

## LEGISLATIVE COUNCIL BRIEF

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

#### INTRODUCTION

At the meeting of the Executive Council on 12 April 2022, the Council ADVISED and the Chief Executive ORDERED that the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Bill (“**Bill**”), at Annex A, should be introduced into the Legislative Council (“**LegCo**”).

#### JUSTIFICATIONS

2. The arrangement titled 《關於內地與香港特別行政區法院相互認可和執行民商事案件判決的安排》 (“**REJ Arrangement**”) signed between the Government of the Hong Kong Special Administrative Region (“**Hong Kong**”) and the Supreme People’s Court (“**SPC**”) on 18 January 2019 will need to be implemented in Hong Kong by way of legislation. A copy of the REJ Arrangement is at Annex B.

3. The REJ Arrangement was entered into having regard to the following considerations, among others -

- (a) Prior to the REJ Arrangement, there were two existing arrangements which provided for reciprocal recognition and enforcement of judgments (“**REJ**”) in civil and commercial matters i.e. the *Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region Pursuant to Choice of Court Agreements between Parties Concerned*<sup>1</sup>

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<sup>1</sup> The Chinese title is 《關於內地與香港特別行政區法院相互認可和執行當事人協議管轄的民商事案件判決的安排》. The Choice of Court Arrangement was signed in July 2006 and took effect on 1 August 2008. The Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) is the implementing

(“**Choice of Court Arrangement**”) and the *Arrangement on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases by the Courts of the Mainland and of the Hong Kong Special Administrative Region*<sup>2</sup> (“**Matrimonial Arrangement**”), each only provided for a specific scope of application. The former applies to money judgments made by the courts of either side where the parties to a commercial contract have agreed in writing that a court of one side will have exclusive jurisdiction to determine a dispute arising from that contract. The latter only applies to civil judgments in matrimonial or family matters.

- (b) With the increasingly close interaction and cooperation between Hong Kong and the Mainland in terms of trade and economic activities as well as social interactions, the Choice of Court Arrangement and Matrimonial Arrangement are not able to fully address the needs for a comprehensive REJ mechanism. There have thus been calls from time to time in the community to widen the scope of the REJ regime between the two places.
- (c) Apart from the REJ mechanism under the Choice of Court Arrangement and the Matrimonial Arrangement, money judgments given by Mainland courts may be considered for recognition and enforcement in Hong Kong at common law. This route however has met with difficulties. Procedurally, a party seeking to enforce a non-Hong Kong judgment at common law must initiate a fresh action in Hong Kong by writ<sup>3</sup> and bear the burden of proving to the court all the essential requirements for the recognition and enforcement of the non-Hong Kong judgment.<sup>4</sup> Notably, Hong Kong courts have in different circumstances held that whether a relevant Mainland judgment could be regarded as final and conclusive in light of the review power exercisable under the trial supervision procedures in the Mainland<sup>5</sup> would be a triable issue.<sup>6</sup>

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legislation as far as Hong Kong is concerned.

<sup>2</sup> The Chinese title is 《關於內地與香港特別行政區法院相互認可和執行婚姻家庭民事案件判決的安排》. The Matrimonial Arrangement was signed in June 2017 and took effect on 15 February 2022. The Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639) is the implementing legislation as far as Hong Kong is concerned.

<sup>3</sup> The party may apply for a summary judgment pursuant to Order 14 of the Rules of the High Court (Cap. 4A) to seek enforcement of a Mainland judgment at common law.

<sup>4</sup> Common law allows the recognition and enforcement of a non-Hong Kong judgment (including a Mainland judgment) if certain conditions are satisfied, including that the judgment is given by a competent court for a fixed sum of money and that it is a final judgment conclusive upon the merits of the claim.

<sup>5</sup> For details of the trial supervision mechanism of the Mainland, see Chapter 16 of the *Civil Procedure Law of the People's Republic of China* (中華人民共和國民事訴訟法).

<sup>6</sup> In *Lee Yau Wing v Lee Shui Kwan* [2007] 2 HKLRD 749, the Court of Appeal set aside a summary judgment enforcing a Mainland judgment at common law, because whether a Mainland judgment was not final and

- (d) The REJ Arrangement, which goes beyond the scope of the Choice of Court Arrangement and the Matrimonial Arrangement, will establish a more comprehensive mechanism for REJ in civil and commercial matters between Hong Kong and the Mainland, thereby reducing the need for re-litigation of the same disputes in both places, offering better protection to the parties' interests and enhancing Hong Kong's competitiveness as a regional centre for international legal and dispute resolution services.

4. In formulating the REJ Arrangement, reference has been drawn to the then draft version of the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters which was concluded on 2 July 2019 but still not yet in force. Taking into account the practical needs and circumstances of Hong Kong and the Mainland, and utilising the "one country two systems" policy, we have expanded the scope of application of the REJ Arrangement by covering a wider range of judgments on contractual and tortious disputes to expressly include judgments given in respect of certain types of disputes over intellectual property rights. This major breakthrough makes Hong Kong the first jurisdiction to have an arrangement with the Mainland on REJ with such a wide coverage, reflecting the unique advantages of "one country, two systems".

5. A synopsis of the key features of the REJ Arrangement is at **Annex C**.

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

7. The REJ Arrangement will come into effect after both Hong Kong and the Mainland have put in place the relevant implementation mechanism in their respective jurisdictions and will apply to judgments made on or after the commencement date of the REJ Arrangement.

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conclusive simply due to the trial supervision regime was a controversial and complex question of great public importance, and needed to be resolved with oral expert evidence at trial (paras. 24-29 and 34-39). This decision was followed in, for instance, *Lin Chien Cheng v Hui Chi Keung* [2019] HKCFI 2686, where the Court of First Instance refused summary judgment to enforce a Mainland judgment at common law. The court held that since there was no definitive authority on how the trial supervision regime would impact on whether Mainland judgments would be final and conclusive under Hong Kong law, that difficult question had to be resolved with full expert evidence and submissions at trial (paras. 12-20).

8. There have been calls from the legal and business sectors for the early implementation of the REJ Arrangement.

## **THE BILL**

9. The Bill provides for mechanisms in respect of the following -
- (a) Part 2 of the Bill (Clauses 10 to 31) provides a mechanism for the registration in Hong Kong of Mainland Judgments in Civil or Commercial Matters; and
  - (b) Part 3 of the Bill (Clauses 32 to 34) provides a mechanism for the application of certified copies of and the issuance of certificates for Hong Kong Judgments in Civil or Commercial Matters to facilitate parties in seeking recognition and enforcement of the Judgments in the Mainland.
10. The main provisions of the Bill are set out in **Annex D**.

## **LEGISLATIVE TIMETABLE**

11. The legislative timetable will be -
- |  |                |
|--|----------------|
| (a) Publication in the Gazette   | 22 April 2022  |
| (b) First Reading and commencement of Second Reading debate                | 4 May 2022     |
| (c) Resumption of Second Reading debate, Committee stage and Third Reading | To be notified |

## **IMPLICATIONS OF THE PROPOSAL**

12. The Bill will further enhance Hong Kong's status and competitiveness as a regional centre for international legal and dispute resolution services and also complement Hong Kong's development into a regional intellectual property trading centre. The proposal has economic, financial and civil service

implications as set out in **Annex E**. It has no productivity, environmental, family or gender implications. There are no sustainability implications other than the economic implications.

13. The proposal is in conformity with the Basic Law, including Article 95 thereof and the provisions concerning human rights.

14. The Bill contains no express binding effect clause.

## **PUBLIC CONSULTATION**

15. Between December 2021 and January 2022, the Government conducted a public consultation to invite views on the Bill from the community, including the legal sector, business communities and other interested parties. Subsequently, the Government received 17 written submissions from the stakeholders including those from the business, legal and dispute resolution sectors. The Government also held meetings with some stakeholders to discuss the issues set out in the consultation paper.

16. On the whole, most respondents indicated their support for the implementation of the REJ Arrangement through the Bill and some from the legal and business sectors remarked that given the growing ties between Hong Kong and the Mainland, the implementation of the REJ Arrangement could reduce the need for re-litigation of the same disputes in both places and offer better protection to parties' interests. Further, the majority of the respondents agreed that the enactment of the Bill could enhance Hong Kong's competitiveness as a regional centre for legal and dispute resolution services. A respondent indicated that the implementation of the REJ Arrangement would provide a better environment and basis for the legal profession in Hong Kong to contribute to fuller and harmonious integration in the Greater Bay Area.

17. Some respondents specifically welcomed the comprehensive scope of application of the REJ Bill which covers judgments on a wide range of contractual and tortious disputes including certain intellectual property disputes and remarked that such inclusion would support the Greater Bay Area's innovation-driven development.

18. The Government briefed the Panel on Administration of Justice and Legal Services of the LegCo (“**AJLS Panel**”) on the Bill on 28 March 2022. The AJLS Panel indicated support for the Bill and some members remarked that the Bill should be implemented soonest.

19. After considering the comments from the stakeholders, the Government has amended the Bill in the following technical aspects to further enhance its clarity and make it more user-friendly –

- (a) Clause 7 amended to put beyond doubt the Bill does not cover judgments on intellectual property rights which are not defined as “specified intellectual property right” under Clause 2 of the Bill so as to reflect Article 3(1)(3) of the REJ Arrangement which provides that “本安排暫不適用於就下列民商事案件作出的判決：[... ] 以及有關本安排第五條未規定的知識產權案件”.
- (b) Clauses 20 and 21 amended to the effect that where a registration order is made, unless otherwise ordered by the court, the period within which an application for setting aside the registration should be within 14 days after service of the notice of registration. This amendment seeks to reflect in express terms the prevailing practice in comparable registration mechanisms.
- (c) A definition to the term “specified Hong Kong court” added in Clause 2 so as to put beyond doubt that Part 3 of the Bill (on application for certificates for Hong Kong Judgments) would be applicable to Judgments in civil and commercial matters made by the courts and tribunals covered by the Bill, namely:
  - (i) the Court of Final Appeal;
  - (ii) the Court of Appeal;
  - (iii) the Court of First Instance;
  - (iv) the Competition Tribunal;
  - (v) the District Court;
  - (vi) the Lands Tribunal;
  - (vii) the Labour Tribunal; or
  - (viii) the Small Claims Tribunal.

20. A respondent indicated that certain types of insurance policies, namely motor vehicles third party liability insurance, public liability insurance and employees’ compensation insurance (collectively, “**Relevant Insurance**”

**Policies**”), would usually contain an exclusion clause excluding the insurer from liabilities for indemnifying the insured for liabilities arising from judgments against the insured which are not in the first instance delivered by or obtained from a Hong Kong Court (“**Exclusion Clause**”). It remarked that the Bill would have “*the potential of generating inadvertently empty/unenforceable judgements*” on tortious liabilities purportedly excluded by the Exclusion Clause in the Relevant Insurance Policies.

21. The Government takes the view that an “empty judgment” would arise only when the Relevant Insurance Policy does not cover the claim in question, *and* the defendant (i.e. the insured) has no other means to pay.

22. A plaintiff is free to devise his own strategy in pursuing his claim (for tortious liabilities or otherwise) and to weigh the pros and cons for commencing his claim in either Hong Kong or the Mainland (or elsewhere), with or without knowledge of the existence of any insurance policy held by the defendant (i.e. the insured) and the terms and coverage of such a policy, which is a commercial matter beyond the scope of the Bill. The Bill does not create or aggravate the possibilities for “empty judgments”. The Government has considered various possible scenarios which may arise from the Relevant Insurance Policies and our observations in this regard are set out in **Annex F**.

## **PUBLICITY**

23. A press release will be issued on 20 April 2022. A spokesperson will be made available to handle enquiries.

## **ENQUIRIES**

24. Enquiries on this brief can be addressed to Ms Peggy AU-YEUNG, Senior Assistant Solicitor General (Policy Affairs) 1, at telephone number 3918 4038.

**Department of Justice**  
**20 April 2022**

# **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.
- 

**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.
- 

**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.

**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.

**關於內地與香港特別行政區法院  
相互認可和執行民商事案件判決的安排**

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

**第一條** 內地與香港特別行政區法院民商事案件生效判決的相互認可和執行，適用本安排。

刑事案件中有關民事賠償的生效判決的相互認可和執行，亦適用本安排。

**第二條** 本安排所稱“民商事案件”是指依據內地和香港特別行政區法律均屬於民商事性質的案件，不包括香港特別行政區法院審理的司法覆核案件以及其他因行使行政權力直接引發的案件。

**第三條** 本安排暫不適用於就下列民商事案件作出的判決：

（一）內地人民法院審理的贍養、兄弟姐妹之間扶養、解除收養關係、成年人監護權、離婚後損害責任、同居關係析產案件，香港特別行政區法院審理的應否裁判分居的案件；

（二）繼承案件、遺產管理或者分配的案件；

(三) 內地人民法院審理的有關發明專利、實用新型專利侵權的案件，香港特別行政區法院審理的有關標準專利（包括原授專利）、短期專利侵權的案件，內地與香港特別行政區法院審理的有關確認標準必要專利許可費率的案件，以及有關本安排第五條未規定的知識產權案件；

(四) 海洋環境污染、海事索賠責任限制、共同海損、緊急拖航和救助、船舶優先權、海上旅客運輸案件；

(五) 破產（清盤）案件；

(六) 確定選民資格、宣告自然人失蹤或者死亡、認定自然人限制或者無民事行為能力的案件；

(七) 確認仲裁協議效力、撤銷仲裁裁決案件；

(八) 認可和執行其他國家和地區判決、仲裁裁決的案件。

**第四條** 本安排所稱“判決”，在內地包括判決、裁定、調解書、支付令，不包括保全裁定；在香港特別行政區包括判決、命令、判令、訟費評定證明書，不包括禁訴令、臨時濟助命令。

本安排所稱“生效判決”：

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

(二) 在香港特別行政區，是指終審法院、高等法院上訴法庭及原訟法庭、區域法院以及勞資審裁處、土地審裁處、小額錢債審裁處、競爭事務審裁處作出的已經發生法律效力的判決。

**第五條** 本安排所稱“知識產權”是指《與貿易有關的知識產權協定》第一條第二款規定的知識產權，以及《中華人民共和國民法總則》第一百二十三条第二款第七項、香港《植物品種保護條例》規定的權利人就植物新品種享有的知識產權。

**第六條** 本安排所稱“住所地”，當事人為自然人的，是指戶籍所在地或者永久性居民身份所在地、經常居住地；當事人為法人或者其他組織的，是指註冊地或者登記地、主要辦事機構所在地、主要營業地、主要管理地。

**第七條** 申請認可和執行本安排規定的判決：

(一) 在內地，向申請人住所地或者被申請人住所地、財產所在地的中級人民法院提出；

(二) 在香港特別行政區，向高等法院提出。

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

**第八條** 申請認可和執行本安排規定的判決，應當提交下列材料：

(一) 申請書；

(二) 經作出生效判決的法院蓋章的判決副本；

(三) 作出生效判決的法院出具的證明書，證明該判決屬於生效判決，判決有執行內容的，還應當證明在原審法院地可以執行；

(四) 判決為缺席判決的，應當提交已經合法傳喚當事人的證明文件，但判決已經對此予以明確說明或者缺席方提出認可和執行申請的除外；

(五) 身份證明材料：

1. 申請人為自然人的，應當提交身份證件複印件；

2. 申請人為法人或者其他組織的，應當提交註冊登記證書的複印件以及法定代表人或者主要負責人的身份證件複印件。

上述身份證明材料，在被請求方境外形成的，應當依據被請求方法律規定辦理證明手續。

向內地人民法院提交的文件沒有中文文本的，應當提交準確的中文譯本。

**第九條** 申請書應當載明下列事項：

(一) 當事人的基本情況：當事人為自然人的，包括姓名、住所、身份證件信息、通訊方式等；當事人為法人或者其他組織的，包括名稱、住



所及其法定代表人或者主要負責人的姓名、職務、住所、身份證件信息、通訊方式等；

（二）請求事項和理由；申請執行的，還需提供被申請人的財產狀況和財產所在地；

（三）判決是否已在其他法院申請執行以及執行情況。

**第十條** 申請認可和執行判決的期間、程序和方式，應當依據被請求方法律的規定。

**第十一條** 符合下列情形之一，且依據被請求方法律有關訴訟不屬於被請求方法院專屬管轄的，被請求方法院應當認定原審法院具有管轄權：

（一）原審法院受理案件時，被告住所地在該方境內；

（二）原審法院受理案件時，被告在該方境內設有代表機構、分支機構、辦事處、營業所等不屬於獨立法人的機構，且訴訟請求是基於該機構的活動；

（三）因合同糾紛提起的訴訟，合同履行地在該方境內；

（四）因侵權行為提起的訴訟，侵權行為實施地在該方境內；

（五）合同糾紛或者其他財產權益糾紛的當事人以書面形式約定由原審法院地管轄，但各方當事人住所地均在被請求方境內的，原審法院地應系合同履行地、合同簽訂地、標的物所在地等與爭議有實際聯繫地；

（六）當事人未對原審法院提出管轄權異議並應訴答辯，但各方當事人住所地均在被請求方境內的，原審法院地應系合同履行地、合同簽訂地、標的物所在地等與爭議有實際聯繫地。

前款所稱“書面形式”是指合同書、信件和數據電文（包括電報、電傳、傳真、電子數據交換和電子郵件）等可以有形地表現所載內容的形式。

知識產權侵權糾紛案件以及內地人民法院審理的《中華人民共和國反不正當競爭法》第六條規定的不正當競爭糾紛民事案件、香港特別行政區法院審理的假冒糾紛案件，侵權、不正當競爭、假冒行為實施地在原審法院地境內，且涉案知識產權權利、權益在該方境內依法應予保護的，才應當認定原審法院具有管轄權。

除第一款、第三款規定外，被請求方法院認為原審法院對於有關訴訟的管轄符合被請求方法律規定的，可以認定原審法院具有管轄權。

**第十二條** 申請認可和執行的判決，被申請人提供證據證明有下列情形之一的，被請求方法院審查核實後，應當不予認可和執行：

（一）原審法院對有關訴訟的管轄不符合本安排第十一條規定的；

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

（三）判決是以欺詐方法取得的；

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

(五) 被請求方法院已經就同一爭議作出判決，或者已經認可其他國家和地區就同一爭議作出的判決的；

(六) 被請求方已經就同一爭議作出仲裁裁決，或者已經認可其他國家和地區就同一爭議作出的仲裁裁決的。

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

**第十三條** 申請認可和執行的判決，被申請人提供證據證明在原審法院進行的訴訟違反了當事人就同一爭議訂立的有效仲裁協議或者管轄協議的，被請求方法院審查核實後，可以不予認可和執行。

**第十四條** 被請求方法院不能僅因判決的先決問題不屬於本安排適用範圍，而拒絕認可和執行該判決。

**第十五條** 對於原審法院就知識產權有效性、是否成立或者存在作出的判項，不予認可和執行，但基於該判項作出的有關責任承擔的判項符合本安排規定的，應當認可和執行。

**第十六條** 相互認可和執行的判決內容包括金錢判項、非金錢判項。

判決包括懲罰性賠償的，不予認可和執行懲罰性賠償部份，但本安排第十七條規定的除外。

**第十七條** 知識產權侵權糾紛案件以及內地人民法院審理的《中華人民共和國反不正當競爭法》第六條規定的不正當競爭糾紛民事案件、香港特別行政區法院審理的假冒糾紛案件，內地與香港特別行政區法院相互認可和執行判決的，限於根據原審法院地發生的侵權行為所確定的金錢判項，包括懲罰性賠償部份。

有關商業秘密侵權糾紛案件判決的相互認可和執行，包括金錢判項（含懲罰性賠償）、非金錢判項。

**第十八條** 內地與香港特別行政區法院相互認可和執行的財產給付範圍，包括判決確定的給付財產和相應的利息、訴訟費、遲延履行金、遲延履行利息，不包括稅收、罰款。

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

**第十九條** 被請求方法院不能認可和執行判決全部判項的，可以認可和執行其中的部份判項。

**第二十條** 對於香港特別行政區法院作出的判決，一方當事人已經提出上訴，內地人民法院審查核實後，中止認可和執执行程序。經上訴，維持全部或者部份原判決的，恢復認可和執执行程序；完全改變原判決的，終止認可和執执行程序。

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

**第二十一條** 被申請人在內地和香港特別行政區均有可供執行財產的，申請人可以分別向兩地法院申請執行。

應對方法院要求，兩地法院應當相互提供本方執行判決的情況。

兩地法院執行財產的總額不得超過判決確定的數額。

**第二十二條** 在審理民商事案件期間，當事人申請認可和執行另一地法院就同一爭議作出的判決的，應當受理。受理後，有關訴訟應當中止，待就認可和執行的申請作出裁定或者命令後，再視情終止或者恢復訴訟。

**第二十三條** 審查認可和執行判決申請期間，當事人就同一爭議提起訴訟的，不予受理；已經受理的，駁回起訴。

判決全部獲得認可和執行後，當事人又就同一爭議提起訴訟的，不予受理。

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

**第二十四條** 申請認可和執行判決的，被請求方法院在受理申請之前或者之後，可以依據被請求方法律規定採取保全或者強制措施。

**第二十五條** 法院應當盡快審查認可和執行的申請，並作出裁定或者命令。

**第二十六條** 被請求方法院就認可和執行的申請作出裁定或者命令後，當事人不服的，在內地可以於裁定送達之日起十日內向上一級人民法院申請覆議，在香港特別行政區可以依據其法律規定提出上訴。

**第二十七條** 申請認可和執行判決的，應當依據被請求方有關訴訟收費的法律和規定交納費用。

**第二十八條** 本安排簽署後，最高人民法院和香港特別行政區政府經協商，可以就第三條所列案件判決的認可和執行以及第四條所涉保全、臨時濟助的協助問題簽署補充文件。

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

**第二十九條** 本安排在最高人民法院發布司法解釋和香港特別行政區完成有關程序後，由雙方公布生效日期。

內地與香港特別行政區法院自本安排生效之日起作出的判決，適用本安排。

**第三十條** 本安排生效之日，《關於內地與香港特別行政區法院相互認可和執行當事人協議管轄的民商事案件判決的安排》同時廢止。

本安排生效前，當事人已簽署《關於內地與香港特別行政區法院相互認可和執行當事人協議管轄的民商事案件判決的安排》所稱“書面管轄協議”的，仍適用該安排。

**第三十一條** 本安排生效後，《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》繼續施行。

本安排於二零一九年一月十八日在北京簽署，一式兩份。



(Courtesy English Translation)

**ARRANGEMENT ON RECIPROCAL RECOGNITION AND ENFORCEMENT OF  
JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS  
BY THE COURTS OF THE MAINLAND AND  
OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION**

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

**Article 1**

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

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

**Article 2**

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

**Article 3**

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

(1) cases heard by a people's court of the Mainland on maintenance of parent(s) or grandparent(s), maintenance between siblings, dissolution of adoptive relationship, guardianship of adults, disputes after divorce on liability for damages, or division of property arising from a co-

habitation relationship; or cases heard by a court of the HKSAR on whether a decree of judicial separation should be granted;

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

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

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

(5) bankruptcy (insolvency) cases;

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

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

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

#### **Article 4**

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

A "legally effective judgment" referred to in this Arrangement:

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

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

#### **Article 5**

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

#### **Article 6**

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

#### **Article 7**

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

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

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

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

#### **Article 8**

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

- (1) an application;
- (2) a copy of the legally effective judgment affixed with the seal of the court which gave the judgment;
- (3) a certificate issued by the court which gave the legally effective judgment certifying the judgment to be a legally effective judgment and, if the judgment has content which requires enforcement, certifying the judgment to be enforceable in the requesting place;
- (4) where the judgment is a default judgment, a document certifying that the party concerned has been legally summoned, unless the judgment expressly states the same, or the absent party is the party applying for recognition and enforcement;
- (5) documents of identity :
  1. where the applicant is a natural person, a copy of the identity card shall be submitted;
  2. where the applicant is a legal person or other organisation, copies of the certificate of incorporation or registration and of the identity card of the legal representative or the principal responsible person shall be submitted;

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

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

## **Article 9**

An application shall specify the following:

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

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

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

## **Article 10**

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

## **Article 11**

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

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

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

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

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

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

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

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

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

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

## **Article 12**

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

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

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

(3) the judgment was obtained by fraud;

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

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

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

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

### **Article 13**

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

#### **Article 14**

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

#### **Article 15**

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

#### **Article 16**

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

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

#### **Article 17**

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

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

#### **Article 18**

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



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

#### **Article 19**

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

#### **Article 20**

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

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

#### **Article 21**

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

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

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

## **Article 22**

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

## **Article 23**

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

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

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

## **Article 24**

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

## **Article 25**

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

## **Article 26**

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

#### **Article 27**

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

#### **Article 28**

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

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

#### **Article 29**

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

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

#### **Article 30**

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

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

**Article 31**

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

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

**KEY FEATURES OF THE  
ARRANGEMENT ON RECIPROCAL RECOGNITION AND  
ENFORCEMENT OF JUDGMENTS IN CIVIL AND  
COMMERCIAL MATTERS BY THE COURTS OF THE  
MAINLAND AND OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
("ARRANGEMENT")**

The Arrangement seeks to establish a more comprehensive mechanism for reciprocal recognition and enforcement of judgments in civil and commercial matters between Hong Kong and the Mainland. The key features of the Arrangement are set out below.

**A. Scope**

2. The Arrangement covers matters which are considered to be of a “civil and commercial” nature under both Hong Kong and Mainland law. Non-judicial proceedings and judicial proceedings relating to administrative or regulatory matters would be excluded<sup>1</sup>.

**B. Specific types of matters to be covered or excluded**

***Corporate insolvency and debt restructuring as well as personal bankruptcy***

3. The Arrangement does not cover judgments on corporate insolvency and debt

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<sup>1</sup> Article 2 of the Arrangement. By way of non-exhaustive examples, the following matters are excluded from the Arrangement: (a) judicial review cases; (b) cases brought by the Securities and Futures Commission under section 214 of the Securities and Futures Ordinance (Cap. 571); (c) appeals before the Court of Appeal under sections 266 and 267 of the Securities and Futures Ordinance; (d) appeals before the Court of First Instance under section 84 of the Trade Marks Ordinance (Cap. 559); and (e) applications brought by the Competition Commission before the Competition Tribunal under section 92 of the Competition Ordinance (Cap. 619). However, follow-on actions brought before the Competition Tribunal under section 110 of the Competition Ordinance by a person who has suffered loss or damage as a result of any act that has been determined to be a contravention of a conduct rule are covered by the Arrangement.

restructuring as well as personal insolvency<sup>2</sup>.

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

4. The Arrangement excludes matters in relation to the succession, administration or distribution of the estate of a deceased person<sup>3</sup>.

***Matrimonial or family matters not covered by the Matrimonial Arrangement***

5. Judgments in matrimonial or family matters already covered by the Matrimonial Arrangement will be governed by the Matrimonial Arrangement and the Arrangement does not apply to those matters<sup>4</sup>.

6. Moreover, decrees of judicial separation made by Hong Kong courts and the following types of disputes categorised in the Mainland as matrimonial or family related<sup>5</sup> are also excluded from the Arrangement<sup>6</sup>:

- (a) disputes on maintenance arising out of a legal obligation of a son/daughter to support his/her parent(s) or a grandchild to support his/her grandparent(s);
- (b) disputes on maintenance between siblings;
- (c) disputes on dissolution of an adoptive relationship;
- (d) disputes on guardianship rights over adults;
- (e) disputes after divorce on liability for damages; and
- (f) disputes on division of property arising from a co-habitation relationship.

7. Be that as it may, the following two types of disputes categorised in the Mainland as matrimonial or family disputes and excluded from the Matrimonial

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<sup>2</sup> Article 3(1)(5) of the Arrangement.

<sup>3</sup> Article 3(1)(2) of the Arrangement.

<sup>4</sup> Article 31 of the Arrangement.

<sup>5</sup> These types of disputes are excluded from the Matrimonial Arrangement.

<sup>6</sup> Article 3(1)(1) of the Arrangement.

Arrangement may arise in Hong Kong as disputes of general “civil and commercial” nature. They are therefore covered by the Arrangement:

- (a) disputes between family members on division of property<sup>7</sup>; and
- (b) disputes on property arising from engagement agreements<sup>8</sup>.

### ***Intellectual property rights***

8. The Arrangement covers judgments involving intellectual property rights. It provides for a definition for “intellectual property rights”<sup>9</sup> mirroring the types of such rights provided for under Article 1(2) of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* with an additional reference to the plant variety rights provided under Hong Kong’s Plant Varieties Protection Ordinance (Cap. 490) and Article 123(2)(7) of the General Provisions of the Civil Law of the People’s Republic of China (中華人民共和國民法總則) as the case may be.

9. The specific scope of judgments involving intellectual property rights covered or excluded (as the case may be) by the Arrangement are as follows<sup>10</sup>:

- (a) judgments ruling on contractual disputes involving intellectual property rights are covered;
- (b) judgments ruling on tortious claims for infringement of intellectual property rights are covered, except for infringement of invention patents and utility models in the Mainland and infringement of standard patents (including “original grant” patents) and short-term patents in Hong Kong;
- (c) judgments ruling on the licence fee rate of standard essential patents in both the Mainland and Hong Kong are excluded;
- (d) judgments ruling on intellectual property rights which are not within the definition of “intellectual property rights” set out under paragraph 8 above

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<sup>7</sup> Such disputes are described as “分家析產糾紛” under Mainland law.

<sup>8</sup> Such disputes are described as “婚約財產糾紛” under Mainland law.

<sup>9</sup> Article 5 of the Arrangement.

<sup>10</sup> Articles 3(1)(3) and 15 of the Arrangement.

are excluded;

- (e) a ruling on the validity, establishment or subsistence of intellectual property rights is not recognised or enforced under the Arrangement; and
- (f) notwithstanding sub-paragraph (e) immediately above, a judgment on liability based on a ruling on the validity, establishment or subsistence of intellectual property rights as a preliminary issue shall still be recognised and enforced under the Arrangement, provided the requirements under the Arrangement are satisfied.

### ***Maritime matters***

10. Judgments on marine pollution, limitation of liability of maritime claims, general average, emergency towage and salvage, maritime liens and carriage of passengers by sea are excluded from the Arrangement<sup>11</sup>.

### ***Arbitration matters***

11. Judgments on the validity of an arbitration agreement and the setting aside of an arbitral award are excluded from the Arrangement<sup>12</sup>. The Arbitration Arrangement<sup>13</sup> continues to be relevant to these matters.

### ***Other matters***

12. The following matters are excluded from the Arrangement<sup>14</sup>:

- (a) judgments ruling on a natural person's qualification as a voter;
- (b) judgments declaring the disappearance or death of a natural person;
- (c) judgments ruling on the legal incapacity of a natural person for civil acts;  
and

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<sup>11</sup> Article 3(1)(4) of the Arrangement.

<sup>12</sup> Article 3(1)(7) of the Arrangement.

<sup>13</sup> The full title of the **Arbitration Arrangement** signed in 1999 and which took effect in February 2000 is “關於內地與香港特別行政區相互執行仲裁裁決的安排” and the title translated to English is “Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region”.

<sup>14</sup> Articles 3(1)(6) and 3(1)(8) of the Arrangement.



- (d) judgments ruling on the recognition and enforcement of judgments and arbitral awards made by other countries or places.

***Findings on preliminary issues***

13. The Arrangement includes a provision to the effect that the requested court shall not refuse recognition and enforcement under the Arrangement solely for the reason that the judgment is based on a ruling on a preliminary issue on a matter outside the scope of the Arrangement<sup>15</sup>.

**C. Principle of enforceability and level of courts to be covered**

14. In relation to the Mainland, legally enforceable Mainland judgments given by the Primary People's Courts or above in the following circumstances are covered by the Arrangement<sup>16</sup>:

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

15. In respect of Hong Kong, legally enforceable Hong Kong judgments given by the following courts are covered by the Arrangement<sup>17</sup>:

- (a) the Court of Final Appeal;
- (b) the Court of Appeal and the Court of First Instance of the High Court;
- (c) the District Court;

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<sup>15</sup> Article 14 of the Arrangement. For instance, if the requesting court, having decided whether a natural person had the legal capacity to enter into a contract, proceeded to make a judgment on the contractual liability of that person, the requested court should not refuse to recognise and enforce the judgment on contractual liability simply because the ruling by the requesting court on the issue of legal capacity would fall outside the scope of the Arrangement.

<sup>16</sup> Article 4(2)(1) of the Arrangement.

<sup>17</sup> Article 4(2)(2) of the Arrangement.

- (d) the Labour Tribunal;
- (e) the Lands Tribunal;
- (f) the Small Claims Tribunal; and
- (g) the Competition Tribunal.

16. The term “judgment” in the Arrangement includes<sup>18</sup>:

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

#### **D. Jurisdictional Basis**

17. Subject to the relevant dispute not being under the exclusive jurisdiction of the courts of the requested place, the requesting court shall be considered to have jurisdiction for the purpose of the Arrangement if one of the following conditions is satisfied<sup>19</sup>:

- (a) at the time the requesting court accepted the case, the defendant’s “place of residence”<sup>20</sup> was in the requesting place;
- (b) at the time the requesting court accepted the case, the defendant maintained a representative office, branch, office, place of business or other establishment without separate legal personality at the requesting place, and the claim on which the judgment is based arose out of the activities of that establishment;
- (c) the proceeding was brought on a contractual dispute and the place of

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<sup>18</sup> Article 4(1) of the Arrangement.

<sup>19</sup> Article 11(1) of the Arrangement.

<sup>20</sup> The term “place of residence” is defined in Article 6 of the Arrangement and discussed in paragraph 19 of this paper.

performance of the contract is in the requesting place;

- (d) the proceeding was brought on a tortious dispute and the act of infringement was committed in the requesting place;
- (e) the parties to a contractual dispute or other disputes related to interests in property had expressly agreed in writing that the courts of the requesting place shall have jurisdiction over the relevant proceedings, and where the “place of residence” of all the parties to the judgment was at the requested place, the requesting place was the place where the contract was performed or signed, where the subject matter was situated etc., being a place which has an actual connection with the dispute; or
- (f) the parties did not raise any objection as to the jurisdiction of the requesting court and participated in the proceedings in defence or reply, and where the “place of residence” of all the parties to the judgment was at the requested place, the requesting place was the place where the contract was performed or signed, where the subject matter was situated etc., being a place which has an actual connection with the dispute.

18. Apart from the provisions specified in the preceding paragraph, where the requested court considers that the requesting court had jurisdiction over the dispute according to the law of the requested place, the requested court may also determine that the requesting court has jurisdiction over the dispute<sup>21</sup>.

19. The term “place of residence” is defined to mean in relation to a natural person, one’s household residence, permanent residence or habitual residence; and in relation to a legal person, its place of incorporation or registration, place of principal office, principal place of business or place of central management<sup>22</sup>.

### ***Judgments on intellectual property rights***

20. The jurisdictional grounds set out in paragraph 17 above are not applicable to a judgment ruling on a tortious claim for an infringement of an intellectual property right<sup>23</sup>.

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<sup>21</sup> Article 11(4) of the Arrangement.

<sup>22</sup> Article 6 of the Arrangement.

<sup>23</sup> Including acts of unfair competition prohibited under Article 6 of the Anti-Unfair Competition Law of the People’s Republic of China (中華人民共和國反不正當競爭法) (Article 6 relates to acts of confusion

For such a judgment, the requesting court shall be considered to have jurisdiction only if the act of infringement<sup>24</sup> of intellectual property right was committed in the requesting place and the intellectual property right or interest concerned is subject to protection under the law of the requesting place<sup>25</sup>.

21. On the other hand, judgments ruling on a contractual claim relating to an intellectual property right will still be subject to the jurisdictional grounds set out in paragraph 17 above.

#### **E. Grounds for refusal**

22. The Arrangement provides the following mandatory grounds for refusal in respect of an application for recognition and enforcement of a relevant judgment<sup>26</sup>:

- (a) the judgment does not meet the jurisdictional requirement(s) as set out under paragraphs 17 to 21 above (as the case may be);
- (b) the respondent was not summoned in accordance with the law of the requesting place, or although the respondent was duly summoned, was not given a reasonable opportunity to make representations or defend his/her case;
- (c) the judgment was obtained by fraud;
- (d) the judgment was rendered in a cause of action which was accepted by the requesting court after a court of the requested place has already accepted the cause of action on the same dispute;
- (e) a court of the requested place has rendered a judgment on the same cause of action, or has recognised a judgment on the same cause of action given by a court of another country or place;
- (f) an arbitral award was already given in the requested place on the same

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causing one's products to be mistaken for the products of another or as having specific connection with another) as well as claims for passing off under Hong Kong law.

<sup>24</sup> *Ibid.*

<sup>25</sup> Article 11(3) of the Arrangement.

<sup>26</sup> Article 12 of the Arrangement.

cause of action, or a court of the requested place has recognised an arbitral award on the same cause of action given in another country or place; or

- (g) the requested Mainland court considers that the recognition and enforcement of the judgment is manifestly contrary to the basic legal principles of Mainland law or the social and public interests of the Mainland; or the requested Hong Kong court considers that the recognition and enforcement of the judgment is manifestly contrary to the basic legal principles of Hong Kong law or the public policy of Hong Kong.

23. The Arrangement also provides a discretionary ground for refusal in respect of an application for recognition and enforcement of a relevant judgment where the proceedings in the court of the requesting place were contrary to a valid arbitration agreement or a valid agreement designating a court (not being a court of the requesting place) as having jurisdiction for resolving the same cause of action<sup>27</sup>.

#### **F. Types of relief**

24. Subject to paragraph 25 below, the Arrangement covers both monetary (excluding exemplary or punitive damages) and non-monetary relief.

25. In respect of judgments ruling on tortious claims for infringement of intellectual property rights<sup>28</sup>, the Arrangement only covers monetary relief (but including exemplary or punitive damages) determined with reference to the infringing act committed in the requesting place<sup>29</sup>, but judgments ruling on tortious claims for infringement of trade secrets will additionally cover non-monetary relief<sup>30</sup>.

#### **G. Relationship with the Choice of Court Arrangement**

26. The Arrangement will, upon its commencement, supersede the Choice of Court

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<sup>27</sup> Article 13 of the Arrangement.

<sup>28</sup> Including acts of unfair competition prohibited under Article 6 of the Anti-Unfair Competition Law of the People's Republic of China (中華人民共和國反不正當競爭法) (Article 6 relates to acts of confusion causing one's products to be mistaken for the products of another or mistaken as having specific connection with another) as well as claims for passing off under Hong Kong law.

<sup>29</sup> Article 17(1) of the Arrangement.

<sup>30</sup> Article 17(2) of the Arrangement.

Arrangement. This is except for a “choice of court agreement”<sup>31</sup> made between the parties before the commencement of the Arrangement and, in which case, the Choice of Court Arrangement will continue to apply<sup>32</sup>.

## **H. Procedural matters**

27. The Arrangement provides that the time limits, procedures and means for a party to apply for recognition and enforcement of a judgment shall be governed by the law of the requested place<sup>33</sup>.

28. The Arrangement allows simultaneous applications for enforcement in both Hong Kong and the Mainland if the assets of the party against whom enforcement is sought are situated in both Hong Kong and the Mainland<sup>34</sup>. The total amount recovered, however, shall not exceed the sum specified in the relevant judgment.

## **I. Implementation**

29. The Arrangement will only take effect on a date to be announced by the two sides, after both places have completed the necessary procedures to enable implementation and will apply to judgments made on or after the commencement date of the Arrangement<sup>35</sup>.

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<sup>31</sup> A “choice of court agreement” is defined in the Choice of Court Arrangement to mean “any agreement in written form made, as from the day of commencement of this Arrangement, by the parties concerned in which a people’s court of the Mainland or a court of the Hong Kong Special Administrative Region is expressly designated as the court having sole jurisdiction for resolving any dispute which has arisen or may arise in respect of a particular legal relationship”.

<sup>32</sup> Article 30 of the Arrangement.

<sup>33</sup> Article 10 of the Arrangement.

<sup>34</sup> Article 21 of the Arrangement.

<sup>35</sup> Article 29 of the Arrangement.

## **MAIN PROVISIONS OF THE BILL**

The main provisions of the Bill are set out below.

### **A. Overview**

2. Under the proposed registration mechanism in Part 2 of the Bill:
  - (a) a judgment creditor may apply to the Court of First Instance (“CFI”) to have a Mainland Judgment in a civil or commercial matter registered with the CFI on an *ex parte* basis;<sup>1</sup>
  - (b) The CFI may set aside the registration if a person against whom a registered judgment may be enforced has so applied to the CFI and proved to its satisfaction that any of the exhaustive grounds of refusal exists;<sup>2</sup>
  - (c) Subject to certain exceptions, the proposed legislative scheme covers both monetary (excluding punitive or exemplary damages) and non-monetary relief; and
  - (d) A registered judgment may be enforced in the same way as if it were a judgment originally given by the CFI.<sup>3</sup>
3. The proposed legislative scheme also facilitates the recognition and enforcement in the Mainland of Hong Kong Judgments in civil or commercial matters by empowering a specified Hong Kong court<sup>4</sup> to issue certified copies of and certificates for such Hong Kong Judgments in Part 3 of the Bill.
4. Except for certain “excluded intellectual property cases”<sup>5</sup>, the proposed legislative scheme covers “specified intellectual property rights” which is defined to mean the rights provided under Article 1(2) of the Agreement on Trade-Related Aspects of Intellectual Property Rights with an additional reference to plant variety rights respectively provided under subparagraph (7) of the second paragraph of Article 123 of the Civil Code of the

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<sup>1</sup> Clauses 10 – 19.

<sup>2</sup> Clauses 21 – 22.

<sup>3</sup> Clause 26.

<sup>4</sup> Pursuant to Clause 2, a “specified Hong Kong court” means: the Court of Final Appeal, the Court of Appeal, the Court of First Instance, the Competition Tribunal, the District Court, the Lands Tribunal, the Labour Tribunal or the Small Claims Tribunal.

<sup>5</sup> The term is defined in Clause 7 and reflects Article 3(1)(3) of the REJ Arrangement.

People's Republic of China (中華人民共和國民法典) or the Plant Varieties Protection Ordinance (Cap. 490)<sup>6</sup>.

5. Taking into account the principle of territoriality applicable to intellectual property rights, the Bill provides for:

- (a) the jurisdictional requirements specifically applicable to judgments given in respect of tortious disputes over the infringement of a “specified intellectual property right” or a civil dispute over an act of unfair competition under the relevant Mainland law (paragraph 15 below); and
- (b) the types of relief given in Mainland Judgments concerning “specified intellectual property rights” which are eligible for registration under the Bill (paragraph 13 below).

## **B. Registration of Mainland Judgments in Hong Kong**

### ***B.1 Scope of Registration Applications***

6. Clause 3 of the Bill provides for the scope of the judgments to which the registration mechanism applies by defining what qualifies as a “Mainland Judgment in Civil or Commercial Matters”. It refers to a Mainland Judgment that is not an “excluded judgment” referred to in Clause 5; and either (a) it is given in proceedings that are civil or commercial in nature under the law of the Mainland; or (b) it 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.<sup>7</sup> The definition of “excluded judgment”<sup>8</sup> in Clause 5 reflects Article 3 of the REJ Arrangement.

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<sup>6</sup> The definition is in Clause 2 and reflects Article 5.

<sup>7</sup> Clause 3(1)(a)(ii) seeks to reflect Article 1(2) of the REJ Arrangement.

<sup>8</sup> By way of **non-exhaustive** examples, Mainland Judgments given in respect of any of the following matters would be **excluded**: (a) an excluded matrimonial or family case within the meaning of Clause 6; (b) matters relating to the succession to, or the administration or distribution of, an estate; (c) an excluded intellectual property case within the meaning of Clause 7, i.e. a Mainland Judgment given in proceedings brought in respect of a tortious dispute over an infringement of an invention patent or utility model patent; a Mainland Judgment given in proceedings for a determination of the licence fee rate of a standard-essential patent; and a Mainland Judgment given in proceedings brought in respect of a dispute over an intellectual property right that is not a specified intellectual property right; (d) matters relating to marine pollution, limitation of liability for a maritime claim, general average, an emergency towage or salvage, a maritime lien, or the carriage of passengers by sea; (e) matters relating to the insolvency of an entity other than a natural person or the bankruptcy of a natural person; (f) election, declaration of the disappearance or death of a natural person or determination as to a natural person's legal capacity for performing civil acts; and (g) validity of an arbitration agreement or setting aside an arbitral award.



## **B.2 Applications for Registration**

7. Clause 10 provides that a judgment creditor under a Mainland Judgment in a civil or commercial matter may apply *ex parte* to the CFI for an order to register the Mainland Judgment, if:

- (a) the Judgment was given on or after the commencement date of the Bill (if enacted)<sup>9</sup>;
- (b) the Judgment is effective in the Mainland<sup>10</sup>; and
- (c) there was a default in complying with the Mainland Judgment's requirement to pay a sum of money or perform an act<sup>11</sup> and the default occurred within 2 years before the date of the application and has not been made good at the date of the application.<sup>12</sup>

8. Clause 12 provides for how the default date of a Mainland Judgment is to be ascertained. For example, if the Judgment does not specify a date by which a sum of money is to be paid, the date on which the Judgment becomes effective in the Mainland is deemed to be the date on which a default occurs.<sup>13</sup>

## **B.3 Registration Orders**

### *Registration order*

9. Clause 13 provides that on a registration application, the CFI may order a Mainland Judgment in a civil or commercial matter, or any part of such a Judgment, to be registered if the relevant conditions are satisfied. The judgment creditor applicant must then serve a notice of registration of the Judgment on all persons, so far as known to the applicant, against whom the Judgment or part may be enforced.<sup>14</sup>

### *Certificate for a Mainland judgment*

10. For the purpose of making a registration order, until the contrary is proved, a

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<sup>9</sup> Clause 10(1)(a)(i).

<sup>10</sup> Clause 10(1)(a)(ii). See also Clause 8 which defines "Effective Mainland Judgments".

<sup>11</sup> Under Clause 2(2), the requirement to perform an act includes a prohibition, or a restriction, on the performance of an act.

<sup>12</sup> Clause 10(1)(b), with reference to the fact that under Mainland law, the time limit for enforcement of judgements in the Mainland is two years (see Article 246 of the Civil Procedure Law of the PRC (中華人民共和國民事訴訟法)).

<sup>13</sup> Clause 12(b)(ii)

<sup>14</sup> Clause 13(3)(b).

Mainland Judgment is presumed to be given in a civil or commercial matter and effective in the Mainland if a certificate certifying those facts is issued by the original Mainland court.<sup>15</sup>

*Sums to be included in registration and currency*

11. Clause 18 provides that the sums to be included on registration of a Mainland Judgment in a civil or commercial matter may include interest due under the Judgment, costs duly certified by the original Mainland court, etc.

12. Clause 19 states that where a sum of money is required to be paid under a Mainland Judgment is denominated in a currency other than Hong Kong dollars, the Judgment is registered as if the Judgment required the payment of a sum denominated in Hong Kong dollars at the exchange rate prevailing at the date of registration.

*Mainland Judgments concerning “specified intellectual property rights”*

13. Clauses 15, 16 and 18(3)(c) contain the following provisions specifically applicable to Mainland Judgments concerning “specified intellectual property rights” as defined in Clause 2:

- (a) a ruling on the validity, establishment or subsistence of a “specified intellectual property right” must **not** be registered (Clause 15);
- (b) a Mainland Judgment given in respect of a tortious dispute over an infringement of a “specified intellectual property right” (**other than** an infringement of a right in a trade secret) or a civil dispute over an act of unfair competition under the relevant Mainland law must **not** be registered to the extent it relates to a relief **other than** monetary damages awarded in respect of an infringement or an act of unfair competition committed in the Mainland (Clause 16); and
- (c) punitive or exemplary damages would **not** be **excluded** if awarded 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 committed in the Mainland (Clause 18(3)(c)).

**B.4     *Setting Aside the Registration***

14. A person against whom a registered judgment may be enforced may, under Clause

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<sup>15</sup> Clause 13(2).

21, apply to set aside the registration of the judgment within the time limit specified by the CFI, or if the CFI does not specify a time limit, within 14 days after the date on which a notice of registration is served.<sup>16</sup>

15. The grounds on which registration **must** be set aside are exhaustively set out under Clause 22(1). One of such grounds is where the jurisdictional requirement is **not** satisfied in the circumstances of the proceedings in which the Mainland Judgment was given.<sup>17</sup> The jurisdictional requirements are further spelt out in Clause 23. In particular, in light of the territoriality principle applicable to intellectual property rights, Clause 23(1)(a)(i) and (2) specifically provide for the jurisdictional requirements applicable only to judgments given in respect of tortious disputes over an infringement of a “specified intellectual property right” or a civil dispute over an act of unfair competition under the relevant Mainland law.

16. Clause 22(2) provides for a **discretionary** ground on which registration **may** be set aside, being that the proceedings in the original Mainland court were contrary to a valid arbitration agreement or jurisdiction agreement entered into by the same parties on the same cause of action.

### ***B.5 Effect of Registration***

17. Clause 26 provides that a registered judgment may be enforced in Hong Kong as if it were a judgment originally given by the CFI on the day of registration.

18. Clause 27 provides that an action to enforce a registered judgment may be taken only after (a) the expiry of the period within which an application to set aside the registration of the judgment may be made, or (b) when an application to set aside has been made, the application has been finally disposed of.

### ***B.6 Restriction on Bringing Proceedings on the Same Cause of Action in Hong Kong***

19. Under Clause 29, where a registration application is made in relation to a Mainland Judgment in a civil or commercial matter where proceedings are pending before a court in Hong Kong (“**adjudicating court**”) in respect of the same cause of action between the same parties, the pending proceedings before the adjudicating court must be stayed.

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<sup>16</sup> Clauses 20 and 21, where the former seeks to reflect Article 12 of the REJ Arrangement.

<sup>17</sup> Clause 22(1)(b) .

20. Where a registration application of a Mainland Judgment in a civil or commercial matter is pending or upon its registration, Clause 30 provides that a party to the proceedings in which the Mainland Judgment was given may not bring in a court in Hong Kong proceedings in respect of the same cause of action.

**C. Facilitation of Recognition and Enforcement in the Mainland of Hong Kong Judgments in Civil or Commercial Matters**

21. To facilitate a party in seeking recognition and enforcement in the Mainland of a Hong Kong Judgment in a civil or commercial matter<sup>18</sup> given on or after the commencement date of the Bill (if enacted) and is effective in Hong Kong<sup>19</sup>, Clause 33 in Part 3 of the Bill provides that a judgment creditor to a Hong Kong Judgment in a civil or commercial matter may apply to the relevant specified Hong Kong court for a certified copy of the Hong Kong Judgment.

22. Clause 34 further states that when issuing a certified copy of the Hong Kong Judgment, the specified Hong Kong court must also issue a certificate certifying that the Judgment is given in a civil or commercial matter and is effective in Hong Kong.

**D. Relationship with the Choice of Court Arrangement**

23. The Bill will **not** apply to the recognition and enforcement in Hong Kong of a Mainland Judgment given pursuant to a “choice of court agreement” made before the commencement date of the Bill (if enacted).<sup>20</sup> The Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) will continue to apply to those Mainland Judgments.

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<sup>18</sup> “Hong Kong Judgment in a civil or commercial matter” is defined in Clause 4.

<sup>19</sup> “Effective Hong Kong Judgments” is defined in Clause 9.

<sup>20</sup> Clause 5(1)(j) and the Schedule to the Bill.

## **ECONOMIC, FINANCIAL AND CIVIL SERVICE IMPLICATIONS OF THE BILL**

### **Economic Implications**

The Bill establishes a more comprehensive mechanism for reciprocal enforcement of judgments (“REJ”) in civil and commercial matters between Hong Kong and the Mainland, thereby reducing the need for re-litigation of the same disputes in both places and offers better protection to parties’ interests. It would enhance certainty and predictability of the cross-boundary enforceability of judgments in civil and commercial matters between the two places, reduce the risks, legal costs, and time usually associated with the cross-boundary enforcement of such judgments. This would in turn improve the environment for cross-boundary trade and investment.

2. Further, the breakthrough in expressly including judgments on certain intellectual property rights makes Hong Kong the first jurisdiction to have an arrangement with the Mainland on REJ with such a wide coverage. It would thus be conducive to complementing Hong Kong’s development into a regional intellectual property trading centre as well as a regional centre for international legal and dispute resolution services as outlined in the 14th Five-Year Plan for National Economic and Social Development.

### **Financial and Civil Service Implications**

3. It is difficult to estimate the number of Mainland judgments that parties would seek to recognise and enforce in Hong Kong pursuant to the Bill. Whether a judgment creditor would seek enforcement of a Mainland judgment in Hong Kong depends on a number of variables, including whether the judgment debtor voluntarily complies with the Mainland judgment (partially or otherwise), whether the judgment debtor has assets which could be subject to execution in Hong Kong and at times, the method of execution chosen by a judgment creditor could be a commercial decision.

4. The Government would monitor the need for additional resources required for the implementation of the Bill. If additional financial and manpower resources are required, they would be sought with justifications in accordance with the established mechanism.

5. The implementation of the Bill would also result in additional work for the Judiciary. The Government and the Judiciary would sort out the necessary financial and manpower resource requirements and the resources would be provided in accordance with the established mechanism if such needs arise in the future.

## **OBSERVATIONS ON POSSIBLE SCENARIOS ARISING FROM THE RELEVANT INSURANCE POLICIES**

### **The Problem**

A respondent indicated that certain types of insurance policies, namely motor vehicles third party liability insurance, public liability insurance and employees' compensation insurance (collectively, "**Relevant Insurance Policies**"), would usually contain an exclusion clause excluding the insurer from liabilities for indemnifying the insured for liabilities arising from judgments against the insured which are not in the first instance delivered by or obtained from a Hong Kong Court ("**Exclusion Clause**"). The respondent submitted that the Bill would have the potential of generating inadvertently empty/unenforceable judgements on tortious liabilities purportedly excluded by the Exclusion Clause in the Relevant Insurance Policies.

### **The Government's Observations**

2. It appears that an "empty judgment" would arise only when a Relevant Insurance Policy does not cover the claim in question and the defendant (i.e. the insured) has no means to pay.
3. The Bill does not create or aggravate the possibilities for "empty judgments" in relation to the Relevant Insurance Policies. Whether a defendant's liability to a tortious claim would be indemnified by a Relevant Insurance Policy would be subject to the terms and coverage of the Policy, which is a commercial matter beyond the scope of the Bill.
4. To illustrate the above, the Government has considered various possible scenarios which may arise in relation to the Relevant Insurance Policies and each type of which is briefly described below:
  - (a) motor vehicles third party liability insurance indemnifies the insured against the insured's liabilities in respect of a third party's death, personal injury and/or property damage arising out of accidents in connection with the motor vehicle that the insured owns or drives;
  - (b) public liability insurance indemnifies the insured against the insured's liabilities for compensation in respect of personal injury and/or property damage occurred in connection with the insured's business; and
  - (c) employees' compensation insurance indemnifies the insured against the insured's legal liabilities for compensation in respect of death or accidental personal injury of the insured's employee in the course of employment.

***Scenarios relating to motor vehicles third party liability insurance***

5. In relation to the case involving motor vehicles third party liability insurance, where the insured's liabilities have arisen from a traffic accident which occurred in the Mainland and the plaintiff sues the defendant in a Mainland court for tortious liabilities in relation to that accident:

- (a) It would be reasonable for a Mainland court to hear the plaintiff's case given that the tortious act in question was committed in the Mainland (i.e. fulfilled the relevant jurisdictional requirement under the Bill (see Clause 23(3)(d)).
- (b) Assuming that the Mainland court made a judgment in favour of the plaintiff, subject to the satisfaction of other relevant conditions (e.g. the Mainland judgment was made after the commencement of the Bill when enacted), the Mainland judgment would be registrable in Hong Kong under the Bill.
- (c) On the question of whether the defendant could be indemnified by the insurer under a relevant motor vehicles third party liability insurance policy for his liabilities as determined in the Mainland judgment:
  - (i) ***If*** the defendant had an insurance policy covering motor accidents which occurred in the Mainland<sup>1</sup> – whether the defendant could be indemnified would depend on the terms of that policy;
  - (ii) ***If*** the policy contains an Exclusion Clause and the Exclusion Clause is effective, the defendant would not be indemnified by the insurer and would have to find other means to satisfy his liabilities under the Mainland judgment whether or not it is registered in Hong Kong under the Bill.

***Scenarios relating to public liability insurance***

6. In relation to the case involving public liability insurance, where the insured's liabilities have arisen from loss or damage caused in the Mainland in the course of the insured's business, for example, a sewage leakage in the office of the insured in the Mainland had caused damage to a neighbouring office of a Mainland company and that Mainland company sued the insured for tortious liabilities before a Mainland court:

- (a) It would be reasonable for the Mainland court to hear the plaintiff (Mainland company)'s case against the defendant given that the tortious act causing the loss or damage suffered by the plaintiff was committed in the Mainland (i.e. fulfilled the relevant jurisdictional requirement under the Bill (see Clause

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<sup>1</sup> Motor vehicles third-party liability insurance is compulsory under Mainland law: see Article 17 of the Law of the PRC on Road Traffic Safety (中華人民共和國道路交通安全法) and Article 2 of the Regulations on Compulsory Traffic Accident Liability Insurance for Motor Vehicles (機動車交通事故責任強制保險條例).

23(3)(d)).

- (b) Assuming that the Mainland court made a judgment in favour of the plaintiff, subject to the satisfaction of other relevant conditions (e.g. the judgment was made after the commencement of the Bill when enacted), the Mainland judgment would be registrable in Hong Kong under the Bill.
- (c) On the question of whether the defendant could be indemnified by the insurer under a relevant public liability insurance policy for his liabilities as determined in the Mainland judgment:
  - (i) **If** the defendant had an insurance policy covering his liabilities arising from loss or damage caused in the Mainland – whether the defendant could be indemnified would depend on the terms of that policy;
  - (ii) **If** the defendant had an insurance policy covering his liabilities arising from loss or damage only caused in Hong Kong (but not in the Mainland) – the defendant would not be indemnified under that policy;
  - (iii) **If** the relevant policy contains an Exclusion Clause and the Exclusion Clause is effective, the defendant would not be indemnified by the insurer and would have to find other means to satisfy his liabilities under the Mainland judgment whether or not it is registered in Hong Kong under the Bill.

***Scenarios relating to employees' compensation insurance***

7. In relation to the case involving employees' compensation insurance wherein injury was caused in the course of employment in the Mainland to an employee of a Mainland employer (e.g. a Mainland subsidiary of a Hong Kong company) –

- (a) The employee may sue the Mainland employer or any relevant third party (e.g. the occupier of the premises in the Mainland where the accident occurred) before a Mainland court for tortious liabilities.
- (b) It would be reasonable for a Mainland court to hear the employee's case against the defendant given that the defendant (a Mainland company) was resident in the Mainland and the tortious act causing the injury suffered by the employee was committed in the Mainland (i.e. fulfilled the relevant jurisdictional requirements under the Bill (see Clause 23(3)(a) and (d))).
- (c) Assuming that the Mainland court made a judgment in favour of the employee, subject to the satisfaction of other relevant conditions (e.g. the judgment was made after the commencement of the Bill when enacted), the Mainland judgment would be registrable in Hong Kong under the Bill.



- (d) On the question of whether the defendant could be indemnified by the insurer under a relevant employees' compensation insurance policy for his liabilities as determined in the Mainland judgment:
  - (i) **If** the defendant had an insurance policy covering his liabilities arising from injuries to his employees caused in the Mainland – whether the defendant could be indemnified would depend on the terms of that policy;
  - (ii) **If** the relevant policy contains an Exclusion Clause and the Exclusion Clause is effective, the defendant would not be indemnified by the insurer and would have to find other means to satisfy his liabilities under the Mainland judgment whether or not it is registered in Hong Kong under the Bill.

8. **If** the employee has sustained injuries during his secondment by an employer being a Hong Kong company to work in the Mainland or during a business trip to the Mainland –

- (a) It would be reasonable for the employee to pursue any action against his employer before a Hong Kong court instead of a Mainland court, given that his employment relationship was with a Hong Kong company but not a Mainland company. In such a case, any judgment arising from the employee's claim would be a Hong Kong judgment and the Exclusion Clause would not be relevant.
- (b) **If** the employee chooses to pursue an action against his employer (a Hong Kong company) before a Mainland court, and **if** the tortious act causing the injury (say the non-provision by the Hong Kong company of safety equipment) was regarded as having been committed in the Mainland, the judgment made by the Mainland would fulfill the relevant jurisdictional requirements under the Bill (see Clause 23(3)(d)).
- (c) The observations set out in paragraph 7(d) above would equally apply to the question of whether the defendant (i.e. the employer being a Hong Kong company) could be indemnified by the insurer under a relevant employees' compensation insurance policy for his liabilities as determined in the Mainland judgment.

### ***Concluding remarks***

9. It is evident from the above observations that the purported existence of "empty/unenforceable judgments" in relation to the Relevant Insurance Policies would inherently be a matter of the formulation and construction of the Policies (including the Exclusion Clause if any), something beyond the objectives and the coverage of the Bill.

10. Indeed, it would be a matter for the stakeholders to consider if the Exclusion

Clause in its present form contained in the Relevant Insurance Policies would still be relevant or appropriate or sufficiently meet the market needs in light of the following factors:

- (a) the needs for and the benefits brought by a comprehensive and effective mechanism for reciprocal enforcement of judgments in civil and commercial matters between Hong Kong and the Mainland established under the REJ Arrangement (and to be implemented in Hong Kong through the Bill);
- (b) the increasingly close interaction and cooperation between Hong Kong and the Mainland in terms of trade and economic activities as well as social interactions; and
- (c) in the longer run, the needs for and benefits brought by an even wider mechanism for reciprocal enforcement of judgments in civil and commercial matters between Hong Kong and other jurisdictions as contemplated under the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.<sup>2</sup>

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<sup>2</sup> It is noteworthy to point out that the Bill has been modelled upon, among other things, the then draft Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (which was concluded in July 2019 and still not in force) and that judgments on tortious claims in general and on insurance agreements are covered by the Convention as in the case of the Bill.