

**For information
On 24 October 2005**

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 centre for the resolution of commercial disputes, and to develop the HKSAR's legal services, we proposed to establish between the HKSAR and the Mainland a mechanism for REJ (the Arrangement). Following the agreed step-by-step approach, we proposed that the Arrangement should cover only money judgments given by a designated court of either the Mainland or the HKSAR exercising its jurisdiction pursuant to a valid choice of court clause contained in a commercial contract.

3. We briefed this Panel on 27 May 2002 on the proposed scope and safeguards of the Arrangement. Since then, we have conducted a series of meetings with the Mainland authorities to exchange views on the scope of the proposed Arrangement, the issue of finality and the technicalities involved in the recognition and enforcement of judgments in both jurisdictions. We last briefed the Panel on 22 November 2004 on the progress of the Administration's discussion with the Mainland authorities. We undertook to keep the Panel informed of any major development or discussion that might involve deviation from the principles and direction of our original proposal.

LATEST DEVELOPMENT

4. Pursuant to the meeting with the Mainland authorities at the end of September 2005, we see that we have come to terms on the bulk of the items for discussion and would like to update Members of developments on the following major issues.

(a) Level of court

5. The Administration initially proposed that the Arrangement should cover judgments given by courts at the Intermediate People's Court level or higher in the Mainland, and at the District Court level or higher in Hong Kong. The rationale was that, according to our understanding then, it would normally be this level of Mainland People's Courts that would have jurisdiction to determine foreign-related civil and commercial disputes.

6. During the course of discussions, it came to light that some of the designated Basic Level People's Courts also have jurisdiction over foreign-related civil and commercial cases. Indeed, these designated Basic Level People's Courts may have jurisdiction over a single claim of up to or even exceeding RMB 1 million, generally on a par with the District Court of the HKSAR which has jurisdiction over a single claim of not exceeding HK\$ 1 million. In the Mainland, there is stringent control over the designation of Basic Level People's Courts. As a result, only about one percent out of the about 3,100 Basic Level People's Courts is so designated. People's Courts of the basic level to be included in the Arrangement will be made up of these designated courts only. As we understand it, in those provinces, autonomous regions and municipalities directly under the Central Government, a good proportion of foreign-related cases were dealt with by the Basic Level People's Courts, which could well be over 50% of the total number of foreign-related civil and commercial cases in the relevant region.

7. In addition to the Intermediate People's Courts or above, therefore, the Mainland authorities propose that the Arrangement should also cover the small number of Basic Level People's Courts that are designated to handle foreign-related civil and commercial cases. We consider this proposal reasonable and conducive to the effective implementation of the Arrangement.

(b) Limiting the trial scheme to certain cities

8. There is a suggestion of identifying only the better developed cities in the Mainland that have proven trade or economic activities with the HKSAR as “trial points” for initial implementation of the Arrangement. The Arrangement may be extended to other cities only upon the successful implementation of such a trial scheme in due course.

9. We have raised this suggestion for the consideration of the Mainland authorities. The Mainland authorities explained that insofar as their legal system is concerned, the Arrangement would be implemented through the promulgation of regulations or judicial explanation which must be applied across all provinces in the Mainland. It would not be feasible or practical to exclude certain parts of the Mainland from the uniform application of the regulations or judicial explanation. Moreover, there is little established or objective basis for one to discriminate one city against another. We consider their explanation acceptable.

(c) Finality

10. The HKSAR and the Mainland have different ways to determine if a judgment is considered enforceable. At common law, for a judgment to be enforceable, it must be a final and conclusive judgment. What it means is that the case cannot be reheard by the original trial court. In accordance with the trial supervision procedures in the Mainland, however, it is possible for a case to be retried by the same court that made the original judgment, although the original judgment will remain legally enforceable. Doubts have been expressed by some members of the local legal profession as to whether a Mainland judgment which is subject to a possible retrial by the original trial court can be considered as final and conclusive under the common law rules applied by the HKSAR courts.

11. However, the Mainland authorities stress that the procedures for conducting a retrial of a case are only invoked sparingly with restrictive conditions set out in the Mainland law, amidst continued improvement in the quality of the Mainland judicial system especially in recent years. In order to address our concerns, the Mainland authorities have agreed special procedures would be put in place to ensure that after an application has been made to the Hong Kong court to enforce a Mainland judgment under the Arrangement, the case, if subject to trial supervision procedures, will be brought up for re-trial by a People’s Court at the next higher level in the Mainland and will not be retried by the

court making the original judgment. In this regard, the special procedures are generally in line with the requirements laid down by our court for enforcing Mainland judgments in Hong Kong.

WAY FORWARD

12. We would strive to reach agreement on the Arrangement with the Mainland authorities as soon as possible. Any Arrangement between the HKSAR and the Mainland authorities would need to be underpinned by local legislation in the HKSAR before it may take effect in Hong Kong. In accordance with existing arrangements, we will consult the LegCo again in the context of the detailed legislative proposals.

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