



HONG KONG BAR ASSOCIATION

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24th October 2005

The Hon. Margaret Ng
 Chairman of the Panel
 Panel on Administration of Justice
 and Legal Services
 Legislative Council Building
 8 Jackson Road, Central,
 Hong Kong.

Dear Ms. Ng,

Panel on Administration of Justice and Legal Services Meeting on 24th October 2005

Please find herewith the comments from Mr. PY Lo of the Hong Kong Bar Association on the Administration's paper on the issue of 'Reciprocal enforcement of Judgments (REJ) in commercial matters between the HKSAR and the Mainland' for your attention.

- (a) **Level of court:** Please consider asking the Administration to provide a list of the small number of Basic Level People's Court contemplated by the Mainland Side to be included in the Arrangement.
- (b) **Limiting the trial scheme to certain cities:** Please consider clarifying with the Administration as to whether the parties have ruled out a trial scheme applicable to some cities ahead of a general Arrangement. The "trial point" proposal as a matter of logic would precede any general Arrangement.

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香港大律師公會

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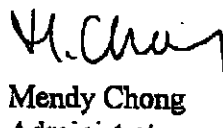
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- (c) **Finality:** Please consider indicating that the HKSAR courts must remain in a position to decide on whether the "special procedures" proposed by the Mainland Side, if adopted in the Arrangement, meet the HKSAR conflict of law rule of requiring the judgment sought to be enforced to be final and conclusive. Thus the draft HKSAR legislation must be prepared towards preserving this position. Attention is also drawn to two recent HKSAR cases: *New Link Consultants Ltd v Air China & Ors* [2005] 2 HKC 260, CFI and *Xinjiang Xingmei Oil-Pipeline Co Ltd v China Petroleum & Chemical Corp* [2005] 2 HKC 292, CFI. The first case is of importance as it appears to be the only fully argued case with expert evidence on "lack of finality" of Mainland judgments. The judgment of the case contains an interesting summary of the expert evidence of both sides, with the Court expressing caution against the expert evidence of New Link. It may assist the deliberations of the Panel if the parties to the case are willing to provide to the Panel copies of the expert reports filed. Leading counsel for New Link was Martin Lee SC and leading counsel for Air China was Paul Shieh SC.

Yours sincerely,


Mendy Chong
Administrator

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