

立法會
Legislative Council

Ref : CB2/BC/6/06

LC Paper No. CB(2)2431/06-07

These minutes have been seen
by the Administration)

Bills Committee on Mainland Judgments (Reciprocal Enforcement) Bill

**Minutes of the seventh meeting
held on Friday, 22 June 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 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
- Members Absent** : 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 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

Action

I. Confirmation of minutes of meeting

(LC Paper No. CB(2)2078/06-07 - Minutes of meeting on 30 April 2007

LC Paper No. CB(2)2167/06-07 - Minutes of meeting on 5 May 2007)

The minutes of the meetings held on 30 April and 5 May 2007 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(2)2091/06-07(01) - Administration's response to the issues raised at the meeting on 30 April 2007

LC Paper No. CB(2)2091/06-07(02) – Administration's composite response to the views of the deputations and submissions on the Bill

LC Paper No. CB(2)2114/06-07(01) - Administration's response to the issues raised at the meeting on 30 April 2007

LC Paper No. CB(2)2091/06-07(03) – An updated check list of follow-up actions required of the Administration

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

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

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

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).
3. The Administration was requested to -
 - (a) consider whether the Long Title should make reference to the Arrangement;

Action

- (b) review the appropriateness of using the conjunctive word "or" in "civil or commercial" in the Long Title and the Interpretation Clause (Clause 2(1)), given that the scope of the Bill was meant to cover business-to-business civil-commercial contracts only; and
- (c) provide case law to illustrate how the enforcement of foreign judgments obtained by fraud had been refused in Hong Kong.

III. Date of next meeting

- 4. The Bills Committee agreed that the next two meetings would be held on 29 June 2007 at 8:30 am and 16 July 2007 at 10:45 am respectively.
- 5. The meeting ended at 10:07 am.

Council Business Division 2
Legislative Council Secretariat
4 July 2007

**Proceedings of the seventh meeting of the
Bills Committee on Mainland Judgments (Reciprocal Enforcement) Bill
on Monday, 22 June, at 8:30 am
in Conference Room B of the Legislative Council Building**

| Time Marker | Speaker(s) | Subject(s) | Action required |
|-----------------|--|---|---------------------------|
| 000000 - 000529 | Chairman Ms Miriam LAU Mr LI Kwok-ying Mr Andrew LEUNG Admin | Confirmation of minutes of meetings Dates of future meetings | |
| 000530 - 001813 | Chairman Admin ALA6 | Administration's response to the issues raised by members at the meeting on 30 April 2007 (LC Paper No. CB(2) 2091/06-07(01)) <u>Long Title and the Interpretation Clause (Clause 2(1))</u> Appropriateness of the expression "civil or commercial" (paragraphs 1-8 of LC Paper No. CB(2) 2091/06-07(01)) The Administration was requested to - (a) consider whether the Long Title should make reference to the Arrangement; and (b) review the appropriateness of using the conjunctive word "or" in "civil or commercial", given that the scope of the Bill was meant to cover business-to-business civil-commercial contracts only | Admin to follow up |
| 001814 - 004044 | Chairman Admin Mr LI Kwok-ying Ms Audrey EU | <u>Clause 2(1) - "specified contract"</u> Definition of "specified contract" (paragraphs 9-10 of LC Paper No. CB(2) 2091/06-07(01)) Contract for service v. contract of service (paragraphs 11-15 of LC Paper No. CB(2) 2091/06-07(01)) Definition of "specified contract" adopted by the Mainland and Hong Kong and how discrepancies could be resolved, if arose Views of the Chairman that the drafting of the definition "specified contract" was | |

| Time Marker | Speaker(s) | Subject(s) | Action required |
|-----------------|---|---|-----------------|
| | | <p>not user friendly</p> <p>Circumstances under which a court of Hong Kong, on an application to enforce a Mainland judgement, would reopen a case based on the argument that the subject contract was a contract of service rather than a contract for service</p> | |
| 004045 - 004439 | <p>Chairman Administration Ms Miriam LAU</p> | <p>Views of Ms Miriam LAU -</p> <p>(a) difficulty in drawing a clear distinction between a contract for service and a contract of service for both the courts of Hong Kong and the Mainland; and</p> <p>(b) when a case was heard, the defence should provide sufficient evidence to convince the court having exclusive jurisdiction the nature of the contract in question, instead of applying to set aside the judgment after it was delivered</p> | |
| 004440 - 011007 | <p>Chairman Mr Audrey EU ALA6 Mr Martin LEE</p> | <p>Response of the Administration to members' queries -</p> <p>(a) application for registration of a Mainland judgment could be made ex parte by the judgment creditor under clause 5 of the Bill, but the court could direct a summons to be issued to the judgment debtor. The judgment debtor could apply for the registration to be set aside on the grounds stipulated in clause 18 of the Bill ;</p> <p>(b) the procedure for registration of a Mainland judgment was modeled on that of the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319) and the Judgments (Facilities for Enforcement) Ordinance (Cap. 9), i.e. the burden of proof for setting aside registration of judgment rested with the judgment debtor. International conventions such as the Hague Convention adopted a similar approach. Other common law jurisdictions also adopted a similar approach; and</p> <p>(c) it was not for a Hong Kong court to re-open the merits of a Mainland judgment. Normally, a Hong Kong</p> | |

| Time Marker | Speaker(s) | Subject(s) | Action required |
|-----------------|---|---|---------------------------|
| | | court would re-open and re-examine the merits of the case only under very exceptional circumstances, e.g., where grave injustice was involved | |
| 011008 - 012517 | Chairman Mr Martin LEE | Views of the Chairman that the circular drafting approach adopted in the definition "specified contract", clauses 3, 5(2) and 18 were not user friendly Background for introducing the Bill | |
| 012518 - 013209 | Chairman Mr Martin LEE Administration | The Administration was requested to provide case law to illustrate how the enforcement of foreign judgments obtained by fraud had been refused in Hong Kong | Admin to follow up |
| 013210 - 013721 | Chairman Administration | Response of the Administration to members' queries - (a) to reflect the narrow scope of the Arrangement, it was necessary to make cross reference to certain provisions which set out the elements required for the application of the Bill (e.g. those in clause 5(2)); (b) the definition of "specified contract" was based on the drafting of Article 3(2) of the Arrangement; and (c) the Administration regularly referred to the Hague Convention as its drafting was accepted by countries of common law tradition and those of civil law tradition | |