

Women's Commission

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

Background

Under Article 95 of the Basic Law, the Hong Kong SAR “*may, through consultations and in accordance with law, maintain juridical relations with the judicial organs of other parts of the country, and they may render assistance to each other*”. As of September 2022, the Hong Kong SAR has entered into nine documents with the Mainland on mutual legal assistance in civil and commercial matters.

2. Among them, 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》 (“Arrangement”) was signed between the Government of the Hong Kong Special Administrative Region and the Supreme People’s Court (“SPC”) on 18 January 2019.

3. The Bill seeks to implement the Arrangement in Hong Kong. The Bill was introduced to the Legislative Council in May 2022. The Legislative Council’s Bills Committee has completed its scrutiny on the Bill. Upon the resumption of the Second Reading debate at the Legislative Council in Q4 2022, we would strive for the passing of the Bill by the end of 2022. The Department of Justice will introduce the Bill at the meeting of the Women's Commission. The relevant presentation slides are at **Annex**.

Key Features

4. The Bill provides for the following two mechanisms -

- (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.

Objectives

5. The Bill seeks to establish 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.

6. An enhanced REJ mechanism would increase 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.

7. 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.

Key Provisions

A. Registration of Mainland Judgments in Hong Kong

Scope

8. 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 Mainland law; or (b) it is given in proceedings that are criminal in nature under Mainland law, and contains an order for the payment of a sum of money in respect of

compensation or damages by a party to the proceedings.¹

9. The definition of “excluded judgments” in Clause 5 reflects Article 3 of the Arrangement. Examples of “excluded judgments” include judgments on (a) an excluded matrimonial or family case within the meaning of Clause 6; (b) matters relating to the insolvency of an entity other than a natural person or the bankruptcy of a natural person; and (c) matters relating to succession.

Registration applications

10. Clause 10 provides that a judgment creditor under a Mainland Judgment in a civil or commercial matter may apply *ex parte* to the Court of First Instance (“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 passed)²;
- (b) the Judgment is effective in the Mainland³; and
- (c) there was a default in complying with the Mainland Judgment’s requirement to pay a sum of money or perform an act⁴ and the default occurred within two(2) years before the date of the application and has not been made good at the date of the application.⁵

11. An effective Mainland judgment refers to an enforceable judgment:

- (a) given by the Supreme People’s Court;
- (b) of second instance given by a High People’s Court or an Intermediate People’s Court; or
- (c) of first instance given by a High People’s Court or an Intermediate People’s Court or a Primary People’s Court, where no appeal is allowed or the time limit for appeal has expired with no appeal filed under Mainland law.

12. For the purpose of registration, until the contrary is proved, a Mainland Judgment is presumed to be given in a civil or commercial matter and effective in

¹ Clause 3(1)(a)(ii) seeks to reflect Article 1(2) of the Arrangement.

² Clause 10(1)(a)(i).

³ Clause 10(1)(a)(ii). See also Clause 8 which defines “Effective Mainland Judgments”.

⁴ Under Clause 2(2), the requirement to perform an act includes a prohibition, or a restriction, on the performance of an act.

⁵ 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)).

the Mainland if a certificate certifying those facts is issued by the original Mainland court.⁶

Setting Aside the Registration

13. A person against whom a registered judgment may be enforced may, under Clause 21, apply to set aside the registration of the Mainland 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.⁷

14. 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.⁸ 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.

15. 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.

Effect of Registration

16. 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.

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

17. To facilitate a party in seeking recognition and enforcement in the Mainland of a Hong Kong Judgment in a civil or commercial matter⁹ given on or after the commencement date of the Bill (if passed) and is effective in Hong Kong¹⁰, Clause 33 in Part 3 of the Bill provides that a judgment creditor to a Hong

⁶ Clause 13(2).

⁷ Clauses 20 and 21, where the former seeks to reflect Article 12 of the Arrangement.

⁸ Clause 22(1)(b) .

⁹ “Hong Kong Judgment in a civil or commercial matter” is defined in Clause 4.

¹⁰ “Effective Hong Kong Judgments” is defined in Clause 9.

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.

18. 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.

C. Relationship with the Choice of Court Arrangement¹¹

19. 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 passed).¹² The Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) will continue to apply to those Mainland judgments.

Way Forward

20. After the passage of the Bill, relevant rules would be made by the Chief Judge of the High Court for the operation of the relevant mechanisms.

21. In the Mainland, the Arrangement will be implemented by way of judicial interpretation to be promulgated by the Supreme People’s Court.

22. The Arrangement will come into effect simultaneously in both Hong Kong and the Mainland when both sides have put in place the relevant implementation mechanisms and will apply to judgments made on or after the commencement date of the Arrangement.

Department of Justice
September 2022

¹¹ The full title of the Choice of Court Arrangement is 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*. 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 legislation as far as Hong Kong is concerned.

¹² Clause 5(1)(j) and the Schedule to the Bill.



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

《內地民商事判決（相互強制執行）條例草案》 （《條例草案》）

Briefing to Women's Commission 婦女事務委員會簡介會

By Department of Justice 律政司

September 2022

Background 背景



Basic Law and Mutual Legal Assistance

《基本法》與司法互助

- Under **Article 95 of the Basic Law**, the **HKSAR** may, through consultations and in accordance with law

《基本法》第九十五條規定，香港特區可通過協商依法：

- maintain juridical relations with **the judicial organs of other parts of the country** 與全國其他地區的司法機關進行司法方面的聯繫；and 和
 - they may **render assistance to each other** 相互提供協助
- Since **July 1997**, **nine documents** signed with the Mainland on mutual legal assistance in **civil and commercial matters**
自**1997年7月**，特區政府與內地簽署了**九項**關於**民商事司法互助**的文書

REJ Arrangement 《判決安排》

- ✓ Signed in January 2019
2019年1月簽訂
- ✓ Establish a more comprehensive REJ mechanism in civil and commercial matters
就民商事司法互助訂立更全面機制
- ✓ To be implemented in HK by way of legislation
在香港通過立法實施



Bill 《條例草案》

5.2022

- introduced to LegCo
- 向立法會提交《條例草案》

Q3 2022

- LegCo's Bills Committee completed its scrutiny on the Bill
- 立法會的相關法案委員會已經完成審議《條例草案》

Q4 2022

- Expected Resumption of 2nd Reading Debate at LegCo
- 預計《條例草案》的二讀辯論恢復

By 2022

2022年內

- Strive for early passage of the Bill
- 爭取盡快通過《條例草案》



Before REJ Arrangement – Problem 1

《判決安排》落實以前 – 困難 1

Absence of a clear legal basis for seeking enforcement of HK judgments
in the Mainland

缺乏清晰法律機制以在內地尋求執行香港判決





Before REJ Arrangement – Problem 2

《判決安排》落實以前 – 困難 2

Difficulties in seeking enforcement of Mainland judgments in HK

在香港尋求執行內地判決的困難：

(A) *Under common law* 根據普通法

1. To enforce a non-HK judgment, one must

任何一方如欲尋求執行非香港判決，必須 -

- **initiate a fresh action** in Hong Kong by writ 通過令狀在香港提起新訴訟
- bear **the burden of proving** to the court all the essential requirements for the recognition and enforcement 承擔向法庭舉證的責任，證明有關判決符合認可和執行的所有規定



Before REJ Arrangement – Problem 2

《判決安排》落實以前 – 困難 2

Difficulties in seeking enforcement of Mainland judgments in HK

在香港尋求執行內地判決的困難：

(A) *Under common law* (con't) 根據普通法 (續)

2. A **triable issue** - whether a relevant Mainland judgment could be regarded as **final and conclusive**

須予審理的爭論點：內地判決是否可視作**最終及不可推翻**



(B) Under other arrangements/statutes/documents 根據其他安排/法例/文書

Document 文書	Effective since 生效日期	Implemented via 本地實施方法	Scope of application 適用範圍
Choice of Court Arrangement 《協議管轄安排》	01.08.2008	Cap. 597	<ul style="list-style-type: none">• Money judgments only 只適用於金錢判決• Where parties have agreed in writing that a court of one side will have exclusive jurisdiction to determine a dispute arising from the contract 當事人必須已書面同意一方的法院具有專屬司法管轄權，可就有關合約所引致的爭議作出裁決
Matrimonial Arrangement 《婚姻安排》	15.02.2022	Cap. 639	Civil judgments in matrimonial or family matters only 只適用於 婚姻家庭的民事案件 判決
Record of Meeting on Insolvency 《破產會談紀要》	14.05.2021	Existing common law regime; no local legislation needed 現行普通法機制； 不須本地立法	Related to corporate insolvency and debt restructuring matters only 只適用於 公司清盤及債務重組 事宜



Upon implementation of REJ Arrangement 《判決安排》落實後 – **Impact 1 效用1**

Straightforward mechanism for REJ 簡易相互認可和執行機制

- “exclusive choice of court agreement” **no longer** a prerequisite
無需訂立“選用法院協議”亦可受惠
- avoid disputes on **finality** of Mainland judgments
避免就內地法院終局性的爭論
- Clear **legal basis** for enforcement in the Mainland
為在內地執行判決提供清晰法律基礎

Upon implementation of REJ Arrangement 《判決安排》落實後 – Impact 2 效用2

Wide coverage of civil and commercial judgments

廣泛適用範圍、涵蓋多種民商事判決

- monetary and **non-monetary** judgments 金錢及**非金錢**判決
- judgments on specified **intellectual property rights** 指明**知識產權**判決
- REJ Arrangement + Matrimonial Arrangement + Record of Meeting on CBI

《判決安排》+《婚姻安排》+《破產會談紀要》

» comprehensively cover **around 90%** of civil and commercial cases

全面涵蓋**約90%**民商事案件

Upon implementation of REJ Arrangement 《判決安排》落實後 – Advantages 好處

- Minimise need to **re-litigate** on same disputes

減低就同一爭議重複提出訴訟的需要

- Save cost & time 節省費用和時間

- Enhance certainty 提升確定性

- Facilitate trade & investment 利便貿易和投資

- Enhance HK's competitiveness as a regional **int'l legal and dispute**

resolution services hub and **IP trading centre** 提升香港作為區域國際

法律和爭議解決中心以及知識產權貿易中心的競爭力



Key Features of the Bill 《條例草案》要點

- *Two mechanisms* 兩套機制

1. Part 2 of the Bill provides:

《條例草案》第2部訂立了：

- a **mechanism** for the **registration** in Hong Kong of Mainland Judgments in Civil or Commercial Matters
在香港**登記**內地民商事判決的**機制**

律政中心 — 東座
JUSTICE PLACE – EAST WING
中環下亞厘畢道18號
18 Lower Albert Road, Central



Key Features of the Bill 《條例草案》要點

- *Two mechanisms* 兩套機制

2. Part 3 of the Bill provides a **mechanism** to **facilitate** application for recognition and enforcement of HK judgments **in the Mainland** 《條例草案》第3部訂立了**利便**當事人尋求**在內地**申請認可和強制執行香港判決**的機制**：

- one may apply for 當事人可作出以下**申請**：
 - a) **certified copies** of Hong Kong Judgments in Civil or Commercial Matters 香港民商事判決**經核證文本**；and
 - b) **certificates** for Hong Kong Judgments in Civil or Commercial Matters 香港民商事判決**證明書**

Key Provisions 主要條文



Scope of the Bill 《條例草案》範圍

- *Civil or Commercial Matters* 民商事

(1) **Not** “**excluded judgment**” (Clause 5) 不屬第 5 條所指 “**被排除的判決**”; **and** 及

(2) Either: 有以下其中一種情況：

- a) Given in proceedings that are **civil or commercial** in nature under Mainland law 在根據內地法律屬**民商事**性質的法律程序中作出的判決；**or** 或
- b) Given in proceedings that are **criminal** in nature under Mainland law, and contains an order for the **payment of a sum of money** in respect of **compensation or damages** by a party to the proceedings 在根據內地法律屬**刑事性質**的法律程序中作出的判決，並載有一項 命令，飭令該法律程序中的一方就**補償或損害賠償**支付款項



Clause 5 第五條

- *Excluded judgment* 被排除的判決

For example – Judgments on: 例如以下判決：

- excluded **matrimonial or family** cases “被排除的**婚姻或家庭**案件”
- matters relating to the **insolvency** of an entity other than a natural person or the **bankruptcy** of a natural person 關乎並非自然人的實體**無力償債**或自然人**破產**的事宜
- matters relating to **succession** 關乎繼承**遺產**的事宜



Clause 8 第八條

- *Effective judgments* 生效判決

An **enforceable judgment** 可強制執行的判決，而該判決是：

- given by the **Supreme People's Court** 由最高人民法院作出的；
- **second instance** given by a **High People's Court** or an **Intermediate People's Court** 由高級人民法院或中級人民法院作出的第二審判決； or 或

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JUSTICE PLACE – EAST WING
中環下亞厘畢道18號
18 Lower Albert Road, Central



Clause 8 第八條

- *Effective judgments* 生效判決

An **enforceable judgment** 可強制執行的判決，而該判決是：

- of **first instance** given by a High People's Court or an Intermediate People's Court or a Primary People's Court, where under the Mainland law 由高級人民法院、中級人民法院或基層人民法院作出的**第一審內地判決**，而按照內地法律：
 - **no appeal is allowed** or 不准對該判決提出上訴；or 或
 - **the time limit for appeal has expired with no appeal filed** 對該判決上訴的限期已屆滿，而無人提出上訴



Clause 13(2) 第13(2)條

- *Certificate and presumption of effective judgments* 證明書與有關生效判決的推定

Presumption » Mainland Judgment **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**

推定 » 如內地判案法院發出**證明書**，證明某內地判決屬在內地生效的民商事判決，該判決須**推定**為屬在內地**生效**的民商事判決



Clauses 20 & 21 第20及21條

- *Setting aside procedure* 將登記作廢的程序

May apply to **set aside the registration of judgment** 可申請將該判決的**登記作廢**的限期為

- within the time limit **specified** by the CFI in the registration order 原訟法庭**指明**的限期，or 或
- within **14 days of service of registration notice** if the CFI does not specify a time limit 如原訟法庭沒有指明限期，在**登記通知書送達的14天內**



Clause 22 第22條

- *Grounds on setting aside* 將登記作廢的理由

Clause 22(1)

Exhaustive grounds on which registration **must** be set aside 以窮盡方式訂明的、**須**將登記作廢的**理由**，包括：

- **jurisdictional requirement** (provided in Clause 23) **NOT** satisfied
與第23條的**司法管轄權規定**不符
- **Fraud** 欺詐
- manifestly incompatible with **public policy** 明顯違反**公共政策**

Clause 22(2)

A **discretionary ground** on which registration **may** be set aside **酌情可**將登記作廢的**理由**：

- Proceedings in the original **Mainland court** **contrary to a valid arbitration agreement or jurisdiction agreement** entered into by the same parties on the same cause of action 內地判案法院進行的法律程序，**違反**相同的各方之間就同一訴訟因由簽訂的 **有效仲裁協議 或 司法管轄權協議**



Clause 32 第32條

- *Effect of registration* 登記的效果

A **registered judgment** 已登記判決

- May be **enforced in Hong Kong** *as if* it were a **judgment originally given by the CFI** on the day of registration

可在香港強制執行，*猶如*該判決是由原訟法庭在登記當日原先作出的一樣

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18 Lower Albert Road, Central



Clauses 33 & 34 第33及34條

- *Facilitation of Recognition and Enforcement in the Mainland of Hong Kong Judgments*

利便在內地認可和強制執行香港判決

- may apply for a **certified copy of a Hong Kong Judgment**
可申請**香港判決的經核證文本**
- When issuing a certified copy of the Hong Kong Judgment, the specified Hong Kong court must also issue a **certificate certifying** the Judgment:
指明香港法院在發出香港判決的經核證文本時，亦須發出一份**證明書以證明**該判決：
 - is given in a **civil or commercial matter** 是**民商事判決**; and 及
 - is **effective** in Hong Kong 在香港**生效**

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18 Lower Albert Road, Central



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- **Implementation in HK: REJ Bill + Rules**

香港方面落實：《條例草案》 + 《規則》

- Rules to be made by *Chief Judge of the High Court*

《規則》將由*高等法院首席法官*訂立

- for the **operation** of the relevant mechanisms 就相關機制的運作訂立

- **Implementation in Mainland: judicial interpretation** by the *Supreme*

People's Court 內地方面落實：*最高人民法院*頒布**司法解釋**



Way Forward 未來路向

- **Promotion** and **capacity building** initiatives

推廣及能力建設舉措

- **Close liaison** with stakeholders on implementation

與各持份者就落實情況保持緊密溝通

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JUSTICE PLACE – EAST WING
中環下亞厘畢道18號
18 Lower Albert Road, Central



Thank You

 律政司
DEPARTMENT OF JUSTICE

律政中心 — 東座
JUSTICE PLACE — EAST WING

中環下亞厘畢道18號
18 Lower Albert Road, Central