

# 《外地判決 ( 限制承認及強制執行 ) 條例》

## ( 第 46 章 )

# Foreign Judgments (Restriction on Recognition and Enforcement) Ordinance

## (Cap. 46)

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## 經核證文本 Verified Copy

(《法例發布條例》( 第 614 章 ) 第 5 條 )  
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### 尚未實施的條文 / 修訂 ——

尚未實施的條文及修訂的資料，可於「電子版香港法例」(<http://www.elegislation.gov.hk>) 閱覽。

### Provisions / Amendments not yet in operation —

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### 制定史

本為 1985 年第 37 號 —— 1985 年編正版，1990 年第 38 號，1995 年第 (C)11 號法律公告 ( 中文真確本 )，1995 年第 45 號，2009 年第 14 號，2019 年第 1 號編輯修訂紀錄

### Enactment History

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### （第 46 章）

### （Cap. 46）

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本條例旨在修訂與外地判決的承認及強制執行有關的法律；禁制在香港提起法律程序以代替強制執行外地判決；並為附帶事宜訂定條文。

To amend the law relating to the recognition and enforcement of foreign judgments; to bar the bringing of proceedings in Hong Kong as an alternative to the enforcement of a foreign judgment; and to provide for matters incidental thereto.

[1985 年 6 月 28 日]

(格式變更——2019 年第 1 號編輯修訂紀錄)

[28 June 1985]

(Format changes—E.R. 1 of 2019)

### 1. 簡稱

本條例可引稱為《外地判決(限制承認及強制執行)條例》。

### 1. Short title

This Ordinance may be cited as the Foreign Judgments (Restriction on Recognition and Enforcement) Ordinance.

### 2. 釋義

在本條例中，除文意另有所指外——

**判決** (judgment) 指法院在任何民事法律程序中，作出或發出不論任何稱謂的判決或命令；

**法院** (court) 與海外國家有關時，包括有權作出、確認、強制執行、更改或撤銷《贍養令(交互強制執行)條例》(第 188 章) 第 2 條界定的贍養令的任何審裁處或人士；

**海外國家** (overseas country) 指香港以外的任何地方。

### 2. Interpretation

In this Ordinance, unless the context otherwise requires—

**court** (法院), in relation to an overseas country, includes any tribunal or person having power to make, confirm, enforce, vary or revoke a maintenance order as defined in section 2 of the Maintenance Orders (Reciprocal Enforcement) Ordinance (Cap. 188);

**judgment** (判決) means any judgment or order (by whatever name called) given or made by a court in any civil proceedings;

**overseas country** (海外國家) means any place outside Hong Kong.

### 3. 違反爭議和解協議的外地判決

(1) 除本條另有規定外，如有以下情況，則任何海外國家法院在任何法律程序中所作出的判決，不得在香港獲承認或強制執行——

(a) 在該法院提起該等法律程序是違反一項協議的，而根據該項協議，有關爭議應循在該國法院進行法律程序以外的其他途徑解決；及

(b) 判決中被判敗訴的人——

### 3. Overseas judgments given in breach of agreement for settlement of disputes

(1) Subject to this section, a judgment given by a court of an overseas country in any proceedings shall not be recognized or enforced in Hong Kong if—

(a) the bringing of those proceedings in that court was contrary to an agreement under which the dispute in

- (i) 沒有在該法院提起或沒有同意在該法院提起該等法律程序；及
  - (ii) 沒有在該等法律程序中提出反申索，或沒有以其他方式接受該法院的司法管轄權管轄。
- (2) 凡第(1)(a)款所提述的協議屬非法、無效或不能強制執行，或因某些原因而不能予以履行，而該等原因不能歸咎於提起法律程序引致有關判決的一方，則第(1)款並不適用。
- (3) 在裁定一項海外國家法院作出的判決應否在香港獲承認或強制執行時，香港的法院無須受該海外國家法院就任何有關第(1)或(2)款所述事情而作出的決定約束。
- (4) 凡《外地判決(交互強制執行)條例》(第319章)憑藉以下條文而適用於某項判決，第(1)款並不影響該項判決在香港獲承認或強制執行——
- (a) 《核材料(關於運載的法律責任)條例》(第479章)第10(4)條；(由1995年第45號第16條修訂；由2009年第14號第38條修訂)
  - (b) 《商船(油類污染的法律責任及補償)條例》(第414章)第18(2)或27(3)條；或(由1990年第38號第32(2)條代替。由2009年第14號第38條修訂)
  - (c) 《燃油污染(法律責任及補償)條例》(第605章)第21條。(由2009年第14號第38條增補)

[比照 1982 c. 27 s. 32 U.K.]

- question was to be settled otherwise than by proceedings in the courts of that country; and
- (b) the person against whom the judgment was given—
- (i) did not bring or agree to the bringing of those proceedings in that court; and
  - (ii) did not counter-claim in the proceedings or otherwise submit to the jurisdiction of the court.
- (2) Subsection (1) does not apply where the agreement referred to in paragraph (a) of that subsection was illegal, void or unenforceable or was incapable of being performed for reasons not attributable to the fault of the party bringing the proceedings in which the judgment was given.
- (3) In determining whether a judgment given by a court of an overseas country should be recognized or enforced in Hong Kong, the court in Hong Kong shall not be bound by any decision of the court of the overseas country relating to any of the matters mentioned in subsection (1) or (2).
- (4) Nothing in subsection (1) shall affect the recognition or enforcement in Hong Kong of a judgment to which the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319) applies—
- (a) by virtue of section 10(4) of the Nuclear Material (Liability for Carriage) Ordinance (Cap. 479); (*Amended 45 of 1995 s. 16; 14 of 2009 s. 38*)
  - (b) by virtue of section 18(2) or 27(3) of the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap. 414); or (*Replaced 38 of 1990 s. 32(2). Amended 14 of 2009 s. 38*)
  - (c) by virtue of section 21 of the Bunker Oil Pollution (Liability and Compensation) Ordinance (Cap. 605). (*Added 14 of 2009 s. 38*)

**4. 採取某些步驟不等於接受海外國家法院的司法管轄權管轄**

為裁定一項海外國家法院作出的判決應否在香港獲承認或強制執行，判決中被判敗訴的人不得只因曾在有關法律程序中為任何以下目的出庭(附有條件或無條件)而被視為已接受該法院的司法管轄權管轄——

- (a) 就該法院的司法管轄權而爭辯；
- (b) 請求該法院撤銷或擱置有關的法律程序，所據理由是有關爭議應提交仲裁解決或交由另一國家的法院裁定；
- (c) 保護或爭取發還在有關法律程序中遭檢取或遭威脅會被檢取的財產。

[比照 1982 c. 27 s. 33 U.K.]

**5. 因某些外地判決而禁制以同一訴因提起法律程序**

- (1) 任何人如在海外國家法院進行的法律程序中就某一訴因獲得勝訴判決，該人不得在香港再就同一訴因而對相同的訴訟另一方或其利害關係人提起法律程序，但如該項判決在香港不能強制執行或無資格獲承認則除外。
- (2) 本條不適用於在本條例生效日期\*前作出的判決。

[比照 1982 c. 27 s. 34 U.K.]

編輯附註：

\* 生效日期：1985 年 6 月 28 日。

[cf. 1982 c. 27 s. 32 U.K.]

**4. Certain steps not to amount to submission to jurisdiction of overseas court**

For the purposes of determining whether a judgment given by a court of an overseas country should be recognized or enforced in Hong Kong, the person against whom the judgment was given shall not be treated as having submitted to the jurisdiction of the court by reason only of the fact that he appeared (conditionally or otherwise) in the proceedings for any of the following purposes—

- (a) to contest the jurisdiction of the court;
- (b) to ask the court to dismiss or stay the proceedings on the ground that the dispute in question should be submitted to arbitration or to the determination of the courts of another country;
- (c) to protect, or obtain the release of, property seized or threatened with seizure in the proceedings.

[cf. 1982 c. 27 s. 33 U.K.]

**5. Certain foreign judgments a bar to proceedings on the same cause of action**

- (1) No proceedings may be brought by a person in Hong Kong on a cause of action in respect of which a judgment has been given in his favour in proceedings between the same parties, or their privies, in a court of an overseas country, unless that judgment is not enforceable or entitled to recognition in Hong Kong.
- (2) This section shall not apply to judgments given before the commencement\* of this Ordinance.

[cf. 1982 c. 27 s. 34 U.K.]

Editorial Note:

6. 相應及過渡性條文

- (1) 附表所指明的條例（*經修訂的條例*）現按附表所示的範圍修訂。
- (2) 本條例不適用於以下的判決——
  - (a) 在本條例生效日期\*前已根據任何經修訂的條例而登記的判決；或
  - (b) 在本條例生效日期\*前，為強制執行有關判決而進行的普通法法律程序已有最後裁定的判決，  
而經修訂的條例仍繼續對 (a) 段所提述的任何判決有效，  
猶如本條例未曾制定一樣。

編輯附註：

\* 生效日期：1985 年 6 月 28 日。

\* Commencement date: 28 June 1985.

6. Consequential and transitional

- (1) The Ordinances specified in the Schedule (*the amended Ordinances*) are amended to the extent indicated therein.
- (2) This Ordinance shall not apply to a judgment—
  - (a) registered under any of the amended Ordinances before the commencement\* of this Ordinance; or
  - (b) in respect of which proceedings at common law for its enforcement were finally determined before such commencement\*,  
and the amended Ordinances shall continue to have effect in relation to any judgment referred to in paragraph (a) as if this Ordinance had not been enacted.

Editorial Note:

\* Commencement date: 28 June 1985.

**附表**

*(已失時效而略去——2019 年第 1 號編輯修訂紀錄)*

**Schedule**

*(Omitted as spent—E.R. 1 of 2019)*