

立法會
Legislative Council

LC Paper No. CB(2)1214/09-10
(These minutes have been
seen by the Administration)

Ref : CB2/BC/9/08

Bills Committee on Arbitration Bill

Minutes of the 10th meeting
held on Wednesday, 10 February 2010, at 10:45 am
in Conference Room B 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 Miriam LAU Kin-ye, 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
Dr Hon Priscilla LEUNG Mei-fun

Members absent : Hon Albert HO Chun-yan
Hon LAU Kong-wah, JP
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

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I. Meeting with the Administration

[The Bill, Legislative Council Brief, LC Paper Nos. CB(2)853/09-10(01), 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**).

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2. The Administration was requested to –

- (a) consider the need to refine the drafting of clause 75(1) in respect of taxation of costs of arbitral proceedings by the court;
- (b) explain the considerations for modelling on the UK Arbitration Act 1996 in drafting clauses 77 and 54(2);
- (c) review the need for the expression ", given effect to by section (number)," used in the entire Arbitration Bill; and
- (d) advise on whether the court had similar power as that of an arbitral tribunal under clause 79 to award compound interest .

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3. Members noted that the Administration would, in the light of the members' concerns, consider amending clause 54(2) to the effect that experts meant assessors appointed by the arbitral tribunal to assess the amount of the costs of arbitral proceedings. The Administration would revert to the Bills Committee. Members also noted that the Administration would amend clause 86(2)(a) by adding the expression "under the law of Hong Kong" at the end of the sentence, in

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order to tally with the wording in similar provisions in Divisions 2 and 3 of Part 10 of the Bill regarding the enforcement of Convention and Mainland awards respectively.

II. Any other business

4. There being no other business, the meeting ended at 12:35 pm.

Council Business Division 2
Legislative Council Secretariat
1 April 2010

**Proceedings of the 10th meeting of the
Bills Committee on Arbitration Bill
on Wednesday, 10 February 2010, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda item I – Meeting with the Administration</i>			
000000 - 001833	Administration Mr Ronny TONG	<p>The Administration's responses to issues raised by members at the meetings on 3 and 21 December 2009 LC Paper No. CB(2)853/09-10(01)</p> <p>Views of Mr Ronny TONG that the statistics on the referral to arbitration in employment-related cases by the court was not crucial to the scrutiny of the Bill having regard to the object of the Bill (i.e. to facilitate the fair and speedy resolution of disputes by arbitration without unnecessary court intervention and expenses) and that there was no need to expressly provide for an appeal mechanism against modification, substitution or termination of interim measure or preliminary order by an arbitral tribunal under Article 17D of the UNCITRAL Model Law.</p>	
001834 - 002644	Chairman Administration Mr Ronny TONG	<p>Continuation of clause-by-clause examination of the Arbitration Bill (the Bill) from clause 75 onwards</p> <p><u>Clause 75 – Taxation of costs of arbitral proceedings (other than fees and expenses of arbitral tribunal)</u></p> <p>Mr Ronny TONG suggested the Administration to consider refining the drafting of clause 75(1) to "unless the arbitral tribunal has decided otherwise, the award is deemed to be taxable by the court", as the current drafting might not cover the situation where an arbitral tribunal had failed to direct taxation of costs and lacked flexibility in dealing with the taxation of costs</p> <p>The Administration's response that the Departmental Working Group to implement the Report of the Committee on Hong Kong Arbitration Law had given detailed consideration to the drafting of clause 75(1), which was adapted from the existing Arbitration Ordinance (Cap. 341). Under the Bill, the arbitral tribunal was obliged to make such directions where parties had agreed that the relevant costs were taxable by the court. The Administration would study whether refinement to the drafting of clause 75(1) was necessary</p> <p>Members raised no question on clause 76</p>	Admin to consider
002645 - 010832	Administration Chairman Mr Ronny TONG Ms Miriam LAU	<p><u>Clause 77 – Determination of arbitral tribunal's fees and expenses in case of dispute</u></p> <p>Members raised the following concerns –</p> <p>(a) the Chairman enquired whether clause 77 would be effective in ensuring that arbitration fees and expenses would be duly settled where, even when the arbitral tribunal had invoked its power to refuse</p>	

Time marker	Speaker(s)	Subject(s)	Action required
		<p>to deliver award under clause 77(1), no party (particularly, the losing party responsible for fees and expenses might not want to apply and make payment in on fees and expenses) applied for Court intervention under clause 77(2); and</p> <p>(b) Mr Ronny TONG queried about the need for the Court to determine the arbitral tribunal's fees and expenses in case of disputes given that the arbitration fees should have been agreed by parties to the proceedings</p> <p>The Administration's response that –</p> <p>(a) the situation where no party would apply under clause 77(2) to take the matter further was rare, but even if so, the parties would be jointly and severally liable to pay the arbitration fees and expenses under clause 78; and</p> <p>(b) clause 77 was modelled on section 56 of the UK Arbitration Act 1996 which sought to provide for additionally one more situation in case of disputes over the arbitral tribunal's fees and expenses</p> <p>In connection with clause 77(3) regarding the fees and expenses of experts or legal advisers appointed by an arbitral tribunal under clause 54, members expressed the following views –</p> <p>(a) Mr Ronny TONG noted with concern that clause 54 empowered the arbitral tribunal to appoint experts or legal advisers without the need to consult parties of arbitration, and considered that clause 54(2) was redundant as it was embraced under clause 54(1); and</p> <p>(b) Ms Miriam LAU opined that the Administration should consider expressly stating that parties to the proceedings would be consulted on the appointment of experts under clause 54</p> <p>The Administration's response that –</p> <p>(a) clause 54(1) gave effect to Article 26 of UNCITRAL Model Law (the Model Law) which empowered the arbitral tribunal to appoint experts to report to it on specific issues. As recommended in the Report of Committee on Hong Kong Arbitration Law 2003, clause 54(2) sought to make it clear that the arbitral tribunal might appoint experts to assist in assessing the amount of the costs of arbitral proceedings; and</p> <p>(b) Article 26 of the Model Law, given effect to by clause 54(1), was also applicable to international arbitration under the existing Arbitration Ordinance. Although the provision did not require the arbitral tribunal to consult parties on the appointment of experts, the arbitral tribunal would in practice consult parties before appointing</p>	

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		<p>experts so as to avoid disputes. Against this background, the Administration considered it unnecessary to spell out such requirement as it would depart from the wording used in the Model Law</p> <p>The Administration was requested to explain the considerations for modelling on the UK Arbitration Act 1996 in drafting clauses 77 and 54(2), and review the need for the expression ", given effect to by section (number)," in the entire Bill</p> <p>The Administration advised that it would, in the light of members' concerns, consider amending clause 54(2) to the effect that experts meant assessors appointed by the arbitral tribunal to assess the amount of the costs of arbitral proceedings</p>	<p>Admin</p> <p>Admin</p>
010833 - 011005	Administration Chairman	Members raised no question on clause 78	
011006 - 012326	Administration Ms Miriam LAU Chairman Mr Ronny TONG	<p><u>Clause 79 – Arbitral tribunal may award interest and</u> <u>Clause 80 – Interest on money or costs awarded or ordered in arbitral proceedings</u></p> <p>Expressing concern that the arbitral tribunal was empowered to award simple or compound interest on money and costs awarded in the arbitral proceedings, Ms Miriam LAU requested the Administration to advise on the whether the court had similar power to award compound interest</p>	Admin
012327 - 014037	Chairman Administration	Members raised no question on clauses 81 to 85	
014038 - 015024	Administration Chairman	<p><u>Clause 86 – Refusal of enforcement of arbitral awards</u></p> <p>Members noted that the Administration would amend clause 86(2)(a) by adding the expression "under the law of Hong Kong" at the end of the sentence in order to tally with the wording in similar provisions in Divisions 2 and 3 of Part 10 of the Bill regarding the enforcement of Convention and Mainland awards respectively</p>	Admin
015025 - 015055	Chairman	Date of next meeting	