

**立法會**  
**Legislative Council**

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

**Background brief**

**Purpose**

This paper gives an account of the past discussion of the Panel on Administration of Justice and Legal Services on the proposal to establish reciprocal enforcement of judgments in commercial matters between the Hong Kong Special Administrative Region (HKSAR) and the Mainland (the Arrangement).

**Current position**

2. At present, there is no arrangement between the HKSAR and the Mainland on reciprocal enforcement of judgments. However, a Mainland judgment may be recognised and enforced by the HKSAR courts under the common law. At common law, a foreign money judgment, including a Mainland judgment, may be recognised and enforced by action as a debt, if it is –

- (a) given by a competent court (as determined by the HKSAR courts with reference to the private international law rules);
- (b) a judgment for a fixed sum of money; and
- (c) a final judgment that is conclusive upon the merits of the claim.

3. However, the Mainland laws have not clearly provided for the recognition and enforcement of HKSAR judgments. The Mainland, being a civil law jurisdiction, does not have rules that are similar to the common law rules on recognition and enforcement of foreign judgments as those applied in Hong Kong.

**Consultation with Members**

4. In December 2001, the Administration briefed the Panel on the initial proposal of the Arrangement. The Administration proposed that the scope of the Arrangement should be limited to begin with, and might be expanded in the light of actual

experience gained in running the initial scheme. The initial proposal was that the Arrangement should cover only *"money judgments given by a court of either the Mainland (at the Intermediate People's Court level or higher) or the HKSAR (at the District Court level or higher) exercising its jurisdiction pursuant to a valid choice of forum clause contained in a commercial contract"*.

5. In 2002, the Administration conducted a consultation exercise to seek the views of the Panel, the legal professional bodies, chambers of commerce and trade associations on the proposal, and reported the outcome of the consultation exercise to the Panel. The Administration then conducted a series of meetings with the Mainland authorities to exchange views on the scope of the Arrangement, the issue of finality and the technicalities involved in the recognition and enforcement of judgments in both jurisdictions, and reported the progress of these discussions to the Panel at a number of meetings between 2004 and 2006.

6. Pursuant to the discussions with the Mainland authorities, the Administration briefed the Panel on its revised proposal in February 2006. Under the revised proposal, the Arrangement should apply to *"money judgments of commercial cases given by specified courts of either the Mainland or the HKSAR made pursuant to a valid exclusive choice of court agreement in writing"*.

7. The "Arrangement on Reciprocal Recognition and Enforcement 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" was signed by the Department of Justice and the Supreme People's Court on 14 July 2006. A LegCo Brief entitled "Reciprocal Enforcement of Judgments in Commercial Matters between the Mainland and the Hong Kong Special Administrative Region" was issued to the Council on 13 July 2006, a copy of which is in **Appendix I**.

8. On 25 November 2006, the Administration briefed the Panel on the main features of the Mainland Judgments (Reciprocal Enforcement) Bill which would give legislative backing to the Arrangement.

## **Issues raised by the Panel**

### Major concerns

9. The major concerns raised by members of the Panel on the Arrangement are summarised below -

- (a) Members pointed out that at common law, for a judgement to be enforceable, it must be a final and conclusive judgment, i.e. the case could not be reheard by the original trial court. In accordance with the trial supervision procedures in the Mainland, it was possible for a case to be retried by the same court that made the original judgment,

although the original judgment would remain legally enforceable. Members expressed concern as to whether a Mainland judgment which was subject to a possible retrial by the original court could be considered as final and conclusive under the common law rules applied by the HKSAR courts. They considered that the common law approach should be maintained in addressing the issue of finality.

- (b) Members expressed concern about the quality of justice and the propriety of the judicial officers in the Mainland, and the difficulties in executing judgments in the Mainland.

10. The Administration advised that the revised proposal would address the concerns raised by members -

- (a) the scope of the Arrangement was restricted. It would only apply to parties who made a prior express agreement to designate a court of the Mainland or the HKSAR to have exclusive jurisdiction for resolving any dispute<sup>Note 1</sup>;
- (b) the Arrangement would not cover the judgments of all courts in the Mainland. It only covered Intermediate People's Courts or above, and those Basic Level People's Courts designated to exercise jurisdiction over foreign-related civil and commercial cases<sup>Note 2</sup>;
- (c) to address the common law requirements of finality, the Supreme People's Court would devise a set of special procedures which would be set out in the Arrangement<sup>Note 3</sup>; and
- (d) the Arrangement provided for grounds for refusal of enforcement which were similar to the common law rules and those stipulated under the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319)<sup>Note 4</sup>.

### Trial points

11. Some members reiterated their concern about the quality of justice in the Mainland, and the difficulties in executing judgments in the Mainland. They

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Note 1 The meaning of "choice of court agreement" is defined in clause 3 of the Bill

Note 2 A list of the Basic Level People's Courts is attached to the Arrangement signed by the Secretary for Justice with the Vice-President of the Supreme Peoples' Court on 14 July 2006 (Annex B to the LegCo Brief on the Bill refers)

Note 3 Section 2 of the Arrangement signed on 14 July 2006 and clause 6 of the Bill deal with the finality of Mainland judgments.

Note 4 Clause 18 of the Bill provides for cases in which the Court of First Instance shall set aside the registration of a Mainland judgment. They are generally modelled on the grounds for setting aside the registration of a foreign judgment under the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319).

suggested that initially, certain better developed cities in the Mainland having proven trade or economic activities should be selected as "trial points" for the implementation of the Arrangement, and the Arrangement might be extended to other cities only upon the successful implementation of the trial scheme.

12. The Administration advised that the Mainland authorities had reservation in accepting the suggestion. The Mainland authorities had explained that -

- (a) the Arrangement would be implemented through the promulgation of regulations or judicial explanation which must be applied across all provinces in the Mainland. It would not be feasible or practical to exclude certain parts of the Mainland from the uniform application of the regulations or judicial explanation;
- (b) there was little established or objective basis for selecting "trial points";
- (c) the "trial points" arrangement, if implemented, might impact on the distribution of investments in the Mainland. The areas selected as "trial points" might attract more foreign investments;
- (d) the "trial points" arrangement might also exacerbate forum shopping. Parties who sought to benefit from the Arrangement might create some arbitrary connections between their contracts and the "trial points" so that their contractual disputes would be adjudicated by the court in these areas; and
- (e) if the application of the Arrangement were to be confined to "trial points", it would render the Arrangement ineffective as it would significantly reduce its already limited scope.

#### Parallel proceedings

13. Some members expressed concern about the risk of parallel proceedings being instituted in the courts of both places.

14. The Administration explained that the requirement for adopting an exclusive choice of court clause by the parties aimed to minimise the risk of parallel proceedings. As each jurisdiction had its own laws, litigation rules and procedures on enforcement of judgments which were quite different from one another, it was difficult if not impossible to agree on a common set of principles to resolve problems brought by parallel litigation. The two sides hence agreed that an exclusive choice of court agreement between the parties was a preferred option as this gave certainty to the scope of judgments covered.

### Level of courts

15. Members noted that under the revised proposal, the Arrangement would also cover the Basic Level People's Courts, in addition to judgments given by courts at the Intermediate People's Court level or above. Some members expressed concern about the criteria for drawing up the list of designated Basic Level People's Courts.

16. The Administration advised that about 1% out of the 3 100 odd Basic Level People's Courts in the Mainland had been designated to exercise jurisdiction over foreign-related civil and commercial cases, some of which might be allowed to adjudicate claims of up to RMB 1 million, generally on par with the District Court of the HKSAR. In many provinces, autonomous regions and municipalities directly under the Central Government, a good proportion of foreign-related cases were dealt with by the Basic Level People's Court, which could amount to 50% of the total number of foreign-related civil and commercial matters dealt with in the relevant region. Many of the designated Basic Level Peoples' Courts were situated in provinces or municipalities where Hong Kong businesses had set up operations. In view of this development, the Administration accepted the Mainland side's counter-proposal that judgments made by designated Basic Level People's Courts should also be covered under the revised Arrangement.

### Requests of the Panel

17. The Administration advised the Panel that the Arrangement would be implemented in the HKSAR by means of legislation whereas, in the Mainland, the Supreme People's Court would promulgate a judicial interpretation to set out the details of the procedures for implementing the Arrangement. The Panel requested the Administration to provide a copy of the judicial interpretation for reference of Members.

18. At present, a Mainland judgment may be recognised and enforced by the HKSAR courts under the common law. The Panel requested the Administration to provide information on the existing problems encountered in enforcement of Mainland judgments in the HKSAR, the methods employed for and the success rate of enforcement of such judgements.

### **Relevant papers**

19. A list of relevant papers available on the LegCo website is in the **Appendix II**.

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## LEGISLATIVE COUNCIL BRIEF

### RECIPROCAL ENFORCEMENT OF JUDGMENTS IN COMMERCIAL MATTERS BETWEEN THE MAINLAND AND THE HONG KONG SPECIAL ADMINISTRATIVE REGION

#### INTRODUCTION

At the meeting of the Executive Council on 4 July 2006, the Council ADVISED and the Chief Executive ORDERED that the Hong Kong Special Administrative Region (HKSAR) should agree with the Supreme People's Court on an arrangement for reciprocal enforcement of judgments in commercial matters between the Mainland and the HKSAR along the lines of the draft at **Annex A**.

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#### JUSTIFICATIONS

##### The current situation

2. There is currently no arrangement for reciprocal enforcement of judgments (REJ) between the Mainland and the HKSAR. The Foreign Judgments (Reciprocal Enforcement) Ordinance (the Ordinance) provides for foreign judgments to be enforced in Hong Kong summarily on a reciprocal basis. The Mainland is not among the designated jurisdictions.

3. A Mainland judgment may, however, be recognized and enforced in Hong Kong under the common law. At common law, a foreign money judgment (including a Mainland judgment) may be recognized and enforced by action as a debt, subject to certain overriding principles; for instance, judgments obtained by fraud or which are against public policy cannot be enforced. A judgment creditor of a Mainland judgment who seeks to enforce the judgment under common law in the HKSAR suffers certain disadvantages –

- (a) he cannot use the simplified procedure of registration provided under the Ordinance. The proceedings will take longer time to complete and involve higher legal costs; and
- (b) he will have to bear the burden of proof whereas in proceedings for registration of a foreign judgment under the Ordinance, the burden of proof falls on the judgment debtor to show why the judgment should not be enforced.

4. On the other hand, the Mainland laws have not clearly provided for the recognition and enforcement of Hong Kong judgments. The Mainland, being a civil law jurisdiction, does not have rules that are similar to the common law rules on recognition and enforcement of foreign judgments as those applied in Hong Kong.

5. Given the huge volume of activities, particularly commercial ones, between the Mainland and the HKSAR, it is in the interest of the Hong Kong and the international business communities that are doing business with the Mainland to have an REJ arrangement, so that an option is available for the judgment creditors to seek summary enforcement of court judgments of one jurisdiction in the other jurisdiction within the specified scope of the arrangement, without undergoing the time-consuming and costly litigation proceedings.

6. Such an arrangement will also be conducive to developing Hong Kong as a centre for dispute resolution in commercial cases and provision of legal services to the international business communities. A simple and effective enforcement mechanism is believed to be a key consideration for investors to decide the place of resolving commercial disputes.

### **The Arrangement**

7. Pursuant to the discussions with the relevant Mainland organs, with the last of the meeting held on 12 April 2006 between the Secretary for Justice and representatives of the Supreme People's Court, the draft REJ arrangement between the Mainland and the HKSAR (the Arrangement), at **Annex A**, was reached. The Arrangement covers **“money judgments given by designated courts of either the Mainland or the HKSAR, exercising its jurisdiction pursuant to a valid exclusive choice of court clause contained in a business-to-business agreement”**.

A

B A synopsis is at **Annex B**.

8. The Legislative Council's Panel on Administration of Justice and Legal Services (AJLS Panel) and some quarters have previously raised concerns regarding whether the court judgments of the Mainland meet the "finality" test under common law principles, the quality of justice in the Mainland (including the propriety of Mainland judicial officers), and the difficulties in executing judgments in the Mainland. The following elements of the Arrangement adequately address the concerns -

- (a) the scope of the Arrangement is restricted. It only covers money judgments on disputes arising from business-to-business agreement and is only applicable where the parties who, on the basis of freedom of contract, made a prior express agreement to submit to the sole jurisdiction of the courts of the Mainland or Hong Kong;
- (b) the Arrangement does not cover the judgments of all courts in the Mainland. It only covers Intermediate People's Courts and above, and those Basic Level People's Courts designated to exercise jurisdiction over foreign-related civil and commercial cases;
- (c) to address the common law requirements of finality, the Supreme People's Court will devise a set of special procedures which are set out in the Arrangement; and
- (d) the Arrangement provides for grounds for refusal of enforcement which are similar to common law rules and those stipulated under the Ordinance.

9. The Secretary for Justice will sign the Arrangement with the Supreme People's Court on 14 July when representatives of the Supreme People's Court visit Hong Kong. Legislation is required to implement the Arrangement. We will prepare the legislative proposals.

## **IMPLICATIONS OF THE ARRANGEMENT**

10. It is difficult to estimate the number of Mainland judgments that parties would seek to enforce in Hong Kong under the Arrangement, and to what extent the Arrangement may encourage parties to choose HKSAR courts as the designated courts to determine their business disputes. Nevertheless, we do not envisage that the enforcement number will be large, at least at the initial stage of implementation, given the



restricted scope and application of the Arrangement, the availability of other modes of disputes resolution, and the fact that not all judgment debtors have assets in Hong Kong worthy of execution. We are seeking further assistance of the relevant Mainland organs to provide us with as many relevant statistics as possible to help us to make a better estimate. If, in the light of the information received, additional funding is considered necessary for the implementation of the Arrangement, it will be sought in accordance with established mechanism.

11. The Arrangement will benefit members of the business community who are doing business with the Mainland, as the court judgments of one jurisdiction can be enforced in the other without the need to go through time-consuming and costly litigation proceedings. It will have positive impact on the development of HKSAR as a centre for resolution of commercial disputes, in particular relating to disputes involving Mainland parties or interests. The legal profession of HKSAR will benefit from a likely rise in the demand for legal services resulting from the implementation of the Arrangement. The Arrangement is in conformity with the Basic Law, including the provisions concerning human rights. It has no civil service, productivity, environmental or sustainability implications.

## **PUBLIC CONSULTATION**

12. We consulted the AJLS Panel, the legal professional bodies, chambers of commerce and trade associations on the need for an REJ arrangement with the Mainland and on the broad framework of the arrangement in 2002. The majority of the respondents indicated support. We further briefed the Law Society of Hong Kong and the Hong Kong Bar Association on the Arrangement in December 2005 and January 2006 respectively. The two bodies supported the Arrangement. We have briefed the AJLS Panel periodically on the progress of the matter since 2002. The Panel indicated support at its meeting held in February 2006. Members were advised that the Administration intended to reach agreement with the Mainland as soon as possible.

## **PUBLICITY**

13. The Arrangement will be signed on 14 July, and a press release will be issued on the day of signature. A spokesman will be available to answer media and public enquiries. We will also publicize

the implications of the new Arrangement to the business community.

## **ENQUIRIES**

14. Any enquiries on this brief can be addressed to Mrs Alice Cheung, Assistant Director (Administration) at 2810 2576.

**Department of Justice**

**Administration Wing  
Chief Secretary for Administration's Office**

**13 July 2006**

## 擬稿

### 關於內地與香港特別行政區法院相互認可和執行

#### 當事人協議管轄的民商事案件判決的安排

根據《中華人民共和國香港特別行政區基本法》第九十五條的規定，最高人民法院與香港特別行政區政府經協商，現就當事人協議管轄的民商事案件判決的認可和執行問題作出如下安排：

第一條 內地人民法院和香港特別行政區法院在具有書面管轄協議的民商事案件中作出的須支付款項的具有執行力的終審判決，當事人可以根據本安排向內地人民法院或者香港特別行政區法院申請認可和執行。

第二條 本安排所稱“具有執行力的終審判決”：

(一) 在內地是指：

1. 最高人民法院的判決；
2. 高級人民法院、中級人民法院以及經授權管轄第一審涉

外、涉港澳臺民商事案件的基層人民法院（名單附後）依法不准上訴或者已經超過法定期限沒有上訴的第一審判決，第二審判決和依照審判監督程序由上一級人民法院提審後作出的生效判決。

（二）在香港特別行政區是指終審法院、高等法院上訴法庭及原訟法庭和區域法院作出的生效判決。

本安排所稱判決，在內地包括判決書、裁定書、調解書、支付令；在香港特別行政區包括判決書、命令和訴訟費評定證明書。

當事人向香港特別行政區法院申請認可和執行判決後，內地人民法院對該案件依法再審的，由作出生效判決的上一級人民法院提審。

第三條 本安排所稱“書面管轄協議”，是指當事人為解決與特定法律關係有關的已經發生或者可能發生的爭議，自本安排生效之日起，以書面形式明確約定內地人民法院或者香港特別行政區法院具有唯一管轄權的協議。

本條所稱“特定法律關係”，是指當事人之間的民商事合同，不包括僱傭合同以及自然人因個人消費、家庭事宜或者其他非商業目的而作為協議一方的合同。

本條所稱“書面形式”是指合同書、信件和數據電文(包括電報、電傳、傳真、電子數據交換和電子郵件)等可以有形地表現所載內容、可以調取以備日後查用的形式。

書面管轄協議可以由一份或者多份書面形式組成。

除非合同另有規定，合同中的管轄協議條款獨立存在，合同的變更、解除、終止或者無效，不影響管轄協議條款的效力。

第四條 申請認可和執行符合本安排規定的民商事判決，在內地向被申請人住所地、經常居住地或者財產所在地的中級人民法院提出，在香港特別行政區向香港特別行政區高等法院提出。

第五條 被申請人住所地、經常居住地或者財產所在地在內地不同的中級人民法院轄區的，申請人應當選擇向其中一個人民法院提出認可和執行的申請，不得分別向兩個或者兩個以上人民法院提出申請。

被申請人的住所地、經常居住地或者財產所在地，既在內地又在香港特別行政區的，申請人可以同時分別向兩地法院提出申請，兩地法院分別執行判決的總額，不得超過判決確定的數額。已經部分或者全

部執行判決的法院應當根據對方法院的要求提供已執行判決的情況。

第六條 申請人向有關法院申請認可和執行判決的，應當提交以下文件：

- (一) 請求認可和執行的申請書；
- (二) 經作出終審判決的法院蓋章的判決書副本；
- (三) 作出終審判決的法院出具的證明書，證明該判決屬於本安排第二條所指的終審判決，在判決作出地可以執行；
- (四) 身份證明材料：
  1. 申請人為自然人的，應當提交身份證或者經公證的身份證複印件；
  2. 申請人為法人或者其他組織的，應當提交經公證的法人或者其他組織註冊登記證書的複印件；
  3. 申請人是外國籍法人或者其他組織的，應當提交相應的公證和認證材料。

向內地人民法院提交的文件沒有中文文本的，申請人應當提交證明無誤的中文譯本。

執行地法院對於本條所規定的法院出具的證明書，無需另行要求公證。

第七條 請求認可和執行申請書應當載明下列事項：

- (一) 當事人為自然人的，其姓名、住所；當事人為法人或者其他組織的，法人或者其他組織的名稱、住所以及法定代表人或者主要負責人的姓名、職務和住所；
- (二) 申請執行的理由與請求的內容，被申請人的財產所在地以及財產狀況；
- (三) 判決是否在原審法院地申請執行以及已執行的情況。

第八條 申請人申請認可和執行內地人民法院或者香港特別行政區法院判決的程序，依據執行地法律的規定。本安排另有規定的除外。

申請人申請認可和執行的期限，雙方或者一方當事人是自然人的為一年，雙方是法人或者其他組織的為六個月。

前款規定的期限，內地判決到香港特別行政區申請執行的，從判決規定履行期間的最後一日起計算，判決規定分期履行的，從規定的每次履行期間的最後一日起計算；香港特別行政區判決到內地申請執行的，從判決可強制執行之日起計算，該日為判決上注明的判決日期，判

決對履行期限另有規定的，從規定的履行期限屆滿後開始計算。

第九條 對申請認可和執行的判決，原審判決中的債務人提供證據證明有下列情形之一的，受理申請的法院經審查核實，應當裁定不予認可和執行：

- (一) 根據當事人協議選擇的原審法院地的法律，管轄協議屬於無效。但選擇法院已經判定該管轄協議為有效的除外；
- (二) 判決已獲完全履行；
- (三) 根據執行地的法律，執行地法院對該案享有專屬管轄權；
- (四) 根據原審法院地的法律，未曾出庭的敗訴一方當事人未經合法傳喚或者雖經合法傳喚但未獲依法律規定的答辯時間。但原審法院根據其法律或者有關規定公告送達的，不屬於上述情形；
- (五) 判決是以欺詐方法取得的；
- (六) 執行地法院就相同訴訟請求作出判決，或者外國、境外地區法院就相同訴訟請求作出判決，或者有關仲裁機構作出仲裁裁決，已經為執行地法院所認可或者執行的。

內地人民法院認為在內地執行香港特別行政區法院判決違反



內地社會公共利益，或者香港特別行政區法院認為在香港特別行政區執行內地人民法院判決違反香港特別行政區公共政策的，不予認可和執行。

第十條 對於香港特別行政區法院作出的判決，判決確定的債務人已經提出上訴，或者上訴程序尚未完結的，內地人民法院審查核實後，可以中止認可和執行程序。經上訴，維持全部或者部分原判決的，恢復認可和執行程序；完全改變原判決的，終止認可和執行程序。

內地地方人民法院就已經作出的判決按照審判監督程序作出提審裁定，或者最高人民法院作出提起再審裁定的，香港特別行政區法院審查核實後，可以中止認可和執行程序。再審判決維持全部或者部分原判決的，恢復認可和執行程序；再審判決完全改變原判決的，終止認可和執行程序。

第十一條 根據本安排而獲認可的判決與執行地法院的判決效力相同。

第十二條 當事人對認可和執行與否的裁定不服的，在內地可以向上一級人民法院申請復議，在香港特別行政區可以根據其法律規

定提出上訴。

第十三條 在法院受理當事人申請認可和執行判決期間，當事人依相同事實再行提起訴訟的，法院不予受理。

已獲認可和執行的判決，當事人依相同事實再行提起訴訟的，法院不予受理。

對於根據本安排第九條不予認可和執行的判決，申請人不得再行提起認可和執行的申請，但是可以按照執行地的法律依相同案件事實向執行地法院提起訴訟。

第十四條 法院受理認可和執行判決的申請之前或者之後，可以按照執行地法律關於財產保全或者禁制資產轉移的規定，根據申請人的申請，對被申請人的財產採取保全或強制措施。

第十五條 當事人向有關法院申請執行判決，應當根據執行地有關訴訟收費的法律和規定交納執行費或者法院費用。

第十六條 內地與香港特別行政區法院相互認可和執行的標的範圍，除判決確定的數額外，還包括根據該判決須支付的利息、經

法院核定的律師費以及訴訟費，但不包括稅收和罰款。

在香港特別行政區訴訟費是指經法官或者司法常務官在訴訟費評定證明書中核定或者命令支付的訴訟費用。

第十七條 內地與香港特別行政區法院自本安排生效之日（含本日）起作出的判決，適用本安排。

第十八條 本安排在執行過程中遇有問題或者需要修改，由最高人民法院和香港特別行政區政府協商解決。

第十九條 本安排在內地由最高人民法院發布司法解釋以及在香港特別行政區完成修改有關法律程序後，由雙方公布生效日期並予以執行。

本安排於 2006 年 月 日在 簽署，一式兩份。

最高人民法院  
副院長

香港特別行政區  
律政司司長

附：截至 2006 年 5 月 31 日止，內地經授權管轄第一審涉外、涉港澳臺民商事案件的基層人民法院名單

直轄市、省、自治區	基層人民法院名稱
廣東	廣州市越秀區人民法院
	廣州市海珠區人民法院
	廣州市天河區人民法院
	廣州市番禺區人民法院
	廣州市蘿崗區人民法院
	廣州市南沙區人民法院
	深圳市福田區人民法院
	深圳市羅湖區人民法院
	深圳市寶安區人民法院
	深圳市龍崗區人民法院
	深圳市南山區人民法院
	深圳市鹽田區人民法院
	佛山市禪城區人民法院
	東莞市人民法院
	湛江經濟技術開發區人民法院
	惠州市大亞灣經濟技術開發區人民法院
	山東
淄博高新技術產業開發區人民法院	
泰安高新技術產業開發區人民法院	
煙臺經濟技術開發區人民法院	
日照經濟開發區人民法院	
河北	石家莊高新技術產業開發區人民法院

	廊坊經濟技術開發區人民法院
	秦皇島市經濟技術開發區人民法院
湖北	武漢市經濟技術開發區人民法院
	武漢東湖新技術開發區人民法院
	襄樊高新技術開發區人民法院
遼寧	瀋陽經濟技術開發區人民法院
	瀋陽高新技術產業開發區人民法院
	大連經濟技術開發區人民法院
江蘇	蘇州市工業園區人民法院
	無錫市高新技術產業開發區人民法院
	常州高新技術產業開發區人民法院
	南通經濟技術開發區人民法院
上海	浦東新區人民法院
	黃浦區人民法院
吉林	長春市經濟技術開發區人民法院
	吉林高新技術產業開發區人民法院
天津	天津市經濟技術開發區人民法院
浙江	義烏市人民法院
河南	鄭州高新技術產業開發區人民法院
	洛陽市高新技術開發區人民法院
四川	成都高新技術產業開發區人民法院
	綿陽高新技術產業開發區人民法院
海南	洋浦開發區人民法院
內蒙古	包頭稀土高新技術產業開發區人民法院
安徽	合肥高新技術產業開發區人民法院

最高人民法院根據審判工作的需要，對授權管轄第一審涉外、涉港澳臺民商事案件的基層人民法院進行增減的，在通報香港特別行政區政府後，列入附件。

**Key Features of the Arrangement on  
Reciprocal Enforcement of Judgments  
in Commercial Matters  
by the Courts of the Mainland and HKSAR  
("the Arrangement")**

The Arrangement covers money judgments given by a designated court of either the Mainland or the HKSAR exercising its jurisdiction pursuant to a valid exclusive choice of court clause contained in a business-to-business agreement. The key elements are set out below.

**Scope**

2. The Arrangement only covers judgments that –
  - (a) require payment of money in business-to-business cases. That is, employment contracts and contracts to which a natural person acting for personal consumption, family or other non-commercial purposes is a party will be excluded;
  - (b) relate to disputes in which the parties concerned have agreed in written form to designate a people's court of the Mainland or a court of the HKSAR as the forum to have sole jurisdiction for resolving such dispute; and
  - (c) are final and conclusive.

**Levels of Courts**

3. Judgments from the following courts of the Mainland and HKSAR are covered:
  - (a) in the case of the Mainland, any judgment –
    - i. of the Supreme People's Court;
    - ii. of the first instance made by a Higher or Intermediate People's Court or a designated Basic Level People's Courts which has been authorized to exercise jurisdiction in civil and commercial cases of the first instance involving foreign parties, or Hong Kong, Macao and Taiwan parties from

which no appeal is allowed according to the law, or in respect of which the time limit for appeal has expired and no appeal has been filed;

iii. of the second instance; or

iv. made in accordance with the trial supervision procedure by bringing up the case for retrial by a people's court at the next higher level.

(b) in the case of HKSAR –  
a judgment of the District Court or above.

4. For the purposes of the Arrangement, a judgment includes any judgment, ruling, conciliation statement and order of payment in the case of the Mainland, and includes any judgment, order and allocatur in the case of HKSAR.

### **Safeguards**

5. The Arrangement provides for grounds for refusal of enforcement which are similar to common law rules and those stipulated under the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319). An application for recognition and enforcement of a judgment will be refused if –

(a) the choice of court agreement is invalid under the law of the place chosen by agreement of the parties where the original trial was conducted, unless the chosen court has determined that the choice of court agreement is valid;

(b) the judgment has been fully executed;

(c) the court of the place where enforcement is sought has exclusive jurisdiction over the case according to its law;

(d) the losing party has not been given sufficient time to defend his case;

(e) the judgment has been obtained by fraud; or

(f) the court of the place where enforcement is sought has made a prior judgment on the same cause of action.



6. In addition, the court concerned shall refuse an application for recognition and enforcement of a judgment, if–

- (a) in the case of the People’s Court of the Mainland, it considers that the enforcement of the HKSAR judgment is contrary to the social and public interests of the Mainland; or
- (b) in the case of the HKSAR court, it considers that the enforcement of the Mainland judgment is contrary to the public policy of the HKSAR.

### **Finality**

7. At common law, in order to establish that a foreign money judgment is final, it must be shown that the court, by which the judgment was pronounced, conclusively, finally and forever established the existence of the debt in question so as to make it *res judicata* between the parties. A judgment can still be regarded as final even if it is under appeal.

8. Under the trial supervision system in the Mainland, a party to the case, a people’s court or a people’s procuratorate at a higher level may initiate a review of a legally effective judgment subject to certain conditions. This could result in the retrial of the case by the original trial court. Hence, there were instances where the Hong Kong courts ruled that judgments of the Mainland courts could not be considered final and conclusive for the purpose of seeking enforcement in Hong Kong.

9. For the purpose of the Arrangement, special procedures will be adopted in order to address the common law requirements of finality which are to be set out in the Arrangement –

- (a) only a final judgment will be recognized and enforced;
- (b) where an application to enforce a Mainland court judgment has been made in Hong Kong and the trial supervision procedure calling for a retrial is subsequently invoked in the Mainland, the case will be brought up for a retrial by a higher court. This is to ensure that the People’s Court which pronounced the original judgment will not have the opportunity to vary or abrogate the very judgment of which enforcement is sought;
- (c) a certificate of “final judgment” to be issued by the relevant Mainland court must be submitted to the Hong Kong court by

the judgment creditor seeking enforcement; and

- (d) the Supreme People's Court of the PRC will issue a judicial interpretation to set out the above special retrial procedures applicable to Mainland judgments sought to be enforced in Hong Kong under the Arrangement. In addition, an explanatory document on the new procedures will be drawn up and distributed by the Supreme People's Court before the Arrangement comes into effect.

10. The above special procedures are considered to be generally in line with the requirements laid down by Hong Kong courts for determining the finality and conclusiveness of a foreign judgment.

### **Other Provisions**

11. The Arrangement will also provide for the conditions of applying to the relevant courts for the recognition and enforcement of a judgment, and that the application procedures should be governed by the law of the place where enforcement of the judgment is sought. A judgment recognized in accordance with the Arrangement will have the same force and effect as one being made by a court of the place where enforcement is sought. Where an appeal against the relevant judgment was lodged or an application to bring up the case for retrial in accordance with the procedure for trial supervision in the Mainland has been made, as the case may be, the recognition and enforcement procedure may be suspended.

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**Mainland Judgments  
(Reciprocal Enforcement) Bill**

**Relevant documents**

<u>Committee</u>	<u>Date of meeting</u>	<u>Papers</u>
Panel on Administration of Justice and Legal Services	20 December 2001	<p>Administration's paper on "Enforcement of Mainland Judgments in the Hong Kong Special Administrative Region (HKSAR) and Benefits of an Arrangement of Reciprocal Enforcement of Judgments (REJ) between the HKSAR and the Mainland and Choice of Forum Provisions and their Implications on REJ under the Draft Hague Convention on Jurisdiction and foreign Judgments in Civil and Commercial Matters"</p> <p>[<a href="#">LC Paper No. CB(2)722/01-02(04)</a>]</p> <p>Minutes of meeting</p> <p>[<a href="#">LC Paper No. CB(2)955/01-02</a>]</p>
	27 May 2002	<p>Administration's paper on "Reciprocal Enforcement of Judgments in Commercial Matters between the HKSAR and the Mainland"</p> <p>[<a href="#">LC Paper No. CB(2)1431/01-02(01)</a>]</p> <p>Administration's paper on "Result of the Consultation Exercise"</p> <p>[<a href="#">LC Paper No. CB(2)2020/01-02(01)</a>]</p> <p>Minutes of meeting</p> <p>[<a href="#">LC Paper No. CB(2)2780/01-02</a>]</p>
	22 November 2004	<p>Submission from Mr P Y LO</p> <p>[<a href="#">LC Paper No. CB(2)248/04-05(04)</a>]</p> <p><i>(Chinese version only)</i></p>

<u>Committee</u>	<u>Date of meeting</u>	<u>Papers</u>
		<p>Administration's paper on "Reciprocal Enforcement of Judgments in Commercial Matters between the HKSAR and the Mainland"  <a href="#">[LC Paper No. CB(2)248/04-05(05)]</a></p> <p>Minutes of meeting  <a href="#">[LC Paper No. CB(2)386/04-05]</a></p>
	24 October 2005	<p>Background brief entitled "Reciprocal Enforcement of Judgments in Commercial Matters between the HKSAR and the Mainland"  <a href="#">[LC Paper No. CB(2)122/05-06(03)]</a></p> <p>Administration's paper on "Reciprocal Enforcement of Judgments in Commercial Matters between the HKSAR and the Mainland"  <a href="#">[LC Paper No. CB(2)122/05-06(04)]</a></p> <p>Minutes of meeting  <a href="#">[LC Paper No. CB(2)499/05-06]</a></p>
	--	<p>Hong Kong Bar Association's letter and Mr P Y LO's comments  <a href="#">[LC Paper No. CB(2)169/05-06(01)]</a>  <i>(English version only)</i></p> <p>Panel Chairman's letter to the Administration  <a href="#">[LC Paper No. CB(2)194/05-06(01)]</a>  <i>(English version only)</i></p> <p>Administration's response to the letter from the Panel Chairman  <a href="#">[LC Paper No. CB(2)568/05-06(01)]</a>  <i>(English version only)</i></p>
	27 February 2006	<p>Background brief entitled "Reciprocal Enforcement of Judgments in Commercial Matters between the HKSAR and the Mainland"  <a href="#">[LC Paper No. CB(2)1202/05-06(01)]</a></p>

<u>Committee</u>	<u>Date of meeting</u>	<u>Papers</u>
		<p>Administration's paper on "Reciprocal Enforcement of Judgments in Commercial Matters between the HKSAR and the Mainland" <a href="#">[LC Paper No. CB(2)1202/05-06(02)]</a></p> <p>Law Society of Hong Kong's letter <a href="#">[LC Paper No. CB(2)1202/05-06(03)]</a> <i>(English version only)</i></p> <p>Hong Kong Bar Association's position paper <a href="#">[LC Paper No. CB(2)1225/05-06(01)]</a> <i>(English version only)</i></p> <p>Minutes of meeting <a href="#">[LC Paper No. CB(2)1764/05-06]</a></p>
	27 November 2006	<p>Administration's paper on "Reciprocal Enforcement of Judgments in Commercial Matters between the HKSAR and the Mainland" <a href="#">[LC Paper No. CB(2)429/06-07(01)]</a></p> <p>Minutes of meeting <a href="#">[LC Paper No. CB(2)887/06-07]</a></p>