

立法會
Legislative Council

LC Paper No. CB(2)1039/09-10
(These minutes have been
seen by the Administration)

Ref : CB2/BC/9/08

Bills Committee on Arbitration Bill

Minutes of the 9th meeting
held on Monday, 25 January 2010, 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
Hon Miriam LAU Kin-ye, GBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon Paul TSE Wai-chun
- Members absent** : Hon Abraham SHEK Lai-him, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Dr Hon Priscilla LEUNG Mei-fun
- Public Officers attending** : 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) 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 –

Clause 62 of the Bill

- (a) provide information on the legislation in other jurisdictions pertaining to the power of the Court to order recovery of arbitrator's fees;
- (b) advise whether clause 62, which provided for the Court's power to order recovery of arbitrator's fees, could be substituted by an agreement of the parties that set out the circumstances under which arbitrator's fees were to be recovered;
- (c) consider the need for spelling out the considerations taken into account by the Court in exercising its discretion to order that the arbitrator was not entitled to receive his fees or expenses;
- (d) provide information on previous cases, if any, to illustrate the circumstances in which the Court had regard to the conduct of an arbitrator in question;

Clauses 66 and 67

- (e) review the need for the expression ", given effect to by subsection (1)," in clauses 66(2) and 67(2); and

Action

Clause 73

- (f) explain the meaning of "any person claiming through or under any of the parties" in clause 73(1)(b), and consider improving the clarity of the expression.

II. Any other business

- 3. The Chairman reminded members that the next meeting would be held on 10 February 2010 at 10:45 am.
- 4. There being no other business, the meeting ended at 10:25 am.

Council Business Division 2
Legislative Council Secretariat
3 March 2010

**Proceedings of the 9th meeting of the
Bills Committee on Arbitration Bill
on Monday, 25 January 2010, 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 – 000935	Chairman Administration	Continuation of the clause-by-clause examination of the Arbitration Bill (the Bill) from clause 61 onwards Members raised no question on clause 61	
000936 – 004200	Administration Ms Miriam LAU Chairman Mr LAU Kong-wah ALA	<p><u>Clause 62 – Power of Court to order recovery of arbitrator's fees</u></p> <p>Given that an order of the Court under clause 62(1) of the Bill was not subject to appeal, members raised the following concerns –</p> <p>(a) Ms Miriam LAU pointed out that the termination of an arbitrator's mandate under Article 14 of the UNCITRAL Model Law (Model Law) might be due to various reasons, for instance, becoming <i>de jure</i> or <i>de facto</i> unable to perform his functions other than his own faults. She enquired whether the arbitrator could receive the whole or part of the arbitrator's fees under clause 62(1); and</p> <p>(b) Mr LAU Kong-wah expressed concern about the meaning of "conduct of the arbitrator" in clause 62(1) which the Court should have regard to before it ordered recovery of an arbitrator's fees</p> <p>The Administration's response that –</p> <p>(a) under clause 62(1), on the application of any party, the Court would, in its discretion and having regard to the conduct of the arbitrator, order recovery of an arbitrator's fees if the arbitrator's mandate had terminated upon challenge under Article 13 of the Model Law (given effect to by clause 26) or failure to act under Article 14 of the Model Law (given effect to by clause 27). Similar but more stringent provisions were laid down in the existing Arbitration Ordinance (Cap. 341) (i.e. section 15(3) of the Ordinance) under which no specific application to recover fees by any party was required, and it was mandatory that the arbitrator would not be entitled to receive any remuneration in respect of his services if he was removed under this section; and</p> <p>(b) the Court would have regard to reasons for an arbitrator failing to perform his functions or for other reasons failing to act without undue delay in addition to the "conduct of the arbitrator"</p>	

Time marker	Speaker(s)	Subject(s)	Action required
		<p>The Administration was requested to –</p> <ul style="list-style-type: none"> (a) provide information on the legislation in other jurisdictions pertaining to the power of the Court to order recovery of arbitrator's fees; (b) advise whether clause 62, which provides for the Court's power to order recovery of arbitrator's fees, could be substituted by an agreement of the parties that set out the circumstances under which arbitrator's fees were to be recovered; (c) consider the need for spelling out the considerations taken into account by the Court in exercising its discretion to order that the arbitrator was not entitled to receive his fees or expenses; and (d) provide information on previous cases, if any, to illustrate the circumstances in which the Court had regard to the conduct of an arbitrator in question 	Admin
004201 – 004809	Administration Chairman	Members raised no questions on clauses 63 and 64	
004810 – 005251	Administration Mr LAU Kong-wah Chairman	<p><u>Clause 65 – Article 29 of UNCITRAL Model Law (Decision-making by panel of arbitrators)</u></p> <p>Responding to Mr LAU Kong-wah's enquiry, the Administration advised that the procedures for selecting the presiding arbitrator would normally be set out in relevant arbitration agreement or be by way of election among the arbitrators. The presiding arbitrator would decide on questions of procedures, if so authorized by the parties or all members of the arbitral tribunal</p>	
005252 – 010257	Administration Chairman	<p><u>Clause 66 – Article 30 of UNCITRAL Model Law (Settlement)</u></p> <p><u>Clause 67 – Article 31 of UNCITRAL Model Law (Form and contents of award)</u></p> <p>The Administration was requested to review the need for the expression ", given effect to by subsection (1)," in clauses 66(2) and 67(2)</p>	Admin
010258 – 013315	Administration Mr LAU Kong-wah Chairman Mr Albert HO	<p><u>Clause 68 – Article 32 of UNCITRAL Model Law (Termination of proceedings)</u></p> <p><u>Clause 69 - Article 33 of UNCITRAL Model Law (Correction and interpretation of award; additional award)</u></p> <p>Whether any parties could request the arbitral tribunal to be reconvened to review an award after the termination of the arbitral proceedings</p>	

Time marker	Speaker(s)	Subject(s)	Action required
		<p>The Administration's response that –</p> <p>(a) clause 69 gave effect to Article 33 of the Model Law which dealt with application for correction of clerical or typographical errors etc. in an arbitral award, and the making of an additional award to deal with claims that were presented in the arbitral proceedings but omitted from the award;</p> <p>(b) finality of an arbitral award would contribute to the speedy resolution of disputes, which was one of the objectives of the reform of the arbitration law; and</p> <p>(c) clause 81(1) gave effect to Article 34 of the Model Law which dealt with application to the Court for setting aside as exclusive recourse against an arbitral award due to reasons as stated in paragraph (2) of Article 34 in clause 81(1)</p>	
013316 – 013623	Chairman Administration	Members raised no questions on clauses 70 to 72	
013624 – 014602	Administration Chairman Mr LAU Kong-wah	<p><u>Clause 73 – Effect of award</u></p> <p>The Administration was requested to explain the legal meaning of "any person claiming through or under any of the parties" in clause 73(1)(b), and to consider improving the clarity of the expression</p>	Admin
014603 – 015327	Chairman Administration Mr LAU Kong-wah	<p><u>Clause 74 – Arbitral tribunal may award costs of arbitral proceedings</u></p> <p>Clarification about the meaning of "the person to whom and by whom that the costs were to be paid" in clause 74(2)</p>	
015328 – 015356	Chairman	Date of next meeting	