

LC Paper No. CB(2)120/07-08(01)

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本司檔號 Our Ref.: L/M (2) to LP CLU 5037/7/3C
電話號碼 Tel. No.: 2867 4746

17 October 2007

Mrs Percy Ma
Clerk to Bills Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central
Hong Kong

By Fax: 2509 9055

Dear Mrs Ma,

Bills Committee on Mainland Judgments (Reciprocal Enforcement) Bill

Thank you for your letter of 9 October 2007.

With regard to the issues raised at the meeting of 8 October 2007, the Administration is undertaking a research on the different manners adopted in various legislation in order to give effect to international agreements applicable to Hong Kong. The Administration also noted the comments raised by the Assistant Legal Adviser on Clauses 3(1), 3(2), 5(2)(a)(iv)(C), 5(2)(a)(iv)(D) and 6(1)(d) of the Bill. The drafting of the said clauses are being reviewed and, where necessary, Committee Stage Amendments will be introduced to properly reflect the Administration's intention.

We will, in due course, set out our findings and response to the above for Members' consideration.

Noting Members' comments on the proposed Order 71A, rule 3, we

have sought the Office of the Privacy Commissioner's further view on the proposed Order. We enclose, for Member's information, a copy of our letter to the Commissioner dated 12 October 2007 and the Commissioner's reply dated 15 October 2007. The Administration has also written to various chambers of commerce, particularly those which have formerly offered their views on the Bill, whether to the Bills Committee or to the Administration, reporting on the matter and seeking their further comments on the same. We will further report to the Bills Committee after receiving their response.

In respect of the next meeting of the Bills Committee scheduled for 24 October 2007, kindly note that the following officers will attend:

Mr Frank Poon, Deputy Solicitor General (Acting)
潘英光先生 署理副法律政策專員

Miss Michelle Tsang, Senior Assistant Solicitor General
曾憲薇女士 高級助理法律政策專員

Mr Paul Tsang, Senior Assistant Solicitor General (Acting)
曾強先生 署理高級助理法律政策專員

Ms Marie Siu, Senior Government Counsel
蕭艾芬女士 高級政府律師

Ms Peggy Au Yeung, Government Counsel
歐陽慧儒女士 政府律師

Miss Carmen Kong, Assistant Secretary (Administration)³
江嘉敏女士 政務主任(行政)³

Thank you for your attention.

With best regards,

Yours sincerely,



(Peggy Au Yeung)

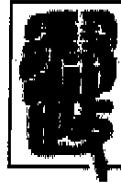
Senior Government Counsel (Ag)

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(By Fax: 2877 7026)

12 October 2007

Mr. Wilson LEE
Legal Counsel
Office of the Privacy Commissioner
12/F, 248 Queen's Road East
Wanchai
Hong Kong

Dear Mr. LEE,

Mainland Judgments (Reciprocal Enforcement) Bill

Thank you for your letter of 20 August 2007.

The Administration has subsequently related the views of the Privacy Commissioner on the proposed Order 71A, rule 3(2)(a) in Schedule 2 of the Bill to the Bills Committee for Members' consideration. The matter was discussed at the Bills Committee Meeting of 8 October 2007. The views expressed by Members are recapped below –

- (1) Personal data of the judgment creditor should not be an issue of concern if he was a party to the legal proceedings in Hong Kong;
- (2) The judgment debtor should have the right to know and verify the identity of the judgment creditor;
- (3) The proposed Order was intended to implement Article 6(4) of the Arrangement which referred to the requirement for authenticated copy

of identity document of the judgment creditor; and

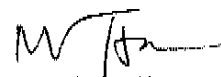
- (4) The evidential requirements to support applications for enforcement of Mainland and Hong Kong judgments under the Arrangement should be similar.

Noting Members' views, the Administration would like to seek the Commissioner's further comments on the matter and in particular, if there are any further objections to retaining the proposed Order 71A, rule 3(1)(a)(iv) and rule 3(2) in its current form.

For your reference, I enclose a copy of the Administration's response on various issues to the Bills Committee prior to the Meeting of 8 October 2007 (LC Paper no. CB(2)2767/06-07 (01)).

Kindly note that the next Meeting is scheduled for 24 October 2007, I would be most grateful for your early reply.

Yours sincerely,



(Miss Michelle Tsang)

Senior Assistant Solicitor General
(China Law)



香港個人資料私隱專員公署
Office of the Privacy Commissioner
for Personal Data, Hong Kong

Your Ref : L/M (2) to LP CLU 5037/7/3/C
Our Ref : PCPD(O)115/156 pt.13

15 October 2007

**By Fax : 2110 9788
& By Post**

Department of Justice
Legal Policy Division
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66 Queensway
Hong Kong

(Attn : Miss Michelle Tsang,
Senior Assistant Solicitor General (China Law))

Dear Miss Tsang,

Re: Mainland Judgments (Reciprocal Enforcement) Bill

Thank you for your letter dated 12 October 2007.

I refer to the Members' views referred to in your letter and have the following comments.

Members' view (1)

Data privacy is specifically protected by the Personal Data (Privacy) Ordinance, Cap. 486. Under Data Protection Principle 1 in Schedule 1 to the Ordinance, personal data shall not be collected unless the collection of the personal data is necessary and not excessive.

Although it is necessary for a judgment creditor to disclose his name in the registration application, and it is inevitable that his name would be disclosed to

the judgment debtor and the persons who are authorized to handle the application documents, there is no basis to assume that the judgment creditor should also be prepared to disclose to such persons other information, e.g. identity card number and date of birth, contained in his Hong Kong identity card and other identification documents. Besides, as you confirmed to us in your letter dated 4 July 2007, the Court does not require such identification documents in processing the relevant applications.

In the circumstances, it appears that the requirement for judgment creditor to exhibit his Hong Kong identity card or his identification documents to his supporting affidavit ("**Such Requirement**") is not necessary and is excessive under Data Protection Principle 1.

Members' view (2)

Under the proposed Order 71A, r.2, an application for registration of a Mainland judgment is made *ex parte* unless the Court otherwise directs. It appears, therefore, that the judgment creditor's identification documents are intended to be inspected by the Court instead of by the judgment debtor. In any event, the judgment debtors' concern may not be well founded since the identity of the judgment creditor would be verified by the witnessing solicitors when the affidavit is made.

As the judgment debtor should be involved in the legal proceedings in which the Mainland judgment is obtained, it is highly unlikely that the identity of the judgment creditor would be unknown to the judgment debtor.

Even if the judgment debtor has valid grounds to challenge the judgment creditor's identity, he can still do so at the summons hearing, if any, or at the subsequent enforcement proceedings instituted by the judgment creditor.

I, therefore, consider it unlikely that the judgment debtor would be prejudiced by not being able to inspect the judgment creditor's identification documents.

Members' views (3) and (4)

While I appreciate the Members' concern, it is also important to ensure that the proposed Order 71A is not inconsistent with the existing legislation.

As I have highlighted in my letter dated 23 March 2007, given that the

existing Order 71 and the proposed Order 71A are expected to be consistent as both Orders govern applications for registration of judgments not entered in Hong Kong, the fact that Such Requirement applies only to Order 71A appears to be inconsistent with Order 71 and may result in unnecessary litigation.

Based on the information available to us, I still consider that there is no sufficient justification for imposing Such Requirement in r.3(2)(a) and r.3(2)(b) of the proposed Order 71A.

Yours sincerely,



(Wilson LEE)

Legal Counsel

for Privacy Commissioner for Personal Data