

立法會
Legislative Council

Ref : CB2/BC/6/06

LC Paper No. CB(2)2649/06-07
(These minutes have been seen
by the Administration)

Bills Committee on Mainland Judgments (Reciprocal Enforcement) Bill

**Minutes of the ninth meeting
held on Monday, 16 July 2007, at 10:45 am
in Conference Room B 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 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

Ms Peggy AU YEUNG
Government Counsel

Miss Jacko TSANG
Assistant Secretary (Administration) 3
- 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)2431/06-07 - Minutes of meeting on 22 June 2007

LC Paper No. CB(2)2466/06-07 - Minutes of meeting on 29 June 2007)

The minutes of the meetings held on 22 and 29 June 2007 were confirmed.

II. Meeting with the Administration

(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(02) – Administration's composite response to the views of the deputations and submissions on the Bill

LC Paper No. CB(2)2458/06-07(01) – Administration's response to the issues raised at the meeting on 22 June 2007

LC Paper No. CB(2)2458/06-07(01) – An updated check list of follow-up actions required of the Administration

Annex B to LegCo Brief – "Arrangement on Reciprocal of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region Pursuant to Choice of Court Agreements between Parties Concerned" signed between the Mainland and the Hong Kong Special Administrative Region (HKSAR) on 14 July 2006 (the Arrangement)

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)

Action

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).
3. The Administration was requested to –

Clauses 5, 6 and Schedule 2

- (a) review the drafting of the expression "依據(pursuant to)" in clause 5(2)(b) of the Bill;
- (b) review whether the expression "unless the original court is the Supreme People's Court" should be deleted from clause 6(1)(d) of the Bill; and
- (c) provide a paper to explain the legal effect of preserving or deleting paragraph 3 of Schedule 2 from the Bill;

Issues relating to clause 18

- (d) explain whether the grounds for setting aside the registration of Mainland judgments set out in clause 18 covered "natural justice", and provide case law to illustrate how "public policy" and "fraud" could cover "natural justice";
- (e) advise whether clause 18, as presently drafted, had incorporated all the grounds for refusal of registration of foreign judgments under common law and statute law;
- (f) advise whether "public policy" and "fraud" as grounds of setting aside were sufficient to deal with future challenges relating to the concept of "natural justice" in Hong Kong;
- (g) clarify whether new evidence had to be provided by a judgment debtor making an application to set aside the registration of a judgment on the ground of "fraud" under clause 18 having regard to ALA6's comments concerning the differences in requirement between common law and Cap. 319; and
- (h) review the drafting of clause 18 having regard to members' observations as detailed in the index of proceedings attached at **Annex**.

III. Date of next meeting

4. The Chairman suggested that the next meeting should be held in mid September 2007. The date would be fixed after consulting the Administration and members of the Bills Committee nearer the time.

Action

5. The meeting ended at 12:25 pm.

Council Business Division 2
Legislative Council Secretariat
28 August 2007

**Proceedings of the ninth meeting of the
Bills Committee on Mainland Judgments (Reciprocal Enforcement) Bill
on Monday, 16 July, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000000 - 000327	Chairman	Confirmation of minutes of meetings	
000328 -	Chairman Administration	Continued discussion on the Administration's response to the issues raised at the meeting on 14 May 2007 (paragraphs 17-24 of LC Paper No. CB(2)2114/06-07(01))	
001222 - 002620	Chairman Administration ALA6	<p>Briefing by the Administration on its composite response to the views of deputations and submissions on the Bill (LC Paper No. CB(2)2091/06-07(02))</p> <p><u>Clauses 2 and 3</u> (paragraphs 3-6 of LC Paper No. CB(2)2091/06-07(02))</p> <p><u>Clauses 5 and 6</u> (paragraphs 7 and 8 of LC Paper No. CB(2)2091/06-07(02))</p> <p>The Administration would -</p> <p>(a) review whether the expression "依據 (pursuant to)" in clause 5(2)(b) of the Bill should be adopted; and</p> <p>(b) review whether the expression "unless the original court is the Supreme People's Court" should be deleted from clause 6(1)(d) of the Bill</p>	Adm to follow up
002621 - 003736	Administration ALA6 Chairman	<u>Clauses 7, 18 and Schedule 2</u> (paragraphs 9-19 of LC Paper No. CB(2)2091/06-07(02))	
003737 - 004334	ALA6 Chairman Administration	<p><u>Paragraph 3 of Schedule 2</u> (paragraphs 20 and 21 of LC Paper No. CB(2)2091/06-07(02))</p> <p>On the Administration's decision to delete paragraph 3 of Schedule 2 from the Bill in response to the Bar's query, members requested the Administration to provide a paper to explain the legal effect of preserving or deleting the proposed amendment</p>	Adm to follow up

Time Marker	Speaker(s)	Subject(s)	Action required
004335 - 011824	Administration Ms Audrey EU Chairman ALA6	<p><u>Natural justice - Article 9 of the Arrangement</u> (paragraph 22 of LC Paper No. CB(2)2091/06-07(02))</p> <p>The Administration was requested to -</p> <p>(a) explain whether the grounds for setting aside the registration of Mainland judgments set out in clause 18 covered "natural justice", and provide case law to illustrate how "public policy" and "fraud" could cover "natural justice";</p> <p>(b) advise whether clause 18, as presently drafted, had incorporated all the grounds for refusal of registration of foreign judgments under common law and statute law;</p> <p>(c) advise whether "public policy" and "fraud" as grounds of setting aside were sufficient to deal with future challenges relating to the concept of "natural justice" in Hong Kong; and</p> <p>(d) review whether the drafting of clause 18 reflected Article 9 of the Arrangement, having regard to members' following observations -</p> <p>(i) Article 9 was divided into two paragraphs. Under paragraph 1 of the Article, a judgment debtor was required to prove to the satisfaction of the court that the judgment should not be enforced under the grounds listed in (1) to (6). Under paragraph 2 of the Article, the court had the discretion not to enforce a judgment on the ground that it was contrary to "social and public interest" in the Mainland or "public policy" in Hong Kong; and</p> <p>(ii) the formulation of clause 18 was different. All the grounds (including "public policy") against enforcement of judgments were set out in clause 18(1) of the Bill. In addition, a judgment debtor was required to prove to the satisfaction of the court that a judgment should not be enforced</p>	Adm to follow up

Time Marker	Speaker(s)	Subject(s)	Action required
011825 - 012439	Chairman Administration	Briefing by the Administration on the rest of its composite response to the views of deputations and submissions on the Bill (paragraphs 23-32 of LC Paper No. CB(2)2091/06-07(02))	
012440 - 013730	Chairman Administration ALA6 Ms Audrey EU	<p>Briefing by the Administration on the use of "fraud" as a defence against the enforcement of foreign judgments (LC Paper No. CB(2)2458/06-07(01))</p> <p>The Administration was requested to -</p> <p>(a) clarify whether new evidence had to be provided by a judgment debtor making an application to set aside the registration of a judgment on the ground of "fraud" under clause 18 of the Bill, having regard to ALA6's comments that while no new evidence was required for an application under Cap. 319, this was not the case under common law and a House of Lords' case in 1992 was relevant; and</p> <p>(b) review whether the drafting of clause 18 reflected the policy intent that the court could of its own motion set aside the registration of a judgment, as different expressions had been adopted in the Bill and the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319) -</p> <p>(i) the court shall set aside the registration of the judgment if "the party has proved to the satisfaction" of the court(clause 18 of the Bill); and</p> <p>(ii) the registration of the judgment shall be set aside if "the registering court is satisfied" (section 6(1) of Cap. 319)</p>	Adm to follow up
013731 - 013947	Chairman Mr LI Kwok-ying	Way forward	