

**Bills Committee on Mainland Judgments (Reciprocal Enforcement) Bill
A check list of follow-up actions required of the Administration
(Position as at 22 October 2007)**

Subject	Issues raised by the Bills Committee and deputations	Date of meeting	Administration's response (LC Paper No.)
Long title	(a) review whether the expression "civil or commercial matters" is appropriate as only judgments arising from commercial matters will be covered by the Bill	30 April 2007	The Administration considers it proper to adopt the expression "civil or commercial matters" (paragraphs 1 to 8 of CB(2)2091/06-07(01))
	(b) consider whether the Long Title should make reference to the Arrangement (c) review the appropriateness of using the conjunctive word "or" in "civil or commercial matters", given that the scope of the Bill is meant to cover business-to-business civil-commercial contracts only	22 June 2007	The Administration considers it not necessary to make reference to the Arrangement in the Long Title (paragraphs 1 and 2 of CB(2)2767/06-07(01)) The Administration considers the term "civil or commercial" will not have any impact on the scope of the Bill (paragraphs 3 to 5 of CB(2)2767/06-07(01))
	In relation to the enactment of local legislation to give effect to an international agreement, the Administration to - (a) provide information and give examples on the following - (i) cases where reference is made to international agreements in the Long Title of the implementing legislation; (ii) cases where the texts of international agreements are incorporated into the implementing legislation as a schedule; and (b) reconsider members' proposal that reference to the Arrangement should be made in the Long Title of the Bill and that the Arrangement be set out in a schedule to the Bill for ease of reference	8 Oct 2007	Response awaited
Clause 2(1) - Definition of "Mainland"	(a) review whether the definition of "Mainland" will give rise to uncertainty and the need for amendment	29 June 2007	The Administration considers the definition of "Mainland" appropriate (paragraphs 8 to 10 of CB(2)2767/06-07(01))

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Clause 2(1) - Definition of "Mainland judgment"	(a) review whether the expression "civil or commercial matters" is appropriate as only judgments arising from commercial matters will be covered by the bill	30 April 2007	The Administration considers it proper to adopt the expression "civil or commercial matters" (paragraphs 1 to 8 of CB(2)2091/06-07(01))
	(b) review the appropriateness of using the conjunctive word "or" in "civil or commercial", given that the scope of the Bill is meant to cover business-to-business civil-commercial contracts only	22 June 2007	The Administration considers the term "civil or commercial" will not have any impact on the scope of the Bill (paragraphs 3 to 5 of CB(2)2767/06-07(01))
Clause 2(1) - Definition of "Recognized Basic People's Court"	(a) review whether reference should be made to clause 25(1) in the definition	30 April and 29 June 2007	The Administration agrees that, for clarity sake, a reference to clause 25(1) may be made in the definition (paragraphs 17 to 21 of CB(2)2091/06-07(01) and paragraphs 6 and 7 of CB(2)2767/06-07(01))
	(b) consider the need to stipulate in the Bill that the list of recognized Basic People's Court will take effect upon publication of it by the Secretary for Justice in the Gazette under clause 25	30 April 2007	The Administration will ensure the revised list will be widely published, in addition to the Gazette, to ensure the public will have notice of the same (paragraph 20 of CB(2)2091/06-07(01))
	(c) report to the Bills Committee on its discussion with the Supreme People's Court about the effect that may be caused by any addition to and deletion from the list of the Recognized Basic People's Courts published under clause 25	29 June 2007	Committee Stage amendments (CSAs) will be introduced to provide for the necessary transitional provisions (paragraph 7 of CB(2)2767/06-07(01))
Clause 2(1) - Definition of "Specified contract"	<p>(a) clarify the scope of the definition</p> <p>(b) explain how the definition can achieve the legislative intent</p> <p>(c) provide examples on the types of contracts that can be included and excluded from the definition</p> <p>(d) advise whether a Mainland court will 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 can retry the case and challenge the ruling of the Mainland court, if a judgment debtor has applied for the registration of a Mainland judgment to be set aside on the ground that it is an employment contract</p>	30 April 2007	<p>The Administration advises that the definition reflects the second paragraph of Article 3 of the Arrangement. In sum, the Arrangement will be limited to business-to-business contracts.</p> <p>In view of the absence of a generally accepted definition of "commercial matters", the Arrangement follows the drafting practice of various international conventions to define its scope by way of exclusion.</p> <p>The Administration does not propose to amend the definition of "specified contract". (paragraphs 9 to 16 of CB(2)2091/06-07(01))</p>

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	(f) consider whether the exclusion drafting approach or a more user-friendly approach should be adopted for the definition		
Clause 2(2)	(a) review the drafting of clause 2(2) which is unusual (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)	30 April 2007	The Administration advises that clause 2(2) follows section 10C of Cap. 1, and considers the clause is neither novel nor inappropriate (paragraphs 22 to 26 of CB(2)2091/06-07(01))
	(c) advise when section 10C is included in Cap.1 (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	29 June 2007	The Administration explains the purpose of inserting clause 2(2) and advises that its deletion will not affect the operation of the Bill (paragraphs 11 to 14 of CB(2)2767/06-07(01))
Clause 3	(a) 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"	29 March 2007 30 April 2007	The Administration will propose CSAs to amend clause 3(1) and (2) so that "designating a court in Hong Kong" and "designating a court in the Mainland" will respectively read "designating the courts in Hong Kong or any of them" and "designating the courts in the Mainland or any of them" (paragraph 13 of CB(2)2114/06-07(01))
	(b) advise the consequences if the court so designated does not have jurisdiction over the case, e.g. it has no real and substantial connection with the case	30 April 2007	The Administration advises that the case will be transferred under Article 25 of the Civil Procedure Law to a court which may exercise jurisdiction (CB(2)1641/06-07(01) and paragraph 15 of CB(2)2114/06-07(01))
	(c) review the drafting of the expression "designating a court" in clause 3, which is different from the expression used in Article 3 of the Arrangement (d) advise whether the policy intent of clause 3(1) and 3(2) is that when a specific court or courts in a jurisdiction have been chosen to have exclusive jurisdiction, judgment delivered by the chosen court(s) or any other courts in that jurisdiction will be enforceable in the other jurisdiction and whether the drafting of clause 3(1) and 3(2) has reflected the policy intent	5 May 2007	The Administration considers that the CSAs to be proposed to clause 3 will reflect Article 3 of the Arrangement more accurately (paragraph 13 of CB(2)2114/06-07(01)) Paragraphs 12 to 16 of CB(2)2114/06-07(01)

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	<p>(e) advise whether the policy intent of clause 3(1) and 3(2) is 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) has reflected the policy intent</p> <p>(f) provide information on whether parties to a contract will usually specify a particular court or any court to have exclusive jurisdiction</p>		
	<p>(g) if parties to a contract have designated a particular People's Court in Shanghai to be the court to have exclusive jurisdiction, advise whether it is the policy intent for the Mainland judgments given in the following scenarios to be enforceable, and whether the drafting of clause 3 reflects the policy intent -</p> <p>(i) the chosen court in Shanghai does not have any real and substantial connection with the case and transfers the case to another court according to the rule of Mainland law. The latter court delivers a judgment</p> <p>(ii) • both parties to the contract subsequently agree to have the case tried in another designated court instead of the court in Shanghai and a judgment is delivered</p> <p>• a party to the contract institutes legal proceedings in another designated court instead of the court in Shanghai and a judgment is delivered</p> <p>(iii) parties to the contract have each instituted legal proceedings in another designated court and two conflicting judgments, which are certified final and enforceable in the Mainland, are delivered by the respective courts</p>	29 June 2007	Paragraphs 15 to 17 of CB(2)2767/06-07(01)
Clause 5	(a) review the drafting of clause 5(2)(b) which is different from the Chinese text of Article 1 of the Arrangement, which refers to a civil or commercial	16 July 2007	The Administration advises that it will make appropriate amendments to the Bill to address members' concern on the expression "pursuant to"

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	case "involving" a choice of court agreement in writing as opposed to "pursuant to" (依據) such an agreement		(Paragraph 7 of CB(2)2091/06-07(01) and paragraph 18 of CB(2)2767/06-07(01))
Clause 6	(a) 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	16 July 2007	The Administration will introduce a CSA to remove the "unless" clause from clause 6(1)(d) (Paragraph 8 of CB(2)2091/06-07(01) and paragraphs 19 and 20 of CB(2)2767/06-07(01))
Clause 7	(a) review the time limit for an application for the registration of a Mainland judgment in the Bill (i.e. six months or one year) which may be too short (b) whether there should be a link between this clause and clause 13, which deals with the performance of Mainland judgments in stages. Article 8 of the Arrangement makes provision for a different time limit for registration where the Mainland judgment is to be performed in stages	5 May 2007	The Administration advises that the time limit in clause 7 follows the same time limit in relation to an application to a people's court in the Mainland for the execution of a judgment under Article 219 of the Civil Procedure Law of the PRC, and is consistent with section 4(1)(b) of Cap. 319 which provides that a foreign judgment should not be registered if at the date of the application, it could not be enforced by execution in the country of the original court. (paragraphs 8 to 9 of CB(2)2114/06-07(01)) If the performance a Mainland judgment is required to be in stages, a judgment creditor may apply to register any part of the judgment in accordance with clause 13. Clause 7 is linked to clause 13(2)(c) which provides that in the case of an application for registration of any part of a Mainland judgment, the other provisions of the Bill (including clause 7) shall be construed and have application accordingly. (paragraphs 9 of CB(2)2091/06-07(02))
Clause 18	(a) clarify whether the grounds for setting aside the registration of Mainland judgments in clause 18 reflect the provisions in Article 9 of the Arrangement (b) consider whether to include a safeguard in clause 18 to empower the court to set aside the registration of a Mainland judgment on the ground that the court giving the judgment has no real and substantial connection with the dispute	14 May 2007	The Administration's reply is affirmative (paragraph 19 of CB(2)2114/06-07(01)) The Administration considers such a ground of refusal departs from the common law rule and is inconsistent with Cap. 319, and falls outside the grounds of refusal under the Arrangement (paragraphs 20 to 21 of CB(2)2114/06-07(01)) and CB(2)1927/06-07(01))
	(c) provide information and case law on the use of "fraud" as a defence against the enforcement of foreign judgments in Hong Kong	22 June 2007	CB(2)2458/06-07(01)

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	<p>(d) explain whether the grounds for setting aside the registration of Mainland judgments set out in clause 18 cover "natural justice", and provide case law to illustrate how "public policy" and "fraud" can cover "natural justice"</p> <p>(e) advise whether clause 18, as presently drafted, has incorporated all the grounds for refusal of registration of foreign judgments under common law and statute law</p> <p>(f) advise whether the use of "public policy" and "fraud" as grounds for setting aside the registration of Mainland judgments is sufficient to deal with future challenges relating to the concept of "natural justice" in Hong Kong</p> <p>(g) clarify whether new evidence has 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 is required for an application under Cap. 319, this is not the case under common law and a House of Lords' case in 1992 is relevant</p> <p>(h) review whether the drafting of clause 18 reflects Article 9 of the Arrangement, having regard to members' following observations -</p> <p>(i) Article 9 is divided into two paragraphs. Under paragraph 1 of the Article, a judgment debtor is 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 has the discretion not to enforce a judgment on the ground that it is contrary to "social and public interest" in the Mainland or "public policy" in Hong Kong</p> <p>(ii) the formulation of clause 18 is different. All the grounds (including "public policy") against enforcement of judgments</p>	<p>16 July 2007</p>	<p>Annex A to LC Paper No. CB(2)2767/06-07(01)</p>

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	<p>are set out in clause 18(1) of the Bill. In addition, a judgment debtor is required to prove to the satisfaction of the court that a judgment should not be enforced</p> <p>(i) review whether the drafting of clause 18 reflects the policy intent that the court could of its own motion set aside the registration of a judgment, as different expressions have 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)</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>		<p>The Administration considers it appropriate to follow the drafting of section 6(1)(a) of Cap. 319</p>
Schedule 2	(a) on the Administration's decision to delete paragraph 3 of Schedule 2 from the Bill in response to the Bar's query, provide a paper to explain the legal effect of preserving or deleting the proposed amendment	16 July 2007	<p>The Administration explains why paragraph 3 of Schedule 2 should be removed from the Bill (Paragraphs 21 to 24 of CB(2)2767/06-07(01))</p>
	(b) consider members' views on the Privacy Commissioner's concern about the risk of exposing the personal data of the judgment creditor by requiring him to exhibit a copy of his identity document in support of the affidavit for application for registration of Mainland judgments under the proposed Order 71A, Rule 3, consult the Privacy Commissioner and the business sector, and revert to the Bills Committee	8 Oct 2007	Response awaited
Submissions	<p>(a) provide a copy of the submission received from the International Chamber of Commerce - Hong Kong, China in 2002</p> <p>(b) provide a composite response to the views given by the deputations</p>	5 May 2007	<p>CB(2)2057/06-07(01)</p> <p>CB(2)2091/06-07(02) and CB(2)2114/06-07(01)</p>
Application of the Bill	(a) advise the applicability of the Arrangement to a specified contract	14 May 2007	The Administration advises that the Arrangement contains no provision as

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	made before the date of commencement of the Bill		regards the date of entering a specified contract from which a dispute was derived. The Arrangement will apply to a specified contract, whether the latter was made before or after the commencement of the Bill, and whether the required exclusive choice of court agreement deals with all or some specific matters arising from the contract. (paragraph 18 of CB(2)2114/06-07(01))
Statistics on arbitration awards	(a) provide statistics on arbitration awards	14 May 2007	Paragraphs 22 of CB(2)2114/06-07(01)
Hague Convention on Choice of Court Agreements	(a) provide relevant provisions of the Hague Convention on which clauses 3 and 4 of the Bill are modeled	29 March 2007	Annex II to CB(2)1641/06-07(01)
Civil Procedure Law of the People's Republic of China	(a) provide a paper on the rules governing the jurisdiction of courts on the Mainland, including how a case can be transferred from one court to another court	29 March 2007	Annex III to CB(2)1641/06-07(01)
Forum shopping	(a) provide a paper to explain whether or not the Bill, if enacted, will affect the application of common law rules in Hong Kong that govern forum shopping	24 April 2007	CB(2)1827/06-07(01)
Admin's proposed amendments to the Bill	<p>On the proposed amendments in the marked-up version of the Bill provided by the Administration (LC Paper No. CB(2)2767/06-07(02)), the Administration to -</p> <p>(a) <u>proposed clause 3(1) and (2)</u> - clarify how the requirement that the court(s) specified in the "choice of court agreement" should be to the exclusion of courts of other jurisdictions is to be met in practice;</p> <p>(b) <u>proposed clause 5(2)(a)(iv)</u> - consider whether the proposed clause 5(2)(a)(iv)(C) and (D) are necessary as proposed clause 5(2)(a)(iv)(A) and (B) should have covered all scenarios; and</p> <p>(c) <u>proposed clause 6(1)(d)</u> - review the drafting of the proposed clause as the definition of "original court" in clause 2 is not appropriate in the context of the proposed clause</p>	8 Oct 2007	Response awaited

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Others	(a) provide a table showing how the clauses in the Bill correspond with the relevant provisions of the Arrangement	29 March 2007	Annex I to CB(2)1641/06-07(01)
	(b) 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	29 March 2007	Response awaited

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Legislative Council Secretariat
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