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Our Ref. L/M (2) to JUD CR 1-55/1

25 October 2007

Mr Lester G Huang  
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*Dear President,*

**Enforcement of Court Judgment in Civil Cases**

We have recently been advised by the Clerk to the Panel on Administration of Justice and Legal Services ("AJLS Panel") of the Legislative Council ("LegCo") that the Civil Litigation and Family Law Committees of the Law Society of Hong Kong ("Law Society") tendered a submission on the captioned subject to the AJLS Panel in February 2007. In June 2007, a copy of the submission was made available to the Judiciary Administration. We also understand that the same submission has been uploaded onto the LegCo website for viewing by members of the public through the internet.

2. It is noted that paragraph 1(d)(i) of the aforementioned submission under the sub-heading of the Civil Litigation Committee has made reference to the Bailiff service of the Judiciary Administration. For ease of reference, this paragraph is extracted at the **Annex** to this letter. The Judiciary Administration takes a very serious view of the comments made by the Law Society in the above-quoted paragraph. We are very concerned that some of these remarks have been made without any factual substantiation.

3. Before I respond to the specific comments made by the Law Society as quoted in paragraph 2, I would like to make a few general points about the enforcement of judgment in civil actions so that the discussion of the matters concerned may be conducted in their proper contexts.

4. First, it is important to point out that in the case of civil actions, the parties bear the responsibility of enforcing the judgment if it is not complied with. In the event that the judgment debtor does not pay in full or at all, the judgment creditor may enforce the judgment. Where the judgment creditor execute the judgment, he has a choice of several modes of execution. Among them are:

- (a) A Charging Order against the landed properties of the judgment debtor. In this case, the judgment creditor has to execute the judgment by registering the Charging Order with the Land Registry; or
- (b) A Ganishee Order so that monies held by a third party (such as a bank) for the judgment debtor can be applied to satisfy the judgment. In this case, the judgment creditor has to execute the judgment by serving the Ganishee order on the third party concerned; or
- (c) A Writ of Fieri Facias ("Writ of Fi Fa") to seize the goods and chattels on the premises of the judgment debtor. In this case, the judgment creditor would apply to the Bailiff Office of the Judiciary Administration to execute the writ.

5. Secondly, it is important to point out what the responsibilities of the Bailiff Office in the enforcement of civil judgment are, and what are not. In the event that a judgment creditor decides to execute the judgment by means of a Writ of Fi Fa, such writ will be executed by the Bailiff Office. As the judgment creditor is responsible for enforcing the judgment, he has to bear the costs of execution. The Bailiff Office's responsibility is to carry out execution of the court judgment upon the judgment creditor's instruction. It is not the responsibility of the Bailiff Office to trace the whereabouts of the judgment debtor if he cannot be located or to guarantee

that the sum awarded to the judgment creditor will be successfully recovered.

6. Thirdly, it is important to discuss the matter having regard to facts and not hearsay allegations. It is relevant to note that the position of execution of the Writs of Fi Fa by the Bailiff Office on the instruction of the judgment creditors is as follows:

- (a) In 2006, the Bailiff Office could in most cases normally execute a Writ of Fi Fa within 4 days upon the receipt of the writ by the Bailiff Office;
- (b) In the past years, upon the receipt of the Writs of Fi Fa, the Bailiff Office has been able to carry out action in all cases in accordance with the instruction of the judgment creditors. The Bailiff Office would only withhold action in enforcement if they are instructed by the judgment creditor not to proceed further or in the event that the judgment creditor withdraws the action after the issuing of the writ;
- (c) The Bailiff Office has been discharging their duties in seizing goods and chattels if valuable goods and chattels are found in the location of the execution; and
- (d) In the event where the judgment debtor could not be located at the location of the execution, or nothing valuable belonging to the judgment debtor could be found at the location of execution, the Bailiff Office would report the position back to the judgment creditor and awaits further instruction, if any. For example, if the judgment creditor finds out that the address provided previously is wrong and has since identified an updated address, he may instruct the Bailiff Office to carry out the execution in the new address.

7. I would now like to respond to specific comments made by the Law Society as extracted in the Annex.

8. First, it is noted that the Law Society's submission remarks that "*There is widespread dissatisfaction with the effectiveness of the bailiff recovery system. .... Many practitioners report a low return of successful*

*recoveries..... Practitioners report they avoid issuing Writs of FiFa if there is any chance of success by using other method of enforcement*". It seems that these comments are based on some misconceived premises which confuse the responsibility of the judgment creditors and that of the Bailiff Office and also with other factors which are beyond the control of both. It should be stressed that:

- (a) Enforcement of judgment is the responsibility of the judgment creditor and it is up to the judgment creditor to assess and decide, having regard to the specific circumstances of each and every case, which mode of execution should best serve his purpose in enforcing the judgment. And whether the enforcement action subsequently taken would turn out to be effective in recoveries or not would depend on a wide range of factors, including whether the debtor has sufficient means to repay the debt; and
- (b) The responsibility of the Bailiff Office is to carry out the enforcement upon the instruction of the judgment creditor. It follows that in assessing the effectiveness of the Bailiff service, it is only fair and reasonable to focus on how the Bailiffs are doing in carrying out the execution of the court judgment upon the creditor's instruction. It is neither reasonable nor fair to assess the effectiveness of the Bailiff Office by reference to the level of recoveries. Whether sufficient sums could be recovered in enforcement action can be due to many factors beyond the control and responsibility of the Bailiff Office, such as nothing valuable belonging to the judgment debtor could be found at the location of execution.

9. It is also noted that the Law Society's submission states that *"Those who have worked personally with bailiffs found them unmotivated and ineffectual... ..It was also reported that the procedure is very slow."* It seems that these remarks are made without any factual substantiation. It should be noted that:

- (a) As pointed out in paragraph 6(a), the average waiting time for the execution of a writ of Fi Fa is normally about 4 days and is regarded as reasonable;
- (b) The Bailiff Office has been striving to improve the effectiveness of its operation and enhance the quality of its services. As a matter of fact, our Bailiff Office has recently been awarded with the ISO 9001:2000 certificate. This is the efforts of all staff in the Bailiff Office, which demonstrates that the quality of services provided by the Bailiff Office is well in compliance with the requirements adopted by a third party accredited certification body; and
- (c) The Bailiff Office also gives due regard to gauging feedback from its users, including legal practitioners and others. The latest Users Satisfaction Survey was conducted in August 2007. It is noted that of over 300 responses received, 92.4% expressed satisfaction with the services provided by our Bailiffs in the execution services, 7.4% gives no views and 0.2% expressed dissatisfaction. While there is no room for complacency, it is reassuring to know that an overwhelming majority of the respondents are satisfied with the service provided by our Bailiffs in the execution of enforcement of judgment.

10. Finally, it is noted that the Law Society's submission states that "*...the entire system is in need of review and radical change....The review should study the current English system and adopts its improvements.*" It is however not clear as to what specific ideas the Law Society has in mind with regard to the issues which need to be looked at in the review, and the relevant improvements which need to be considered with reference to the current English system, having regard to the fact the English system is operating under a very different legal framework and background from those in Hong Kong. We should be grateful if the Law Society could set out its views in more specific terms. On the part of the Judiciary Administration, we are always conscious of the need to carry out on-going review of the operation of the Bailiff Office with a view to enhancing the effectiveness of its operation. The more recent initiatives include the introduction of the docket system in streamlining the operational procedures and expediting the processing time in the execution

of writs, the re-organization of the Bailiff Office in enhancing supervision of frontline operation and the alignment and improvement of work procedures under the ISO 9001:2000 certification. We also keep in close contact with various Bailiff Offices in England, so that we can exchange views and share experiences with our counterparts, including keeping ourselves abreast of developments regarding the application of information technology in enforcement action.

11. I would like to conclude by reiterating that the Judiciary Administration would continue to keep our services under constant review and strive to make improvements where appropriate and necessary. Constructive feedback and suggestions from all users are always welcomed.

12. I look forward to continuing and furthering our working relationship with the Law Society not only on the subject in question but also on other issues of mutual interest.

Yours sincerely,



(Miss Emma Lau)  
Judiciary Administrator

c.c. Mrs Percy Ma  
Clerk to LegCo Panel on  
Administration of Justice and Legal Services

**Extracted from the Law Society's Submission on 9 February 2007  
on "Enforcement of Court Judgments in Civil Cases"**

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***"(d) Bailiff Service and Deposits***

***(i) Bailiff Service***

*There is widespread dissatisfaction with the effectiveness of the bailiff recovery system. It is felt the entire system is in need of review and radical change. Many practitioners report a low return of successful recoveries. Those who have worked personally with bailiffs found them unmotivated and ineffectual. Practitioners report they avoid issuing Writs of Fisa if there is any chance of success by using any other method of enforcement. It was also reported the procedure is very slow. The review should study the current English system and adopt its improvements."*