

立法會
Legislative Council

Ref : CB2/BC/6/06

LC Paper No. CB(2)1639/06-07
(These minutes have been seen
by the Administration)

Bills Committee on Mainland Judgments (Reciprocal Enforcement) Bill

Minutes of the second meeting
held on Thursday, 29 March 2007, 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 Audrey EU Yuet-mee, SC, JP
Hon LI Kwok-ying, MH, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP

Members Absent : Hon Martin LEE Chu-ming, SC, JP
Hon James TO Kun-sun
Hon Ronny TONG Ka-wah, SC

Public Officers attending : Item II
Mr Frank POON
Deputy Solicitor General (Acting)
Miss Michelle TSANG
Senior Assistant Solicitor General
Mr Paul TSANG
Senior Government Counsel
Ms Marie SIU
Senior Government Counsel
Miss Leonie LEE
Assistant Secretary (Administration) 2

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)1445/06-07 - Minutes of meeting on 21 March 2007)

The minutes of the meeting held on 21 March 2007 were confirmed.

II. Meeting with the Administration

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

LM(2) to LP5037/7/3C -The Legislative Council Brief on the Bill

LS46/06-07 - The Legal Service Division Report

LC Paper No. CB(2)1365/06-07(02) - Background Brief prepared by the Legislative Council Secretariat)

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).
3. The Administration was requested to -
 - (a) provide a table showing how the clauses in the Bill correspond with the relevant provisions of the "Arrangement on Reciprocal 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);
 - (b) provide a copy of the judicial interpretation on the procedures for implementing the Arrangement to be promulgated by the Supreme People's Court;
 - (c) provide relevant provisions of the Hague Convention on Choice of Court Agreements on which clauses 3 and 4 were modeled;

Action

- (d) provide a paper on the rules governing jurisdiction of the courts on the Mainland, including how a case could be transferred from one court to another court; and
- (e) review the drafting of clause 3(1) and 3(2) of the Bill in view of members' concern that the phrase "designating a court" could be construed to mean "a specified court".

III. Dates of future meetings

4. Apart from the meeting on 5 May 2007 to receive views from interested parties, the Panel agreed to schedule three more meetings as follows -

- (a) 24 April 2007 at 10:45 am;
- (b) 30 April 2007 at 4:30 pm; and
- (c) 14 May 2007 at 10:45 am.

5. The meeting ended at 10:37 am.

Council Business Division 2
Legislative Council Secretariat
23 April 2007

**Proceedings of the second meeting of the
Bills Committee on Mainland Judgments (Reciprocal Enforcement) Bill
on Thursday, 29 March 2007, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000000 - 000530	Chairman	Opening remarks	
000531 - 001521	Admin Chairman	<p>Briefing by the Administration on the Bill</p> <p>The Administration was requested to provide a table showing how the clauses in the Bill correspond with the relevant provisions of the "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)</p>	Admin to follow up
001522 - 004354	Chairman Admin Ms Miriam LAU ALA6	<p>Difference between the Arrangement and the initial proposal in 2002 in respect of provisions for the choice of court -</p> <p>(a) 2002 proposal - the proposed arrangement would apply to judgments of the HKSAR or Mainland courts where the parties to a commercial contract had agreed that a court of either place or the courts of both places would have jurisdiction; and</p> <p>(b) the Arrangement as reflected in the Bill - the Arrangement would only apply if the parties concerned expressly agreed in writing to designate a court of the Mainland or the HKSAR to have exclusive jurisdiction for resolving any dispute</p> <p>Reasons for adopting an exclusive choice of court agreement in the Arrangement -</p> <p>(a) it would minimize the risk of parallel proceedings being instituted in the courts of both places;</p> <p>(b) it was difficult if not impossible to agree on a common set of principles to resolve problems brought by parallel litigation, as each jurisdiction had its own laws,</p>	

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		<p>litigation rules and procedures on enforcement of judgments which were quite different from the other;</p> <p>(c) reference was made to the Hague Convention on Choice of Court Agreements (the Hague Convention) which provided for similar rules; and</p> <p>(d) the Arrangement had taken into account the views of LegCo Members and views received during consultation</p> <p>Clarification by the Administration that the reference to designating "a court in Hong Kong" and "a court in the Mainland" in clause 3(1) and 3(2) of the Bill referred to "any" court in either jurisdiction and not only a specified court</p> <p>Views of members that the drafting of clause 3(1) and 3(2) of the Bill did not appear to have reflected the legislative intent</p> <p>Explanation by the Administration that even though parties to a contract had designated a specified Hong Kong court to have exclusive jurisdiction in resolving disputes, the legal proceedings could still take place in a Mainland court if -</p> <p>(a) the Hong Kong court applied prevailing common law principles such as "forum nonconveniens" to decline jurisdiction; or</p> <p>(b) the case involved was outside the jurisdiction of Hong Kong courts e.g. a case relating to immovable property on the Mainland</p> <p>Advice of ALA on conflict of laws -</p> <p>(a) the Bill did not intend to change the rules of conflict of laws that governed jurisdiction of courts; and</p> <p>(b) the Bill sought to provide only rules according to which a Mainland judgment could be registered and enforced in Hong Kong, and not to confer extra jurisdiction to a court in Hong Kong</p>	
004355 - 005025	Ms Audrey EU Admin	Response of the Administration on the different application procedures for enforcement of judgments of respective	

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		<p>places in clauses 5 and 21 of the Bill respectively -</p> <p>(a) procedures for enforcement of Mainland judgment in Hong Kong - a judgment creditor was required to register the Mainland judgment with the Court of First Instance before the Mainland judgment could be enforced; and</p> <p>(b) procedures for certification of Hong Kong judgments - a judgment creditor had to obtain a certified copy of Hong Kong judgment in order to apply for its enforcement in the Mainland</p> <p>The Administration undertook to provide a copy of the judicial interpretation on the procedures for implementing the Arrangement to be promulgated by the Supreme People's Court for Members' reference</p>	<p>Admin to follow up</p>
005026- 005954	<p>Admin Chairman Ms Audrey EU Ms Miriam LAU</p>	<p>Discussion on exclusive jurisdiction of courts in resolving disputes and the response of the Administration as follows -</p> <p>(a) the Arrangement would only apply if an exclusive choice of court clause was included in the contract, i.e. parties to the contract had to specify either "a court of the HKSAR" or "a court of the Mainland", and not "a court of the HKSAR or the Mainland" as a clause in the contract. This was reflected in clause 3 of the Bill;</p> <p>(b) it was for the parties concerned to decide on the terms of the choice of court agreement and the court to determine whether the agreement complied with the requirements set out in the Bill; and</p> <p>(c) in the event that a Mainland court was designated to have exclusive jurisdiction and the legal proceedings subsequently took place in a Hong Kong court, the Hong Kong court's judgment could not be enforced in the Mainland under the Arrangement</p>	
005955 - 010649	<p>ALA6 Admin Chairman</p>	<p>The Administration's advice that if the two parties to a contract had designated a different court to have exclusive jurisdiction in their respective obligations under a contract, this was inconsistent with the stipulation "to the exclusion of courts of other jurisdiction" in clause 3 of the Bill. In other words, the two</p>	

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		<p>parties should designate the same court to have exclusive jurisdiction in their respective contracts</p> <p>Concern of members that the drafting of clause 3 of the Bill was subject to different interpretations and did not reflect the legislative intent</p>	
010650 - 011200	Ms Audrey EU Admin Chairman	<p>Response of the Administration on members' queries on clause 4 of the Bill concerning severability of choice of court agreement -</p> <p>(a) a contract entered into between parties could be in written or other forms, but the choice of court agreement must be in written form;</p> <p>(b) the choice of court agreement was independent from other terms of the contract, i.e. the validity of the agreement shall not be affected by any modification, discharge, termination or nullification of the contract; and</p> <p>(c) clause 4 of the Bill was modelled on a similar provision in the Hague Convention</p> <p>The Administration undertook to provide for members' reference relevant provisions of the Hague Convention on which clauses 3 and 4 of the Bill were modeled</p>	Admin to follow up
011200 - 013744	Ms Audrey EU Admin Chairman Ms Miriam LAU ALA6	<p>Concern of members about the definition of "recognized Basic People's Court " in clause 2 of the Bill -</p> <p>(a) whether the scope of the definition was too wide, as the number of recognized Basic People's Courts was subject to change from time to time; and</p> <p>(b) whether Hong Kong business people were aware that once an exclusive choice of Mainland court agreement was made, any disputes arising from the contract could be determined in any Mainland court stipulated in Schedule 1 to the Bill, including any recognized Basic People's Court in a remote area, and the judgment could be enforced in Hong Kong</p> <p>Response of the Administration -</p> <p>(a) the recognized Basic People's Courts</p>	

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		<p>were authorized by the Supreme People's Court to exercise jurisdiction in foreign-related civil and commercial cases;</p> <p>(b) a list of 47 recognized Basic People's Courts was attached to the Arrangement as an Annex. The last paragraph of the Annex stipulated that the list would be updated by the Supreme People's Court from time to time and provided to the HKSAR Government. Clauses 2 and 25 of the Bill sought to reflect this part of the Arrangement;</p> <p>(c) clause 25 of the Bill stipulated that the Secretary for Justice would publish in the Gazette a list of recognized Basic People's Courts from time to time;</p> <p>(d) a similar arrangement was adopted for the list of Mainland arbitration bodies under the arrangement for mutual enforcement of arbitral awards between the Mainland and the HKSAR;</p> <p>(e) the Arrangement did not change the existing legal proceedings in the Mainland, but sought to provide an alternative for judgments of Hong Kong courts to be enforced in the Mainland; and</p> <p>(f) only a final and conclusive Mainland judgment would be recognized and enforced in Hong Kong</p>	
013745 - 15059	Ms Audrey EU Admin Chairman	<p>Making reference to an example that if a case was tried in a recognized Basic People's Court in a remote area, instead of the Higher People's Court in Shanghai as specified in the contract, members raised the following questions -</p> <p>(a) whether clause 5(2) regarding choice of exclusive Mainland court agreement had been complied with; and</p> <p>(b) whether the judgment delivered by the Basic People's Court could be enforced in Hong Kong</p> <p>Response of the Administration -</p> <p>(a) if the Basic People's Court hearing the case was on the list of recognized Basic People's Courts, clause 5(2) had been complied with;</p>	

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		<p>(b) if a party to the contract maintained the view that the case should be tried in the Higher People's Court in Shanghai, it could institute legal proceedings in the Mainland and it was for the court to decide whether or not the judgment delivered by the Basic People's Court should be set aside; and</p> <p>(c) clause 18 of the Bill provided the conditions under which registration of Mainland judgment could be set aside</p>	
015100 - 015907	Admin Ms Audrey EU Chairman Ms Miriam LAU	<p>The Administration was requested to -</p> <p>(a) provide a paper on the rules governing the jurisdiction of courts on the Mainland, including how a case could be transferred from one court to another court; and</p> <p>(b) review the drafting of clause 3(1) and 3(2) of the Bill in view of members' concern that the phrase "designating a court" could be construed to mean "a specified court"</p>	Admin to follow up
015908 - 020700	Chairman Ms Audrey EU	<p>Confirmation of minutes of meeting</p> <p>Dates of future meetings</p>	