

立法會
Legislative Council

Ref : CB2/BC/6/06

LC Paper No. CB(2)727/07-08
(These minutes have been seen
by the Administration)

Bills Committee on Mainland Judgments (Reciprocal Enforcement) Bill

**Minutes of the meeting
held on Thursday, 22 November 2007, at 4:30 pm
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 Andrew LEUNG Kwan-yuen, SBS, JP
Hon Ronny TONG Ka-wah, SC

Members absent : Hon James TO Kun-sun
Hon Audrey EU Yuet-mee, SC, JP
Hon LI Kwok-ying, MH, 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
Senior Government Counsel (Acting)

Miss Carmen KONG
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)370/07-08 – Minutes of meeting on 24 October 2007)

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

II. Meeting with the Administration

(LC Paper No. CB(2)379/07-08(01) – Administration's response to the issues raised at the meetings on 8 and 24 October 2007)

LC Paper No. CB(2)379/07-08(02) – A check list of follow-up actions required of the Administration (position as at 20 November 2007)

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

LC Paper No. CB(2)2767/06-07(02) – A marked-up version of the Bill setting out the amendments proposed by 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)

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)

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).
3. The Administration was requested to -
 - (a) re-consider whether the procedures for registration of Mainland judgments which were required to be performed in stages could be simplified in consultation with Judiciary;

Action

- (b) re-consider whether the Long Title should make reference to the Arrangement;
- (c) review the drafting of clause 14(1) and clause 15 so that the drafting was in line with section 4(2) of the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319);
- (d) illustrate by examples the application of clause 14(2)(b) and their practical effect to facilitate members to consider whether the drafting of the provision was appropriate;
- (e) propose amendments to clause 18(1)(f) and (i), and clause 19 to improve clarity; and
- (f) consider whether it was appropriate to use the word "desirous" in clause 21(1) and (2).

III. Date of next meeting

4. The Chairman instructed the Clerk to fix the date of the next meeting after consulting the Administration and members of the Panel.

(Post-meeting note: With the concurrence of the Chairman, the next meeting will be held on 14 January 2008 at 2:30 pm.)

5. The meeting ended at 6:01 pm.

Council Business Division 2
Legislative Council Secretariat
3 January 2008

**Proceedings of the 12th meeting of the
Bills Committee on Mainland Judgments (Reciprocal Enforcement) Bill
on Thursday, 22 November 2007, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000000 - 000143	Chairman	Confirmation of minutes of meeting	
000144 - 002407	Admin Chairman Mr Martin LEE Mr Ronny TONG Ms Miriam LAU	Briefing by the Administration on its response to the issues raised at the meetings on 8 and 24 October 2007 (LC Paper No. CB(2)379/07-08(01))	
002408 - 005549	Chairman Admin Ms Miriam LAU Mr Martin LEE ALA6	<p><u>Clause 13 - Cases in which Mainland judgments are required to be performed in stages</u> (paras 16 to 21 of LC Paper No. CB(2)379/07-08(01))</p> <p>Views of members and ALA6 on the procedures for enforcing a Mainland judgement that was required to be performed in stages -</p> <p>(a) rule 11(2)(a) of proposed Order 71A in Schedule 2 of the Bill, which required an application for registration of part of a Mainland judgment to be supported by a copy of any affidavit submitted in support of the previous applications for registration, was cumbersome and not user-friendly;</p> <p>(b) irrespective of whether a one-off application or phased-application was required to be made for registration of a judgment that was required to be performed in stages, the legal effect would be the same, i.e. the relevant part of the judgment could not be enforced until it had become due; and</p> <p>(c) the procedures should be simplified</p> <p>Advice of the Administration that -</p> <p>(a) the procedures were in line with Article 219 of the Civil Procedure Law in the Mainland and the Foreign Judgements (Reciprocal Enforcement) Ordinance (Cap. 319);</p> <p>(b) clause 14(2)(b), which followed the existing practice of Cap. 319, provided that the sum for which the judgement was registered should carry interest. If a one-off registration was made in respect of a judgment required to be performed in stages, a judgment debtor would be liable to interest payment in relation to the part or parts of</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>judgment that had fallen due; and</p> <p>(c) the reason for requiring a judgment creditor to submit previous copies of applications for registration in his affidavit was to enable the court to be aware of the amount that had fallen due and remained unpaid, in cases where part or parts of a judgment would be enforced in the Mainland and Hong Kong in parallel</p> <p>Suggestion of Mr Martin LEE to replace the word "previous" with "last" in rule 11(2)(a) of proposed Order 71A in Schedule 2</p> <p>Comments of the Chairman that -</p> <p>(a) the Long Title of the Bill should make reference to the Arrangement in order to make clear that the proposals in the Bill sought to reflect the provisions of the Arrangement; and</p> <p>(b) she would propose amendments to the Long Title to that effect if the Administration did not agree to do so</p> <p>The Administration was requested to re-consider -</p> <p>(a) whether the procedures for registration of Mainland judgments which were required to be performed in stages could be simplified in consultation with the Judiciary; and</p> <p>(b) whether the Long Title should make reference to the Arrangement</p>	<p>Admin to follow up</p>
005550 - 005626	Chairman	<p>Clause-by-clause examination of the Bill with reference to the marked-up version of the Bill setting out the amendments proposed by the Administration (LC Paper No. CB(2)2767/06-07(02))</p>	
005627 - 010147	Admin Chairman ALA6	<p><u>Clause 14 - Effect of registration</u></p> <p>Comment of ALA6 that the effect of registration of a judgment under clause 14(1) should be subject to clause 15 which provided that a registered judgment should not be enforced under certain circumstances</p> <p>The Administration was requested to review the drafting of clause 14(1) and clause 15 so as to be in line with the drafting of section 4(2) of Cap. 319</p>	<p>Admin to follow up</p>

Time Marker	Speaker(s)	Subject(s)	Action required
010148 - 010727	ALA6 Admin Chairman	<p>Views of ALA6 that the drafting of clause 14(2)(b) concerning the interest carried by a Mainland judgment upon registration was general. According to the Administration, the judgment interest rate was to be specified by the court upon registration of the judgment. There were variations as to how the interest should be calculated under different circumstances. For example -</p> <p>(a) if the interest rate had already been specified in the judgment, whether the interest to be specified by the court upon registration would override that in the judgement;</p> <p>(b) if the interest sum had already been included in the judgment as part of the damage to be awarded, whether and how clause 14(2)(b) would apply; and</p> <p>(c) if the judgment was to be performed in stages, whether the interest was to be calculated by the court from the date of amount due</p> <p>The Administration was requested to illustrate by examples the application of clause 14(2)(b) and their practical effect to facilitate members to consider whether the drafting of the provision was appropriate</p>	Admin to follow up
010728 - 011352	Chairman Admin ALA6 Ms Miriam LAU	<p><u>Clause 15 - Registered judgments not to be enforced under certain circumstances</u></p> <p><u>Clause 16 - Recognition of Mainland judgments</u></p> <p><u>Clause 17 - Time limit for setting aside registration of registered judgments</u></p> <p>Advice of the Administration that clauses 15 to 17 were not requirements stipulated in the Arrangement, but they reflected the common law and the registration system</p>	
011353 - 011754	Chairman Admin ALA6	<p><u>Clause 18 - Clauses in which registration of registered judgments shall be set aside</u></p> <p><u>Clause 19 - Cases in which registration of registered judgments may be set aside or application to set aside registration may be adjourned</u></p> <p>The Administration undertook to propose amendments to clause 18(1)(f) and (i), and clause 19 to improve clarity</p>	Admin to follow up
011755 - 012704	Chairman	<u>Clause 20 - Effect of setting aside registration of</u>	

Time Marker	Speaker(s)	Subject(s)	Action required
	Admin ALA6 Ms Miriam LAU	<u>registered judgments</u> Confirmation of the Administration that part payment of a judgment sum after application for registration of a judgment could not be a ground for setting aside the registration of a registered judgment, as clause 10 provided that the judgment, when registered, should only be registered in respect of the balance remaining payable at the date of application	
012705 - 012941	Chairman Admin	The Administration was requested to consider whether it was appropriate to use the word "desirous" in clause 21(1) and (2)	Admin to follow up
012942 - 013030	Chairman Admin	Date of next meeting to be decided after the meeting	