

For information

**PANEL ON ADMINISTRATION OF JUSTICE
AND LEGAL SERVICES OF THE LEGISLATIVE COUNCIL**

**Arrangement on Mutual Taking of Evidence in Civil and
Commercial Matters between the Courts of the Mainland and the
Hong Kong Special Administrative Region**

Introduction

This paper informs Members that the Hong Kong Special Administrative Region (“HKSAR”) will conclude an arrangement with the Supreme People’s Court (“SPC”) on mutual assistance in the taking of evidence in civil and commercial matters.

Background

2. In the HKSAR, there is a long established statutory framework, predating the resumption of the exercise of sovereignty by China, for the courts to provide assistance to their counterparts outside Hong Kong and to seek assistance from them in taking of evidence through the use of letters of request (LoRs). In civil and commercial matters, sections 74 to 77A in Part VIII of the Evidence Ordinance (Cap. 8) give the Court of First Instance power to make provision for obtaining evidence in response to a LoR issued by a court outside Hong Kong, while the detailed procedural rules for giving effect to such LoR are set out in Order 70 of the Rules of the High Court (RHC). In corresponding terms, Order 39, rules 1 to 3A of the RHC set out the procedure for Registrar, High Court to issue outgoing LoRs to seek assistance from courts outside Hong Kong in obtaining evidence.

3. International cooperation in taking of evidence for civil proceedings through LoRs has been facilitated by the Convention on the

Taking of Evidence Abroad in Civil and Commercial Matters done at The Hague on 18 March 1970 (Hague Evidence Convention). For instance, it requires States Parties to designate competent authorities for direct receipt and transmission of LoRs (Article 2 of Convention), specifies the information that shall be included in a LoR (Article 3 of Convention), stipulates the responsibility for payment of expenses incurred in connection with the execution of a LoR (Article 14 of Convention), and provides that execution of LoRs shall be in accordance with the law of the executing courts (Article 9 of Convention). Although the Hague Evidence Convention continues to apply to the HKSAR after the resumption of the exercise of sovereignty by China, as an inter-state international convention, it does not apply as between the Mainland and the HKSAR because they are parts of one country.

4. Absent an arrangement to facilitate mutual assistance, obtaining of evidence between the Mainland and the HKSAR in civil and commercial matters lacks certainty and efficiency. At present, LoRs to and from the Mainland have to be transmitted through intermediary bodies, including the Hong Kong and Macao Affairs Office (HKMAO) and the Chief Executive's Office (CE's Office) before they could be ultimately transmitted to the executing authority. Besides, litigants are not entirely clear about the types of assistance available under the respective laws of the Mainland and the HKSAR, as well as what is required to be included in a LoR. Moreover, it could take considerable time before litigants may receive responses on the outcomes of their requests.

Negotiation for an Arrangement

5. Article 95 of the Basic Law provides that the HKSAR may, through consultations and in accordance with law, maintain juridical relations with judicial organs in other parts of China, and they may render assistance to each other. In view of the current unsatisfactory situation on mutual assistance in taking of evidence in civil and commercial matters, the HKSAR commenced negotiations with the Supreme People's Court (SPC) in early 2016 for an arrangement in line with the spirit of the Hague Evidence Convention. The arrangement aims at helping litigants

of the two jurisdictions to obtain evidence in civil and commercial matters with enhanced efficiency and greater certainty. It seeks to make the following provisions:

- (a) designation of competent authorities in the Mainland and the HKSAR for direct receipt and transmission of LoRs. Intermediary bodies such as HKMAO and CE's Office are to be removed from the transmission process;
- (b) specification on the scope of assistance available under the respective laws of the HKSAR and the Mainland;
- (c) stipulation of the procedures for execution of LoRs, with emphasis on execution in accordance with the law of the executing courts;
- (d) limitation on the use of evidence obtained pursuant to LoRs, namely for judicial proceedings mentioned in the relevant LoR;
- (e) specification of the language and the information required to be contained in LoRs;
- (f) stipulation on responsibility for expenses incurred in connection with execution of LoRs;
- (g) requirements for timely execution of requests and giving of reasons for refusals.

Conclusion and Implementation

6. The text of the arrangement has been settled recently. The Judiciary has been consulted on the arrangement. It has expressed support to the initiative and has also approved the text. The Administration plans to sign the arrangement with SPC by the end of December 2016. As the arrangement seeks to set out matters primarily of an administrative nature, it will not bring any change to our existing

law on court-to-court assistance in taking of evidence in civil and commercial matters and will be implemented under such law. Following signing of the arrangement, a copy of the arrangement will be put on the website of the Department of Justice.

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