

Speech by Secretary for Justice

Following is the speech by the Secretary for Justice, Mr Wong Yan Lung, SC, at the Signing Ceremony of 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 held at Central Government Offices today (July 14): (English translation)

The Honourable Vice-President Huang, ladies and gentlemen,

Today, I am greatly honoured to be here to sign, on behalf of the Government of the Hong Kong Special Administrative Region (HKSAR), 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 with the Supreme People's Court. This Arrangement is another mutual legal assistance agreement reached between the two places in accordance with Article 95 of the Basic Law, following the signing of the Arrangement for Mutual Service of Judicial Documents in Civil and Commercial Proceedings and the Arrangement Concerning Mutual Enforcement of Arbitral Awards in 1999.

The objective of this new Arrangement is to establish a new and convenient mechanism for the reciprocal enforcement of judgments made by the courts of the Mainland and of the HKSAR so that a judgment creditor will no longer need to spend a large amount of time and money to bring a legal action again in the place where the property of the debtor is situated. During my visit to the Supreme People's Court in April this year, Vice-President Huang and I agreed to finalise the details of the new mechanism. In the initial phase, the new mechanism under the Arrangement will be subject to appropriate restrictions. Firstly, the Arrangement is only applicable to money judgments on disputes arising from commercial contracts where the parties concerned, on the basis of freedom of contract, have made an agreement in writing in which a court of the Mainland or a court of the HKSAR is expressly designated as the court to have sole jurisdiction for resolving the dispute concerned. The judgments I refer to do not cover all judgments made by any of the courts of the Mainland or of the HKSAR. For the Arrangement to be applicable, the judgment must be made, in the case of the Mainland, by an Intermediate People's Court or above or a Basic People's Court which has been authorised to exercise jurisdiction in civil and

commercial cases involving foreign parties; or, in the case of the HKSAR, by the District Court or above. In order to meet the finality requirements at common law, the Supreme People's Court will lay down a set of special procedures for the retrial of a case in the Mainland, should such a retrial be necessary, where an application for enforcement of the judgment concerned made by a Mainland court has been filed with a HKSAR court. In addition, the Arrangement also stipulates the grounds on which the courts of both places may refuse to enforce a judgment with a view to protecting the interests of debtors. Such safeguards are basically the same as those provided by the current laws in Hong Kong.

To ensure that the Arrangement can meet the actual needs of the public, the HKSAR Government has consulted the Legislative Council's Panel on Administration of Justice and Legal Services, the legal professional bodies and the relevant chambers of commerce on the subject matter and framework of the Arrangement. We would like to thank them for their invaluable input, which has enabled the authorities of both places to consider the matter from a wider perspective when discussing the contents of the Arrangement.

On the premise of protecting the interests and freedom of contracting parties, we have taken into full account the laws and legal systems of the two places and drawn reference from similar international laws and practices when devising the new mechanism. I believe that this mechanism can provide convenience for, and enhance the confidence of people who are involved in business dealings in the two places, and duly address the concerns and issues raised by various sectors. In future, contracting parties will have a further option. They may choose to initiate proceedings and apply to the appropriate court for enforcement of a judgment if the situation so warrants, having given due consideration to the place where the property of the debtor is situated. The Arrangement should alleviate the concerns of investors about litigation and enforcement of judgments and make the business environment of the two places more attractive. At the same time, it can also strengthen Hong Kong's position as a regional centre for dispute resolution.

After nearly four years of discussions, the representatives of the two places finally reached an agreement over the content of the Arrangement. Apart from expressing my gratitude to the Legislative Council, the Hong Kong Bar Association, the Law Society of Hong Kong and various chambers of commerce for their support, I would like to give special thanks to the Mainland experts led by the Supreme People's Court, especially Director Shao Wenhong and Director Yang Runshi of the Supreme

People's Court, for their full understanding and support to the HKSAR Government over the course of the discussions, making it possible for the Arrangement to have regard to the needs of the different legal systems and the parameters of the relevant laws.

In Hong Kong, we have yet to go through the relevant legislative procedures before we could implement the Arrangement. In the Mainland, the Supreme People's Court will have to issue new guidelines and interpretation. Nevertheless, we all look forward to with pleasure the early implementation of the Arrangement so that court judgments covered by the Arrangement can be enforced timely and legally in both places and that the interests of investors and debtors will be protected.

Lastly, I wish the Arrangement great success in its implementation. May I also wish our distinguished guests from the Mainland and all those present good health, every success and happiness in the future.

Thank you!

Ends/Friday, July 14, 2006

NNNN