

立法會
Legislative Council

Ref : CB2/BC/6/06

LC Paper No. CB(2)2078/06-07

(These minutes have been seen
by the Administration)

Bills Committee on Mainland Judgments (Reciprocal Enforcement) Bill

**Minutes of the fourth meeting
held on Monday, 30 April 2007, at 4:30 pm
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

Members 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 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. Meeting with the Administration

(LC Paper No. CB(2)1641/06-07(01) - Administration's response to the issues raised at the meeting on 29 March 2007

LC Paper No. CB(2)1698/06-07(01) - A memorandum of points of concern provided by Assistant Legal Adviser

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(3)379/06-07 - The Bill)

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

2. The Administration was requested to provide a written response on the following issued raised -

- (a) Long title - to review the drafting of the Long title, i.e. whether the words "civil or" should be deleted;
- (b) Definition of "recognized Basic People's Court" in clause 2(1) -
 - (i) to consider whether reference should be made to clause 25(1) in the definition;
 - (ii) to consider the need to stipulate in the Bill that the list of recognized Basic People's Courts would take effect upon gazettal;
- (c) Definition of "Mainland judgment" in clause 2(1) - to review the drafting of the definition, i.e. whether the words "civil or" should be deleted;
- (d) Definition of "specified contract" in clause 2(1) -
 - (i) to clarify the scope of the definition;
 - (ii) to explain how the definition could achieve the legislative intent;

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- (iii) to provide examples on the types of contracts that could be included and excluded from the definition;
- (iv) to advise whether a Mainland court would classify a contract entered into between a container truck driver and a container truck owner involving in cross border transportation as an employment or a commercial contract;
- (v) in relation to (iv) above, to advise whether a Hong Kong court could retry the case and challenge the ruling of the Mainland court, if a judgment debtor had applied for the registration of a Mainland judgment to be set aside on the ground that it was an employment contract;
- (vi) to consider whether the exclusion drafting approach or a more user-friendly approach should be adopted for the definition;
- (e) Clause 2(2) - to review the drafting of the clause and to consider whether the meaning of an expression of the law of the Mainland (e.g. any court, court document or court procedure, etc.) used in the Bill should more appropriately be defined in clause 2 (1);
- (f) Clause 3 -
 - (i) to review the expression "designating a court" as the Administration had previously advised that the expression should mean "a court" or "courts" so designated; and
 - (ii) to advise the consequences if the court so designated did not have jurisdiction over the case, e.g. it had no real and substantial connection with the case.

II. Date of next meeting

3. Members noted that the next meeting would be held on 5 May 2007 at 9:00 am to receive views from deputations.

4. The meeting ended at 5:29 pm.

**Proceedings of the fourth meeting of the
Bills Committee on Mainland Judgments (Reciprocal Enforcement) Bill
on Monday, 30 April 2007, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000000 - 000537	Chairman	Opening remarks	
000538 - 002856	Admin Chairman Mr Ronny TONG ALA6	<p>Clause-by-clause examination of the Bill</p> <p><u>Long title</u></p> <p>Concerns raised by members on the long title of the Bill -</p> <p>(a) under common law, civil matters covered not only commercial matters but all non criminal matters. However, civil matters did not include commercial matters under the law of the Mainland; and</p> <p>(b) if the Bill intended to cover commercial contracts only, the long title was misleading as it referred to judgments "in civil or commercial matters"</p> <p>Response of the Administration -</p> <p>(a) civil and commercial matters concerned separate matters in civil law jurisdictions, including the Mainland;</p> <p>(b) the Bill sought to cover business-to-business contracts only; and</p> <p>(c) "specified contract" in clause 2 of the Bill referred to business-to-business contracts and was a definition by exclusion, the drafting of which was modeled on the Hague Convention on Choice of Court Agreements</p> <p>The Administration was requested to review the drafting of the long title, i.e. whether the words "civil or" should be deleted</p>	Admin to follow up
002857 - 003143	Chairman Admin	<p><u>Clause 1 - Short title and commencement</u></p> <p>Advice of the Administration that the Bill would come into operation on a day to be</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		agreed by the Mainland and Hong Kong authorities, and after the promulgation of the judicial interpretation on the procedures for implementing the Arrangement by the Supreme People's Court	
003144 - 003732	Chairman Admin ALA6	<p><u>Clause 2 - Interpretation</u></p> <p><i>Definition of "recognized Basic People's Court"</i></p> <p>Discussion on whether the drafting of clause 25 reflected the Administration's intention that the list of recognized Basic People's Courts (as defined in clause 2) would come into effect upon publication of it by the Secretary for Justice in the Gazette under clause 25</p> <p>The Administration was requested to consider -</p> <p>(a) whether reference should be made to clause 25(1) in the definition of "recognized Basic People's Court"; under clause 2(1); and</p> <p>(b) the need to stipulate in the Bill that the list would take effect upon gazettal</p>	Admin to follow up
003733 - 004142	Mr LI Kwok-ying Chairman Admin ALA6	<p><i>Definition of "Mainland"</i></p> <p>Concern about the scope of the definition of "Mainland" (which was defined to mean any part of China other than Hong Kong, Macau and Taiwan) as it did not cover places which had disputes over sovereignty, such as Diaoyu Tai and Nansha Qundao</p> <p>Comments of ALA6 and the Administration -</p> <p>(a) the definition was in line with that provided in Cap.1;</p> <p>(b) the term "Mainland" was used in conjunction with either "judgment" or "court" when appeared in the Bill; and</p> <p>(c) the designated courts specified in Schedule 1 to the Bill were not located in the places which had disputes over sovereignty</p>	

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004143 - 010418	Mr LI Kwok-ying Chairman Admin ALA6 Mr Ronny TONG	<p><i>Definition of "Mainland judgment"</i></p> <p>Clarification by the Administration that the four types of Mainland judgments were included in the definition after seeking advice from the Mainland authorities</p> <p>Pursuant to the previous discussion on the long title of the Bill, the Administration was also requested to consider whether the words "civil or" should be deleted from the definition</p> <p><i>Definition of "specified contract"</i></p> <p>Response of the Administration to members' concern about the clarity of the definition and related issues -</p> <p>(a) the definition adopted an exclusion drafting approach, i.e. the Bill would apply to a contract other than (i) an employment contract; and (ii) a contract to which a natural person acting for personal consumption, family or other non-commercial purposes was a party;</p> <p>(b) the parties to a business-to-business contract were usually corporate bodies;</p> <p>(c) a judgment debtor as defined in the Bill might include an administrator of the deceased's estate;</p> <p>(d) a contract relating to loans between a bank and an individual in his/her personal capacity was outside the scope of the Bill, as it was not a business-to-business contract;</p> <p>(e) a contract relating to loans between a bank and a company would be regarded as a business-to-business contract. If the judgment debtor argued that the Mainland judgment could not be registered and enforced in Hong Kong because the loan was for personal use, he had to provide sufficient evidence to convince the Hong Kong court that the contract in question was not of a commercial nature;</p> <p>(f) if a business-to-business loan contract</p>	<p>Admin to follow up</p>

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		<p>involved a personal guarantee given for a non-commercial purpose, the Bill would not apply to the guarantor because he was a natural person;</p> <p>(g) a contract relating to exchange of company shares between two family members in the course of their business was commercial in nature; and</p> <p>(h) the drafting of the definition had adopted a purposive approach with a narrow scope, i.e. the Bill would apply to contracts signed for business purpose only, and the parties to the contract should not be a natural person acting for personal consumption, family or other non-commercial purpose</p> <p>In relation to the definition of "specified contract", the Administration was requested to provide a paper to -</p> <p>(a) clarify the scope of "specified contract";</p> <p>(b) explain how the definition could achieve the legislative intent; and</p> <p>(c) provide examples on the types of contracts that could be included and excluded from the definition</p>	<p>Admin to follow up</p>
010419 - 010544	ALA6 Chairman	<p>Concern about the clarity of the definition of "specified contract" and whether it would apply to multi-purpose contracts, e.g. whether a mortgage loan contract on a residential property with revolving credit to facilitate the mortgagor to use the loan for commercial purposes should be classified as a commercial contract</p>	
010545 - 013224	Mr LI Kwok-ying Chairman Admin ALA6	<p>Illustration of the difficulty in classifying the nature of a contract, e.g. whether a contract between a container truck driver and a container truck owner involving in cross border transportation was an employment contract or a commercial contract.</p> <p>The Administration was requested to advise -</p> <p>(a) whether the contract would be classified by the Mainland court as a</p>	<p>Admin to follow up</p>

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>commercial contract or an employment contract;</p> <p>(b) whether a Hong Kong court could retry the case and challenge the ruling of the Mainland court, if a judgment debtor had applied for the registration of a Mainland judgment to be set aside on the ground that it was an employment contract; and</p> <p>(c) consider whether the exclusion drafting approach or a more user-friendly drafting approach should be adopted for the definition of "specified contract"</p>	
013225 - 013829	Mr LI Kwok-ying Chairman Admin	<p><i>Definition of "recognized Basic People's Court "</i></p> <p>Response of the Administration -</p> <p>(a) the recognized Basic People's Courts were authorized by the Supreme People's Court to exercise jurisdiction in foreign-related civil or 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) the Supreme People's Court would take into account the number of foreign-related civil and commercial cases handled by individual Basic People's Courts and the quality of the courts concerned in determining whether or not to include them on the list; and</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>	

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013830 - 014209	Chairman Admin	<p><u>Clause 3</u></p> <p>The Administration was requested to -</p> <p>(a) review the expression "designating a court", as the Administration had previously advised that the expression should mean "a court" or "courts" so designated; and</p> <p>(b) advise the consequences if the court so designated did not have jurisdiction over the case, e.g. it had no real and substantial connection with the case</p>	Admin to follow up
014210 - 015354	Mr LI Kwok-ying Chairman Admin ALA6	<p><u>Clause 2(2) - Interpretation</u></p> <p>Concerns of members about clause 2(2) -</p> <p>(a) the purpose of the clause;</p> <p>(b) whether a Hong Kong court should seek clarification from the Mainland authorities if it was uncertain about the meaning of a Chinese expression used in the Bill, or it construed the meaning of that Chinese expression differently from that of the Mainland authorities; and</p> <p>(c) whether or not a court in Hong Kong was obliged to accept the interpretation given by the Mainland authorities on (b) above</p> <p>The Administration was requested to -</p> <p>(a) review the drafting of clause 2(2); and</p> <p>(b) consider whether the meaning of an expression of the law of the Mainland (e.g. any court, court document or court procedure etc.) used in the Bill should more appropriately be defined under clause 2(1)</p>	Admin to follow up
015355 - 015829	Chairman	Date of next meeting	