

立法會
Legislative Council

LC Paper No. CB(2)152/09-10
(These minutes have been
seen by the Administration)

Ref : CB2/BC/9/08

Bills Committee on Arbitration Bill

**Minutes of the second meeting
held on Wednesday, 16 September 2009, at 10:45 am
in Conference Room A of the Legislative Council Building**

Members present : Dr Hon Margaret NG (Chairman)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon LAU Kong-wah, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Ronny TONG Ka-wah, SC
Prof Hon Patrick LAU Sau-shing, SBS, JP
Dr Hon Priscilla LEUNG Mei-fun

Members absent : Hon CHIM Pui-chung
Hon Paul TSE Wai-chun

Public Officers attending : Item I

Mr Frank POON
Deputy Solicitor General (General)

Mr Allen LAI
Senior Assistant Law Draftsman (Ag.)

Mr LEE Tin-yan
Senior Government Counsel

Mr Christopher NG
Senior Government Counsel

Ms Angie LI
Government Counsel

Clerk in attendance : Miss Betty MA
Chief Council Secretary (2) 4

Staff in attendance : Mr Kelvin LEE
Assistant Legal Adviser 1

Miss Florence WONG
Senior Council Secretary (2)5

Miss Maggie CHIU
Legislative Assistant (2)4

Action

I. Meeting with the Administration

[The Bill, Legislative Council Brief, LC Paper Nos. CB(2)2261/08-09(01) to (03) and CB(2)2469/08-09(01) to (04)]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

Admin

2. The Administration was requested to –

- (a) explain the guiding principles for adopting the approaches that were used in domestic legislation which implemented an international agreement;
- (b) provide the relevant extracts to illustrate that certain provisions were set out in the legislation for information only and they did not have legal effect;
- (c) take into account members' views and consider improving the approach adopted for Schedule 1 to the Bill;
- (d) provide more information on the ruling of the Court of Final Appeal (CFA) in *Paquito Lima Buton v. Rainbow Joy Shipping Ltd. Inc.*, the application of section 6(2) of the current Arbitration Ordinance and clause 20(2) of the Bill, as well as advise whether clause 20(2) of the Bill was consistent with the CFA ruling and section 18(A) of the Employees' Compensation Ordinance (Cap. 282); and

Action

- (e) provide more information on the submissions and comments on clause 20(2) of the draft Bill, in particular the implications of the CFA ruling on the scope of clause 20(2).

- ALA1 3. The legal adviser to the Bills Committee was requested to provide a written opinion on the general principles for proposing legislative amendments.

II. Any other business

4. There being no other business, the meeting ended at 12:44 pm.

Council Business Division 2
Legislative Council Secretariat
29 October 2009

**Proceedings of the second meeting of the
Bills Committee on Arbitration Bill
on Wednesday, 16 September 2009, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda item I – Meeting with the Administration</i>			
000000 - 001502	Chairman Ms Miriam LAU Administration	<p>The Administration's briefing on the rationale and justifications for the drafting approach of the Arbitration Bill (the Bill) [LC Paper No. CB(2)2469/08-09(01)]</p> <p>In gist, the basic structure of the Bill was that the different clauses stipulating the application of specific articles of the UNCITRAL Model Law (Model Law) were provided in the body of the Bill, and that the text of the Model Law was reproduced in Schedule 1 to the Bill for information only.</p> <p>Having given detailed consideration to the appropriate structure of the Bill, the Departmental Working Group to implement the Report of the Committee on Hong Kong Arbitration Law (Working Group) considered that it was necessary to map out a more user-friendly arbitration law. This was in line with the objective of enhancing the perception that Hong Kong was a Model Law jurisdiction</p>	
001503 - 002420	Ms Miriam LAU Administration Chairman	<p>Whether there were guiding principles on the approaches to be adopted in domestic legislation which implemented an international agreement and whether amendments to the new ordinance should be made in the event that the Model Law was amended</p> <p>The Administration's response that –</p> <p>(a) different methods had been used to implement international agreements in the domestic system that suited different types of international agreements and different policy needs; and</p> <p>(b) legislative amendments to the Arbitration Ordinance would be made if the Model Law was amended in future. It, however, did not expect that amendments to the Model Law would be made frequently. The Administration would consider and decide whether or not to incorporate future substantial revisions to the Model Law, having regard to the views of stakeholders and the business community. Should there be minor or technical amendments to the Model Law, subsequent amendments to the Arbitration Ordinance could be incorporated under a Statute Law (Miscellaneous Provisions) Bill. The amended Model Law would not have the force of law in Hong Kong until amendments to the Arbitration Ordinance were effected</p>	
002421 - 003022	Dr Priscilla LEUNG Chairman Administration	View of Dr Priscilla LEUNG that the current approach adopted in the Bill was confusing. The Administration should make reference to the approach adopted for the	

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		<p>Hong Kong Bill of Rights Ordinance (Cap. 383) and review the drafting of the Bill</p> <p>The Administration's response that the articles of the International Covenant on Civil and Political Rights were directly adopted and inserted as part of the Hong Kong Bill of Rights Ordinance having regard to the importance of safeguarding the rights of Hong Kong people. As for the structure of the Bill, the relevant articles of the Model Law that were to have the force of law in Hong Kong had been expressly set out in the main body of the Bill with appropriate local adaptations having considered the views of the Working Group. The proposed structure of the new ordinance would achieve the objective that Hong Kong was to be seen as conforming to the Model Law</p>	
003023 - 003518	Mr Albert HO Administration Chairman	<p>Concerns about the need to set out the text of the Model Law, including the provisions of the Model Law which would not be adopted in Hong Kong, in the Bill for information only, bearing in mind that provisions in the legislation would have legal effect</p> <p>The Administration's advice that precedents were found in the existing legislation that information such as the formulae for calculation of fees and charges were set out in the main body of the Ordinance, and stating expressly that the provisions were for illustration purpose and information only. The Administration would provide the relevant extracts for members' reference</p>	Admin
003519 – 003640	Ir Dr Raymond HO	Lack of public engagement in the consultation on the reform of the law of arbitration in Hong Kong	
003641 – 004253	Chairman Administration	<p>Role of the Law Draftsman in deciding the drafting approach of the Bill.</p> <p>Noting that different approaches were used in domestic legislation which implemented an international agreement, the Chairman considered that the Law Draftsman should be invited to explain to the Bills Committee the guiding principles for adopting the approaches that were used in domestic legislation which implemented an international agreement, and consider ways to address concerns raised by members in respect of the structure of the Bill</p>	Admin
004254 –005424	Dr Priscilla LEUNG Chairman Administration Ms Miriam LAU	<p>Further discussion on the structure of the Bill, in particular the need to reproduce the text of the Model Law in Schedule 1 to the Bill when the application of specific articles of the Model Law were provided in the body of the Bill</p> <p>The Administration's advice that the text of the Model Law was reproduced in Schedule 1 to the Bill for information only. A note was added after each article to indicate the provision in the Bill which made direct reference to that article. This provided useful information to the users of the new ordinance. While it was technically difficult to revamp the basic structure of the Bill, the Administration would take into account members' views and consider improving the approach</p>	Admin

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		adopted for Schedule 1 to the Bill. It would revert to the Bills Committee later	
005425 - 011630	Chairman Administration	Briefing on the Administration's paper entitled "Summary of submissions and comments on the Consultation Paper on Reform of the Law of Arbitration in Hong Kong and Draft Arbitration Bill" [LC Paper No. CB(2)2469/08-09(03)]	
011631 - 012940	Chairman Dr Priscilla LEUNG Administration Ms Miriam LAU Mr Albert HO	<p>Discussion on concerns relating to clause 16 (Issue 5 of the Administration's paper)</p> <p>The Administration's advice that having considered the requirement to preserve the requirement for confidentiality as a key aspect of arbitration and the need to protect the public interest in having transparency of process and the public accountability of the judicial system, it was stipulated in clause 16 that as a starting point, court proceedings relating to arbitration were to be heard otherwise than in open court, unless on the application of any party or on the court's initiative in any particular case, the court was satisfied that the proceedings ought to be heard in open court</p> <p>Views of Dr Priscilla LEUNG that the Administration should consider specifying in clause 16 that court proceedings relating to arbitration were to be heard in open court only under special circumstances. The Administration would consider Dr LEUNG's suggestion</p> <p>Views of Ms Miriam LAU and the Chairman that clause 16 of the Bill was acceptable as it allowed the court to take into account all circumstances of the case and decide whether the relevant court proceedings should be heard in open court</p>	Admin
012941 – 015512	Mr Albert HO Administration Chairman ALA1 Dr Priscilla LEUNG	<p>Concerns relating to clause 20 (Issue 7 of the Administration's paper) -</p> <p>Views of Mr Albert HO that the Administration should explain clearly the rationale for the proposal under clause 20(2) of the Bill, i.e. the decision not to expand the scope of types of employment-related cases in which the court might decide whether or not to refer the parties to arbitration where there was an arbitration agreement</p> <p>Concerns raised by members as to whether the Employees' Compensation Ordinance (Cap. 282) (ECO) should be amended in the light of the Court of Final Appeal (CFA)'s ruling in <i>Paquito Lima Buton v Rainbow Joy Shipping Ltd. Inc.</i>. If so, whether the amendments should be effected by way of a separate amendment bill</p> <p>Response of the Administration that –</p> <p>(a) the CFA judgment on <i>Paquito Lima Buton v Rainbow Joy Shipping Ltd. Inc.</i> had clarified the scope of the power of the court to stay claims in relation to employees' compensation, i.e. section 18(A) of ECO conferred exclusive jurisdiction on the District Court to deal with all ECO claims and</p>	

