



Protection of Trading Interests Ordinance

(Cap. 471)

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An Ordinance to provide protection from requirements, prohibitions and judgments imposed or given under the laws of places outside Hong Kong and affecting the trading or other interests of persons in Hong Kong.

(Amended 66 of 2000 s. 3)

[5 May 1995]

(Format changes—E.R. 6 of 2019)

(Enacting provision omitted—E.R. 6 of 2019)

1. Short title

This Ordinance may be cited as the Protection of Trading Interests Ordinance.

2. Interpretation

(1)-(2) *(Repealed 66 of 2000 s. 3)*

(3) References in this Ordinance to a claim for, or to entitlement to, contribution are references to a claim or entitlement based on an enactment or rule of law.

[cf. 1980 c. 11 s. 8 U.K.]

3. Overseas measures affecting Hong Kong trading interests

(1) If it appears to the Chief Executive—

- (a) that measures have been or are proposed to be taken by or under the law of any place outside Hong Kong for regulating or controlling international trade; and
- (b) that those measures, in so far as they apply or would apply to things done or to be done outside the territorial

jurisdiction of that place by persons carrying on business in Hong Kong, are damaging or threatening to damage the trading interests of Hong Kong, (*Amended E.R. 6 of 2019*)

the Chief Executive may by order direct that this section shall apply to those measures either generally or in their application to such cases as may be specified in the order.

- (2) The Chief Executive may by order make provision for requiring, or enabling the Chief Executive to require, a person in Hong Kong who carries on business in Hong Kong to give notice to the Chief Executive of any requirement or prohibition imposed or threatened to be imposed on that person pursuant to any measures in so far as this section applies to such measures by virtue of an order under subsection (1).
- (3) The Chief Executive may give to any person in Hong Kong who carries on business in Hong Kong such directions for prohibiting compliance with any such requirement or prohibition as is mentioned in subsection (2) as he considers appropriate for avoiding damage to the trading interests of Hong Kong.
- (4) Directions given under subsection (3) may be either general or special and may prohibit compliance with any requirement or prohibition either absolutely or in such cases or subject to such conditions as to consent or otherwise as may be specified in the directions.
- (5) General directions given under subsection (3) shall be published in such manner as appears to the Chief Executive to be appropriate.
- (6) In this section, **trade** (貿易) includes any activity carried on in the course of a business of any description and **trading**

interests (貿易權益) shall be construed accordingly. (*Amended E.R. 6 of 2019*)

(*Amended 66 of 2000 s. 3*)

[*cf. 1980 c. 11 s. 1 U.K.*]

4. Documents and information required by overseas courts and authorities

(1) If it appears to the Chief Executive—

- (a) that a requirement has been or may be imposed on a person in Hong Kong to produce to any court, tribunal or authority of a place outside Hong Kong any commercial document which is not within the territorial jurisdiction of that place or to furnish any commercial information to any such court, tribunal or authority; or
- (b) that any such authority has imposed or may impose a requirement on a person in Hong Kong to publish any such document or information,

the Chief Executive may, if it appears to him that the requirement is inadmissible by virtue of subsection (2) or (3), give directions for prohibiting compliance with the requirement.

(2) A requirement such as is mentioned in subsection (1)(a) is inadmissible—

- (a) if it infringes the jurisdiction of Hong Kong or territorial jurisdiction in Hong Kong;
- (b) if it is made otherwise than for the purposes of civil or criminal proceedings which have been instituted in the place concerned; or
- (c) if it requires a person to state what documents relevant to any such proceedings are or have been in his possession, custody or power or to produce for the

purposes of any such proceedings any documents other than particular documents specified in the requirement.

- (3) A requirement such as is mentioned in subsection (1)(b) is inadmissible if it infringes the jurisdiction of Hong Kong or territorial jurisdiction in Hong Kong.
- (4) Directions given under subsection (1) may be either general or special and may prohibit compliance with any requirement such as is mentioned in that subsection either absolutely or in such cases or subject to such conditions as to consent or otherwise as may be specified in the directions.
- (5) General directions given under subsection (1) shall be published in such manner as appears to the Chief Executive to be appropriate.
- (6) For the purposes of this section—
 - (a) the making of a request or demand shall be treated as the imposition of a requirement if it is made in circumstances in which a requirement to the same effect could be or could have been imposed;
 - (b)
 - (i) any request or demand for the supply of a document or information which, pursuant to the requirement of any court, tribunal or authority of a place outside Hong Kong, is addressed to a person in Hong Kong; and
 - (ii) any requirement imposed by such a court, tribunal or authority to produce or furnish any document or information to a person specified in the requirement,shall be treated as a requirement to produce or furnish that document or information to that court, tribunal or authority.

- (7) In this section, **commercial document** (商業文件) and **commercial information** (商業資料) mean respectively a document or information relating to a business of any description and **document** (文件) includes any record or device by means of which material is recorded or stored.
(Amended E.R. 6 of 2019)

(Amended 66 of 2000 s. 3)

[cf. 1980 c. 11 s. 2 U.K.]

5. Offences and penalties

- (1) Subject to subsection (2), a person who without reasonable excuse fails to comply with any requirement imposed under section 3(2) or who knowingly contravenes any directions given under section 3(3) or 4(1) commits an offence and is liable—
- (a) on conviction on indictment to a fine;
 - (b) on summary conviction, to a fine at level 5. (Amended E.R. 6 of 2019)
- (2) A person who is neither a permanent resident of the Hong Kong Special Administrative Region nor a body corporate incorporated in Hong Kong shall not be guilty of an offence under subsection (1) by reason of any act or omission outside Hong Kong. (Amended 28 of 1998 s. 2)
- (3) No proceedings for an offence under subsection (1) shall be instituted except with the consent of the Secretary for Justice.
(Amended L.N. 362 of 1997)

[cf. 1980 c. 11 s. 3 U.K.]

6. Exclusion of part of the Evidence Ordinance (Cap. 8), etc.

- (1) A court in Hong Kong shall not make an order under Part VIII of the Evidence Ordinance (Cap. 8) for giving effect to

a request issued by or on behalf of a court or tribunal of a place outside Hong Kong if it appears to the court that the request infringes the jurisdiction of Hong Kong or territorial jurisdiction in Hong Kong.

- (1A) A magistrate shall not for the purposes of section 10 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) give effect to a request referred to in that section if it appears to the magistrate that the request infringes the jurisdiction of Hong Kong or territorial jurisdiction in Hong Kong. (*Added 87 of 1997 s. 36*)
- (2) A certificate signed by or on behalf of the Chief Executive to the effect that a request such as is mentioned in subsection (1) or (1A) infringes the jurisdiction of Hong Kong or territorial jurisdiction in Hong Kong shall be conclusive evidence of that fact. (*Amended 87 of 1997 s. 36*)

(*Amended 66 of 2000 s. 3*)

7. Restriction on enforcement of certain overseas judgments

- (1) A judgment to which this section applies shall not be registered under the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319) and no court in Hong Kong shall entertain proceedings at common law for the recovery of any sum payable under such a judgment.
- (2) This section applies to any judgment given by a court of a place outside Hong Kong, being a judgment— (*Amended 66 of 2000 s. 3*)
- (a) for multiple damages within the meaning of subsection (3);
 - (b) based on a provision or rule of law specified or described in an order under subsection (4) and given after the coming into force of the order; or

- (c) on a claim for contribution in respect of damages awarded by a judgment falling within paragraph (a) or (b).
- (3) In subsection (2)(a), *a judgment for multiple damages* (倍計損害賠償的判決) means a judgment for an amount arrived at by doubling, trebling or otherwise multiplying a sum assessed as compensation for the loss or damage sustained by the party in whose favour the judgment is given. (*Amended E.R. 6 of 2019*)
- (4) The Chief Executive may for the purposes of subsection (2)(b) make an order in respect of any provision or rule of law which appears to him to be concerned with the prohibition or regulation of agreements, arrangements or practices designed to restrain, distort or restrict competition in the carrying on of business of any description or to be otherwise concerned with the promotion of such competition as aforesaid. (*Amended 66 of 2000 s. 3*)
- (5) Subject to subsection (6), subsection (2)(a) applies to a judgment given before the date of commencement* of this Ordinance as well as to a judgment given on or after that date.
- (6) This section does not affect any judgment which has been registered before the date of commencement* of this Ordinance under the provisions mentioned in subsection (1) or in respect of which such proceedings as are there mentioned have been finally determined before that date.

[*cf. 1980 c. 11 s. 5 U.K.*]

Editorial Note:

* Commencement date: 5 May 1995.

8. Recovery of awards of multiple damages

- (1) This section applies where a court of a place outside Hong Kong has given a judgment for multiple damages within the meaning of section 7(3) against— (*Amended 66 of 2000 s. 3*)
- (a) a permanent resident of the Hong Kong Special Administrative Region; (*Amended 28 of 1998 s. 2*)
 - (b) a body corporate incorporated in Hong Kong; or
 - (c) a person carrying on business in Hong Kong,
- (in this section referred to as a **qualifying defendant** (具資格被告人)) and an amount on account of the damages has been paid by the qualifying defendant either to the party in whose favour the judgment was given or to another party who is entitled as against the qualifying defendant to contribution in respect of the damages.
- (2) Subject to subsections (3) and (4), a qualifying defendant shall be entitled to recover from the party in whose favour the judgment was given so much of the amount referred to in subsection (1) as exceeds the part attributable to compensation; and that part shall be taken to be such part of the amount as bears to the whole of it the same proportion as the sum assessed by the court that gave the judgment as compensation for the loss or damage sustained by that party bears to the whole of the damages awarded to that party.
- (3) Subsection (2) does not apply where the qualifying defendant is—
- (a) an individual who was ordinarily resident in the place concerned at the time when the proceedings in which the judgment was given were instituted; or (*Amended 66 of 2000 s. 3*)
 - (b) a body corporate which had its principal place of business there at that time.

- (4) Subsection (2) does not apply where the qualifying defendant carried on business in the place concerned and the proceedings in which the judgment was given were concerned with activities exclusively carried on in that place. (*Amended 66 of 2000 s. 3*)
- (5) A court in Hong Kong may entertain proceedings on a claim under this section notwithstanding that the person against whom the proceedings are brought is not within the jurisdiction of the court.
- (6) (a) The reference in subsection (1) to an amount paid by the qualifying defendant includes a reference to an amount obtained by execution against his property or against the property of a company which (directly or indirectly) is wholly owned by him.
- (b) References in subsections (1) and (2) to the party in whose favour the judgment was given or to a party entitled to contribution include references to any person in whom the rights of any such party have become vested by succession or assignment or otherwise.
- (7) This section shall, with the necessary modifications, apply in relation to any order which—
- (a) is made by a tribunal or authority of a place outside Hong Kong; and (*Amended 66 of 2000 s. 3*)
- (b) would, if that tribunal or authority were a court, be a judgment for multiple damages within the meaning of section 7(3).
- (8) This section does not apply to any judgment given or order made before the commencement* of this Ordinance.

[*cf. 1980 c. 11 s. 6 U.K.*]

Editorial Note:

* Commencement date: 5 May 1995.

9. Enforcement of overseas judgment under provision corresponding to section 8

- (1) If it appears to the Chief Executive that the law of a place outside Hong Kong provides or will provide for the enforcement in that place of judgments given under section 8, the Chief Executive may by order provide for the enforcement in Hong Kong of judgments of any description specified in the order which are given under any provision of the law of that place relating to the recovery of the sums paid or obtained pursuant to a judgment for multiple damages within the meaning of section 7(3), whether or not that provision corresponds to section 8. (*Amended 66 of 2000 s. 3*)
- (2) An order under subsection (1) may, as respects judgments to which it relates—
 - (a) make different provisions for different descriptions of judgment; and
 - (b) impose conditions or restrictions on the enforcement of judgments of any description.
- (3) An order under this section may apply, with or without modification, any of the provisions of the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319).

[cf. 1980 c. 11 s. 7 U.K.]

10. Repeal

- (1) The Protection of Trading Interests Act 1980 (Hong Kong) Order 1990 (L.N. 406 of 1990) is repealed.
- (2) Sections 23 to 25 of the Interpretation and General Clauses Ordinance (Cap. 1) apply in relation to the repeal of the Order referred to in subsection (1) as they apply in relation to the repeal of an Ordinance.

- (3) Notwithstanding the repeal of the Order referred to in subsection (1), any order made or direction given by the Governor under the Schedule to that Order shall continue in full force and effect as if made under this Ordinance.