

LC: Second Reading of Mainland Judgments (Reciprocal Enforcement) Bill  
\*\*\*\*\*

Following is the speech by the Secretary for Justice, Mr Wong Yan Lung, SC, to move the Second Reading of the Mainland Judgments (Reciprocal Enforcement) Bill at the Legislative Council today (7 March) (English translation):

Madam President,

I move that the Mainland Judgments (Reciprocal Enforcement) Bill be read a second time.

Purpose of the Bill

The Bill is 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 Department of Justice and the Supreme People's Court in the Mainland on 14 July 2006.

It has always been the case that judgments given by Mainland courts requiring payment of money could only be recognized and enforced in Hong Kong by beginning a new action in debt at common law. Since Hong Kong and the Mainland each has its own legal system and adopts different legal principles, such proceedings are often time-consuming and involve high legal costs. Due to the increased volume of economic activities between Hong Kong and the Mainland, the Administration conducted a consultation exercise in 2002 on the need for reciprocal enforcement of court judgments with the Mainland. Having consulted the Panel on Administration of Justice and Legal Services of this Council, the legal professional bodies, chambers of commerce and trade associations, and after detailed discussion with the Mainland authorities, the Arrangement was signed.

Pursuant to the Arrangement, the Bill establishes a new and convenient mechanism for the enforcement in Hong Kong of judgments given by Mainland courts. I trust that the implementation of the new mechanism will benefit members of the business community who are doing business with the Mainland, and will be conducive to Hong Kong's

development as a centre for the resolution of commercial disputes involving Mainland parties.

When discussing the details of the Arrangement with the Mainland authorities, reference have been made to the existing Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap 319), which provides for the reciprocal enforcement of judgments between Hong Kong and certain specified foreign jurisdictions. Similarly, the Bill is modelled on the Ordinance.

#### Details of the Bill

The Bill is based on the relevant provisions of the Arrangement. It 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 relevant dispute. The Bill provides that a "choice of Hong Kong court agreement" or a "choice of Mainland court agreement" is one in connection with a contract other than an employment contract or a contract to which a natural person acting for personal consumption, family or other non-commercial purposes is a party. A choice of court agreement refers to an agreement made on or after the date of commencement of the Bill.

Moreover, the Mainland judgments to which this Bill applies are restricted to those made by a "designated court", namely the Supreme People's Court, a Higher People's Court, an Intermediate People's Court or a Basic People's Court which has been authorized to exercise jurisdiction in civil and commercial cases involving foreign parties.

Registration of a Mainland judgment is conditional upon proof, to the satisfaction of the Court of First Instance, that the judgment satisfies certain specified conditions. One condition is that the Mainland judgment is final and conclusive. In view of the retrial system in the Mainland, the Bill also provides that a judgment given in a retrial is final and conclusive only if it is given in a retrial by a People's Court of a level higher than the original court (unless the original court is the Supreme People's Court).

Application to the Court of First Instance for the registration of a Mainland judgment must be supported by a certificate issued by the original Mainland court certifying that the judgment is final and enforceable in the Mainland. It is believed that the issues concerning

the finality and enforceability of Mainland judgments will be effectively dealt with under these provisions.

In addition, provisions are included in the Bill to deal with cases where only some provisions in a Mainland judgment are registrable, where the judgment is partly satisfied or where the Mainland judgment is required to be performed in stages.

The Bill provides that a registered judgment shall have the same force and effect as if the judgment had been originally given in the Court of First Instance. It prohibits any action to be taken to enforce a registered judgment until the time limit for application to set aside the registration has expired or the application to set aside has been disposed of.

For cases in which the Court of First Instance shall set aside the registration of a Mainland judgment, the provisions are generally modelled on the grounds for setting aside the registration of a foreign judgment under the Foreign Judgments (Reciprocal Enforcement) Ordinance.

The Bill also provides for cases in which the Court of First Instance may, at its discretion, order that the registration be set aside on certain grounds, including that a party has proved that an appeal against the judgment is pending or the case is ordered to be retried by a competent Mainland court.

In order to facilitate the application for the enforcement of Hong Kong judgments in the Mainland by judgment creditors, the Bill provides for the powers of the High Court to issue a certified copy of the judgments given by the Court of Final Appeal or the High Court and further for the powers of the District Court to issue a certified copy of its judgments.

#### Rules of Court

The Bill also proposes to amend the Rules of the High Court (Cap. 4 sub. leg. A) to provide for the procedures relating to an application for registration of Mainland judgments. Technical amendments to the Rules of the District Court (Cap. 336 sub. leg. H) are also proposed accordingly.

#### Conclusion

In the course of drafting the Bill, the Administration has given

due consideration to the similarities and differences in the legislation and legal systems of the two jurisdictions. Except for those relating to the laws and legal procedures of the Mainland, the wording used in the Bill to express legal notions is generally consistent with that in the existing legislation of Hong Kong. For instance, the grounds of refusal to register a Mainland judgment is expressed as “grounds to set aside” a registration in the Bill for the reason that, following the registration scheme in the Foreign Judgments (Reciprocal Enforcement) Ordinance, a Mainland judgment shall first be registered in the Court of First Instance but with the right reserved for a judgment debtor to apply to have the registration set aside.

Madam President, the Bill will set a milestone in the mutual legal assistance in civil and commercial matters between the Mainland and Hong Kong and will be conducive to Hong Kong’s development as a centre for commercial dispute resolution in the Asia-Pacific region. I commend the Bill to Honourable Members for early passage into law so that the Arrangement can be implemented at an early date.

I commend the Bill to this Council.

Ends/Wednesday, March 7, 2007