

Memorandum of Points of Concern

Re: Mainland Judgments (Reciprocal Enforcement) Bill

Clause 3

- (a) Choice of court clause different from what was stated at an earlier stage of the proposal. In 2002, the choice of court clause would also allow an agreement for court of both jurisdictions (vide paragraph 10 of the Annex to the letter dated 20 March 2002 from the Director of Administration to Hon Margaret NG [LC Paper No. CB(2) 1431/01-02(01)]).
- (b) Whether the exclusive jurisdiction provision would conflict with any existing legislation that gives exclusive jurisdiction to a particular tribunal or court.
- (c) It is doubtful that designating a court in the Mainland or Hong Kong to determine a dispute should be a necessary part of the choice of court clause/agreement. It seems more effective to designate the Mainland courts in a schedule and to provide for recognition and enforcement of judgments of those courts.

Clause 3(3)

Whether the reference to “an agreement” in line 1 should be more specific.

Clause 5(2)(b)

Would a choice of court clause contained in a self standing agreement in respect of one or all contracts between the parties to the contracts or a supplemental agreement containing such a clause satisfy the requirement in paragraph (b)?

Clause (6)(1)

Whether provisions should be made to cover the possible gap between the date on which a Mainland judgment became final and the date of the establishment of a prima facie case (立案) for a retrial (再審) under the trial supervision procedure (審判監督程序).

Clause 7(2)

It is not clear what would happen if the Mainland judgment does not specify any period for its performance.

Clause 9

Whether the reference to “provisions of the judgment” is appropriate and whether “orders” would be a better alternative.

Clause 12

What are covered by “interest which by the law of the Mainland shall become due under the judgment”? Ask for information on the Mainland practice.

Clause 13

What is meant by “performance of a Mainland judgment is required to be in **stages**”?

Clause 14(2)

It is unclear whether upon registration the interest payable on any sum under the registered Mainland judgment would be the local judgment rate instead of the rate of interest specified in the original judgment.

Clause 18(1)(b) & 20(3)

It is not clear whether

- (a) the amount at which a Mainland judgment is registered would affect the judgment creditor’s right to execute for a lesser amount;
- (b) any partial satisfaction of a Mainland judgment made between the application for registration of that Mainland judgment and the grant or completion of the registration would subject the registration to be set aside; and
- (c) partial satisfaction after the registration of a Mainland judgment would entitle a judgment debtor to resist the judgment creditor’s execution for the full sum registered.

If the answer to each of the above query is negative, it does not seem necessary to require a registered Mainland judgment to be set aside on the ground that the registration was for an amount more than what is actually due. Otherwise, it may be desirable to make provisions allowing the judgment creditor to vary the registration on own initiative to save costs and time.