

立法會
Legislative Council

LC Paper No. CB(2)870/09-10
(These minutes have been
seen by the Administration)

Ref : CB2/BC/9/08

Bills Committee on Arbitration Bill

Minutes of the 6th meeting
held on Thursday, 3 December 2009, at 8:30 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
Prof Hon Patrick LAU Sau-shing, SBS, JP

Members absent : Hon Miriam LAU Kin-ye, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Dr Hon Priscilla LEUNG Mei-fun
Hon Paul TSE Wai-chun

Public Officers attending : Item I

Mr Frank POON
Deputy Solicitor General (General)

Ms Phyllis KO
Senior Assistant Law Draftsman

Mr LEE Tin-yan
Senior Government Counsel

Mr Christopher NG
Senior Government Counsel

Mr Peter SZE
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 (02) and CB(2)2469/08-09(02) and (04)]

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

Admin

2. The Administration was requested to –

- (a) provide information on precedent employment-related cases, if any, in which the court had not referred the parties to arbitration in accordance with the arbitration agreement even if the dispute in the matter was the subject of the arbitration agreement; and
- (b) explain the rationale for proposing the appointment of an mediator was to be made by the Hong Kong International Arbitration Centre for the purposes of the Bill, and provide a written response to the views expressed by the Hong Kong Mediation Centre vide its letter dated 17 July 2009 (LC Paper No. CB(2)2303/08-09(01)).

3. Members noted that the Administration would propose an amendment to delete the reference to "subsection (2)" in clause 20(3) taking into account that section 15 of the Control of Exemption Clauses Ordinance (Cap. 71) dealt with agreements involving consumers, but not employment-related cases.

Action

II. Any other business

4. The Chairman said that the next meeting would be held on 17 December 2009. The Chairman further said that if the President was of the opinion that the Council meeting on 16 December 2009 would be resumed on the following day for continuation of unfinished business, the next meeting would be rescheduled for 21 December 2009 to avoid clashing with the Council meeting.

5. There being no other business, the meeting ended at 10:00 am.

Council Business Division 2
Legislative Council Secretariat
1 February 2010

**Proceedings of the 6th meeting of the
Bills Committee on Arbitration Bill
on Thursday, 3 December 2009, at 8:30 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 - 000312	Chairman	Date of next meeting	
000313 - 000733	Chairman Administration	Continuation of the clause-by-clause examination of the Arbitration Bill (the Bill) Members raised no question on clause 19	
000734 - 002446	Administration Chairman Mr Albert HO ALA1	<p><u>Clause 20 – Article 8 of UNCITRAL Model Law (Arbitration agreement and substantive claim before court)</u></p> <p>Mr Albert HO's enquiry about the meaning of "sufficient reasons" in clause 20(2)(a) for which the parties should not be referred to arbitration in accordance with the arbitration agreement even if the dispute in the matter was the subject of an arbitration agreement involving a claim or other dispute within the jurisdiction of the Labour Tribunal</p> <p>The Administration's response that if a dispute in a matter that was the subject of an arbitration agreement which also involved a claim or other dispute that was within the jurisdiction of Labour Tribunal would not be referred to arbitration if the arbitration agreement was null and void, say, either party entered the agreement under duress</p> <p>As it was uncommon for including an arbitration agreement in the local employment contracts, at the request of members, the Administration would seek further information from the Labour Tribunal and the Labour Department on employment-related cases, if any, in which the court did not refer parties to arbitration in accordance with the arbitration agreement</p>	Admin
002447 - 003044	Administration Chairman	The Administration's advice that it would propose an amendment to delete the reference to "subsection (2)" in clause 20(3) taking into account that section 15 of the Control of Exemption Clauses Ordinance (Cap. 71) dealt with agreements involving consumers, but not employment-related cases	Admin
003045 - 004012	Administration Mr Albert HO Chairman	<p><u>Clause 21 – Article 9 of UNCITRAL Model Law (Arbitration agreement and interim measures by court)</u></p> <p>Concerns about –</p> <p>(a) the factors taken into account by the court to determine whether granting of an interim measure of protection was not incompatible with an arbitration agreement; and</p> <p>(b) the enforceability of such interim measures in Hong Kong</p>	

Time marker	Speaker(s)	Subject(s)	Action required
		<p>The Administration's advice that clause 21 gave effect to Article 9 of the Model Law which provided that it was compatible with an arbitration agreement for any interim measure to be obtained from the court. The grant, recognition and enforcement of interim measures would be dealt with under Part 6 of the Bill</p>	
004013 - 004257	Administration	Members raised no question on clauses 22 and 23	
004258 - 005211	Administration Chairman Mr Albert HO	<p><u>Clause 24 – Article 11 of UNCITRAL Model Law (Appointment of arbitrators)</u></p> <p>Suggestion made by the Hong Kong Institute of Architects and the Hong Kong Institute of Surveyors that the word "or" between subparagraphs (b) and (c) of Article 11(4) of the Model Law in clause 24(1) should be replaced by "and" to better reflect the existing appointment procedure</p> <p>The Administration's response that it considered the current drafting appropriate as the policy intent was clearly spelt out in Article 11 of the Model Law in clause 24(1), i.e. the parties were free to agree on the procedure for the appointment of an arbitrator. The default appointment authority (i.e. HKIAC) would exercise its power of appointment for a party or an institution only if the party or the institution failed to make an appointment pursuant to the agreed appointment procedure. The default appointment authority would not exercise its power of appointment for an institution where the default only related to a party. As the arrangement was commonly adopted in the international arbitration regime and the Administration was not aware of any problems arising from the operation of Article 11, the Administration considered that no change to the drafting was necessary</p>	
005212 - 005606	Administration Chairman	<p><u>Clause 25 – Article 12 of UNCITRAL Model Law (Ground for challenge)</u></p> <p>The Administration's advice that the Chinese rendition of English term "challenge" ("申請迴避") adopted by the Model Law was different from the Chinese rendition of the same English expression that were commonly used in the local legislation ("質疑"). It was an example of the situation to which the interpretation provision of clause 2(5) of the Bill sought to address so that both Chinese equivalents of "challenge" were to be treated as identical in effect in the Bill</p>	
005607 - 010103	Administration	Members raised no question on clauses 26 to 28	
010104 - 010232	Administration Mr Albert HO Chairman	<p><u>Clause 29 – Death of arbitrator or person appointing arbitrator</u></p> <p>Responding to Mr Albert HO's enquiry about the meaning of "mandate", the Administration advised that an award that had been made before the death of an arbitrator would remain in force after the arbitrator's death</p>	

Time marker	Speaker(s)	Subject(s)	Action required
010233 - 010817	Administration Mr Albert HO Chairman	Members raised no question on clauses 30 to 32	
010818 - 011757	Chairman Administration	<p><u>Clause 32 – Appointment of mediator</u></p> <p>Referring to the letter dated 17 July 2009 from the Hong Kong Mediation Centre (HKMC) (LC Paper No. CB(2)2303/08-09(01) suggesting that it should be authorised to appoint a mediator for the purposes of the Bill, the Administration's advice that it would not be desirable to authorise more than one authority to appoint mediators. While acknowledging that HKMC had been promoting mediation in the last decade, it considered that it was appropriate for appointment of mediator to be made by the Hong Kong International Arbitration Centre taking into account its well-established and internationally renowned status in the sector. The Administration was requested to provide a written response to HKMC's letter</p> <p>The Chairman's view that the Administration might further study measures to promote development of mediation in Hong Kong</p>	Admin
011758 - 012848	Administration Chairman Mr Albert HO	<p><u>Clause 33 – Power of arbitrator to act as mediator</u></p> <p>Whether it was appropriate for an arbitrator to act as a mediator in the light of potential embarrassment having regard to the fact that an arbitrator might have obtained confidential information from a party during the mediation proceedings conducted by the arbitrator as a mediator</p> <p>The Administration's response that –</p> <p>(a) under clause 33(1), an arbitrator might act as a mediator only under the condition that all parties consented in writing and for so long as no party withdrew the party's consent in writing; and</p> <p>(b) under clause 33(4), an arbitrator must, before resuming the arbitral proceedings, disclose to all other parties as much of that information as the arbitrator considered was material to the arbitral proceedings if confidential information was obtained by an arbitrator from a party during the mediation proceedings conducted by the arbitrator as a mediator and those mediation proceedings terminated without reaching a settlement acceptable to the parties</p> <p>Members raised no question on clause 34</p>	