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Panel on Administration of Justice and Legal Services

Meeting on 26 November 2018

**Background brief on the proposed arrangement between Hong Kong and
the Mainland for reciprocal recognition and enforcement of
judgments in civil and commercial matters**

Purpose

This paper provides background information on the proposed arrangement between Hong Kong and the Mainland for reciprocal recognition and enforcement of judgments ("REJ") in civil and commercial matters ("Proposed Arrangement") and a brief account of the past discussion of the Panel on Administration of Justice and Legal Services ("the Panel") on this subject.

Background

2. According to the Administration, it is the Government's policy to promote Hong Kong as a leading centre for international legal and dispute resolution services in the Asia-Pacific region. In the Chief Executive's 2018 Policy Address, it is stated that the Department of Justice ("DoJ") would continue to enhance legal co-operation in civil and commercial matters between Hong Kong and the Mainland, including the early conclusion of an arrangement with the Mainland to broaden the mechanism for REJ in civil and commercial matters, as well as exploring the arrangement for entering into an agreement with the Mainland for reciprocal recognition and enforcement of international commercial settlement agreements resulting from mediation.

Existing arrangements for reciprocal recognition and enforcement of judgments with the Mainland

3. Hong Kong has so far reached five arrangements with the Mainland concerning various aspects of mutual legal assistance in civil and commercial matters. Besides three arrangements which respectively deal with mutual service of judicial documents, reciprocal enforcement of arbitral awards and taking of evidence, there are two arrangements which provide for REJ between Hong Kong and the Mainland in civil and commercial matters.

4. The first REJ arrangement, signed in 2006, applies to money judgments made by the courts of either side where the parties to a commercial contract have agreed in writing that the court of one side will have exclusive jurisdiction to determine a dispute arising from that contract ("Choice of Court Arrangement").¹ The second arrangement, signed in 2017, provides for REJ in matrimonial or family matters ("Matrimonial Arrangement").²

A more comprehensive arrangement for reciprocal recognition and enforcement of judgments with the Mainland

5. According to the Administration, as the Choice of Court Arrangement and the Matrimonial Arrangement each provides for a specific scope of application, they are not able to fully address the need for a comprehensive REJ mechanism arising from the increasingly close interaction and co-operation between the two places in terms of trade and economic activities as well as social interactions.

6. In order to expand the scope of the existing arrangement for REJ in civil and commercial matters, DoJ has commenced discussion with the Supreme People's Court with a view to establishing a more comprehensive legal framework for REJ with the Mainland covering civil and commercial judgments which are outside the scope of application of the Choice of Court Arrangement or the Matrimonial Arrangement, thereby reducing the need for re-litigation of the same disputes in both places and offering better protection to the parties'

¹ *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* (《關於內地與香港特別行政區法院相互認可和執行當事人協議管轄的民商事案件判決的安排》)

² *Arrangement on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases by the Courts of the Mainland and of the Hong Kong Special Administrative Region* (《關於內地與香港特別行政區法院相互認可和執行婚姻家庭民事案件判決的安排》)

rights in a wider range of civil and commercial matters. In that regard, the Proposed Arrangement set out the scope of application, requirements for REJ, grounds for refusal as well as the relevant procedural matters.

Past discussion

7. The Administration consulted the Panel at its meeting on 27 November 2017 on the key features of the Proposed Arrangement, including:

- (a) the civil and commercial matters to be covered;
- (b) the specific types of matters to be excluded from or covered;
- (c) the jurisdictional basis for recognition and enforcement of judgments;
- (d) the grounds for refusal of recognition and enforcement of a relevant judgment;
- (e) the types of relief that would be recognized and enforced;
- (f) the principle of enforceability and level of courts to be covered; and
- (g) the relationship between the Proposed Arrangement and the Choice of Court Arrangement.

8. The major views and concerns of members are summarized in the ensuing paragraphs.

General views

9. Members generally supported the Proposed Arrangement. Some members considered that the Proposed Arrangement would be helpful to Hong Kong residents who had won lawsuits in the Mainland court but were unable to enforce the relevant judgments in Hong Kong, and urged the Administration to expedite the legislative process. However, a member expressed reservation on the Proposed Arrangement as he had doubts about the compatibility of the laws of the two places, the independence of the Mainland's judicial system and the effectiveness of the proposed safeguards under the Proposed Arrangement in guarding against injustice.

10. In response, the Administration advised that REJ with foreign courts had been an international trend and, under the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319), judgments from about 10 foreign jurisdictions were currently enforceable in the Hong Kong Special Administration Region. Furthermore, the proposed safeguards in the Proposed Arrangement, which were in line with the latest international practices and Hong Kong's statutory and common law regime, together with the proposed indirect jurisdictional rules, should help strike an appropriate balance between the advantages brought by a more comprehensive REJ mechanism and the risks perceived by members.

Trial supervision system in the Mainland

11. The Panel was concerned about how the Proposed Arrangement would deal with the impact of the trial supervision system in the Mainland. Members noted that the recognition and enforcement of a foreign judgment (including a Mainland judgment) was allowed at common law if certain conditions were satisfied, such as if the judgment was given by a competent court for a fixed sum of money and it was a final judgment that was conclusive upon the merits of the claims. However, under the trial supervision system in the Mainland, it was possible for certain parties to initiate a review of a legally effective judgment subject to the fulfillment of certain conditions, which could result in the retrial of the case by the original trial court. There were cases decided by the Hong Kong court in which Mainland judgments were not considered as final and conclusive for the purpose of enforcement in Hong Kong under the common law.

12. The Administration advised that, to address the common law requirements of finality, different procedures and approaches had been adopted in the Choice of Court Arrangement and the Matrimonial Arrangement having regard to the specific nature of judgments in respective cases. For the Proposed Arrangement, the Administration would further study and consider how best to address the issues of finality, including the criteria in deciding the Mainland judgments would be considered enforceable under Mainland law.

Coverage of the Proposed Arrangement

13. The Panel noted that the Hong Kong Bar Association ("Bar Association") was supportive of the Proposed Arrangement. They also noted the Bar Association's views on the jurisdictional basis for determining the eligibility of judgment for REJ, suggestion on the inclusion of interim reliefs for REJ, and its concerns over excluding the disputes over registration and validity of intellectual property rights from the Proposed Arrangement.

14. Some members echoed the Bar Association's suggestion to extend the scope of the Proposed Arrangement to cover REJ of court orders in relation to the winding-up of companies, personal bankruptcy as well as debt restructuring. The Administration replied that, given the complexity of the issues involved, it was advisable to implement the Proposed Arrangement as the first step.

Latest position

15. On 31 July 2018, DoJ launched a two-month consultation on the Proposed Arrangement.³ DoJ will brief members on results of the consultation exercise and the latest details of the Proposed Arrangement at the Panel meeting scheduled for 26 November 2018.

Relevant papers

16. A list of relevant papers is in the **Appendix**.

Council Business Division 4
Legislative Council Secretariat
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³ https://www.doj.gov.hk/eng/public/pr/20180731_pr1.html

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List of relevant papers

Meeting	Date	References
Panel on Administration of Justice and Legal Services	27 November 2017 (Item III)	Agenda Minutes

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