



**PROPOSED ARRANGEMENT BETWEEN HONG KONG AND THE  
MAINLAND ON RECIPROCAL RECOGNITION AND ENFORCEMENT  
OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS**

**SUPPLEMENTAL SUBMISSION**

1. The Law Society has on 2 October 2018 issued a submission on the Consultation Paper on the Proposed Arrangement between Hong Kong and the Mainland on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters ("the Proposed Arrangement").
2. We are invited by the Department of Justice ("DOJ") to give further views and comments on the Proposed Arrangement in respect of maritime matters and types of relief.

**Further Consultation on issues on maritime matters**

Consultation questions:

There are two proposals in respect of maritime matters have been suggested:

- (1) Option A - to exclude all maritime matters from the Proposed Arrangement, this exclusion would extend to all contractual claims in maritime cases.
- (2) Option B - to exclude the following maritime matters from the Proposed Arrangement:
  - (i) marine pollution;
  - (ii) limitation of liability for maritime claims;
  - (iii) general average;

- (iv) emergency towage and salvage;
- (v) maritime liens; and
- (vi) carriage of passengers by sea.

If Option B is adopted, other maritime matters not so excluded (say contractual claims in maritime cases) would be included in the Proposed Arrangement.

In relation to Option B:

- (1) whether item (v) would be agreeable and if so, whether the present formulation is clear enough; and
- (2) whether item (vi) would be agreeable and if so, whether its formulation should be extended to cover "carriage of passengers and goods by sea".

### **Law Society's Response:**

- 3. We propose to adopt Option B; but "carriage of passengers [and goods] by sea" should *not* be excluded. This is because most maritime matters relate to carriage of goods by sea.
- 4. We note that the Draft Hague Judgments Convention currently excludes carriage of passengers and goods. However, we are not convinced by the reasons for the exclusion as explained in a Preliminary Document prepared for the meeting of the Special Commission on the Hague Judgments Project held in May 2018, i.e. "... *excludes contracts for the national or international carriage of passengers or goods, regardless of the means of transport. Exclusion extends to carriage by sea, land and air, or any combination of the three. The international carriage of persons or goods is subject to a number of other important Conventions, and this exclusion prevents conflicts of instruments from arising. In any event, the exclusion is not limited to commercial contracts for carriage and, therefore, it also covers consumer contracts, e.g., the draft Convention does not apply to a judgment for personal injury to a passenger injured in an accident as a result of a taxi driver's negligence. Conversely, this exclusion does not cover damages to third parties, e.g., a victim in an accident who was not a passenger. Nor does it apply to complex contracts that combine tourist services, such as transport, accommodation and other services, where the*

*transport alone is not the main object of the contract."*<sup>1</sup>

5. In relation to the "maritime lien", we consider the term is clear enough and it is not necessary to expand further on the wording.
6. In general, nothing in the Proposed Arrangement shall affect the parties' rights to seek interim measures in any competent court.

Consultation question:

In light of the suggested exclusion of "carriage of passengers by sea" under item (vi) (subject to suggestion of amendment along the line proposed [to item (vi)]) and the comments set out in paragraph 27 of the Law Society's written submissions [dated 2 October 2018], it seems that the Proposed Arrangement should also exclude matters on "*carriage of passengers and goods by air*". The DOJ invites views from the Law Society.

**Law Society's Response:**

7. We are of the view that "carriage of passengers and goods by air" should **not** be excluded from the Proposed Arrangement on the following basis:
  - (i) Carriage of passengers and goods by air is primarily governed by Carriage by Air Ordinance (Cap. 500) which adopted the Warsaw Convention and the Montreal Convention 1999. These two conventions are applicable to both Hong Kong and China. They are relevant and noteworthy as they provide for matters in relation to determination of jurisdiction and touch upon other procedural matters (including enforcement of judgments).
  - (ii) While Article 28 of the Warsaw Convention and Article 33 of the Montreal Convention 1999 provide for the relevant jurisdictions for a passenger/ claimant to initiate a claim, the question of enforcement

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<sup>1</sup> Paragraph 47 of the Judgments Convention: Revised Preliminary Explanatory Report (Preliminary Document No.10 of May 2018), available at: <https://assets.hcch.net/docs/7cd8bc44-e2e5-46c2-8865-a151ce55e1b2.pdf> (last access: 19 October 2018)

of the relevant judgment obtained outside Hong Kong remains a question of procedure subject to Hong Kong law. For example, Articles 28(2), 29(2) of the Warsaw Convention (Carriage by Air Ordinance Schedule 1 Articles 28(2), 29(2)) and Articles 33(4), 35(4), 45 of the Montreal Convention 1999 (Carriage by Air Ordinance Schedule 1A Articles 33(4), 35(4), 45) all specify that questions of procedure and certain other administrative matters shall be governed and/or determined by the law of the court seized of the case.

(iii) Given that claims under carriage by air are either contractual or tortious, we do not see much difference between claims under Carriage by Air Ordinance and other claims of civil and commercial nature.

8. We wish to point out that contracts for carriage of goods containing exclusive jurisdiction clauses are, indeed, covered by the current arrangements in the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597).

Consultation question:

Separately, the DOJ notes that the Draft Hague Judgments Convention excludes matters on liability for nuclear damage. Whilst this matter has not been specifically mentioned in the Consultation Paper on the Proposed Arrangement [released in July 2018], under the latest line of thinking, matters not specifically excluded would fall within the applicable scope of the Proposed Arrangement. The DOJ invites views from the Law Society in relation to matters on liability for nuclear damage.

**Law Society's Response:**

9. We are not in a position to comment on the liability for nuclear damage.

## Further Consultation on types of relief

### Consultation Question:

The DOJ understands from paragraph 14 of the Law Society's Submissions that the Law Society considers that "*only monetary relief (i.e. an order from payment of a definite sum of money), not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, or multiple or punitive damages, should be provided for in the Proposed Arrangement*", subject to the Law Society's other comments specifically related to intellectual property rights and maritime matters.

The DOJ seeks the Law Society's advice on the reasons for the contention that *only* monetary relief should be provided for in the Proposed Arrangement.

### Law Society's Response:

10. We suggest a prudent, step-by-step approach and to have limited types of relief in the inception stage of the implementation of the Proposed Arrangement. The Administration should cautiously consider the above, which is a practical but important matter.
11. We also have concerns on the manpower and the resources available to the Judiciary to cope with any resultant increases in the volume of cases that the Judiciary is to handle, if Hong Kong is to have "all-type" relief in the Proposed Arrangement.

**The Law Society of Hong Kong  
13 November 2018**