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BY HAND

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Mr. Stephen Wong
Deputy Solicitor General
Legal Policy (General) Section
Department of Justice
4th floor, High Block
Queensway Government Offices
HONG KONG

Dear Stephen

REJ

I am quite concerned about what transpired at today's AJLS Panel meeting on the above captioned item. The two most crucial issues are:

- (1) Parties affected: Whereas our previous understanding is that, after the REJ agreement is in place, parties in a commercial contract must make it a term of the contract that they agree that judgments obtained in Hong Kong will be enforceable in the Mainland and vice versa, before the REJ arrangement is applicable to them. In other words, the parties have to **opt in** expressly for the arrangement to be enforceable against either party.

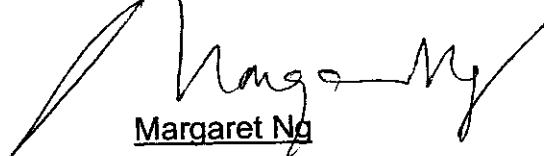
However, you now say the arrangement is enforceable against any party who, after the REJ agreement is in place, enters into a commercial contract which contains a valid choice of court clause specifying either Hong Kong or the Mainland as the choice of court. This is unacceptable because a clause merely specifying, say, "Hong Kong" as the choice of court does not have the implication that a judgment obtained there is enforceable in the Mainland, or vice versa. The REJ arrangement therefore changes the meaning of the choice of court clause. It means parties can become affected by the REJ agreement inadvertently. It also forces parties not prepared to accept REJ to choose a third jurisdiction as the choice of court, or to leave out a choice of court clause.

- (2) Finality: You appeared to propose the "special procedure" as a legal solution to the legal question of finality. This is clearly inappropriate, and moreover the simplistic approach adopted is extremely risky.

"Enforceability" and "finality" are distinct concepts. To adopt "enforceability" instead of "finality" as the requisite condition is a **policy**, not legal decision. This policy is not a step to be lightly taken. If the Government is going down that route, I expect thorough consultation on the basis of sufficient discussion on the consequences.

I should be grateful for your response.

Yours sincerely



Margaret Ng

- c.c. Clerk, AJLS Panel (for circulation to members)
- c.c. Chairman, Hong Kong Bar Association
- c.c. Present, The Law Society of Hong Kong