

立法會
Legislative Council

Ref : CB2/BC/6/06

LC Paper No. CB(2)2539/07-08
(These minutes have been seen
by the Administration)

Bills Committee on Mainland Judgments (Reciprocal Enforcement) Bill

**Minutes of the meeting
held on Tuesday, 19 February 2008 at 8:30 am
in Conference Room B of the Legislative Council Building**

Members present : Hon Margaret NG (Chairman)
Hon Miriam LAU Kin-ye, GBS, JP (Deputy Chairman)
Hon Martin LEE Chu-ming, SC, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon LI Kwok-ying, MH, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Ronny TONG Ka-wah, SC

Member absent : Hon James TO Kun-sun

Public Officers attending : Item II

Mr Frank POON
Deputy Solicitor General (Acting)

Miss Michelle TSANG
Senior Assistant Solicitor General

Mr Paul TSANG
Senior Assistant Solicitor General (Acting)

Ms Mabel CHEUNG
Senior Government Counsel

Ms Peggy AU YEUNG
Senior Government Counsel (Acting)

Miss Carmen KONG
Assistant Secretary (Administration) 3

Clerk in attendance : Mrs Percy MA
Chief Council Secretary (2)3

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Mrs Eleanor CHOW
Senior Council Secretary (2)4

Action

I. Confirmation of minutes of meeting

(LC Paper No. CB(2)727/07-08 – Minutes of meeting on 22 November 2007)

The minutes of the meeting held on 22 November 2007 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(2)1065/07-08(01) – Administration's response to the issues raised at the meeting on 22 November 2007)

LC Paper No. CB(2)1065/07-08(02) – A check list of follow-up actions required of the Administration (position as at 14 February 2008)

LC Paper No. CB(3)379/06-07 – The Bill

LC Paper No. CB(2)1708/06-07(01) – Marked-up copy of the consequential amendments to the Rules of the High Court, Foreign Judgments (Restriction on Recognition and Enforcement) Ordinance, and the Rules of the District Court

LC Paper No. CB(2)2767/06-07(02) – A marked-up version of the Bill setting out the amendments proposed by the Administration

Annex B to LegCo Brief – "Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region Pursuant to Choice of Court Agreements between Parties Concerned" signed between the Mainland and the Hong Kong Special Administrative Region (HKSAR) on 14 July 2006 (the Arrangement)

Annex I to LC Paper No. CB(2)1641/06-07(01) – A table showing the clause in the Bill which correspond with the Articles of the Arrangement)

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).

Action

3. The Administration was requested to -
 - (a) review the drafting of clauses 12 and 14(2) to ensure that they reflected the legislative intent as members and the Administration held different interpretations as to whether interest accrued in the Mainland on a principal sum under a Mainland judgment up to the time of registration of that judgment in Hong Kong would carry Hong Kong judgment interest after such time;
 - (b) advise on the operation of section 4(2)(c) under the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319) based on previous cases handled;
 - (c) provide a copy of the Agreed Notes referred to in paragraph 13 of LC Paper No. CB(2)1065/07-08(01) to the Bills Committee before the resumption of the Second Reading debate on the Bill;
 - (d) provide a copy of the judicial interpretation on the procedures for implementing the Arrangement when available; and
 - (e) consider the suggestion of legal adviser that the list of recognized Basic People's Courts should take effect on the day following its publication in the Gazette.

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(2)1393/07-08 on 19 March 2008.)

4. The Bills Committee had completed scrutiny of the Bill. The Bills Committee agreed that the Chairman, on behalf of the Bills Committee, would move a Committee Stage amendment (CSA) to amend the Long Title of the Bill to include a reference to the Arrangement. The Chairman instructed the legal adviser to draft the CSA and circulate it for members' approval. If there was disagreement that could not be resolved, the Bills Committee would be reconvened to deal with it.

(Post-meeting note: The draft CSA was issued to members vide LC Paper No. CB(2)1213/07-08(01) on 27 February 2008.)

5. The Administration advised members that given that it was still exchanging views with the Mainland authorities on the Agreed Notes, the resumption of the Second Reading debate on the Bill would take place after 9 April 2008. It would advise the Bills Committee the exact date in due course.

(Post-meeting note: The Administration has given notice to resume the Second Reading debate on the Bill on 23 April 2008.)

Action

6. The meeting ended at 10:45 am.

Council Business Division 2
Legislative Council Secretariat
7 July 2008

**Proceedings of the 13th meeting of the
Bills Committee on Mainland Judgments (Reciprocal Enforcement) Bill
on Tuesday, 19 February 2008, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000043 - 000143	Chairman	Confirmation of minutes of meeting	
000144 - 000817	Chairman Clerk Admin	Follow-up actions required of the Administration (LC Paper No. CB(2)1065/07-08(02))	
000818 - 001058	Chairman Admin	Briefing on the Administration's response to issues raised at the Bills Committee meeting held on 22 November 2007 (LC Paper No. CB(2)1065/07-08(01))	
001059 - 003012	Admin Chairman ALA6 Mr Ronny TONG	<p><u>Clause 14 - Interest on judgment</u> (paragraphs 1-11 of LC Paper No. CB(2)1065/07-08(01))</p> <p>Concerns raised by members and ALA6 -</p> <p>(a) if a Mainland judgment had specified the interest rate for the debt which was required to be paid in stages, whether a Mainland judgment registered in Hong Kong would be subject to the interest rate specified in the Mainland judgment or the interest rate of Hong Kong; and</p> <p>(b) whether a judgment debtor had to pay interest on interest for a Mainland judgment registered in Hong Kong</p> <p>Response of the Administration -</p> <p>(a) Article 232 of the Civil Procedures Law of the People's Republic of China(CPL) provided that if a person subject to execution failed to fulfill his obligations with respect to pecuniary payment within the period specified in a judgment, he should pay double interest on the debt for the belated payment;</p> <p>(b) clause 12 provided that the judgment sum registered in Hong Kong should be the aggregate of the principal debt (e.g. \$10 million) and the interest due under Mainland law up to the time of registration (e.g. \$5 million). After registration of the Mainland judgment in Hong Kong, the judgment sum (i.e. \$15 million) would be subject to Hong Kong interest; and</p>	

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		<p>(c) section 49(1)(b) of the High Court Ordinance (Cap. 4) stated that in the absence of an order by the Court of First Instance under section 49(1)(a), judgments should carry simple interest at such rate as might be determined from time to time by the Chief Justice by order</p>	
003013 - 005858	<p>Ms Miriam LAU Admin Chairman ALA6 Ms Audrey EU Mr LI Kwok-ying</p>	<p>Concerns raised by members and ALA6 that -</p> <p>(a) it was uncertain whether interest should be charged on the principal debt (i.e. \$10 million) only or the whole of the judgment sum registered in Hong Kong (i.e. \$15 million) as clause 14(2)(b) provided that upon the registration of a Mainland judgment, the sum for which the judgment was registered should carry interest; and "as if the judgment had been a judgment originally given in the Court of First Instance and entered on the day of registration". The hanging paragraph of clause 14(2) caused confusion and carried the meaning that interest should only be charged on the principal debt (i.e. \$10 million). Mr LI Kwok-ying thought otherwise and agreed with the Administration's interpretation; and</p> <p>(b) the purpose of the Bill was to enable the enforcement of Mainland judgment in Hong Kong and not to change the content of the Mainland judgment. It was debatable whether a Mainland judgment registered in Hong Kong should carry the interest rate specified in the judgment or that ordered by the Hong Kong court</p> <p>Response of the Administration that -</p> <p>(a) the Hong Kong court was empowered to determine the interest rate for the judgment sum. While most of the judgments should carry simple interest at a rate determined by the court, the court could deviate from the practice after considering all factors relevant to the case;</p> <p>(b) clause 14(2)(b) largely followed the wording of section 4(2)(c) of the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319) in respect of application of interest on judgment sum registered in Hong Kong. The drafting and content of the clause were also similar to those adopted in the relevant</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>law of England. Using the example quoted, interest would be charged on the judgment sum of \$15 million upon registration in Hong Kong; and</p> <p>(c) clause 14(2) was sufficiently clear when read in conjunction with clause 12 which provided for interest, costs, etc., to be included in registration of Mainland judgments</p> <p>The Administration was requested to -</p> <p>(a) review the drafting of clauses 12 and 14(2) to ensure that they reflected the legislative intent as members and the Administration held different interpretations as to whether interest accrued in the Mainland on a principal sum under a Mainland judgment up to the time of registration of that judgment in Hong Kong would carry Hong Kong judgment interest after such time; and</p> <p>(b) advise on the operation of section 4(2)(c) under Cap. 319 based on previous cases handled</p>	<p>Admin to follow up</p>
005859 - 010355	Admin Chairman	<p><u>Amendments to the CPL</u> (paragraphs 12 and 13 of LC Paper No. CB(2)1065/07-08(01))</p> <p>Advice of the Administration that -</p> <p>(a) the CPL had been amended and the amendments would take effect on 1 April 2008. The amendments included, among other things, the time limit for an application for execution of a Mainland judgment and how the time limit would be calculated;</p> <p>(b) Article 8 of the Arrangement and clause 7 of the Bill would be amended in accordance with the amendments to CPL; and</p> <p>(c) the Administration had entered into discussions with the Mainland authorities regarding the need to introduce amendments to Article 8 of the Arrangement. The Agreed Notes on the amendments would be made available for members' reference before the resumption of the Second Reading debate on the Bill</p>	<p>Admin to follow up</p>

Time Marker	Speaker(s)	Subject(s)	Action required
010356 - 010400	Chairman	<p><u>Amendments to clauses 18(1)(f), (h) and (i) and clauses 21(1) and (2)</u> (paragraphs 14 and 15 of LC Paper No. CB(2)1065/07-08(01))</p>	
010401 - 011310	Admin Chairman	<p><u>Order 71A</u> (paragraphs 16 and 17 of LC Paper No. CB(2)1065/07-08(01))</p> <p>Advice of the Administration that -</p> <ul style="list-style-type: none"> (a) the proposed Order 71A, rule 3(2)(a) and (b) (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 who was a natural person; (b) the Administration had consulted various chambers of commerce and other organizations of the business sector on the Proposed Order. The responses of the organizations varied. Some organizations supported the retention of the rule while some found the proposed requirement not necessary; (c) the Judiciary considered that it would not require the provision of any identification documents by the judgment creditor as his application for registration of Mainland judgment needed to be supported by an affidavit; (d) there was no comparable requirement relating to the registration of foreign judgments pursuant to Cap. 319; and (e) the Administration would propose CSAs to delete the relevant rule <p>Views of the Chairman -</p> <ul style="list-style-type: none"> (a) it was inappropriate for the Privacy Commissioner to suggest that the requirement under the Proposed Order might entail a risk of exposing the personal data of the judgment creditor, given that a judgment debtor had the right to know the identity of the judgment creditor; (b) parties to legal proceedings had the right to know the identity of the opponent, regardless of the Judiciary's procedure to verify the identity of the judgment creditor; and 	

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		(c) she considered that the two paragraphs should not be deleted from the Bill. She would speak on the issue during the resumption of the Second Reading debate on the Bill	
011311 - 011834	Mr LI Kwok-ying ALA6	<p>Response of ALA6 to Mr LI Kwok-ying's queries -</p> <p>(a) an affidavit provided by the judgment creditor had to be sworn before qualified personnel who would take steps to satisfy themselves of the identity of the deponent;</p> <p>(b) it was appropriate to set out in the Bill the evidential requirements to support applications for registration of Mainland judgments so as to reflect the requirements of Article 6(4) of the Arrangement</p> <p>Members held no strong view on the CSAs proposed by the Administration</p>	
011835-013324	Admin Chairman Ms Miriam LAU	<p><u>Simplified procedures for Mainland judgment which is required to be performed in stages</u> (paragraphs 18 and 19 of LC Paper No. CB(2)1065/07-08(01))</p> <p>Response of the Administration to members' concerns on how the time limit for registration of Mainland judgment which were required to be performed in stages would be handled -</p> <p>(a) the Supreme People's Court had advised that the amount and dates for the various phases of payments would be specified in a Mainland judgment;</p> <p>(b) the time limit for an application for execution of judgment would be amended to two years. The date should be calculated from the last day the respective payments became due;</p> <p>(c) in accordance with clause 5(2)(d), an application for registration of a Mainland judgment could be made when the judgment was enforceable in the Mainland; and</p> <p>(d) the judicial interpretation on the procedures for implementing the Arrangement was being prepared and would be promulgated by the Supreme People's Court. A copy would be provided to the Bills Committee when available</p>	Admin to follow up

Time Marker	Speaker(s)	Subject(s)	Action required
013325-013827	Chairman Admin	Clause by clause examination of the Bill with reference to the marked-up copy of the latest CSAs proposed by the Administration (Annex to LC Paper No. CB(2)1065/07-08(01)) Clause 1 - clause 17	
013828 - 015039	Chairman Admin ALA6 Ms Miriam LAU Mr Ronny TONG	Clause 18 - clause 20	
015040 - 015326	Chairman Admin	Clause 21	
015327 - 015551	Chairman Admin	Clause 22	
015552 - 015705	Chairman Admin	Clause 23	
015706 - 015729	Chairman Admin	Clause 24	
015730 - 015923	Chairman Admin Ms Miriam LAU	Clause 25 Advice of the Administration that a full list of recognized Basic People's Courts (BPCs) would be published in the Gazette whenever the list was updated	
015924 - 020226	Chairman Admin ALA6	Proposed new clause 25A Response of the Administration to concerns raised - (a) the Administration and the Mainland authorities would cooperate to ensure that any time gap between the publication of the BPC list in the Gazette and the promulgation of courts becoming or ceasing to be recognized BPCs in the Mainland would be minimized; and (b) the Administration would consider the suggestion of ALA6 that the BPC list should take effect on the day following its publication in the Gazette to allow time for preparation of legal documents	Admin to follow up
020227 - 020902	Chairman Admin	Clause 26 Schedules 1 and 2	
020903 - 021023	Chairman	Summary of follow-up actions by the Administration	

Time Marker	Speaker(s)	Subject(s)	Action required
021024 - 021137	Admin Chairman	Date of resumption of Second Reading debate on the Bill	Admin to advise
021138 - 021259	Chairman	CSA to the Long Title of the Bill proposed by the Bills Committee	ALA6 to prepare draft CSA for members' approval

Council Business Division 2
Legislative Council Secretariat
7 July 2008