



THE FRENCH CHAMBER
OF COMMERCE AND INDUSTRY IN HONG KONG

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1401, 14/F, Euro Trade Centre
21-23 Des Voeux Road Central
Hong Kong

E-mail: frencham@fccihk.com
Tel: (852) 2523 6818
Fax: (852) 2524 1428

**BILLS COMMITTEE
ON MAINLAND JUDGEMENTS
(RECIPROCAL ENFORCEMENT) BILL
LEGISLATIVE COUNCIL SECRETARIAT
LEGISLATIVE COUNCIL BUILDING
8 Jackson Road
CENTRAL, HONG KONG**

14 May 2007

Hon. Chairman of the Committee,
Hon. Members of the Committee,

**MAINLAND JUDGEMENTS (RECIPROCAL ENFORCEMENT) BILL
NOTES ON ORAL REMARKS - MEETING 5 MAY 2007**

Further to the hereabove referred meeting of the Bill Committee on Mainland Judgments (Reciprocal Enforcement) Bill ("the Bill"), and to the request of the Bill Committee, the French Chamber of Commerce and Industry in Hong Kong ("FCCIHK") is pleased to hereby provide written notes on the subject matter comprehending the oral remarks made by the undersigned before the 5 May 2007 Bill Committee panel.

The FCCIHK supports the introduction and the application of a piece of legislation which would provide for the reciprocal enforcement of judgments between the Mainland and Hong Kong.

However, the practical application of the legislation and proper administration of justice may be subject to the following concerns:



1. Enforcement of Mainland Judgments in Hong Kong

1.1 Choice of Court Agreement (sec 5(2)(b) & sec 3 Bill)

The Bill sets forth that the registration of the Mainland judgment in Hong Kong is subject to the parties having validly agreed to the competence of a designated court to solve their dispute.

This clause alone may render the whole Bill inapplicable.

To be able to agree on a choice of court, the parties should be firstly enabled to do so by the applicable domestic laws. It is notorious that in some relevant and important instances, the PRC laws do not allow the parties of so choosing (such as under the Sino-Foreign Joint Ventures PRC regulations).

In any case, shall the parties have the choice of court, one may further argue that the election in favor of a Mainland court rather than that of an arbitration court (be it in the Mainland such as the CIETAC) is highly unrealistic, as foreign enterprises will probably be wary to submit themselves to the jurisdiction of the PRC ordinary courts.

1.2 Conflict of laws in Hong Kong – Arbitration Ordinance

We understand that the arbitration Courts in the Mainland or in Hong Kong should be excluded from the application of the Bill according to the definition of designated courts pursuant sec. 2(1) Bill (as no such arbitration courts are listed in Schedule 1, they should be automatically excluded from the application of the Bill).

The enforcement of Mainland arbitration awards in Hong Kong is set forth under the provisions of the Arbitration Ordinance (Cap 341 [sec 2GG, 40B ff]).



Said provisions may differ substantially from the provisions of the Bill and hence may cause concerns in some cases where the two legislations may conflict.

We would hence suggest, in order to prevent possible conflict of laws situation, to specifically exclude the Mainland arbitration awards from the application of the Bill.

1.3 Time limit for application and certification (sec 7 & 6(2) Bill)

The time limit set forth by the Bill to apply for registration (one [1] year or six [6] months, sec (7) Bill), combined with the need to obtain certification from the original court on the enforceability of the judgment (sec 6(2) Bill) may be too short in practice.

The legislator in Hong Kong was concerned about fraud in the judicial process, however it may have disregarded the fact that if fraud may exist, it may appear at the end of the judicial process as well.

Further, apart from fraud or undue influence of the judgment debtor on the PRC Courts, delays on obtaining the certification may also stem from ordinary circumstances, including the time needed to assess whether the judgment creditor may have grounds to enforce in Hong Kong (assessment of assets of judgment debtor, other legal issues), the time needed to access relevant court service and clerks in some parts of the Mainland, etc.

As a matter of comparison, the delay for registration as set forth by the Hong Kong Foreign Judgments [Reciprocal Enforcement] Ordinance is six (6) years.

2. Enforcement of Hong Kong Judgments in the Mainland



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The Agreement signed between the Mainland and Hong Kong should be enforced in both jurisdictions in an equal and satisfactory manner.

Parties will be wary about litigating in Hong Kong if they are not certain whether they can enforce their judgment in the Mainland.

If, eventually, Mainland judgments could be executed in Hong Kong whereas Hong Kong judgments will prove difficult to enforce in the Mainland, this may alter the credibility of Hong Kong as a "rule of law" jurisdiction and the image of Hong Kong as a dispute resolution centre.

We would suggest to devise a provision allowing Hong Kong to refuse the enforcement of Mainland judgments in Hong Kong in case of reciprocity is not granted and, possibly, to put together a complaint body to which the interested parties could apply in case the enforcement of Hong Kong judgments cannot be obtained in the Mainland.

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We remain at disposal and look forward to the application of the Agreement,

Yours faithfully,

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FRENCH CHAMBER OF COMMERCE
& INDUSTRY IN HONG KONG
Serge G. Fafalen
President, Tax & Legal Committee