

# **立法會**

## ***Legislative Council***

LC Paper No. LS27/2022

### **Paper for the House Committee Meeting on 6 May 2022**

#### **Legal Service Division Report on Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Bill**

#### **I. SUMMARY**

- 1. The Bill**

The Bill seeks 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"); and to provide for related matters.
- 2. Public Consultation**

The Government conducted a public consultation on the Bill between December 2021 and January 2022. Most respondents indicated their support for the implementation of the Arrangement through the Bill.
- 3. Consultation with LegCo Panel**

The Panel on Administration of Justice and Legal Services ("Panel") was briefed on the key features of the Bill at its meeting on 28 March 2022. While the Panel expressed support for the introduction of the Bill into the Legislative Council, members of the Panel had expressed various views and concerns on the Bill.
- 4. Conclusion**

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. As the Bill seeks to broaden the scope of the mechanism for reciprocal enforcement of judgments in civil and commercial matters between Hong Kong and the Mainland, Members may wish to form a Bills Committee to study the Bill in detail.

## II. REPORT

The date of First Reading of the Bill is 4 May 2022. Members may refer to the Legislative Council (“LegCo”) Brief (File Ref: CPA 5041/12/3C) issued by the Department of Justice on 20 April 2022 for further details.

### Object of the Bill

2. The Bill seeks to provide 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 (“HKSAR”) made between the Supreme People’s Court (“SPC”) of the People’s Republic of China and the Government of HKSAR (“Arrangement”); and to provide for related matters.

### Background

3. At present, the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) and the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639)<sup>1</sup> provide a mechanism for reciprocal recognition and enforcement of judgments (“REJ”) between Hong Kong and the Mainland in certain civil and commercial matters. Cap. 597 applies to money judgments made by courts of either side where parties to a specified contract<sup>2</sup> have agreed in writing that a court of one side will have exclusive jurisdiction to determine a dispute arising from that contract. Cap. 639 only applies to civil judgments in matrimonial and family cases. According to paragraph 3 of the LegCo Brief, given that the existing REJ arrangements cannot meet the demand for a comprehensive REJ mechanism arising from the increasingly close interaction and co-operation between Hong Kong and the Mainland, the Arrangement was entered into on 18 January 2019 to establish a more comprehensive mechanism for REJ in civil and commercial matters, to reduce the need for re-litigation of the same disputes in both places, and to offer better protection to the parties’ interests. The Bill seeks to implement the Arrangement in Hong Kong. According to paragraph 6 of the LegCo Brief, the Arrangement would be implemented by way of judicial interpretation in the Mainland.

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<sup>1</sup> Cap. 597 and Cap. 639 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 Pursuant to Choice of Court Agreements between Parties Concerned” signed by the Mainland and HKSAR on 14 July 2006 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” made between SPC and the Government of HKSAR on 20 June 2017 respectively.

<sup>2</sup> “Specified contract” means a contract other than an employment contract, and a contract to which a natural person acting for personal consumption, family or other non-commercial purposes is a party (see the definition of “specified contract” in section 2 of Cap. 597).

## Key provisions of the Bill

### Registering Mainland judgments in civil or commercial matters in Hong Kong

#### *Scope of registration*

4. Part 2 of the Bill seeks to provide for the registration in Hong Kong of certain judgments in civil or commercial matters given in proceedings under the law of the Mainland (“Mainland Judgment”)<sup>3</sup>. It is proposed under the Bill that a Mainland Judgment would be registrable if it is:

- (a) given in proceedings that-
  - (i) are civil or commercial in nature under the law of the Mainland; or
  - (ii) 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 (“payment order”); and
- (b) not an excluded judgment.

5. Under clause 5 of the Bill, “excluded judgment” in respect of a Mainland Judgment or a Hong Kong judgment in a civil or commercial matter (“Hong Kong Judgment”)<sup>4</sup> would include a judgment that is given in respect of certain specified matters, including:

- (a) matrimonial or family cases which are covered by Cap. 639;
- (b) succession to, or administration or distribution of, an estate;
- (c) certain intellectual property cases such as determination of the licence fee rate of a standard-essential patent;
- (d) matters relating to marine pollution; and
- (e) insolvency of an entity or bankruptcy of a natural person.

#### *Registration orders*

6. Under clause 10 of the Bill, a judgment creditor under a Mainland Judgment may apply to the Court of First Instance (“Court”) for a registration order to register the Mainland Judgment, or any part of the Mainland Judgment, if:

- (a) the Mainland Judgment was given on or after the commencement date of the enacted Ordinance (if the Bill is passed);

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<sup>3</sup> “Mainland Judgment” is proposed to mean 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 (see clause 2(1) of the Bill).

<sup>4</sup> “Hong Kong Judgment” is proposed to mean 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 (see clause 2(1) of the Bill).

- (b) the Mainland Judgment is effective in the Mainland (i.e. it is enforceable in the Mainland and it is given by certain courts in the Mainland (e.g. SPC, a High People's Court, an Intermediate People's Court or a Primary People's Court)); and
- (c) a default in complying with the requirement under the Mainland Judgment to (i) pay a sum of money, or (ii) perform an act occurred within two years before the date of the application, and the default has not been made good as at the date of the application.

7. Under clause 13(2) of the Bill, a Mainland Judgment would be presumed, until the contrary is proved, to be a Mainland Judgment that is effective in the Mainland if a certificate certifying those facts is issued by the original Mainland court.

8. Under clauses 15 and 16 of the Bill, a Mainland Judgment or any part of it would not be registrable if e.g. the Mainland Judgment or any part of it contains a ruling on the validity, establishment or subsistence of a specified intellectual property right (such as copyright, trade mark, or patent), or the Mainland Judgment or any part of it is given in proceedings brought 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) and it relates to an "excluded relief" (i.e. a relief other than monetary damages, including punitive or exemplary damages).

#### *Effect of registration*

9. Clause 26 of the Bill seeks to provide that a registered Mainland Judgment ("Registered Judgment") may be enforced in Hong Kong as if it were a judgment originally given by the Court on the day of registration. Clause 27 of the Bill proposes that an action to enforce a Registered Judgment may be taken only after the application period for setting aside the registration has expired, or after the application for setting aside the registration has been finally disposed of. Clause 28 of the Bill proposes that a Registered Judgment would 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.

#### *Setting aside a registration*

10. Clauses 20, 22 and 23 of the Bill propose that a person against whom a Registered Judgment may be enforced may apply to the Court to set aside the registration within a specified time limit on certain grounds, such as the enforcement of the Registered Judgment is manifestly incompatible with the public policy of Hong Kong, or the jurisdictional requirement in respect of the original proceedings for the Registered Judgment is not satisfied (e.g. if the infringement of a specified intellectual property right, for which proceedings in respect of a tortious dispute were brought, was not committed in the Mainland).

11. It is proposed under clauses 24 and 25 of the Bill that the Court may adjourn an application for setting aside the registration of a Registered Judgment if it is satisfied that an appeal against the Judgment is pending, or the case on which the Judgment was based is ordered to be retried. If the Court sets aside the registration

of a Registered Judgment, it is proposed that the person who made the application for the original registration may not make a further application to register the Mainland Judgment.

*Restrictions on Hong Kong court proceedings*

12.           Clauses 29 and 30 of the Bill propose to impose certain restrictions on Hong Kong proceedings, such as:

- (a)   where a registration application is made in relation to a Mainland Judgment, and proceedings are pending before a court in Hong Kong in respect of the same cause of action between the same parties, the Hong Kong proceedings would be stayed; and
- (b)   a party to the original proceedings for a Mainland Judgment would be restricted from commencing proceedings in respect of the same cause of action on which the Mainland Judgment was given if a registration application is pending, or if the Mainland Judgment is a Registered Judgment.

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

13.           Part 3 of the Bill proposes that a judgment creditor under a Hong Kong Judgment given on or after the commencement date of the enacted Ordinance (if the Bill is passed) and effective in Hong Kong (i.e. it is enforceable in Hong Kong and is given by a specified Hong Kong court (i.e. the Court of Final Appeal, the Court of Appeal, the Court, the Competition Tribunal, the District Court, the Lands Tribunal, the Labour Tribunal or the Small Claims Tribunal)) may apply to the relevant court for a certified copy of the Hong Kong Judgment with a certificate certifying that it is a Hong Kong Judgment and is effective in Hong Kong.

14.           Under clause 4 of the Bill, a Hong Kong Judgment would be eligible for recognition and enforcement in the Mainland if it is not an excluded judgment and is either:

- (a)   given in civil proceedings, other than proceedings brought by way of judicial review or any other proceedings arising directly out of the exercise of an administrative power; or
- (b)   given in criminal proceedings and contains a payment order.

Miscellaneous matters and related amendments

15.           Part 4 of the Bill seeks to provide for miscellaneous and related matters, including the power of the Chief Judge (“CJ”) to make rules for the carrying out of the purposes and provisions of the enacted Ordinance etc., and the related amendments to Cap. 597 as set out in the Schedule to the Bill. The rules to be made by CJ would be subsidiary legislation subject to the negative vetting procedure of LegCo.

## Commencement

16. The Bill, if passed, would come into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette.

## **Public Consultation**

17. According to paragraphs 15 and 16 of the LegCo Brief, 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. The Government also held meetings with some stakeholders to discuss the issues set out in the consultation paper. On the whole, most respondents indicated their support for the implementation of the Arrangement through the Bill.

## **Consultation with LegCo Panel**

18. As advised by the Clerk to the Panel on Administration of Justice and Legal Services (“Panel”), the Panel was briefed on the key features of the Bill at its meeting on 28 March 2022. The Panel expressed support for the introduction of the Bill into LegCo and considered that the Bill would reduce the need for re-litigation, save cost, remove legal barriers to justice, and enhance Hong Kong’s competitiveness as a regional centre for legal and dispute resolution in the Guangdong-Hong Kong-Macao Greater Bay Area. The concerns raised by members of the Panel include whether and how the Bill could address the limitations of Cap. 597 in the enforcement of Mainland Judgments, the fees incurred in the Mainland for the enforcement of judgments given by Hong Kong’s Small Claims Tribunal, and the need to provide interim measures in aid of the seeking of enforcement of Mainland Judgments in Hong Kong.

## **Conclusion**

19. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. As the Bill seeks to broaden the scope of the mechanism for reciprocal enforcement of judgments in civil and commercial matters between Hong Kong and the Mainland, Members may wish to form a Bills Committee to study the Bill in detail.

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