

**立法會**  
**Legislative Council**

Ref : CB2/BC/6/06

LC Paper No. CB(2)2280/06-07

(These minutes have been seen  
by the Administration)

**Bills Committee on Mainland Judgments (Reciprocal Enforcement) Bill**

**Minutes of the sixth meeting  
held on Monday, 14 May 2007, at 10:45 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 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 Martin LEE Chu-ming, SC, JP

**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 Marie SIU  
Senior Government Counsel  
Ms Peggy AU YEUNG  
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

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Action

**I. Confirmation of minutes of meeting**

(LC Paper No. CB(2)1825/06-07 - Minutes of meeting on 24 April 2007)

The minutes of the meeting held on 24 April 2007 were confirmed.

**II. Meeting with the Administration**

(LC Paper No. CB(2)1827/06-07(01) - Administration's response to the issues raised at the meeting on 24 April 2007)

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)

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).
3. The Administration was requested to -
  - (a) clarify whether or not clause 18 complied with the requirements stipulated in Article 9 of the Arrangement;
  - (b) advise whether the Administration would consider to include a safeguard in clause 18 so that the registration of judgment given by a court which had no real and substantial connection with the dispute would be set aside;
  - (c) provide statistics on the number of arbitration cases handled by the Hong Kong International Arbitration Centre, the number of Mainland arbitral awards enforced and not enforced in Hong Kong, and the reasons for these awards not enforced in Hong Kong;
  - (d) advise whether parties to a contract would usually specify a particular court or any court to have exclusive jurisdiction;
  - (e) advise whether the policy intent of clause 3(1) and 3(2) was that when a specific court or courts in a jurisdiction had been chosen to have exclusive jurisdiction, judgment delivered by a specified court(s) or any other courts

Action

in that jurisdiction would be enforceable in the other jurisdiction and whether the drafting of clause 3(1) and 3(2) had reflected the policy intent;

- (f) advise whether the policy intent of clause 3(1) and 3(2) was to require a chosen court to determine a particular dispute or any disputes arising from a contract and whether the drafting of clause 3(1) and 3(2) had reflected the policy intent (paragraph 8 of the Bar Association's submission refers (LC Paper No. CB(2)1767/06-07(01));
- (g) advise whether the policy intent of the Arrangement was to allow contracting parties to apply a choice of court agreement made after commencement of the Bill to previous and future specified contracts and whether the Bill had reflected the policy intent; and
- (h) provide a composite response to the views given by the deputations at the meeting on 5 May 2007.

**III. Dates of future meetings**

4. Members agreed that the next three meetings would be held on -

- (a) 8 June 2007 at 8:30 am;
- (b) 22 June 2007 at 8:30 am; and
- (c) 29 June 2007 at 8:30 am.

*(Post-meeting note : The meeting on 8 June 2007 was cancelled as the Council meeting held on 6 June 2007 continued its business on 8 June 2007.)*

5. The meeting ended at 12:52 pm.

Council Business Division 2  
Legislative Council Secretariat  
26 June 2007

**Proceedings of the sixth meeting of the  
Bills Committee on Mainland Judgments (Reciprocal Enforcement) Bill  
on Monday, 14 May 2007, at 10:45 am  
in Conference Room B of the Legislative Council Building**

<b>Time Marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action required</b>
000000 - 000427	Chairman	Confirmation of minutes of meeting  Dates of future meetings	
000428 - 000857	Admin	Administration's response to the issues raised at the meeting on 24 April 2007 (LC Paper No. CB(2)1827/06-07(01))	
000858 - 001546	Chairman Mr Ronny TONG	<u>Forum shopping</u>  Concerns raised by Mr Ronny TONG -  (a) need to include a provision in the Bill to safeguard against injustice such as unequal bargaining power of the parties to the contract in a choice of court agreement; and  (b) the quality of Mainland judgments were inferior to that of Mainland arbitral awards	
001547 - 002029	Chairman Admin	Administration's response to the views given by the Bar Association of Hong Kong on forum shopping (LC Paper No. CB(2)1838/06-07(01))	
002030 - 002121	Mr Ronny TONG	Proposal to include a safeguard in clause 18 to the effect that the judgment given by a court without real and substantial connection with the dispute would be set aside	
002122 - 002329	Chairman	Concern raised by the Chairman that the exclusive choice of court requirement stipulated in the Arrangement, which was different from the initial proposal in 2002, had given rise to the risk of enabling a party with stronger bargaining power to dictate the choice of court at the time when the contract was negotiated	
002330 - 002937	Mr Andrew LEUNG Chairman	Views of members of the business community on the Arrangement -  (a) they supported the merit of the Arrangement; and	

Time Marker	Speaker(s)	Subject(s)	Action required
		(b) they were concerned about the difficulties in enforcement of Hong Kong judgments in the Mainland and the risks in resorting to the Arrangement	
002938 - 003520	Ms Miriam LAU Chairman	Views of Ms Miriam LAU -  (a) bargaining power of parties varied from time to time and under different circumstances; and  (b) it was practically difficult to legislate against unequal bargaining power	
003521 - 004420	Admin Chairman Ms Miriam LAU	Response of the Administration to members' queries –  (a) refusal of the registration of a foreign judgment on the ground that the foreign court, being the chosen forum, did not have any real and substantial connection with the case was inconsistent with the principles of common law, the Arrangement and the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319) governing reciprocal enforcement of judgments (REJ);  (b) the increasing number of arbitration cases involving parties from both Hong Kong and the Mainland handled by the Hong Kong International Arbitration Centre (HKIAC) indicated that there was room for implementation of the REJ arrangement which allowed parties to choose Hong Kong as the forum for resolving legal disputes;  (c) the Arrangement sought to provide another alternative for businessmen to resolve commercial disputes. The Arrangement was considered a good start as only a final and conclusive Mainland judgment would be recognized and enforced in Hong Kong; and  (d) it would be difficult for the Administration to re-negotiate with the Mainland authorities regarding the safeguard proposed by Mr Ronny TONG at this stage	

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004421 - 004847	Chairman	<p>The Administration was requested to –</p> <p>(a) clarify whether or not clause 18 complied with the requirements stipulated in Article 9 of the Arrangement;</p> <p>(b) advise whether the Administration would consider to include a safeguard in clause 18 so that the registration of judgment given by a court which had no real and substantial connection with the dispute would be set aside; and</p> <p>(c) provide statistics on the number of arbitration cases handled by the HKIAC, the number of Mainland arbitral awards enforced and not enforced in Hong Kong, and the reasons for these awards not enforced in Hong Kong</p>	<b>Admin to follow up</b>
004848 - 005046	Mr Ronny TONG Admin Chairman	<p>Response of the Administration to members' queries –</p> <p>(a) Mainland judgments had not been enforced in Hong Kong since 1997 because of the difficulties involved in establishing that they were final and conclusive; and</p> <p>(b) there had been no case of registration of arbitral awards being refused on the ground that the bargaining power between two contracting parties was unequal or the contract was signed under undue influence</p>	
005047 - 005635	Mr Ronny TONG Admin Chairman	<p>Two scenarios quoted by Mr Ronny TONG about companies involving in cross border trade which had immovable property in both places. Concern raised by Mr TONG as to whether or not the Mainland judgment, which would affect the company's immovable property in Hong Kong, could be enforced in Hong Kong</p> <p>View of the Administration that the scenarios quoted by Mr TONG was related to the exercise of jurisdiction by the Mainland or Hong Kong court over the cases</p>	
005636 - 005756	Chairman Admin	The Administration was requested to provide a composite response to the views	<b>Admin to follow up</b>

Time Marker	Speaker(s)	Subject(s)	Action required
		given by the deputations at the meeting on 5 May 2007	
005757 - 011033	Chairman Admin	<p>Clause-by-clause examination of the Bill</p> <p><u>Clause 3</u> Response of the Administration to members' queries –</p> <p>(a) the expression "designating a court in ..." in clause 3(1) and 3(2) would be replaced with the expression "designating the courts in ... or any of them";</p> <p>(b) Article 3 of the Arrangement was suitably adapted in the Bill; and</p> <p>(c) some of the requirements stipulated in Article 3 of the Arrangement were reflected in clause 5 of the Bill</p>	
011034 - 015741	Chairman Admin ALA6 Mr James TO Ms Miriam LAU	<p>Clarification of the Administration that –</p> <p>(a) only a judgment given pursuant to an exclusive choice of court agreement in respect of a specified contract made on or after the commencement of the Bill would be covered;</p> <p>(b) the Bill would apply to an exclusive choice of court agreement made on or after the commencement of the Bill in respect of a specified contract concluded before the commencement of the Bill, subject to the agreement of the parties to the contract; and</p> <p>(c) while parties to a choice of court agreement would usually designate "a court in the Mainland" rather than a particular court in the Mainland, one could not rule out the possibility that parties to a contract might have chosen a Mainland court that did not have jurisdiction over the case (e.g. the court was listed in Schedule 1 but it did not have any real and substantial connection with the case as required of by Article 25 of the Civil Procedure Law of the People's Republic of China (CPL)). Under the circumstances, the designated court should refer the case to another court that had jurisdiction over the case in accordance with Article 36 of CPL. The judgment so delivered</p>	

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		<p>would be enforceable under the Arrangement provided that it was given by a designated court</p> <p>View of Mr James TO that any judgment delivered by a court other than the one specified in the choice of court agreement should not be enforced</p> <p>The Administration was requested to advise -</p> <p>(a) whether parties to a contract would usually specify a particular court or any court to have exclusive jurisdiction;</p> <p>(b) whether the policy intent of clause 3(1) and 3(2) was that when a specific court or courts in a jurisdiction had been chosen to have exclusive jurisdiction, judgment delivered by a specified court(s) or any other courts in that jurisdiction would be enforceable in the other jurisdiction and whether the drafting of clause 3(1) and 3(2) had reflected the policy intent;</p> <p>(c) whether the policy intent of clause 3(1) and 3(2) was to require a chosen court to determine a particular dispute or any disputes arising from a contract and whether the drafting of clause 3(1) and 3(2) had reflected the policy intent (paragraph 8 of the Bar Association's submission refers (LC Paper No. CB(2) 1767/06-07(01)); and</p> <p>(d) whether the policy intent of the Arrangement was to allow contracting parties to apply a choice of court agreement made after commencement of the Bill to previous and future specified contracts and whether the Bill had reflected the policy intent</p>	<p><b>Admin to follow up</b></p>
015742 - 020552	Admin Mr James TO Ms Miriam LAU Chairman	<p><u>Clause 4</u></p> <p>Response of the Administration to members' queries -</p> <p>(a) the choice of court agreement was independent from other terms of the contract, i.e. the validity of the</p>	



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		agreement shall not be affected by any modification, discharge, termination or nullification of the other parts of the contract unless the said contract otherwise provided; and  (b) clause 4 of the Bill was modeled on a similar provision in the Hague Convention	

Council Business Division 2  
Legislative Council Secretariat  
26 June 2007