

立法會
Legislative Council

Ref : CB2/BC/6/06

LC Paper No. CB(2)2466/06-07

These minutes have been seen
by the Administration)

Bills Committee on Mainland Judgments (Reciprocal Enforcement) Bill

**Minutes of the eighth meeting
held on Friday, 29 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 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

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

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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)2280/06-07 - Minutes of meeting on 14 May 2007)

The minutes of the meeting held on 14 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 14 May 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) make reference to clause 25 of the Bill in the definition of "Recognized

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Basic People's Court" in clause 2(1);

- (b) report to the Bills Committee on the its discussion with the Supreme People's Court about the effects of addition to and deletion from the list of the recognized Basic People's Court;
 - (c) review whether the definition of "Mainland" in clause 2(1) would give rise to uncertainty and the need for amendment;
 - (d) consider whether clause 2(2) should be deleted and if so, provide a paper to explain the pros and cons of deleting the provision; and
 - (e) advise when section 10C was included in the Interpretation and General Clauses (Cap. 1).
4. Members expressed concern on the drafting of clause 3. Quoting the example that parties to a contract had designated a particular People's Court in Shanghai to be the court to have exclusive jurisdiction, the Administration was requested to advise whether it was the policy intent for the Mainland judgments given in a number of scenarios (as detailed in the attached Annex) to be enforceable and whether the drafting of clause 3 reflected the policy intent.

III. Date of next meeting

- 5. The Chairman informed members that the next meeting would be held on 16 July 2007 at 10:45 am.
- 6. The meeting ended at 10:30 am.

Council Business Division 2
Legislative Council Secretariat
13 July 2007

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

Time Marker	Speaker(s)	Subject(s)	Action required
000000 - 000535	Chairman	Confirmation of minutes of meeting	
000536 - 005732	Chairman Administration Mr Martin LEE Mr Ronny TONG ALA6 Ms Miriam LAU Mr James TO	<p>Continued discussion on the Administration's response to the issues raised at the meeting on 30 April 2007 (LC Paper No. CB(2) 2091/06-07(01))</p> <p><u>Clause 2(1) - "Recognized Basic People's Court"</u> (paragraphs 17-21 of LC Paper No. CB(2) 2091/06-07(01))</p> <p>The Administration would -</p> <p>(a) make reference to clause 25 of the Bill in the definition of "Recognized Basic People's Court"; and</p> <p>(b) report to the Bills Committee on its discussion with the Supreme People's Court about the effects of addition to and deletion from the list of the recognized Basic People's Courts</p> <p><u>Clause 2(2)</u> (paragraphs 22-26 of LC Paper No. CB(2) 2091/06-07(01))</p> <p>Response of the Administration to members' queries on clause 2(2) regarding interpretation of an expression of the Mainland law -</p> <p>(a) the drafting of the clause was similar to that of section 10C of the Interpretation and General Clauses Ordinance (Cap.1);</p> <p>(b) examples of expressions of Mainland law used in the Bill (e.g. "a judgment of the second instance" and "a judgment given in a retrial" in clause 6) and how clause 2(2) applied;</p> <p>(c) where there was uncertainty on how an expression of the Mainland law should be construed, evidence from</p>	Admin to follow up

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>experts in Mainland law could be adduced by the parties; and</p> <p>(d) it was not possible to provide a list of Mainland law expressions in the Bill</p> <p>View of members -</p> <p>(a) the examples of expressions quoted by the Administration were facts and did not require interpretation; and</p> <p>(b) the Administration should consider the practical effect of clause 2(2), e.g. whether advice of experts in Mainland law would be required in view of the inclusion of this clause and the quality of the legal advice obtained</p> <p>The Administration was requested to -</p> <p>(a) advise when section 10C was included in Cap.1; and</p> <p>(b) consider whether clause 2(2) should be deleted and if so, provide a paper to explain the pros and cons of deleting the provision</p>	<p>Admin to follow up</p>
005733 - 010249	Mr James TO Chairman Administration	<p><u>Clause 2(1) - "specified contract"</u></p> <p>Contract for service v. contract of service (paragraphs 11-15 of LC Paper No. CB(2) 2091/06-07(01))</p> <p>Confirmation of the Administration that a consultancy agreement signed between a company and another company would be regarded as a business contract rather than an employment contract</p>	
010250 - 011809	Mr James TO Chairman Administration	<p><u>Clause 2(1) - "Mainland"</u></p> <p>Concerns raised by Mr James TO on clause 2(1) which defined "Mainland" as "any part of China other than Hong Kong, Macau and Taiwan" -</p> <p>(a) Taiwan was not defined in the laws of Hong Kong or the Mainland; and</p> <p>(b) in the event that a court in Jinmen (金門) was designated as a recognized Basic People's Court, whether the definition of "Mainland" would give</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>rise to uncertainty</p> <p>The Administration was requested to review whether the definition of "Mainland" would give rise to uncertainty and the need for amendment</p>	<p>Admin to follow up</p>
<p>011810 - 015816</p>	<p>Chairman Administration Ms Audrey EU Mr Ronny TONG Mr James TO ALA6</p>	<p>Administration's response to the issues raised by members at the meeting on 14 May 2007 (LC Paper No. CB(2) 2114/06-07(01))</p> <p><u>Clause 3</u> (paragraphs 12-16 of LC Paper No. CB(2)2114/06-07(01))</p> <p>Concerns of members about the drafting of clause 3. Quoting the example that parties to a contract had designated a particular People's Court in Shanghai to be the court to have exclusive jurisdiction, the Administration was requested to advise whether it was the policy intent for the Mainland judgments given in the following scenarios to be enforceable, and whether the drafting of clause 3 reflected the policy intent -</p> <p>(a) scenario postulated by Ms Audrey EU - the chosen court in Shanghai did not have any real and substantial connection with the case and transferred the case to another court according to the rule of Mainland law. The latter court delivered a judgment;</p> <p>(b) scenarios postulated by Mr Ronny TONG -</p> <p>(i) both parties to the contract subsequently agreed to have the case tried in another designated court instead of the court in Shanghai and a judgment was delivered;</p> <p>(ii) a party to the contract instituted legal proceedings in another designated court instead of the court in Shanghai and a judgment was delivered; and</p> <p>(c) scenario postulated by Mr James TO - parties to the contract had each instituted legal proceedings in another designated court and two conflicting judgments, which were certified final</p>	<p>Admin to follow up</p>

Time Marker	Speaker(s)	Subject(s)	Action required
		and enforceable in the Mainland, were delivered by the respective courts	
015817 - 015954	Chairman	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
13 July 2007