

**Bills Committee on Mainland Judgments (Reciprocal Enforcement) Bill
A check list of follow-up actions required of the Administration
(Position as at 11 June 2007)**

Date of meeting	Follow-up actions required	Administration's response
29 March 2007	Provide a table showing how the clauses in the Bill correspond with the relevant provisions of the Arrangement	Annex I to LC Paper No. CB(2)1641/06-07(01)
	Provide a copy of the judicial interpretation on the procedures for implementing the Arrangement to be promulgated by the Supreme People's Court for Members' reference	Response awaited
	Provide relevant provisions of the Hague Convention on which clauses 3 and 4 of the Bill were modeled	Annex II to LC Paper No. CB(2)1641/06-07(01)
	Provide a paper on the rules governing the jurisdiction of courts on the Mainland, including how a case could be transferred from one court to another court	Annex III to LC Paper No. CB(2)1641/06-07(01)
	<u>Clause 3</u> Review the drafting of clause 3(1) and 3(2) in view of members' concern that the phrase "designating a court" could be construed to mean "a specified court"	LC Paper No. CB(2)2114/06-07(01)
24 April 2007	<u>Forum shopping</u> Provide a paper to explain whether or not the Bill, if enacted, would affect the application of common law rules in Hong Kong, e.g. the rules that governed the prevention of forum shopping	LC Paper No. CB(2)1827/06-07(01)
30 April 2007	<u>Long title</u> <u>Clause 2(1) - Definition of "Mainland judgment"</u> Review the drafting of the clauses, i.e. whether the words "civil or" should be deleted	LC Paper No. CB(2)2091/06-07(01)
	<u>Clause 2(1) - Definition of "recognized Basic People's Court"</u> (a) review whether reference should be made to clause 25(1) in the definition; and (b) consider the need to stipulate in the Bill that the list of recognized Basic People's Court would take effect upon publication of it by the Secretary for Justice in the Gazette under clause 25	LC Paper No. CB(2) 2091/06-07(01)
	<u>Clause 2(1) - Definition of "specified contract"</u> (a) clarify the scope of the definition; (b) explain how the definition could achieve the legislative intent;	LC Paper No. CB(2) 2091/06-07(01)

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	<p>(c) provide examples on the types of contracts that could be included and excluded from the definition;</p> <p>(d) advise whether a Mainland court would classify a contract entered into between a container truck driver and a container truck owner involving in cross border transportation as an employment or a commercial contract;</p> <p>(e) in relation to (d) above, advise whether a Hong Kong court could retry the case and challenge the ruling of the Mainland court, if a judgment debtor had applied for the registration of a Mainland judgment to be set aside on the ground that it was an employment contract; and</p> <p>(f) consider whether the exclusion drafting approach or a more user-friendly approach should be adopted for the definition</p>	
	<p><u>Clause 2(2)</u></p> <p>(a) review the drafting of clause 2(2); and</p> <p>(b) consider whether the meaning of an expression of the law of the Mainland (e.g. any court, court document or court procedure etc.) used in the Bill should more appropriately be defined under clause 2(1)</p>	<p>LC Paper No. CB(2) 2091/06-07(01)</p>
	<p><u>Clause 3</u></p> <p>(a) review the expression "designating a court", as the Administration had previously advised that the expression should mean "a court" or "courts" so designated; and</p> <p>(b) advise the consequences if the court so designated did not have jurisdiction over the case, e.g. it had no real and substantial connection with the case</p>	<p>LC Paper No. CB(2)2114/06-07(01)</p>
<p>5 May 2007</p>	<p><u>Submissions</u></p> <p>(a) provide a copy of the submission received from the International Chamber of Commerce - Hong Kong, China in 2002; and</p> <p>(b) provide a composite response to the views given by the deputations</p>	<p>LC Paper No. CB(2)2057/06-07(01)</p> <p>LC Paper Nos. CB(2) 2091/06-07(02) and CB(2)2114/06-07(01)</p>
	<p><u>Clause 3</u></p> <p>(a) review the drafting of the expression "designating a court" in clause 3 of the Bill, which was different from the expression used in Article 3 of the Arrangement; and</p>	<p>LC Paper No. CB(2)2114/06-07(01)</p>

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	(b) provide information on the provisions relating to the choice of forum in a jurisdiction agreement and the choice of arbitration tribunal in an arbitration agreement	
14 May 2007	<p><u>Clause 3</u></p> <p>(a) advise whether the policy intent of clause 3(1) and 3(2) was that when a specific court or courts in a jurisdiction had been chosen to have exclusive jurisdiction, judgment delivered by a specified court(s) or any other courts in that jurisdiction would be enforceable in the other jurisdiction and whether the drafting of clause 3(1) and 3(2) had reflected the policy intent;</p> <p>(b) advise whether the policy intent of clause 3(1) and 3(2) was to require a chosen court to determine a particular dispute or any disputes arising from a contract and whether the drafting of clause 3(1) and 3(2) had reflected the policy intent (paragraph 8 of the Bar Association's submission refers (LC Paper No. CB(2) 1767/06-07(01); and</p> <p>(c) provide information on whether parties to a contract would usually specify a particular court or any court to have exclusive jurisdiction</p>	LC Paper No. CB(2)2114/06-07(01)
	<p><u>Clause 18</u></p> <p>(a) clarify whether or not clause 18 complied with the requirements stipulated in Article 9 of the Arrangement; and</p> <p>(b) advise whether the Administration would consider to include a safeguard in clause 18 so that the registration of judgment given by a court which had no real and substantial connection with the dispute would be set aside</p>	LC Paper No. CB(2)2114/06-07(01)
	Provide statistics on the number of arbitration cases handled by the Hong Kong International Arbitration Centre, the number of Mainland arbitral awards enforced and not enforced in Hong Kong, and the reasons for these awards not enforced in Hong Kong	LC Paper No. CB(2)2114/06-07(01)
	Advise whether the policy intent of the Arrangement was to allow contracting parties to apply a choice of court agreement made after commencement of the Bill to previous and future specified contracts and whether the Bill had reflected the policy intent	LC Paper No. CB(2)2114/06-07(01)
22 June 2007	<p><u>Long title and clause 2(1)</u></p> <p>(a) consider whether the Long Title should make reference to the Arrangement; and</p> <p>(b) review the appropriateness of using the conjunctive</p>	Response awaited

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	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	
	Provide case law to illustrate how the enforcement of foreign judgments obtained by fraud had been refused in Hong Kong	LC Paper No. CB(2)2458/06-07(01)
29 June 2007	<p><u>Clause 2(1) - Definition of "Recognized Basic People's Court"</u></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>	Response awaited
	<p><u>Clause 2(1) - Definition of "Mainland"</u></p> <p>Review whether the definition of "Mainland" would give rise to uncertainty and the need for amendment</p>	Response awaited
	<p><u>Clause 2(2)</u></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>	Response awaited
	<p><u>Clause 3</u></p> <p>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 to advise whether it was the policy intent for the Mainland judgments given in a number of scenarios to be enforceable and whether the drafting of clause 3 reflected the policy intent</p>	Response awaited

Council Business Division 2
Legislative Council Secretariat
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