

立法會
Legislative Council

Ref : CB2/BC/6/06

LC Paper No. CB(2)1825/06-07
(These minutes have been seen
by the Administration)

Bills Committee on Mainland Judgments (Reciprocal Enforcement) Bill

**Minutes of the third meeting
held on Tuesday, 24 April 2007, at 10:45 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Margaret NG (Chairman)
Hon James TO Kun-sun
Hon Audrey EU Yuet-mee, SC, JP
Hon LI Kwok-ying, MH, JP
Hon Ronny TONG Ka-wah, SC

Members Absent Hon Miriam LAU Kin-ye, GBS, JP (Deputy Chairman)
Hon Martin LEE Chu-ming, SC, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP

Public Officers attending : Item II
Mr Frank POON
Deputy Solicitor General (Acting)
Miss Michelle TSANG
Senior Assistant Solicitor General
Mr Paul TSANG
Senior Government Counsel
Ms Marie SIU
Senior Government Counsel
Miss Leonie LEE
Assistant Secretary (Administration) 2

Clerk in attendance : Mrs Percy MA
Chief Council Secretary (2)3

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Mrs Eleanor CHOW
Senior Council Secretary (2)4

Action

I. Confirmation of minutes of meeting

(LC Paper No. CB(2)1639/06-07 - Minutes of meeting on 29 March 2007)

The minutes of the meeting held on 29 March 2007 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(3)379/06-07 - The Bill)

LC Paper No. CB(2)1641/06-07(01) - Administration's response to the issues raised at the meeting on 29 March 2007

LC Paper No. CB(2)1698/06-07(01) - Memorandum of points of concern provided by Assistant Legal Adviser)

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).
3. The Administration was requested to provide a paper to explain whether or not the Bill, if enacted, would affect the application of common law rules in Hong Kong, e.g. the rule that governed the prevention of forum shopping.

III. Date of next meeting

4. The next meeting would be held on 30 April 2007 at 4:30 pm.
5. The meeting ended at 12:39 pm.

**Proceedings of the third meeting of the
Bills Committee on Mainland Judgments (Reciprocal Enforcement) Bill
on Tuesday, 24 April 2007, at 10:45 am
in Conference Room A of the Legislative Council Building**

| Time Marker | Speaker(s) | Subject(s) | Action required |
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| 000000 - 000922 | Chairman | Confirmation of minutes of meeting | |
| 000923 - 001029 | Chairman | Memorandum of Points of Concern prepared by ALA 6 (LC Paper No. CB(2) 1698/06-07(01)) | |
| 001030 - 001643 | Admin Chairman | Administration's response to the issues raised by members at the meeting on 29 March 2007 (LC Paper No. CB(2) 1641/06-07(01)) | |
| 001644 - 002146 | Chairman Admin | <p>Civil jurisdiction of Mainland People's Courts (Annex III to LC Paper No. CB(2) 1641/06-07(01))</p> <p>Guiding principles for choice of court in Article 25 of the Civil Procedure Law of the People's Republic of China (CPL) -</p> <ul style="list-style-type: none"> (a) the people's court of the place where the defendant has his domicile; (b) the people's court of the place where the contract is performed; (c) the people's court of the place where the contract is signed; (d) the people's court of the place where the plaintiff has his domicile; and (e) the people's court of the place where the object of the action is located <p>Transfer of jurisdiction provided in Article 36 of CPL in the event that the chosen court did not comply with Article 25 of CPL</p> | |
| 002147- 003047 | Chairman Mr James TO Admin | Proposal for the parties to a choice of court agreement to expressly opt in the enforcement regime in a contract in order to invoke 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" | |

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| | | <p>(the Arrangement). Questions raised by Mr James TO as follows -</p> <ul style="list-style-type: none"> (a) whether overseas jurisdictions implementing reciprocal enforcement of judgments (REJ) provided an opt-in system; (b) whether the Hague Convention on Choice of Court of Agreements (the Hague Convention) on which the Bill was modelled provided an opt-in system; (c) whether the Mainland authorities had rejected an opt-in system for the Arrangement; and (d) whether the Bill could be amended to provide for an opt-in system <p>Response of the Administration -</p> <ul style="list-style-type: none"> (a) existing arrangement for REJ between the Mainland and overseas jurisdictions, and between Hong Kong and other overseas jurisdictions did not provide an opt-in system; (b) while the Hague Convention adopted an exclusive choice of court agreement, it was not necessary for the parties to a choice of court agreement to opt in the enforcement regime. The Hague Convention was concluded in June 2005 and had yet to be ratified pending the issuance of an official report; (c) the Arrangement was reached with the Mainland authorities after years of discussion and the suggestion of an opt-in system was discussed but declined by the Mainland Authorities; and (d) changes to the Bill to incorporate an opt-in system would be inconsistent with the Arrangement. It was agreed that the Arrangement should have limited application to begin with | |
| 003048 - 005438 | Mr Ronny TONG Chairman Admin | <p>Concerns raised by Mr Ronny TONG -</p> <ul style="list-style-type: none"> (a) a balance had to be struck between the autonomy and freedom of parties to a contract and forum shopping; | |

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| | | <p>(b) whether the choice of court agreement would override the common law rule for prevention of forum shopping, i.e. a case should be tried in a court with which it had "real and substantial connection";</p> <p>(c) whether the common law rule for prevention of forum shopping should be stipulated in the Bill (a Privy Council case which affirmed the common law rule was mentioned); and</p> <p>(d) how to deal with conflicts of law in respect of jurisdiction of courts between the Mainland and Hong Kong</p> <p>Response of the Administration -</p> <p>(a) the Bill did not intend to change the common law rules that governed jurisdiction of courts, or the rule that governed the prevention of forum shopping;</p> <p>(b) the choice of court agreement permitted under Article 25 of the CPL reflected the principle of "real and substantial connection";</p> <p>(c) unlike the Hague Convention, the Bill did not disturb domestic courts' ability to decline jurisdiction when situation warranted. For instance, a Hong Kong court could apply the principle of "forum non conveniens" to decline jurisdiction;</p> <p>(d) the Bill did not prevent parties to a contract to institute legal proceedings in a court other than the chosen court, but in the circumstances the Arrangement could not be invoked;</p> <p>(e) the Arrangement did not change the existing jurisdictional rules in the Mainland or in Hong Kong, or confer extra jurisdiction to the courts of either side, but sought to promote Hong Kong as a centre for resolving legal disputes;</p> <p>(f) conflict of laws between two jurisdictions was a complicated issue</p> | |

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| | | <p>and was not addressed by the Bill;</p> <p>(g) whether or not a choice of court agreement would be rendered valid would be determined according to the law of the chosen court; and</p> <p>(h) clause 18 of the Bill provided the conditions under which registration of Mainland judgment could be set aside</p> | |
| 005439 - 010742 | Mr James TO Chairman Admin | <p>Concerns raised by Mr James TO on possible manipulation of the Arrangement (an example quoted was a Mainland court awarded a judgment creditor with \$3 billion while the judgment debtor was prepared to pay only \$1 million as agreed in the contract) -</p> <p>(a) whether Hong Kong had to enforce the Mainland judgment even though the awarded sum far exceeded the agreed limit;</p> <p>(b) whether the Bill should incorporate a provision to cap the maximum amount to be awarded in a judgment by reference to the parties' agreed limits so that parties to the contract would know the financial risk involved; and</p> <p>(c) whether including such a provision in the Bill would be inconsistent with the Arrangement</p> <p>Response of the Administration -</p> <p>(a) the Bill was limited in scope, it did not preclude parties to specify the maximum amount to be enforced in a contract;</p> <p>(b) the role of Hong Kong court was to ensure that a Mainland judgment covered by the Arrangement could be enforced in Hong Kong, regardless of the judgment sum;</p> <p>(c) whether or not any capping of the judgment sum (to be enforced) as specified in a contract would be effective would depend on the law applicable to the contract and the ruling of the chosen court;</p> <p>(d) if a Mainland judgment was obtained</p> | |

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| | | <p>by fraud, or was contrary to public policy, or involved punitive damage, the court of Hong Kong could set aside the registration of the Mainland judgment; and</p> <p>(e) businessmen who were concerned about the possible manipulation of the Arrangement by their counterparts could choose not to avail themselves to the Arrangement</p> | |
| 010743 - 011531 | Ms Audrey EU Chairman Admin | <p>Deputations to be invited to give views on 5 May 2007</p> <p>Recollection of the views given by deputations and members when the Panel on Administration of Justice and Legal Services was consulted on the proposed Arrangement</p> <p>Bargaining power of businessmen of Hong Kong in entering a choice of court agreement with the Mainland counterparts</p> | |
| 011532 - 012734 | Mr Ronny TONG Ms Audrey EU ALA 6 Chairman Admin | <p>Clarification of the Administration -</p> <p>(a) the Arrangement would only apply if the parties concerned expressly agreed in writing to designate a court of the Mainland or Hong Kong to have exclusive jurisdiction for resolving any dispute;</p> <p>(b) the expression "designating a court" should mean "a court" or "courts" so designated. The Administration would review the expression in the context of clause 3 of the Bill; and</p> <p>(c) parties to a choice of court agreement would usually designate "a court in the Mainland" rather than a specified court in the Mainland. In a case where, say, "the Higher People's Court in Shanghai" was designated but it lacked any real and substantial connection with the case as required by Article 25 of the CPL, the choice of court agreement might be argued as invalid and the Arrangement could not be invoked</p> | |
| 012735 - 015227 | Mr Ronny TONG Ms Audrey EU Chairman | Mr Ronny TONG remained unconvinced that the Bill did not change the common law rule that governed the prevention of | |

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| | Admin | <p>forum shopping. He cited an example and raised his queries as follows -</p> <ul style="list-style-type: none"> (a) a court in Xinjiang was chosen to have exclusive jurisdiction in a contract, although the case had substantial connection with the court in Hong Kong and not Xinjiang; (b) according to the Arrangement, the case should be tried in the Xinjiang court, but according to common law rules, it should be tried in Hong Kong; and (c) under the circumstances, whether the Hong Kong court could try the case and refuse registration of the Mainland judgment <p>Response of the Administration based on the example quoted -</p> <ul style="list-style-type: none"> (a) if the case was related to matters of which Hong Kong had exclusive jurisdiction, such as immovable property in Hong Kong, the court in Hong Kong could set aside the registration of the relevant Mainland judgment according to clause 18(1)(e) of the Bill; (b) the court in Hong Kong could also set aside the registration of the Mainland judgment if it was contrary to public policy according to clause 18(1)(j) of the Bill; and (c) if the case had substantial connection with the court in Hong Kong and instead of applying under (a) and (b) above, the defendant who became aware of his case would be heard in the Mainland court could apply for an anti-suit injunction to stop the case from being heard in the Mainland. If he did not do so and then subsequently made an application to a court in Hong Kong to set aside the registration of the Mainland judgment after it was delivered by a Mainland court, he had to provide sufficient evidence to the court in Hong Kong to prove why the Mainland judgment should not be enforced in Hong Kong <p>The Administration was requested to</p> | |

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| | | <p>provide a paper to explain whether or not the Bill, if enacted, would affect the application of common law rules in Hong Kong, e.g. the rules that governed the prevention of forum shopping</p> <p>Mr Ronny TONG was requested to provide citation of the Privy Council case relating to forum shopping to the Clerk</p> | <p>Admin to follow up</p> <p>Clerk to follow up</p> |

Council Business Division 2
Legislative Council Secretariat
11 May 2007