

立法會
Legislative Council

Ref : CB2/BC/6/06

LC Paper No. CB(2)370/07-08
(These minutes have been seen
by the Administration)

Bills Committee on Mainland Judgments (Reciprocal Enforcement) Bill

Minutes of the meeting
held on Wednesday, 24 October 2007, at 8:30 am
in Conference Room B of the Legislative Council Building

- Members present** : Hon Margaret NG (Chairman)
Hon Miriam LAU Kin-ye, GBS, JP (Deputy Chairman)
Hon Audrey EU Yuet-mee, SC, JP
Hon LI Kwok-ying, MH, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Ronny TONG Ka-wah, SC
- Members absent** : Hon Martin LEE Chu-ming, SC, JP
Hon James TO Kun-sun
- Public Officers attending** : Item II
Mr Frank POON
Deputy Solicitor General (Acting)

Miss Michelle TSANG
Senior Assistant Solicitor General

Mr Paul TSANG
Senior Assistant Solicitor General (Acting)

Ms Marie SIU
Senior Government Counsel

Ms Peggy AU YEUNG
Government Counsel

Miss Carmen KONG
Assistant Secretary (Administration) 3
- 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)118/07-08 - Minutes of meeting on 8 October 2007)

The minutes of the meeting held on 8 October 2007 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(2)120/07-08(01) – Administration's response to the issues raised at the meetings on 8 October 2007

LC Paper No. CB(2)120/07-08(02) – A check list of follow-up actions required of the Administration (position as at 22 October 2007)

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

LC Paper No. CB(2)1708/06-07(01) – Marked-up copy of the consequential amendments to the Rules of the High Court, Foreign Judgments (Restriction on Recognition and Enforcement) Ordinance, and the Rules of the District Court

LC Paper No. CB(2)2767/06-07(02) – A marked-up version of the Bill setting out the amendments proposed by the Administration

Annex B to LegCo Brief – "Arrangement on Reciprocal 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" signed between the Mainland and the Hong Kong Special Administrative Region (HKSAR) on 14 July 2006 (the Arrangement)

Annex I to LC Paper No. CB(2)1641/06-07(01) – A table showing the clause in the Bill which correspond with the Articles of the Arrangement)

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).
3. The Administration was requested -

Clause 3(4)

- (a) to review whether it was sufficient for the Bill to rely on the definition of "documents" in Cap. 1;

Action

- (b) to advise how documents by electronic means should be presented to the court as evidence;

Clause 11

- (c) to advise how the exchange rate would be determined by a court in the event that there was great fluctuation on the exchange rate on the date of registration;

Clause 13

- (d) in respect of Mainland judgments which were required to be preformed in stages, to consider whether it was necessary to require such judgments to be registered in stages; and
- (e) to consider the need for having clause 13 in the Bill.

III. Date of next meeting

- 4. The Bills Committee agreed that the next meeting would be held on 22 November 2007 at 4:30 pm.
- 5. The meeting ended at 10:30 am.

Council Business Division 2
Legislative Council Secretariat
16 November 2007

**Proceedings of the 11th meeting of the
Bills Committee on Mainland Judgments (Reciprocal Enforcement) Bill
on Wednesday, 24 October 2007, at 8:30 am
in Conference Room B of the Legislative Council Building**

| Time Marker | Speaker(s) | Subject(s) | Action required |
|-----------------|---|---|-----------------|
| 000000 - 000045 | Chairman | Confirmation of minutes of meeting | |
| 000046 - 000115 | Chairman Admin | <p>Clause-by-clause examination of the Bill with reference to the marked-up version of the Bill setting out the amendments proposed by the Administration (LC Paper No. CB(2)2767/06-07(02))</p> <p><u>Long title</u></p> <p><u>Clause 1 - Short title and commencement</u></p> | |
| 000116 - 001617 | Admin Chairman Ms Audrey EU ALA6 | <p><u>Clause 2 - Interpretation</u></p> <p>Advice of the Administration that -</p> <p>(a) there was a typographical error in the Chinese version of the definition of "recognized Basic People's Court";</p> <p>(b) drafting of the definition "judgment creditor" followed that of the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319);</p> <p>(c) a judgment creditor could apply for registration of a Mainland judgment in Hong Kong under the Bill provided that the judgment involved the order of payment of a sum of money, i.e. one of the five requirements set out in clause 5(2);</p> <p>(d) where a Mainland judgment ordered the payment of a sum of money to each of the claimant and defendant over different matters, either party could apply for registration of the Mainland judgment in Hong Kong in the capacity of a judgment creditor in respect of the sum entitled; and</p> <p>(e) where a Mainland judgment involved monetary and non-monetary awards over different matters, the provisions of the judgment concerning monetary awards would be registrable in Hong Kong, as provided in clause 9</p> | |
| 001618 - 004743 | Chairman Admin | <u>Clause 3 - Meaning of "choice of Hong Kong court agreement" and "choice of Mainland court</u> | |

| Time Marker | Speaker(s) | Subject(s) | Action required |
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| | Mr LI Kwok-ying Ms Audrey EU Mr Ronny TONG | <p><u>agreement"</u></p> <p>Response of the Administration to members' questions -</p> <p>(a) if either party or both parties had taken the case to a court other than the chosen court, the Bill would not apply and the judgment so delivered would not be registrable under it; and</p> <p>(b) if both parties agreed to seise a court in the Mainland other than a court chosen in the original choice of court agreement, whether a judgment so delivered could be enforceable in Hong Kong would depend on whether the parties had concluded a new choice of court agreement in accordance with clause 3(2)-(4)</p> | |
| 004744 - 004912 | Chairman Admin | <p><u>Clause 4 - Severability of choice of Hong Kong court agreement and choice of Mainland court agreement</u></p> | |
| 004913 - 005144 | Chairman ALA6 Admin | <p>As there was no definition on the word "documents" in the Bill and the definition of "documents" in Cap. 1 did not cover electronic documents as provided in clause 3, the Administration was requested to -</p> <p>(a) review whether it was sufficient for the Bill to rely on the definition in Cap. 1; and</p> <p>(b) advise how documents by electronic means should be presented to the court as evidence</p> | Admin to follow up |
| 005145 - 010100 | Chairman Admin | <p><u>Clause 5 - Application for registration of Mainland judgments</u></p> | |
| 010101 - 010840 | Chairman Admin Mr LI Kwok-ying | <p><u>Clause 6 - Finality of Mainland judgments</u></p> <p>Response of the Administration to members' questions -</p> <p>(a) the drafting of clause 6(1)(b) referring to appeal followed that of the Mainland law and reflected the requirement of the Arrangement;</p> <p>(b) an order made by a Mainland court concerning bankruptcy cases, except for an application for bankruptcy order, could not normally be subject to an appeal; but these cases would be outside the scope of the Bill;</p> <p>(c) if the time limit for appeal in respect of a judgment had expired, a party may apply</p> | |

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| | | <p>for retrial of the case but only a judgment made by a people's court of a level higher than the original court would be registrable under the Bill;</p> <p>(d) the Arrangement and the Bill did not deal with the right of a litigant to apply for a retrial of a case in a Mainland court, which was a Mainland law issue; and</p> <p>(e) an application for retrial was not a valid ground for setting aside the registration of a Mainland judgment in Hong Kong, unless an appropriate Mainland court had certified that a retrial of the relevant case had been ordered</p> | |
| 010841 - 011148 | Chairman Admin Mr LI Kwok-ying | <p><u>Clause 7 - Time limit for application for registration of Mainland judgments</u></p> <p>Response of the Administration to members' questions -</p> <p>(a) clause 7 reflected the requirement in Article 219 of the Civil Procedure Law of the People's Republic of China;</p> <p>(b) the business sector had commented that the time limit for application for registration of Mainland judgments was too short, i.e. one year for natural persons and six months for any other cases;</p> <p>(c) the Mainland authorities had not explained the reason for imposing the different time limits. They confirmed that the time period for performance would be specified in all cases;</p> <p>(d) a Mainland judgment of which an application for its registration was made after the time limit for making an application for execution in the Mainland had expired should not be enforceable in Hong Kong; and</p> <p>(e) a judgment creditor should obtain a certificate issued by the court certifying that the judgment was final and enforceable in the Mainland within the time limit specified when an application for enforcement could be made</p> | |
| 011149 - 011205 | Chairman Admin | <u>Clause 8 - Application fee</u> | |
| 011206 - 011301 | Chairman | <u>Clause 9 - Cases in which only some provisions</u> | |

| Time Marker | Speaker(s) | Subject(s) | Action required |
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| | Admin | <u>of Mainland judgments are registrable</u> | |
| 011302 – 011350 | Chairman Admin | <u>Clause 10 - Mainland judgments partly satisfied</u> | |
| 011351 - 011530 | Chairman Admin Mr LI Kwok-ying | <u>Clause 11 - Mainland judgment expressed in currency other than Hong Kong currency</u> The Administration was requested to advise how the exchange rate would be determined by a court in the event that there was great fluctuation on the exchange rate on the date of registration | Admin to follow up |
| 011531 – 011727 | Chairman Admin | <u>Clause 12 - Interest, cost, etc. to be included in registration of Mainland judgments</u> | |
| 011728 - 015532 | Chairman Admin ALA6 Ms Miriam LAU Mr Ronny TONG | <u>Clause 13 - Cases in which Mainland judgments are required to be performed in stages</u> Advice of the Administration that - (a) the Supreme People's Court had advised that very few Mainland judgments were required to be performed in stages; (b) in the event that a judgment debtor failed to make the first payment before the last day of performance specified on the judgment, a judgment creditor could file his case to a court for enforcement within the stipulated time limit. If he did not do so, he could no longer claim the first payment; (c) in line with the practice in the Mainland, the Bill required that Mainland judgments which were required to be performed in stages should also be registered in relation to the part or parts which had fallen due but remained unpaid. However, court procedure would be simplified to the effect that the relevant documents submitted for registration of a part could be relied upon in subsequent applications; (d) Cap. 319 had made no provision for enforcement of judgments in stages, given that the time limit for registration of a foreign judgment was six years; and (e) section 4(1)(b) of Cap. 319 provided that a judgment should not be registered if at the date of the application it could not be enforced by execution in the country of the original court Concern of members about the need for a judgment creditor to make separate applications | |

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| | | <p>for registration of a Mainland judgment which was required to be performed in stages. Members pointed out that -</p> <p>(a) Hong Kong would abide by the following principles in enforcement of Mainland judgments -</p> <p>(i) Mainland judgments which were required to be performed in stages would be enforced in Hong Kong in stages after registration but only in respect of the part or parts which had fallen due but remained unpaid;</p> <p>(ii) Mainland judgments which had not been registered after expiry of the stipulated time limit for enforcement in the Mainland would not be enforceable in Hong Kong; and</p> <p>(b) the registration of a Mainland judgment did not imply that the whole judgment was immediately enforceable</p> <p>In order to simplify the procedure for registration of Mainland judgments in Hong Kong, the Administration was requested -</p> <p>(a) in respect of Mainland judgments which were required to be performed in stages, to consider whether it was necessary to require such judgments to be registered in stages; and</p> <p>(b) to consider the need for having clause 13 in the Bill</p> | <p>Admin to follow up</p> |
| 015533 - 015838 | Chairman Admin | Date of next meeting | |