

立法會
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**Paper for the House Committee Meeting
on 9 March 2007**

**Legal Service Division Report on
Mainland Judgments (Reciprocal Enforcement) Bill**

I. SUMMARY

1. **Objects of the Bill** To make provisions for the enforcement in Hong Kong of judgments in civil or commercial matters that are given in the Mainland, and for facilitating the enforcement in the Mainland of judgments in civil or commercial matters that are given in Hong Kong.
2. **Comments**
 - (a) The Bill would only apply to judgments for the payment of a sum of money given by a court designated in a choice of Mainland court agreement that also satisfied certain other requirements.
 - (b) Before such a Mainland judgment may be enforceable in Hong Kong, it must be registered with the Court of First Instance (CFI).
 - (c) The Bill would also enable CFI and District Court respectively to issue certified copy of a Hong Kong judgment given by the Court of Final Appeal, High Court or District Court pursuant to a choice of Hong Kong court agreement to facilitate enforcement of such judgment in the Mainland.
3. **Public Consultation** The professional bodies, chambers of commerce and trade associations have been consulted in 2002. The Law Society of Hong Kong and the Hong Kong Bar Association were briefed on the proposed arrangement in December 2005 and January 2006.
4. **Consultation with LegCo Panel** The Panel on Administration of Justice and Legal Services has from time to time been consulted on and briefed on the progress of the proposed arrangement.
5. **Conclusion** The Bill implements the Reciprocal Enforcement of Judgments Arrangement with the Mainland, which will have significant impact on cross-border business and commercial activities involving Mainland and local parties. It is recommended that a Bills Committee be formed to study the Bill in detail.

II. REPORT

Objects of the Bill

To make provisions for—

- (a) the enforcement in Hong Kong of judgments in civil or commercial matters that are given in the Mainland;
 - (b) for facilitating the enforcement in the Mainland of judgments in civil or commercial matters that are given in Hong Kong; and
- for matters connected therewith.

LegCo Brief Reference

2. File Ref.: L/M(2) to LP5037/7/3C issued by the Department of Justice and dated 14 February 2007.

Date of First Reading

3. 7 March 2007.

Comments

4. The Bill seeks to implement 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" signed between the Mainland and HKSAR on 14 July 2006 (the Arrangement). A copy of the Arrangement is attached to the LegCo Brief as Annex B.

5. The mechanism for recognition and enforcement of Mainland judgments is modeled on that of the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319), which provides for the enforcement of foreign judgments in HKSAR. The first step is the application for the registration of the judgment sought to be enforced with the Court of First Instance (CFI). However, there are several noticeable differences (clause 5(2)(a), (b) and (e))—

- (a) there must first be a choice of Mainland court agreement, i.e. an agreement concluded by parties to a specified contract and designating a court in the Mainland to determine a dispute which has arisen or may arise in connection with the specified contract to the exclusion of courts of other jurisdiction;
- (b) such agreement is made on or after the commencement of the enacted Bill;

- (c) the Mainland judgment must be given by the designated court on or after the commencement of the enacted Bill; and
- (d) the judgment orders payment of a sum of money which is not in respect of taxes or other charges of a like nature or in respect of a fine or other penalty.

6. The other requirements to be satisfied before a Mainland judgment may be registered are that the judgment must be final and conclusive as between the parties and that it is enforceable in the Mainland (clause 5(2)(c) and (d)). After registration, the Mainland judgment would, for the purpose of execution, be of the same force and effect as a judgment given in CFI and entered on the date of registration (clause 14).

7. The meaning of "final and conclusive as between the parties to the judgment" has been provided in clause 6(1). Due to the fact that there is a "trial supervision procedure" in the civil procedural law of the Mainland and a gap could arise between the date on which a judgment became final and the date of the establishment of a prima facie case for the trial supervision procedure, it may be considered whether such contingency needs to be covered.

8. The time limit for the registration of a relevant Mainland judgment would be one year if one of the parties is a natural person, but six months in any other cases (clause 7). Since the meaning of "the period for the performance of the Mainland judgment as specified in the judgment" is not entirely clear, it is uncertain from what date the specified time limit would be calculated.

9. A Mainland judgment registered could, upon the application of the person against whom the judgment may be enforced, be set aside on one of the grounds set out in clause 18(1). It could also be set aside if an appeal is pending or a retrial is ordered, but in such cases the Court would have the discretion to adjourn the application until after the appeal or retrial has been disposed of (clause 19). However, there does not appear to be any provision permitting the judgment creditor to apply on his own initiative to revise or vary a registered judgment necessitated by events that occur after the registration.

10. To facilitate enforcement of Hong Kong judgments in the Mainland pursuant to the Arrangement, both the High Court and the District Court are respectively empowered to certify a judgment of the Court of Final Appeal, High Court and District Court (clause 21).

11. Two new Orders would be added to the Rules of the High Court, namely Orders 71A and 71B to provide respectively for the application for registration of Mainland judgment and for certified copies of Hong Kong judgments (Schedule 2). However, it is not clear what sort of verification, or certification or authentication of the choice of Mainland court agreement would satisfy the Court's requirement in an application for registration.

Public Consultation

12. According to the LegCo Brief, the professional bodies, chambers of commerce and trade associations have been consulted on the need for a reciprocal enforcement of judgment arrangement with the Mainland and on the broad framework of the arrangement in 2002. The majority of respondents expressed support. The Law Society of Hong Kong and the Hong Kong Bar Association were briefed on the proposed arrangement in December 2005 and January 2006 respectively. Both bodies supported the Arrangement.

Consultation with LegCo Panel

13. The Panel on Administration of Justice and Legal Services was briefed on the suggestion of establishing an arrangement for reciprocal enforcement of judgments in commercial matters between the HKSAR and the Mainland (the proposal) in December 2001. Members of the Panel expressed concerns about whether the court judgments of the Mainland met the "finality" test under the common law principles, the quality of justice in the Mainland (including the propriety of Mainland judicial officials), and the difficulties in executing judgments in the Mainland. Since then, the Panel received progress reports periodically from the Administration on its discussions with the Mainland authorities.

14. The Administration briefed the Panel in February 2006 on the main elements of the proposal, which sought to address the concerns of the Panel—

- (a) the scope of the Arrangement was restricted to parties who made a prior express agreement to designate a court of the Mainland or the HKSAR to have exclusive jurisdiction for resolving any dispute;
- (b) the Arrangement only covered Intermediate People's Courts or above, and those Basic Level People's Courts designated to exercise jurisdiction over foreign-related civil and commercial cases;
- (c) the Supreme People's Court would devise a set of special procedures which are set out in the Arrangement to address the common law requirements of finality; and
- (d) the Arrangement provided for grounds for refusal of enforcement which were similar to the common law rules and those stipulated under the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319).

15. Following the signing of the Arrangement, the Administration briefed the Panel on the main features of the Bill at its meeting on 27 November 2006. The Panel requested the Administration to provide the following for consideration of the LegCo when the Bill was introduced—

- (a) a copy of the Arrangement signed on 14 July 2006;
- (b) a copy of the judicial interpretation to be promulgated by the Supreme People's Court to set out the details of the procedures for implementing the Arrangement; and

- (c) information on the existing problems encountered in enforcement of Mainland judgments in the HKSAR, the methods employed for and the success rate of enforcement of such judgments.

16. Regarding the suggestion of the Panel that the Arrangement should apply to cities in the Mainland which had proven trade or economic activities with the HKSAR as "trial points" for initial implementation of the Arrangement, the Administration advised that the Mainland authorities had reservation in accepting the suggestion as there was little established or objective basis for discriminating one city against another.

Conclusion

17. Since the implementation of the Arrangement will have significant impact on cross-border business and commercial activities involving Mainland and local parties, it is recommended that a Bills Committee be formed to study the Bill in detail.

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