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香港中環
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立法會大樓
立法會秘書處
法案委員會秘書
馬朱雪履女士

朱女士：

《內地判決(交互強制執行)條例草案》委員會

2007年10月9日來信收悉。

關於2007年10月8日在法案委員會會議上提出的事項，政府當局現正研究為使適用於香港的國際協議得以實施而採用的各種立法方式。政府亦已得悉助理法律顧問就條例草案第3(1)條、3(2)條、5(2)(a)(iv)(C)條、5(2)(a)(iv)(D)條及6(1)(d)條提出的意見，並着手覆檢上述條文擬稿。如有需要，我們會提出委員會階段修正案，妥為反映政府的用意。

我們稍後會闡述有關的研究結果及對上述事項的回應，以供議員考慮。

在得悉議員就擬議第71A號命令第3條規則提出的意見後，我們就擬議命令向個人資料私隱專員公署尋求進一步意見。隨函附上2007年10月12日我們致私隱專員的函件副本，以及2007年10月15日專員的覆函副本，以供議員參考。另外，政府亦已致函多個商會，特別是早前曾就條例草案向法案委員會或政府表達意見的商會，就此事向他們匯報並徵詢他們的進一步意見。我們在接獲商會的回應後，會向法案委員會再行匯報。

下列人員將出席 2007 年 10 月 24 日舉行的法案委員會會議：

潘英光先生 署理副法律政策專員
Mr Frank Poon, Deputy Solicitor General (Acting)

曾憲薇女士 高級助理法律政策專員
Miss Michelle Tsang, Senior Assistant Solicitor General

曾強先生 署理高級助理法律政策專員
Mr Paul Tsang, Senior Assistant Solicitor General (Acting)

蕭艾芬女士 高級政府律師
Ms Marie Siu, Senior Government Counsel

歐陽慧儒女士 政府律師
Ms Peggy Au Yeung, Government Counsel

江嘉敏女士 政務主任(行政)³
Miss Carmen Kong, Assistant Secretary (Administration)³

謹函奉達。

署理高級政府律師
歐陽慧儒

2007 年 10 月 17 日

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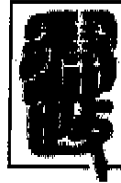
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(By Fax: 2877 7026)

12 October 2007

Mr. Wilson LEE
Legal Counsel
Office of the Privacy Commissioner
12/F, 248 Queen's Road East
Wanchai
Hong Kong

Dear Mr. LEE,

Mainland Judgments (Reciprocal Enforcement) Bill

Thank you for your letter of 20 August 2007.

The Administration has subsequently related the views of the Privacy Commissioner on the proposed Order 71A, rule 3(2)(a) in Schedule 2 of the Bill to the Bills Committee for Members' consideration. The matter was discussed at the Bills Committee Meeting of 8 October 2007. The views expressed by Members are recapped below –

- (1) Personal data of the judgment creditor should not be an issue of concern if he was a party to the legal proceedings in Hong Kong;
- (2) The judgment debtor should have the right to know and verify the identity of the judgment creditor;
- (3) The proposed Order was intended to implement Article 6(4) of the Arrangement which referred to the requirement for authenticated copy

of identity document of the judgment creditor; and

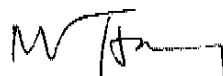
- (4) The evidential requirements to support applications for enforcement of Mainland and Hong Kong judgments under the Arrangement should be similar.

Noting Members' views, the Administration would like to seek the Commissioner's further comments on the matter and in particular, if there are any further objections to retaining the proposed Order 71A, rule 3(1)(a)(iv) and rule 3(2) in its current form.

For your reference, I enclose a copy of the Administration's response on various issues to the Bills Committee prior to the Meeting of 8 October 2007 (LC Paper no. CB(2)2767/06-07 (01)).

Kindly note that the next Meeting is scheduled for 24 October 2007, I would be most grateful for your early reply.

Yours sincerely,



(Miss Michelle Tsang)

Senior Assistant Solicitor General
(China Law)



香港個人資料私隱專員公署
Office of the Privacy Commissioner
for Personal Data, Hong Kong

Your Ref : L/M (2) to LP CLU 5037/7/3/C
Our Ref : PCPD(O)115/156 pt.13

15 October 2007

**By Fax : 2110 9788
& By Post**

Department of Justice
Legal Policy Division
1/F, High Block
Queensway Government Offices
66 Queensway
Hong Kong

(Attn : Miss Michelle Tsang,
Senior Assistant Solicitor General (China Law))

Dear Miss Tsang,

Re: Mainland Judgments (Reciprocal Enforcement) Bill

Thank you for your letter dated 12 October 2007.

I refer to the Members' views referred to in your letter and have the following comments.

Members' view (1)

Data privacy is specifically protected by the Personal Data (Privacy) Ordinance, Cap. 486. Under Data Protection Principle 1 in Schedule 1 to the Ordinance, personal data shall not be collected unless the collection of the personal data is necessary and not excessive.

Although it is necessary for a judgment creditor to disclose his name in the registration application, and it is inevitable that his name would be disclosed to

the judgment debtor and the persons who are authorized to handle the application documents, there is no basis to assume that the judgment creditor should also be prepared to disclose to such persons other information, e.g. identity card number and date of birth, contained in his Hong Kong identity card and other identification documents. Besides, as you confirmed to us in your letter dated 4 July 2007, the Court does not require such identification documents in processing the relevant applications.

In the circumstances, it appears that the requirement for judgment creditor to exhibit his Hong Kong identity card or his identification documents to his supporting affidavit ("**Such Requirement**") is not necessary and is excessive under Data Protection Principle 1.

Members' view (2)

Under the proposed Order 71A, r.2, an application for registration of a Mainland judgment is made *ex parte* unless the Court otherwise directs. It appears, therefore, that the judgment creditor's identification documents are intended to be inspected by the Court instead of by the judgment debtor. In any event, the judgment debtors' concern may not be well founded since the identity of the judgment creditor would be verified by the witnessing solicitors when the affidavit is made.

As the judgment debtor should be involved in the legal proceedings in which the Mainland judgment is obtained, it is highly unlikely that the identity of the judgment creditor would be unknown to the judgment debtor.

Even if the judgment debtor has valid grounds to challenge the judgment creditor's identity, he can still do so at the summons hearing, if any, or at the subsequent enforcement proceedings instituted by the judgment creditor.

I, therefore, consider it unlikely that the judgment debtor would be prejudiced by not being able to inspect the judgment creditor's identification documents.

Members' views (3) and (4)

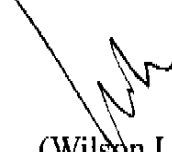
While I appreciate the Members' concern, it is also important to ensure that the proposed Order 71A is not inconsistent with the existing legislation.

As I have highlighted in my letter dated 23 March 2007, given that the

existing Order 71 and the proposed Order 71A are expected to be consistent as both Orders govern applications for registration of judgments not entered in Hong Kong, the fact that Such Requirement applies only to Order 71A appears to be inconsistent with Order 71 and may result in unnecessary litigation.

Based on the information available to us, I still consider that there is no sufficient justification for imposing Such Requirement in r.3(2)(a) and r.3(2)(b) of the proposed Order 71A.

Yours sincerely,



(Wilson LEE)
Legal Counsel

for Privacy Commissioner for Personal Data