



Hong Kong General Chamber of Commerce
香港總商會 1861

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香港總商會

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Dear Ms Chan

**Consultation Paper No. 2 on 2018 Draft Convention on the
Recognition and Enforcement of Foreign Judgments (“the CP”)**

We welcome this opportunity to comment on the CP.

In our response of 29 November 2016 to the first consultation paper (our response is attached hereto for ease of reference), we summarized the mechanisms that already exist under Hong Kong law for the recognition and enforcement of foreign judgments in Hong Kong. We understand that, as a participant in discussions on international conventions such as this one, Hong Kong has to consider whether those conventions, once agreed, should be implemented in Hong Kong, and if so, to what extent. In this respect, we refer to the following comment in the first consultation paper (at paragraph 8):

“Once the Draft Convention has been concluded, the Government will consider the question of application of the Convention to the HKSAR, after making an assessment of the provisions of the finalized Convention on the legal system of Hong Kong and the views of interested parties”.

As part of this assessment the Government should explain whether or not it believes that the existing mechanisms as provided under Hong Kong laws are sufficient, and if not, and how the implementation of the Convention would remove any perceived deficiencies in these mechanisms.

We would re-iterate two points that we made on the 2016 draft Convention which do not seem to be reflected in the 2018 draft:


- The draft should offer a meaningful definition of “civil or commercial matters”, as the meaning this phrase is not entirely clear, and it is a central concept in the Draft Convention.
- The scope of the Draft Convention should be confined to judgments for a definite sum of money, and other forms of relief such as injunctions and specific performance should be excluded. The latest Draft Convention attached to the CP, at Article 11, appears to accept this submission, but only in respect of intellectual property matters, as opposed to any kind of dispute. We believe that the limitation to monetary remedies only should apply to all judgments, not just in intellectual property matters, and the suggested rationale for this proposed restriction to intellectual property matters is unclear.

Please see our earlier submission attached for our justification for these points.

Finally, we note that the CP asks (at paragraph 19) whether the proposed exclusion for antitrust (competition) matters should extend to all such matters, or only certain aspects. As we stated in our earlier submission, antitrust (competition) matters generally are usually assessed with reference to the competitive landscape in the relevant market, and therefore all antitrust (competition) matters should be excluded: we see no reasonable basis for excluding some but not others.

We hope that you will find our comments helpful.

Yours sincerely


Shirley Yuen
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Encl.