

立法會
Legislative Council

LC Paper No. CB(2)963/09-10
(These minutes have been
seen by the Administration)

Ref : CB2/BC/9/08

Bills Committee on Arbitration Bill

Minutes of the 7th meeting
held on Monday, 21 December 2009, at 8:30 am
in Conference Room A of the Legislative Council Building

Members present : Dr Hon Margaret NG (Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon LAU Kong-wah, JP
Dr Hon Priscilla LEUNG Mei-fun
Hon Paul TSE Wai-chun

Members absent : Hon Albert HO Chun-yan
Hon Miriam LAU Kin-yee, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Prof Hon Patrick LAU Sau-shing, SBS, JP

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 (02), CB(2)2469/08-09(02) and (04) and CB(2)586/09-10(01)]

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

Admin

2. The Administration was requested to –

- (a) liaise with the Hong Kong International Arbitration Centre and revert to the Bills Committee on the number of arbitration cases arising from commercial transactions and admiralty disputes that were conducted under the domestic arbitration regime, if available; and
- (b) provide relevant cases, if any, in which the arbitral tribunal had modified, suspended or terminated an interim measure or a preliminary order it had granted and the decision was objected by the parties concerned.

II. Any other business

3. The Chairman said that a special meeting of the House Committee would be scheduled for the morning of 7 January 2010. To avoid clashing with the special meeting of the House Committee, the Chairman suggested and members agreed to reschedule the next meeting of the Bills Committee originally scheduled for 7 January 2010 to 14 January 2010 at 8:30 am or 4:30 pm. The Clerk would

Action

issue a circular to invite members to indicate their availability of the proposed timeslots. The Chairman added that members would be informed of the meeting date in due course.

(Post-meeting note: The next meeting of the Bills Committee would be held on 14 January 2010 at 8:30 am.)

4. There being no other business, the meeting ended at 10:30 am.

Council Business Division 2
Legislative Council Secretariat
18 February 2010

**Proceedings of the 7th meeting of the
Bills Committee on Arbitration Bill
on Monday, 21 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 - 001218	Chairman	Date of next meeting	
001219 - 001856	Chairman Administration	The Administration's response to issues raised at the meeting on 5 November 2009 [LC Paper No. CB(2)586/09-10(01)]	
001857 - 003126	Mr LAU Kong-wah Administration Chairman	<p>Enquiries about the breakdown of arbitration cases opting for domestic arbitration by industries, and number of domestic arbitration cases that were not handled by the Hong Kong International Arbitration Centre (HKIAC), such as disputes relating to building management</p> <p>The Administration's response that –</p> <p>(a) as advised by HKIAC, of 602 arbitration cases handled by it in 2008, about 1/3 were cases from the construction sector, 1/3 involved general commercial transactions and 1/3 involved admiralty disputes. As known to HKIAC, the percentage of construction disputes opted for domestic arbitration would not be substantially higher than 1/3 (i.e. some 60 such cases in 2008);</p> <p>(b) it did not have information on the number of arbitration cases that were not conducted by HKIAC;</p> <p>(c) under Part 11 of the Bill, express provisions could be made in an arbitration agreement to opt for domestic arbitration including building management cases</p> <p>The Administration was requested to liaise with HKIAC and revert to the Bills Committee on the number of cases arising from general commercial transactions and admiralty disputes that were conducted under the domestic arbitration regime, if available</p>	Admin
003127 - 003550	Dr Priscilla LEUNG Administration	<p>Need for stepping up publicity to enhance the understanding of arbitration users on the applicability of the Bill, in particular the opt-in provisions</p> <p>The Administration's response that as explained at previous meetings, it would issue press releases and arrange briefings on the Bill. This apart, HKIAC and the International Chamber of Commerce had advised vide their letters (LC Paper Nos. CB(2)543/90-10(01) and CB(2)590/09-10(01)) of the measures to be taken to prepare arbitrators and other professionals for the implementation of the Bill</p>	

Time marker	Speaker(s)	Subject(s)	Action required
003551 – 004506	Chairman	Continuation of clause-by-clause examination of the Bill Members raised no questions on clauses 35 to 37	
004507 - 005611	Administration Mr LAU Kong-wah Chairman Dr Priscilla LEUNG Mr Paul TSE	<p><u>Clause 38 – Article 17C of UNCITRAL Model Law (Specific regime for preliminary orders)</u></p> <p>Issues raised by members –</p> <p>(a) Mr LAU Kong-wah enquired whether the notice given by the arbitral tribunal to all parties of the preliminary order should be in written form; if so, whether the preliminary order was binding on the parties concerned pending the issue of the written notification; and</p> <p>(b) Mr Paul TSE was concerned about the enforceability of the preliminary orders</p> <p>The Administration's response that the arbitral tribunal was required to give notice immediately after determining an application for a preliminary order. The preliminary order was binding on the parties upon their receipt of the notice but was not enforceable by the court. A preliminary order would expire 20 days after its issuance. Notwithstanding this, clause 45 allowed parties to apply to the Court for granting an interim measure and clause 61 stipulated that an order or direction, including an interim measure, made in relation to arbitral proceedings by an arbitral tribunal was enforceable in the same manner as an order or direction of the Court that had the same effect</p>	
005612 - 010304	Mr LAU Kong-wah Chairman Administration Dr Priscilla LEUNG Mr Paul TSE	<p>Views of Dr Priscilla LEUNG and Mr LAU Kong-wah that the drafting approach of the Bill was not user-friendly. Dr LEUNG considered that the Administration should make reference to the drafting approach for the Hong Kong Bill of Rights Ordinance (Cap. 383);</p> <p>Mr Paul TSE had a different view and expressed his support for the current drafting approach as it enabled the international users to make cross reference with the domestic legislation and the Model Law</p> <p>The Administration highlighted the rationale and justifications for the drafting approach of the Bill, particularly the objective of enhancing the perception that Hong Kong was a Model Law jurisdiction</p>	
010305 - 011733	Administration Chairman Mr LAU Kong-wah Mr Paul TSE Dr Priscilla LEUNG	<p><u>Clause 39 – Article 17D of UNCITRAL Model Law (Modification, suspension, termination)</u></p> <p>Meaning of "exceptional circumstances" in clause 39 and the procedures for raising objection to the modification, suspension or termination of an interim measure or a preliminary order granted by an arbitral tribunal</p>	

Time marker	Speaker(s)	Subject(s)	Action required
		<p>The Administration's response that –</p> <p>(a) while it would not be possible to provide an exhaustive list on the exceptional circumstances for the purpose of Article 17D of the Model Law, clause 39 sought to provide that an arbitral tribunal could on its own initiative modify, suspend or terminate an interim measure or a preliminary order granted by it in exceptional circumstances and upon prior notice to the parties; and</p> <p>(b) application for modification, suspension or termination of an interim measure or a preliminary order could also be made by any party in accordance with the procedures laid down in an arbitration agreement. In the absence of such procedures and in the event that any party was dissatisfied with the arbitral tribunal's decision, it could make application to the tribunal for modification, suspension or termination of an interim measure or a preliminary order it had granted</p> <p>The Administration was requested to provide relevant cases, if any, in which the arbitral tribunal had modified, suspended or terminated an interim measure or a preliminary order it had granted and the decision was objected by the parties concerned</p>	Admin
011734 – 012242	Administration	Members raised no question on clauses 40 to 42	
012243 - 012704	Administration Chairman	<p><u>Clause 43 – Article 17H of UNCITRAL Model Law (Recognition and enforcement)</u></p> <p><u>Clause 44 – Article 17I of UNCITRAL Model Law (Ground for refusing recognition or enforcement)</u></p> <p>The Administration's advice that clause 43 provided that Article 17H of the Model Law did not have effect and clause 61 on enforcement of orders and directions (including interim measures) made by an arbitral tribunal applied instead. Clause 44 provided that Article 17I of the Model Law did not have effect. This was in line with the provisions under section 2GG of the Arbitration Ordinance (Cap. 341) on the enforcement of orders and directions of an arbitral tribunal made whether in or outside Hong Kong</p>	
012705 - 014952	Administration Mr Paul TSE Chairman	<p><u>Clause 45 – Article 17J of UNCITRAL Model Law (Court-ordered interim measures)</u></p> <p>Clarification on the need for clause 45(5) and (6), and rationale why the decision, order or direction of the Court was not subject to appeal</p> <p>The Administration's advice that –</p> <p>(a) clause 45(5)(a) and (6) to (8) was adapted from section 2GC(1A) to (1D) of the Arbitration</p>	

Time marker	Speaker(s)	Subject(s)	Action required
		<p>Ordinance (Cap. 341) which was added to the Ordinance as introduced by the Civil Justice Reform;</p> <p>(b) clause 45(5) set out the threshold for the Court to grant an interim measure in relation to arbitral proceedings which had been or were to be commenced outside Hong Kong, and clause 45(6) stated expressly that the Court could grant such an interim measure even under the circumstances described in clause 45(6); and</p> <p>(c) for procedural decisions, orders or directions made by the Court in relation to arbitral proceedings, they were not subject to appeal in the light of the principle of facilitating the fair and speedy resolution of disputes by arbitration without unnecessary court intervention and expense</p> <p>Members raised no question on clause 46</p>	
014953 – 015842	Administration Mr Paul TSE Chairman	<p><u>Clause 47 – Article 19 of UNCITRAL Model Law (Determination of rules of procedure)</u></p> <p>Rationale for substituting Article 19(2) of the Model Law by clause 47(3)</p> <p>The Administration's response that clause 47(3) was modelled on the wording of section 2GA(2) of the Arbitration Ordinance (Cap. 341), that an arbitral tribunal was not bound by the rules of evidence and might receive any evidence which it considered appropriate</p> <p>Members raised no question on clause 48</p>	