

**For information
On 22 November 2004**

LegCo Panel on Administration of Justice and Legal Services

**Reciprocal Enforcement of Judgments in Commercial Matters
between the HKSAR and the Mainland**

PURPOSE

This paper informs Members of the progress of the Administration's discussion with the Mainland authorities on the proposed arrangement for reciprocal enforcement of judgments (REJ) in commercial matters between the HKSAR and the Mainland.

BACKGROUND

2. As part of the Administration's initiative to promote the HKSAR as a center for the resolution of commercial disputes, and to develop the HKSAR's legal services, we propose to establish between the HKSAR and the Mainland a mechanism for REJ (the Arrangement). We consulted the legal profession, chambers of commerce and trade associations on a proposed framework of the Arrangement in March and April 2002. The majority of the responses received supported the Arrangement. We briefed this Panel on 27 May 2002 on the proposed scope and safeguards of the Arrangement (LC Paper Nos. CB(2) 1431/01-02(01), as well as the views received during the consultation period (LC Paper Nos. CB(2) 2020/01-02(01)). We have since then commenced exploratory discussion with the Mainland authorities on the proposed Arrangement.

THE ARRANGEMENT

3. Following the agreed step-by-step approach, the proposed Arrangement covers only money judgments given by a court of either the

Mainland (at the Intermediate People's Court level or higher) or the HKSAR (at the District Court level or higher) exercising its jurisdiction pursuant to a valid choice of forum clause contained in a commercial contract. The main elements of the proposed Arrangement are recapitulated in **Annex**.

PROGRESS OF DISCUSSION

4. Since mid 2002, we have conducted three rounds of informal meetings with the Mainland authorities to exchange views on the scope of the proposed Arrangement, the issue of finality and technicalities involved in the recognition and enforcement of judgments in both jurisdictions. These meetings have served to enhance our mutual understanding of each other's legal and judicial systems, and the rationale underlying the proposed Arrangement.

WAY FORWARD

5. Discussion is still continuing, and we hope to conduct the fourth round of informal meeting in the first quarter in 2005. Nevertheless, it is premature at this stage to conclude when we may reach a mutually satisfactory and acceptable Arrangement. Both the HKSAR and the Mainland authorities recognize that the Arrangement would need to be underpinned by local legislation in the HKSAR before it may take effect in Hong Kong. We would report to this Panel when there is major development.

Administration Wing
Chief Secretary for Administration's Office

Department of Justice

November 2004

Reciprocal Enforcement of Judgments in Commercial Matters between the HKSAR and the Mainland

The proposed Arrangement covers only *money judgments* given by a court of either the Mainland (at the Intermediate People's Court level or higher) or the HKSAR (at the District Court level or higher) exercising its jurisdiction pursuant to a *valid choice of forum clause* contained in a *commercial contract*.

The main elements are discussed below –

(I) Money Judgments

- Orders for specific performance or injunction, for instance, will not be covered.

(II) Commercial Contracts

- Refers to a contract in which the parties are acting for the purposes of their respective trades or professions, excluding contracts relating to matrimonial matters, wills and succession, bankruptcy and winding up, employment and consumer matters, etc.

(III) Choice of Court

- Only applies to judgments of the HKSAR or Mainland courts where the parties to a commercial contract have agreed that the court of either place or the courts of both places will have jurisdiction.
- The relevant choice of forum clause should be a valid one.
- For the purposes of the HKSAR courts, the Arrangement should cover judgments given by the District Court or higher (amounting to \$50,000 or above generally).

- For the purposes of the Mainland courts, the Arrangement should cover judgments given by the Intermediate People's Courts or higher.

(IV) Finality

- Only permit the enforcement of a judgment that is final and conclusive.

(V) Safeguards

- In line with the common law, local legislation as well as international treaty practice, registration of a judgment under the Arrangement may be refused or set aside, if : –
 - (a) the judgment is wholly satisfied;
 - (b) the judgment was obtained by fraud;
 - (c) the judgment was obtained in breach of natural justice;
 - (d) enforcement of the judgment would be contrary to public policy (order public) in the place of the registering court;
 - (e) the judgment is inconsistent with a prior judgment of the registering court;
 - (f) the judgment was obtained in proceedings at which the defendant was not given sufficient notice; and
 - (g) in the view of the registering court the judgment debtor either is entitled to immunity from the jurisdiction of that court or was entitled to immunity in the court of origin and did not submit to its jurisdiction.
