

Hong Kong

Mainland Judgments (Reciprocal Enforcement) Ordinance of 1 August 2008

Chapter 597 Long title

An Ordinance 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 pursuant to Choice of Court Agreements between Parties Concerned made between the Supreme People's Court of the People's Republic of China and the Government of the Hong Kong Special Administrative Region (as amended from time to time), and for that purpose to make provisions for the enforcement in Hong Kong of judgments in civil or commercial matters that are given in the Mainland and for facilitating the enforcement in the Mainland of judgments in civil or commercial matters that are given in Hong Kong; and to provide for matters connected therewith.

Part: 1 Preliminary

Section: 1 Short title and commencement

(1) This Ordinance may be cited as the Mainland Judgments (Reciprocal Enforcement) Ordinance.

(2) (Omitted as spent)

Section: 2 Interpretation

In this Ordinance, unless the context otherwise requires—

- ‘choice of Hong Kong court agreement’ (選用香港法院協議) has the meaning assigned to it by section 3(1);
- ‘choice of Mainland court agreement’ (選用內地法院協議) has the meaning assigned to it by section 3(2);
- ‘chosen court’ (選用法院) means the court or any of the courts specified in a choice of Mainland court agreement or choice of Hong Kong court agreement, as the case may be, as the court to determine a dispute to which the agreement applies;
- ‘designated court’ (指定法院) means a court in the Mainland which is specified in Schedule 1;
- ‘Hong Kong judgment’ (香港判決) includes any judgment, order and allocatur in civil or commercial matters that are given by a court in Hong Kong;
- ‘judgment creditor’ (判定債權人) means the person in whose favour a Mainland judgment was given, and includes any person in whom the rights under the judgment have become vested by succession or assignment or otherwise;
- ‘judgment debtor’ (判定債務人) means the person against whom a Mainland judgment was given, and includes
 - any person against whom the judgment is enforceable under the law of the Mainland;
- ‘Mainland’ (內地) means any part of China other than Hong Kong, Macau and Taiwan;
- ‘Mainland judgment’ (內地判決) means a judgment, ruling, conciliatory statement or order of payment in civil or commercial matters that is given by a designated court;
- ‘original court’ (原審法院), in relation to any Mainland judgment, means the designated court by which that judgment was given;
- ‘recognized Basic People's Court’ (認可基層人民法院) means any Basic People's Court which is specified in a list published in the Gazette under section 25(1) from time to time;
- ‘registered judgment’ (已登記判決) means a Mainland judgment registered under section 5(2);
- ‘specified contract’ (指明合約) means a contract other than—

- (a) an employment contract; and
- (b) a contract to which a natural person acting for personal consumption, family or other non-commercial purposes is a party.

Section: 3 Meaning of ‘choice of Hong Kong court agreement’ and ‘choice of Mainland court agreement’

(1) In this Ordinance, subject to subsections (3) and (4), ‘choice of Hong Kong court agreement’ (選用香港法院協議) means an agreement concluded by the parties to a specified contract and specifying the courts in Hong Kong or any of them as the court to determine a dispute which has arisen or may arise in connection with the specified contract to the exclusion of courts of other jurisdictions.

(2) In this Ordinance, subject to subsections (3) and (4), ‘choice of Mainland court agreement’ (選用內地法院協議) means an agreement concluded by the parties to a specified contract and specifying the courts in the Mainland or any of them as the court to determine a dispute which has arisen or may arise in connection with the specified contract to the exclusion of courts of other jurisdictions.

(3) Subsections (1) and (2) do not apply to an agreement unless it is concluded or evidenced—

(a) in writing;

(b) by any electronic means (including an electronic data message, a telegram, a telex, a facsimile, an electronic data interchange or an electronic mail) by which the agreement is capable of being displayed in visible form and information is accessible so as to be usable for subsequent reference; or

(c) by any combination of the means described in paragraphs (a) and (b).

(4) Subsections (1) and (2) apply to an agreement whether it is concluded or evidenced in one document or several documents.

Section: 4 Severability of choice of Hong Kong court agreement and choice of Mainland court agreement

Unless otherwise provided in the specified contract between the parties, a choice of Hong Kong court agreement or a choice of Mainland court agreement that forms part of the contract shall be regarded for the purposes of this Ordinance as an agreement independent of the other terms of the contract and the validity of the agreement shall not be affected by any modification, discharge, termination or nullification of the contract.

Part: 2 Application for Registration in Hong Kong of Mainland Judgments

Section: 5 Application for registration of Mainland judgments

(1) A judgment creditor under a Mainland judgment may apply to the Court of First Instance within the time limit specified in section 7 to have the judgment registered in the Court of First Instance.

(2) On an application made under subsection (1), the Court of First Instance shall order the Mainland judgment to be registered in accordance with this Ordinance if the judgment creditor has proved to the satisfaction of the Court of First Instance that the following requirements are satisfied—

(a) the judgment is given on or after the date of the commencement of this Ordinance by—

(i) a chosen court which is a designated court;

(ii) a designated court upon a transfer of the case under the law of the Mainland from a chosen court;

- (iii) a designated court upon an appeal against a judgment of the case given by—
 - (A) a chosen court; or
 - (B) a court to which the case has been transferred under the law of the Mainland from a chosen court; or
- (iv) a designated court upon a retrial of the case which has been tried in—
 - (A) a chosen court; or
 - (B) a court to which the case has been transferred under the law of the Mainland from a chosen court;
- (b) the relevant choice of Mainland court agreement is made on or after the date of the commencement of this Ordinance;
- (c) the judgment is final and conclusive as between the parties to the judgment;
- (d) the judgment is enforceable in the Mainland; and
- (e) the judgment orders the payment of a sum of money (not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty).

Section: 6 Finality of Mainland judgments

- (1) For the purposes of section 5(2)(c), a Mainland judgment is final and conclusive as between the parties to the judgment if—
 - (a) it is a judgment given by the Supreme People’s Court;
 - (b) it is a judgment of the first instance given by a Higher People’s Court, an Intermediate People’s Court or a recognized Basic People’s Court and—
 - (i) no appeal is allowed from the judgment according to the law of the Mainland; or
 - (ii) 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;
 - (c) it is a judgment of the second instance given by a designated court other than a recognized Basic People’s Court; or
 - (d) it is a judgment given in a retrial by a designated court of a level higher than the court whose judgment has given rise to the retrial.
- (2) For the purposes of section 5(2)(d), a Mainland judgment is deemed, until the contrary is proved, to be enforceable in the Mainland if a certificate is issued by the original court certifying that the judgment is final and enforceable in the Mainland.

Section: 7 Time limit for application for registration of Mainland judgments

- (1) The time limit for making an application for registration of a Mainland judgment under section 5(1) shall be 2 years.
- (2) The time limit specified under subsection (1) shall be calculated—
 - (a) where a period for performance of the Mainland judgment has been specified in the judgment, from the last day of the period; or
 - (b) in any other case, from the date from which the judgment takes effect.

Section: 8 Application fee

An application for registration of a Mainland judgment under section 5(1) shall be accompanied by such fee payable in respect of the application as prescribed by the rules of court made under section 23(1).

Section: 9 Cases in which only some provisions of Mainland judgments are registrable

If, on an application for registration of a Mainland judgment, it appears to the Court of First Instance that the judgment is in respect of different matters and that some, but not all, of the provisions of the judgment would, if contained in separate Mainland judgments that are the subjects of applications for registration under section 5(1), satisfy the requirements specified in section 5(2)(a) to (e), the judgment, when registered, shall only be registered in respect of those provisions but not in respect of any other provisions contained in the judgment.

Section: 10 Mainland judgments partly satisfied

If it has been proved that, at the date of an application for registration of a Mainland judgment, the judgment has been partly satisfied, the judgment, when registered, shall only be registered in respect of the balance remaining payable at that date.

Section: 11 Mainland judgments expressed in currency other than Hong Kong currency

Where the sum payable under a Mainland judgment is expressed in a currency other than Hong Kong currency, the judgment, when registered, shall be registered as if it were a judgment for such sum in Hong Kong currency as, on the basis of the rate of exchange prevailing at the date of registration, is equivalent to the sum so payable.

Section: 12 Interest, costs, etc., to be included in registration of Mainland judgments

In addition to the sum of money payable under a Mainland judgment, the judgment, when registered, shall be registered for —

- (a) any interest which by the law of the Mainland shall become due under the judgment up to the time of registration and any costs duly certified by the original court for the judgment; and
- (b) any reasonable costs of and incidental to registration of the judgment, including the costs of obtaining a copy of the judgment duly sealed by the original court.

Section: 13 Cases in which Mainland judgments are required to be performed in stages

(1) If the performance of a Mainland judgment is required to be in stages, a judgment creditor under the judgment may also apply to the Court of First Instance under section 5(1) to have any part of the judgment registered in the Court of First Instance.

(2) In the case of an application for registration of any part of a Mainland judgment under section 5(1) —

- (a) section 5(2)(a) to (e) shall be regarded as also including the requirement that the sum of money ordered to be paid under that part of the judgment is due, and for the avoidance of doubt, references to the requirements specified in section 5(2)(a) to (e) in this Ordinance (including the reference appearing in section 18(1)(a) in relation to that part of the judgment as registered) shall be construed accordingly;
- (b) unless the context otherwise requires, a reference to a Mainland judgment (however described) in this Ordinance shall be construed as a reference to that part of the Mainland judgment; and
- (c) the other provisions of this Ordinance shall, subject to all necessary modifications, be construed and have application accordingly.

Part: 3 Effect of Registration

Section: 14 Effect of registration

(1) Subject to section 15, a registered judgment shall, for the purpose of execution, be of the same force and effect as if it had been a judgment originally given in the Court of First Instance and entered on the day of registration.

(2) Without prejudice to the generality of subsection (1), upon the registration of a Mainland judgment under section 5(2) —

(a) proceedings may be taken on the judgment;

(b) the sum for which the judgment is registered shall carry interest; and

(c) the Court of First Instance shall have the same control over the execution of the judgment, as if the judgment had been a judgment originally given in the Court of First Instance and entered on the day of registration.

Section: 15 Registered judgments not to be enforced under certain circumstances

No action shall be taken to enforce a registered judgment —

(a) during the period specified under section 17(1) as that within which an application to set aside the registration of the judgment may be made under Part 4 or that period as extended under section 17(2); or

(b) where such an application is made during the period specified in paragraph (a), until after the application has been finally disposed of.

Section: 16 Recognition of Mainland judgments

(1) Any Mainland judgment which would satisfy the requirements specified in section 5(2)(a) to (e) in an application for registration of the judgment under section 5(1) shall, whether or not the judgment has been registered, be recognized in any court in Hong Kong as conclusive between the parties to the judgment in any proceedings founded on the same cause of action and may be relied on by way of defence or counterclaim in any such proceedings.

(2) This section does not apply to a Mainland judgment if—

(a) where the judgment has been registered, the registration of the judgment has been set aside on any ground under section 18 or 19 other than that the judgment has been wholly satisfied; or

(b) where the judgment has not been registered, it is shown that if it had been registered, the registration of the judgment would have been set aside on an application for that purpose on any ground under section 18 or 19 other than that the judgment has been wholly satisfied.

(3) Nothing in this section shall prevent any court in Hong Kong from recognizing a Mainland judgment as conclusive of any matter of law or fact decided in the judgment if that judgment would be recognized as conclusive under the common law before the commencement of this Ordinance.

Part: 4 Setting Aside of Registration of Registered Judgments

Section: 17 Time limit for setting aside registration of registered judgments

(1) When making an order under section 5(2) to register a Mainland judgment, the Court of First Instance shall specify the period within which an application may be made to set aside the registration of the registered judgment under section 18 or 19.

(2) The Court of First Instance may extend the period (either as originally fixed or as subsequently extended) within which an application under subsection (1) may be made.

Section: 18 Cases in which registration of registered judgments shall be set aside

(1) On an application in that behalf made by any party against whom a registered judgment may be enforced, the registration of the judgment shall be set aside if the Court of First Instance is satisfied that—

(a) the judgment is not a Mainland judgment which satisfies the requirements specified in section 5(2)(a) to (e);

- (b) the judgment has been registered in contravention of this Ordinance;
- (c) the relevant choice of Mainland court agreement is invalid under the law of the Mainland unless the original court has determined that the agreement is valid;
- (d) the judgment has been wholly satisfied;
- (e) the courts in Hong Kong have exclusive jurisdiction over the case according to the law of Hong Kong;
- (f) the judgment debtor who did not appear in the original court to defend the proceedings —
 - (i) was not summoned to appear according to the law of the Mainland; or
 - (ii) was so summoned but was not given sufficient time to defend the proceedings according to the law of the Mainland;
- (g) the judgment was obtained by fraud;
- (h) a judgment on the same cause of action between the parties to the judgment has been given by a court in Hong Kong or an arbitral award on the same cause of action between the parties has been made by an arbitration body in Hong Kong;
- (i) a judgment on the same cause of action between the parties to the judgment has been given by a court in a place outside Hong Kong or an arbitral award on the same cause of action between the parties has been made by an arbitration body in a place outside Hong Kong, and the judgment or award has already been recognized in or enforced by the courts in Hong Kong;
- (j) the enforcement of the judgment is contrary to public policy; or
- (k) the judgment has been reversed or otherwise set aside pursuant to an appeal or a retrial under the law of the Mainland.

(2) Subsection (1)(f) does not apply where the judgment debtor was summoned to the original court by service by public announcement according to the law of the Mainland.

Section: 19 Cases in which registration of registered judgments may be set aside or application to set aside registration may be adjourned

On an application in that behalf made by any party against whom a registered judgment may be enforced, if the Court of First Instance is satisfied that an appeal against the judgment is pending or the case on which the judgment was based is ordered to be retried by a competent designated court, the Court of First Instance may, on such terms as it may think just—

- (a) set aside the registration; or
- (b) adjourn the application until after the expiration of such period as it appears to the Court of First Instance to be reasonably sufficient to enable the applicant to take the necessary steps to have the appeal or retrial in respect of the judgment disposed of by a competent designated court.

Section: 20 Effect of setting aside registration of registered judgments

(1) Subject to subsections (2) and (3), where the registration of a registered judgment has been set aside under section 18, the judgment creditor shall not make a further application to register the judgment under section 5(1).

(2) Where the registration of a registered judgment has been set aside—

- (a) under section 18(1)(a) solely for the reason that the judgment was not at the date of the application for registration enforceable under the law of the Mainland; or
- (b) under section 19, the setting aside of the registration shall not prejudice a further application to register the judgment if and when the judgment becomes enforceable in the Mainland, or when the appeal or retrial in respect of the judgment has been disposed of, as the case may be.

(3) Where the registration of a registered judgment has been set aside under section 18(1)(b) solely for the reason that the judgment, notwithstanding that it had at the date of the application for registration been partly satisfied, was registered for the whole sum payable under the judgment, the Court of First Instance shall, on the application of the judgment creditor, order the judgment to be registered for the balance remaining payable at that date, and the judgment shall, upon being so registered, be regarded for the purposes of this Ordinance as a registered judgment.

Part: 5 Enforcement in Mainland of Hong Kong Judgments

Section: 21 Jurisdiction to issue certified copies of Hong Kong judgments and certificate for Hong Kong judgments

(1) Where a judgment creditor intends to enforce in the Mainland a Hong Kong judgment under which a sum of money is payable (not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty) and the judgment is given on or after the date of the commencement of this Ordinance by —

(a) the Court of Final Appeal or the High Court which is a chosen court;

(b) the Court of Final Appeal or the High Court upon a transfer of the case under the law of Hong Kong from a chosen court; or

(c) the Court of Final Appeal or the High Court upon an appeal against a judgment of the case given by —

(i) a chosen court; or

(ii) a court to which the case has been transferred under the law of Hong Kong from a chosen court, the High Court shall, on an application made by the judgment creditor and on payment of such fee as may be prescribed by the rules of court made under section 23(1), issue to the judgment creditor a certified copy of the judgment.

(2) Where a judgment creditor intends to enforce in the Mainland a Hong Kong judgment under which a sum of money is payable (not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty) and the judgment is given on or after the date of the commencement of this Ordinance by —

(a) the District Court which is a chosen court; or

(b) the District Court upon a transfer of the case under the law of Hong Kong from a chosen court, the District Court shall, on an application made by the judgment creditor and on payment of such fee as may be prescribed by the rules of court made under section 23(2), issue to the judgment creditor a certified copy of the judgment.

(3) Upon the issue of a certified copy of the judgment under subsection (1) or (2), the High Court or the District Court, as the case may be, shall also issue a certificate—

(a) certifying that the judgment can be enforced by execution in Hong Kong; and

(b) containing such particulars and having annexed to it such documents, as may be prescribed by the rules of court made under section 23(1) or (2), as the case may be.

(4) Where execution of a Hong Kong judgment is stayed for any period pending an appeal or for any other reason, an application shall not be made under this section with respect to the judgment until the expiration of that period.

(5) In this section, ‘judgment creditor’ (判定債權人) means the person in whose favour a Hong Kong judgment was given, and includes any person in whom the rights under the judgment have become vested by succession or assignment or otherwise.

Part: 6 Miscellaneous

Section: 22 Restrictions on proceedings

(1) No proceedings may be brought by a party on the same cause of action in respect of which a Mainland judgment has been given if —

- (a) an application for registration of the judgment under section 5(1) is pending; or
- (b) the judgment is registered under section 5(2).

(2) No proceedings for the recovery of a sum payable under a Mainland judgment which would satisfy the requirements specified in section 5(2)(a) to (e) in an application for registration of the judgment under section 5(1), other than proceedings by way of registration of the judgment, shall be entertained in any court in Hong Kong.

Section: 23 Rules of court

(1) The power to make rules of court under section 54 of the High Court Ordinance (Cap 4) shall include power to make rules for all or any of the following purposes—

- (a) for making provisions with respect to the giving of security for costs by persons applying for registration of Mainland judgments;
- (b) for making provisions with respect to restraining the disposal or transfer of assets of the judgment debtors;
- (c) for prescribing the matters to be proved on an application for registration of a Mainland judgment and for regulating the mode of proving those matters;
- (d) for providing information to courts in the Mainland on the status of enforcement in Hong Kong of a registered judgment and a Hong Kong judgment;
- (e) for providing for the service on the judgment debtor of notice of the registration of a Mainland judgment;
- (f) for prescribing the method by which any question arising under any provisions of this Ordinance as to whether a Mainland judgment is enforceable in the Mainland, or what interest is due under a Mainland judgment under the law of the Mainland, is to be determined;
- (g) for making provisions with respect to the issue of certified copies of and certificates for Hong Kong judgments given by the Court of Final Appeal and the High Court under section 21(1) together with all related documents;
- (h) for prescribing any matter which under any provisions of this Ordinance is to be prescribed by rules of court made under this subsection; and
- (i) generally providing for the better carrying out of the purposes of this Ordinance.

(2) The power to make rules of court under section 72 of the District Court Ordinance (Cap 336) shall include the power to make rules for all or any of the following purposes—

- (a) for providing information to courts in the Mainland on the status of enforcement in Hong Kong of a registered judgment and a Hong Kong judgment;
- (b) for making provisions with respect to the issue of certified copies of and certificates for Hong Kong judgments given by the District Court under section 21(2) together with all related documents; and
- (c) for prescribing any fees which under any provisions of this Ordinance is to be prescribed by the rules of court made under this subsection.

Section: 24 Power to amend Schedule 1

The Chief Executive in Council may, by order published in the Gazette, amend Schedule 1.

Section: 25 Publication of list of Basic People's Courts

(1) The Secretary for Justice shall from time to time publish in the Gazette a list of Basic People's Courts for the purposes of this Ordinance.

(2) A list published under subsection (1) is not subsidiary legislation.

Section: 26 Special provisions for chosen courts becoming or ceasing to be recognized Basic People's Courts

(1) If any chosen court was not a recognized Basic People's Court at the date of the choice of Mainland court agreement, the chosen court shall not be regarded as a recognized Basic People's Court for the purposes of this Ordinance even though the chosen court has subsequently become a recognized Basic People's Court.

(2) If, in relation to any Mainland judgment, any chosen court was a recognized Basic People's Court at the date of the choice of Mainland court agreement and it remained as such at the date of the judgment, the chosen court shall be regarded as a recognized Basic People's Court for the purposes of this Ordinance even though the chosen court has subsequently ceased to be a recognized Basic People's Court.

Section: 27

(Omitted as spent)

Schedule: 1 Designated Courts

[sections 2 & 24]

1. The Supreme People's Court
2. A Higher People's Court
3. An Intermediate People's Court
4. A recognized Basic People's Court

Schedule: 2 (Omitted as spent)