

CB(2)510/99-00(01)

CSO/ADM/CR 1/3221/87(99)Pt.12

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29 November 1999

URGENT BY FAX (2845 0387)

Mr Anthony Chow, JP
President
The Law Society of Hong Kong
3/F, Wing On House
71 Des Voeux Road
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Dear President,

**Bills Committee on
Arbitration (Amendment) Bill 1999**

The Bills Committee to scrutinise the Arbitration (Amendment) Bill 1999 has conveyed the Law Society's comments on the Bill to us. I would like to set out the Administration's response to these comments in the ensuing paragraphs.

(I) Article 2 of the Arrangement

The Law Society seeks clarification on whether the prohibition of an applicant to file its application with two or more People's Courts means a single enforcement judgment obtained in the Mainland would cover both zones in which a Mainland respondent has property, or the claimant has to choose a zone which is likely to be more productive to seek enforcement.

Response

As we understand it, an arbitral award which is recognised by and enforceable in the jurisdiction of one people's court is likewise enforceable in the jurisdiction of another people's court provided that other conditions of enforcement are met. This is supported by the fact that a people's court may entrust another people's court which has jurisdiction over the property of a party subject to the enforcement

judgment to carry out execution.¹ It follows that even if a party has commenced execution proceedings in the wrong court (say the property situates within its jurisdiction may be insufficient to meet the award), such court may still entrust another court to carry out the execution on its behalf.

(II) Article 7(5)(3) of the Arrangement

Article 7(5)(3) states that enforcement of an award in the Mainland may be refused if the court finds that enforcement “would be contrary to the public interests of the Mainland”. The Law Society asks how it differs from “public policy” considerations under local law.

Our Response

The term “public interests” (社會公共利益) is not defined in the laws of the Mainland. Legal scholars in the Mainland generally interpret it to mean the sovereign rights of a state, the basic principles of the political, economic, and legal systems, moral rules and traditional custom and usage.

In the recent case of *Hebei Import & Export Corp v Polytek Engineering Co Ltd [1999] 1 HKLRD 665*, the Court of Final Appeal (CFA) noted that the expression “contrary to public policy of that country” in Article V (2)(b) of the New York Convention (as reflected in section 44(3) of the Arbitration Ordinance (Cap 341)) has been given a narrow construction, and that it has been generally accepted to mean “contrary to the fundamental conceptions of morality and justice” of the forum in which enforcement was sought. In the case, the CFA decided that the opportunity of a party to present his case and a determination by an impartial and independent tribunal which was not influenced, or seen to be influenced, by private communications were basic to the notion of justice and morality in Hong Kong.

Differences may exist between the notion of “public interests” in the laws of the Mainland and the notion of “public policy” in local law. Article 6 of the Arrangement states that upon receipt of an application for enforcement from an applicant, the relevant court shall handle the application and enforce the award according to the legal procedure of the place of enforcement. Furthermore, Article 7(5) sub-paragraph 3 states that “The enforcement of the award may be refused if the court of the HKSAR decides that the enforcement of the arbitral award in Hong Kong would be contrary to the public policy of the HKSAR.” This means that the notion of “public policy” (as opposed to “public interests”) will continue to apply when the local court decides whether the application for enforcement should be refused.

¹ Article 210 of the *Civil Procedure Law of the People’s Republic of China*, and Chapter 14 of the *Regulations of the Supreme People’s Court on Certain Issues of Execution Work by the People’s Court (Trial)* (《最高人民法院關於人民法院執行工作若干問題的規定(試行)》) promulgated by the Supreme People’s Court on 8 July 1998.

Thank you for the Law Society's interest and support on the matter.

Yours sincerely,

(Ms Rosanna Law)
for Director of Administration

c.c. Clerk to Bills Committee, LegCo
(Attn: Mrs Percy Ma)
D of J (Attn: Mr Stephen Wong, DSG)