) If an application under section 33 is made to a specified Hong Kong court in respect of a Hong Kong Judgment in a civil or commercial matter, the specified Hong Kong court must issue to the applicant a certified copy of the Judgment.
 - (2) When issuing a certified copy of the Judgment, the specified Hong Kong court must also—
 - (a) issue to the applicant a certificate—
 - (i) certifying that the Judgment is a Hong Kong Judgment in a civil or commercial matter and is effective in Hong Kong; and
 - (ii) containing the particulars that may be prescribed by the rules made under section 35; and
 - (b) annex to the certificate the documents that may be prescribed by the rules made under section 35.
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Part 4

Miscellaneous

35. 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 judgment;
- (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.

36. Related amendments

The Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) is amended as set out in the Schedule.

Schedule

[s. 36]

**Related Amendments to Mainland Judgments
(Reciprocal Enforcement) Ordinance**

1. Section 5 amended (application for registration of Mainland judgments)

Section 5(2)(b)—

Repeal

“date of the commencement of this Ordinance”

Substitute

“commencement date of this Ordinance but before the commencement date of the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance (of 2022)”.

2. Section 21 amended (jurisdiction to issue certified copies of Hong Kong judgments and certificate for Hong Kong judgments)

Section 21(1) and (2)—

Repeal

“date of the commencement of this Ordinance”

Substitute

“commencement date of this Ordinance pursuant to a choice of Hong Kong court agreement made before the commencement date of the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance (of 2022)”.

Explanatory Memorandum

The purpose of this Bill is to give effect to the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region 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 18 January 2019 (*Arrangement*). The Arrangement provides for the reciprocal recognition and enforcement of judgments in civil and commercial matters between the Mainland and Hong Kong.

2. The Bill contains 4 Parts and a Schedule to provide for—
 - (a) the registration in Hong Kong of Mainland Judgments in civil or commercial matters (within the meaning of clause 3);
 - (b) the facilitation of the recognition and enforcement in the Mainland of Hong Kong Judgments in civil or commercial matters (within the meaning of clause 4); and
 - (c) related amendments to the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) (*Cap. 597*).

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 and 4 explain what is meant by a Mainland

Judgment in a civil or commercial matter or a Hong Kong Judgment in a civil or commercial matter. Clauses 5, 6 and 7 provide that certain judgments are not judgments given in civil or commercial matters. Clauses 8 and 9 explain what is meant by an effective Mainland Judgment or an effective Hong Kong Judgment.

Part 2—Registration in Hong Kong of Mainland Judgments in Civil or Commercial Matters

5. Part 2 deals with matters relating to the registration in Hong Kong of a Mainland Judgment in a civil or commercial matter. That Part contains 5 Divisions.

Division 1—Registration Applications

6. Division 1 (clauses 10, 11 and 12) of Part 2 deals with registration applications. In particular, clause 10(1)(a) provides that a registration application may only be made for a Mainland Judgment in a civil or commercial matter given on or after the commencement date of the Ordinance and that is effective in the Mainland. Clause 10(1)(b) provides that the registration application may only be made if there is a default within 2 years before the date of the application. Clauses 11 and 12 clarify the application of the 2-year requirement, and the computation of the 2-year time limit, in different scenarios.

Division 2—Registration Orders and Registration

7. Division 2 (clauses 13 to 19) of Part 2 deals with the registration of a Mainland Judgment in a civil or commercial matter by the Court of First Instance, including—

- (a) the power of the Court of First Instance to make an order for the registration of a Mainland Judgment (clause 13);
- (b) the extent to which a Mainland Judgment given in criminal proceedings or certain intellectual property right cases may be registered (clauses 14, 15 and 16);
- (c) the extent to which a sum of money or an act required to be paid or performed under a Mainland Judgment may be registered (clause 17);
- (d) the inclusion of certain sums (such as interest) in the registration (clause 18); and
- (e) the registration of a Mainland Judgment requiring the payment of a sum of money denominated in a currency other than Hong Kong dollars (clause 19).

Division 3—Setting Aside Registration

8. Division 3 (clauses 20 to 25) of Part 2 deals with the procedure for setting aside the registration of a registered judgment and the effect of setting aside. In particular, clause 22(1) contains exhaustive grounds on which the registration must be set aside, and clause 22(2) contains a ground on which the registration may be set aside.

Division 4—Effect of Registration etc.

9. Division 4 (clauses 26, 27 and 28) of Part 2 deals with the effect of registration. Clause 26 provides that a registered judgment may be enforced in Hong Kong as if it were a judgment originally given by the Court of First Instance. Clause 28 provides that a Mainland Judgment in a civil or commercial matter, whether registered or not, is to be recognized in a court in Hong Kong as conclusive in any

proceedings in respect of the same cause of action between the same parties and may be relied on by way of defence or counterclaim in any such proceedings. That clause also provides that a court in Hong Kong is not prevented from recognizing a Mainland 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 29, 30 and 31) of Part 2 provides for restriction on Hong Kong proceedings. Clause 29 provides that certain ongoing Hong Kong proceedings must be stayed when an application to register a Mainland Judgment in a civil or commercial matter is made. Clause 30 restricts a party to a Mainland Judgment in a civil or commercial matter from bringing in a court in Hong Kong proceedings in respect of the same cause of action. Clause 31 restricts the bringing of proceedings for the execution of a Mainland Judgment in a civil or commercial matter other than by way of registration.

Part 3—Facilitation of Recognition and Enforcement in Mainland of Hong Kong Judgments in Civil or Commercial Matters

11. Part 3 (clauses 32, 33 and 34) provides for the issue of a certified copy of a Hong Kong Judgment in a civil or commercial matter and also a certificate for the Judgment. The purpose of issuing the certified copy and the certificate is to facilitate a person to seek recognition and enforcement of the Judgment in the Mainland.

Part 4—Miscellaneous

12. Part 4 (clauses 35 and 36) provides for the following miscellaneous matters—
- (a) the Chief Judge’s power to make rules for the carrying into effect of the Ordinance; and
 - (b) the making of related amendments to Cap. 597 (see also the Schedule).

Schedule

13. The Schedule contains related amendments to Cap. 597. After the amendments, Cap. 597 will no longer apply to—
- (a) a Mainland Judgment given pursuant to a choice of Mainland court agreement (as defined by section 2 of Cap. 597) made on or after the commencement date of the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance; and
 - (b) a Hong Kong Judgment given pursuant to a choice of Hong Kong court agreement (as defined by section 2 of Cap. 597) made on or after the commencement date of the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance.