

For discussion

On 27 November 2006

LegCo Panel on Administration of Justice and Legal Services

Reciprocal Enforcement of Judgments in Commercial Matters

between the HKSAR and the Mainland

PURPOSE

At the Meeting of 27 February 2006, the Administration briefed this Panel on the discussions with the Mainland authorities and the legal professional bodies on the proposed arrangement for reciprocal enforcement of judgments (REJ) in commercial matters between the HKSAR and the Mainland. This paper informs Members of the latest position since the signing of 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”* (“the Arrangement”) in July 2006.

BACKGROUND

2. The Arrangement was signed on 14 July 2006 between the Department of Justice and the Supreme People’s Court. It aims to establish a new and

convenient mechanism for the reciprocal enforcement of certain judgments made by the designated courts of the Mainland and of the HKSAR.

3. The Arrangement will be implemented in the HKSAR by means of legislation whereas, in the Mainland, the Supreme People's Court will promulgate a judicial interpretation to set out the details of the procedures for implementing the Arrangement. Since the signing of the Arrangement, the Administration has been preparing the legislative proposals to implement the Arrangement, and a slot has been obtained to introduce the Bill in the current legislative session. The *Mainland Judgments (Reciprocal Enforcement) Bill* ("the Bill") is being prepared and the main features of the Bill are explained below.

MAIN FEATURES OF THE BILL

4. The Bill is to be modelled on the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319), which provides for the enforcement of foreign judgments in Hong Kong. It will implement the provisions of the Arrangement by providing for the registration and enforcement by the HKSAR courts of money judgments given by designated courts of the Mainland exercising their jurisdiction pursuant to a valid exclusive choice of court clause contained in a business-to-business agreement.

5. To reflect the provisions of the Arrangement, the Bill will provide that registration of a Mainland judgment is conditional upon proof, to the satisfaction of the HKSAR court, that the judgment –

- (a) is made by a designated Mainland court on or after the commencement of the proposed ordinance;
- (b) is made pursuant to a requisite choice of court agreement;
- (c) is final and conclusive as between the parties thereto;
- (d) is enforceable in the Mainland; and
- (e) orders the payment of a sum of money, not being a sum payable in respect of taxes, a fine or other penalty.

6. Designated Mainland courts cover the Intermediate People's Courts or above and those Basic Level People's Courts authorized to exercise jurisdiction over foreign-related civil and commercial cases.

7. Finality of the judgment will also be defined in accordance with the provisions of the Arrangement. The Bill will provide that a Mainland judgment is final and conclusive if –

- (a) it is a judgment made by the Supreme People's Court; or
- (b) it is a judgment of the first instance made by a Higher People's Court, an Intermediate People's Court or an authorized Basic People's Court –
 - (i) from which no appeal is allowed according to the law of the Mainland; or
 - (ii) in respect of which the time limit for appeal has expired according to that law and no appeal has been filed;
- (c) it is a judgment of the second instance; or

- (d) it is a judgment made in a retrial by a People's Court of a level higher than the original court unless the original court is the Supreme People's Court.

8. Under the Bill, application for registration of a Mainland judgment has to be made within the prescribed time limit. A party who applies for the registration of a Mainland judgment will be required to produce a certificate issued by the original court certifying that the judgment is final and enforceable in the Mainland.

9. A registered Mainland judgment will be of the same force and effect as if the judgment had been originally given in the Court of First Instance.

10. The Bill also provides for the grounds to set aside an application for registration of a Mainland judgment, which are similar to those for refusing to register a foreign judgment under Cap. 319, namely –

- (a) the choice of court agreement pursuant to which the judgment was given is invalid under the law of the Mainland unless the chosen court has determined that the choice of court agreement is valid;
- (b) the judgment has been wholly satisfied;
- (c) the courts of the HKSAR have exclusive jurisdiction over the case according to the law of the HKSAR;
- (d) the judgment was made in the absence of the judgment debtor who has not been given sufficient time to defend his case;

- (e) the judgment was obtained by fraud;
- (f) a judgment on the same cause of action has been made by a HKSAR court or a court of a place outside the territory, or an arbitral award has been made by an arbitration body;
- (g) the enforcement of the judgment is contrary to public policy of the HKSAR.

CONSEQUENTIAL AMENDMENTS

11. The Bill also proposes various amendments to be made to the Rules of the High Court (Cap.4, sub leg A) and the Rules of the District Court (Cap. 336, sub leg H) for the purpose of providing (amongst other things) the procedures for applications for registration of the relevant Mainland judgments and applications for a certified copy of a judgment entered in the Court of Final Appeal, the High Court and the District Court for enforcement of the same in the Mainland.

CONSULTATION

12. During the discussions with the Mainland authorities on the proposed REJ arrangement, the Administration consulted the legal professional bodies and other stakeholders including various trade associations. The parties concerned indicated support for the implementation of the Arrangement.

WAY FORWARD

12. The Bill is being prepared by the Administration and, subject to the approval of the Executive Council, will be introduced into the Legislative Council later this session.

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