

立法會
Legislative Council

Ref : CB2/BC/6/06

LC Paper No. CB(2)2167/06-07
(These minutes have been seen
by the Administration)

Bills Committee on Mainland Judgments (Reciprocal Enforcement) Bill

Minutes of the fifth meeting
held on Saturday, 5 May 2007, at 9:00 am
in Conference Room A of the Legislative Council Building

- Members present** : Hon Margaret NG (Chairman)
Hon James TO Kun-sun
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 Miriam LAU Kin-ye, GBS, JP (Deputy Chairman)
Hon Martin LEE Chu-ming, SC, JP
- Public Officers attending** : Item I
Mr Frank POON
Deputy Solicitor General (Acting)
Miss Michelle TSANG
Senior Assistant Solicitor General
Mr Paul TSANG
Senior Assistant Solicitor General (Acting)
Ms Marie SIU
Senior Government Counsel
Ms Peggy AU YEUNG
Government Counsel
Miss Leonie LEE
Assistant Secretary (Administration) 2

- Attendance by invitation** : Item I
Mr ONG Yew-kim
Hong Kong Bar Association
Mr Rimsky YUEN SC
Chairman
Mr P Y LO
Bar Council Member
International Chamber of Commerce - Hong Kong, China
Ms Mary THOMSON
Secretary
French Chamber of Commerce
Mr Serge FAFALLEN
Chairman, Tax & Legal Committee
Hong Kong Institute of Arbitrators
Mr Samuel WONG
Council Member
- 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
Mrs Fanny TSANG
Legislative Assistant (2)3

Action

- I. Meeting with deputations and the Administration**
(LC Paper Nos. CB(2)1753/06-07(01)-(04), CB(2)1767/06-07(01), CB(2)1807/06-07(02), CB(2)1946/06-07(01)-(02) and CB(2)2057/06-07(01)-(02) – submissions

Action

LC Paper No. CB(2)1807/06-07(01) - An article on "Development of Regional Conflict of Laws : On the Arrangement of Mutual Recognition and Enforcement of Judgments in Civil and Commercial Matters between Mainland China and Hong Kong SAR written by Xianchu Zhang and Philip Smart)

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

2. The Administration was requested to -
 - (a) provide a copy of the submission it received from the International Chamber of Commerce - Hong Kong, China in 2002;
 - (b) provide information on the provisions relating to the choice of forum in a jurisdiction agreement and the choice of arbitration tribunal in an arbitration agreement;
 - (c) review the drafting of the expression "designating a court" in clause 3 of the Bill, which was different from the expression used in Article 3 of the Arrangement; and
 - (d) provide a composite written response to the views of deputations and submissions on the Bill.

(Post-meeting note: The Administration responses are issued to members vide LC Paper Nos. CB(2)2057/06-07(01), CB(2)2091/06-07(02) and CB(2)2114/06-07(01) on 5, 6 and 7 June 2007 respectively.)

II. Date of next meeting

3. Members noted that the next meeting would be held on 14 May 2007 at 10:45 am.
4. The meeting ended at 10:55 am.

Council Business Division 2
Legislative Council Secretariat
13 June 2007

**Proceedings of the fifth meeting of the
Bills Committee on Mainland Judgments (Reciprocal Enforcement) Bill
on Saturday, 5 May 2007, at 9:00 am
in Conference Room A of the Legislative Council Building**

| Time Marker | Speaker(s) | Subject(s) | Action required |
|--------------------|--|--|---------------------------|
| 000100 - 000517 | Chairman | Opening remarks | |
| 000518 - 001549 | Mr ONG Yew-kim Chairman | Presentation of views (LC Paper No. CB(2) 1753/06-07(01)) | |
| 001550 - 003007 | Chairman Hong Kong Bar Association | Presentation of views (LC Paper No. CB(2) 1767/06-07(01)) | |
| 003008 - 003756 | Chairman International Chamber of Commerce - Hong Kong, China | The Chamber welcomed the introduction of the Bill and considered that sufficient safeguards should be provided to ensure - (a) transparency in reciprocal enforcement of judgments in the Mainland and Hong Kong; and (b) finality of Mainland judgments The Administration was requested to provide a copy of the submission it received from the Chamber in 2002 | Admin to follow up |
| 003757 - 004630 | Chairman French Chamber of Commerce | The Chamber supported the merits of the Bill and expressed the following views - (a) the practical applicability of the Bill e.g. it was not possible for parties to a contract involving in joint ventures to reach a choice of court agreement; (b) the time limit (six months to one year) for application for registration of Mainland judgments was too short; and (c) the enforceability of Hong Kong judgments in the Mainland The Chamber agreed to provide a submission to the Bills Committee around mid May | Clerk to follow up |
| 004631 - 005230 | Chairman Hong Kong Institute of Arbitrators (HKIA) | HKIA supported the merits of the Bill and expressed the following views - (a) the Bill, which was narrow in scope as a start, helped to protect the interests of Hong Kong businessmen effectively; | |

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| | | <p>(b) the choice of court agreement respected the freedom of parties to a contract; and</p> <p>(c) the time limit (six months to one year) for application for registration of Mainland judgments was too short</p> | |
| 005231- 005541 | Chairman Hong Kong Institute of Arbitrators | <p>Response of HKIA on enforcement of arbitral awards in the Mainland -</p> <p>(a) questionnaires were sent to its members and relevant law firms to ascertain the difficulties encountered in enforcement of arbitral awards in the Mainland but there was a lack of response; and</p> <p>(b) Intermediate People's Courts were designated to enforce arbitral awards</p> | |
| 005542 - 005741 | Admin | Response of the Administration to the views of the deputations | |
| 005742 - 005800 | Chairman | Written submissions received on the Bill | |
| 005801 - 011527 | Hon James TO Kun-sun Chairman Hong Kong Institute of Arbitrators Hong Kong Bar Association Mr ONG Yew-kim | <p>Response to Mr James TO's proposal to include a provision in the Bill or in a contract to cap the maximum amount of a judgment that could be enforced in Hong Kong pursuant to the Arrangement so as to safeguard the interest of Hong Kong businessmen -</p> <p>(a) HKIA - the Bill was narrow in scope. The maximum damages recoverable could be stipulated in a contract by the parties concerned;</p> <p>(b) Bar Association - the proposed provision was outside the scope of the Arrangement. Whether the inclusion of such a provision in a contract would be effective would depend on the law applicable to the contract. Once a Mainland money judgment was delivered under the Arrangement, the courts of Hong Kong had to enforce it unless it could be set aside on the grounds stipulated in clause 18;</p> <p>(c) Mr ONG Yew-kim - there was a real possibility that a Hong Kong judgment could not be enforced in the Mainland. There was a need to</p> | |

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| | | <p>establish a formal procedure for enforcement of Hong Kong judgments in the Mainland</p> | |
| 011528 - 013199 | <p>Chairman Hong Kong Bar Association Mr ONG Yew-kim</p> | <p>Concern about changes to the list of recognized Basic People's Courts (the list which was attached to the Arrangement as an Annex</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 and commercial cases;</p> <p>(b) 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. The list would take effect upon gazettal;</p> <p>(d) the list would be made available on the Government website for easy public access; and</p> <p>(e) a similar arrangement was adopted for enforcement of Mainland arbitral awards under which a list of recognized Mainland arbitral authorities (a total of 148 as at 1999) would be updated by the Mainland authorities from time to time</p> <p>Views of Mr ONG Yew-kim -</p> <p>(a) only four to five Mainland courts on the list were considered to be qualified for enforcing Hong Kong judgments; and</p> <p>(b) there was no mechanism for consultation between the Supreme People's Court and the Government of the HKSAR before the list was finalized or amended</p> | |

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| | | <p>Views of the Bar Association -</p> <p>(a) possible changes to the list might affect the application of a choice of Mainland court agreement. For example, in the event that a designated court was struck down from the list by the Supreme People's Court after signing of the choice of court agreement, it was uncertain whether the agreement would be rendered ineffective;</p> <p>(b) Article 18 of the Arrangement provided that in the event of any problem encountered or any need for amendment during the course of the implementation of the Arrangement, it should be resolved through consultation between the Supreme People's Court and the Government of the HKSAR. It was uncertain whether a mechanism could be established under Article 18 to resolve problems arising from amendments to the list; and</p> <p>(c) the expression "designating a court" in clause 3 could mean "a court" or "courts" so designated. A broad meaning would give rise to more questions and it might be more appropriate to adopt a narrow meaning on the definition</p> | |
| 013200 - 015000 | Mr Ronny TONG Chairman Hong Kong Bar Association | <p>Queries raised by Mr Ronny TONG -</p> <p>(a) whether or not a case with real and substantial connection with Hong Kong should be tried in a Mainland court, which was the designated court agreed by the parties to a contract;</p> <p>(b) whether the Bill had provided sufficient safeguards to prevent forum shopping, as parties to a contract were not necessarily of equal bargaining power and Hong Kong businessmen might be obliged to enter into a choice of court agreement which was advantageous to the cause of their Mainland counterparts; and</p> <p>(c) whether it was desirable and feasible to amend the Bill so as to provide more safeguards against abuses e.g. a mechanism to allow Hong Kong</p> | |

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| | | <p>courts to examine if the contract was entered into under circumstances which were unfair to the defendant when warranted as opposed to requiring the court to enforce a Mainland judgment perfunctorily</p> <p>Initial response of the Bar Association. The Bar Association agreed to provide a detailed written response after the meeting</p> | <p>Clerk to follow up</p> |
| 015001 - 015057 | Hong Kong Institute of Arbitrators | Information provided by HKIA that Mainland arbitral awards would be enforced in Hong Kong if they were made by recognized Mainland arbitral authorities, the list of which was to be updated by the Mainland authorities from time to time | |
| 015058 - 015500 | Chairman Hong Kong Bar Association | <p>The Administration was requested to -</p> <p>(a) provide information on the provisions relating to the choice of forum in a jurisdiction agreement and the choice of arbitration tribunal in an arbitration agreement;</p> <p>(b) review the drafting of the expression "designating a court" in clause 3 of the Bill, which was different from the expression used in Article 3 of the Arrangement; and</p> <p>(c) provide a composite written response to the views of the deputations and written submissions on the Bill</p> | <p>Admin to follow up</p> |