

立法會
Legislative Council

LC Paper No. CB(2)1444/09-10
(These minutes have been
seen by the Administration)

Ref : CB2/BC/9/08

Bills Committee on Arbitration Bill

Minutes of the 11th meeting
held on Tuesday, 23 February 2010, at 4:30 pm
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 LAU Kong-wah, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon CHIM Pui-chung
Dr Hon Priscilla LEUNG Mei-fun
Hon Paul TSE Wai-chun

Members absent : Hon Albert HO Chun-yan
Hon Abraham SHEK Lai-him, SBS, JP
Hon Ronny TONG Ka-wah, SC
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) 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 an update of the reciprocal enforcement of arbitral awards between Hong Kong and the Mainland, including the number of applications made on both places, their enforceability as well as the reasons for not being enforced;
- (b) advise on the provisions in the subsidiary legislation made under the existing Arbitration Ordinance which would not continue to be in force upon the commencement of the Bill as a result of clause 109 of the Bill; and
- (c) provide the relevant court cases in the United Kingdom, if any, pertaining to application for challenging arbitral award on ground of serious irregularities proposed in section 4(2) of Schedule 2 to the Bill.

Action

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3. Members noted that the Administration would propose the following amendments to the Bill –
- (a) to update the list of parties to the New York Convention mentioned in clause 90;
 - (b) subject to its review of stakeholders' comments, to state expressly that the automatic opt-in provisions similar to clause 102 of the draft Bill attached to the Consultation Paper on Reform of the Law of Arbitration in Hong Kong and draft Arbitration Bill published by the Department of Justice in December 2007 would be applicable to local subcontracting cases of the construction industry, and to provide for a definition of construction operations modelled on Schedule 1 to the Construction Industry Council Ordinance (Cap. 587); and
 - (c) to amend clauses 103 and 104 to the effect that the Bill would only apply to mediators acting under clauses 32 and 33.

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4. The legal adviser to the Bills Committee was requested to advise whether the drafting and legal aspects of the consequential and related amendments set out in Schedule 4 to the Bill were in order.

II. Any other business

5. Members agreed to hold the next meeting after mid April 2010 to discuss the Administration's responses to the outstanding issues raised at previous meetings and the draft Committee Stage Amendments. Members would be informed of the meeting date in due course.
6. There being no other business, the meeting ended at 6:10 pm.

**Proceedings of the 11th meeting of the
Bills Committee on Arbitration Bill
on Tuesday, 23 February 2010, at 4:30 pm
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 - 001921	Chairman Administration	<p>Continuation of clause-by-clause examination of the Arbitration Bill (the Bill) from clause 87 onwards</p> <p>The Administration advised that it would take the opportunity to update the list of parties to the New York Convention (clause 90). A Committee Stage amendment (CSA) would be proposed to this effect</p> <p>Members raised no question on clauses 87 to 91</p>	Admin
001922 - 002523	Administration Chairman Dr Priscilla LEUNG	<p><u>Clause 92 – Enforcement of Mainland awards</u></p> <p>Enquiry about the enforceability of Hong Kong awards on the Mainland</p> <p>The Administration's response that it had made inquiry with the Supreme People's Court of the People's Republic of China (SPC) on the figures relating to the enforcement of awards made in Hong Kong on the Mainland. SPC did not keep such statistics as the applications were handled by lower courts on the Mainland. However, according to the information available to SPC, some 30 applications had since 2000 been made on the Mainland for enforcement of Hong Kong awards and nine of them were not enforced</p> <p>The Administration was requested to provide information on the reciprocal enforcement of arbitral awards between Hong Kong and the Mainland, including the number of applications made on both places, their enforceability as well as the reasons for not being enforced</p>	Admin
002524 - 003200	Administration Chairman	Members raised no question on clauses 93 to 98	
003201 - 005458	Chairman Administration Dr Priscilla LEUNG	<p>Part 11 – Provisions that may be expressly opted for or automatically apply (clauses 99 to 102)</p> <p>The Administration advised that while the Bill sought to establish a unitary regime for arbitration in Hong Kong, parties to an arbitration agreement were allowed to expressly provide in the agreement as to whether any or all of the provisions in Schedule 2 to the Bill were to apply as opt-in provisions</p> <p>Regarding the concern about the automatic opt-in provisions for subcontracting cases, the Administration advised that there were diverse views on whether the automatic opt-in provisions should be applicable to subcontracting cases. While the construction industry insisted that such provisions were required, other concerns were raised about the impact of the proposal on other industries (e.g. shipping and insurance industries)</p>	

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		<p>where subcontracting was not uncommon. The Administration was studying the viability of limiting any automatic opt-in provisions for sub-contracts to local cases of the construction industry only. In this respect, the Administration was consulting the relevant stakeholders on the proposed definition of construction operations, which was modelled on Schedule 1 to the Construction Industry Council Ordinance (Cap. 587). The initial responses were mixed but on the whole positive. The Administration would revert to the Bills Committee together with the draft CSAs in due course</p>	Admin
005459 - 010141	Chairman Administration	<p><u>Clause 103 – Arbitral tribunal or mediator to be liable for certain acts and omissions</u> and <u>Clause 104 – Appointors and administrators to be liable only for certain acts and omissions</u></p> <p>The Administration advised that a 3-month consultation on the Report of the Working Group on Mediation had just been launched. The Administration would deliberate on the comments received in order to map the way forward, which might include the introduction of a Mediation Bill. To put beyond doubts and not to pre-empt the findings of the above consultation, it would propose amendments to clauses 103 and 104 to the effect that these two clauses would only apply to mediators acting under clauses 32 and 33</p>	Admin
010142 - 010543	Administration	Members raised no question on clauses 105 to 108	
010544 - 010655	Administration Chairman	<p><u>Clause 109 – Effect of repeal on subsidiary legislation</u></p> <p>The Administration was requested to provide information on the provisions in the subsidiary legislation made under the existing Arbitration Ordinance (Cap. 341) which would not continue to be in force upon the commencement of the Bill as a result of clause 109</p>	Admin
010656 - 010744	Chairman Administration	Members raised no question on clauses 110 and 111	
010745 - 011539	Chairman Administration	<p><u>Schedule 4 – Consequential and related amendments</u></p> <p>The legal adviser to the Bills Committee was requested to advise whether the drafting and legal aspects of the consequential and related amendments set out in Schedule 4 were in order</p> <p>The Administration highlighted that section 36 of Schedule 4 to the Bill aimed to add the President of the Hong Kong Construction Association to the Appointment Advisory Board in rule 3(2) of the Arbitration (Appointment of Arbitrators and Umpires) Rules (Cap. 341 sub. leg. B). While no objection had been received on the proposal, the Hong Kong Federation of Electrical and Mechanical Contractors Limited (HKFEMC) had suggested that its President should be added to the Board as well. Taking into account that about 1/3 arbitration cases were from the construction sector and further expanding the Appointment Advisory</p>	ALA1

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		Board would affect its operation, the Administration considered that the current proposal of including only Hong Kong Construction Association was appropriate. Members raised no objection to the proposal and indicated they would consider the issue on whether to include HKFEMC at a later stage.	
011540 - 012012	Chairman Administration	Members raised no question on Schedule 3 to the Bill	
012013 – 013930	Chairman Administration Mr Paul TSE	<p><u>Schedule 2 – Provisions that may be expressly opted for or automatically apply</u></p> <p>The Administration highlighted that section 4 of Schedule 2 to the Bill was modelled on the UK Arbitration Act 1996 which allowed an arbitral award to be challenged on ground of serious irregularity affecting the arbitral tribunal, the arbitral proceedings or the award</p> <p>Members raised the following concerns –</p> <p>(a) whether the construction industry had been consulted on the provisions; and</p> <p>(b) whether the element of “has caused or will cause substantial injustice to the applicant” was independent from or would follow automatically upon proof of any of the serious irregularities set out in section 4(2) of Schedule 2</p> <p>The Administration's response that –</p> <p>(a) professional bodies including the construction industry had been consulted on the provisions and no opposing views had been received. Instead, some respondents suggested that the provisions in section 4 of Schedule 2 should be made mandatory. Having considered that such arrangement would depart from the Model Law, the Administration considered it appropriate to leave it to parties to an arbitral agreement to decide whether to apply the opt-in provisions; and</p> <p>(b) a party to arbitral proceedings should apply to the Court to challenge an arbitral award on ground of serious irregularity, the Court would then consider whether the serious irregularity had caused or would cause substantial injustice to the applicant</p> <p>The Administration was requested to provide the relevant court cases in UK, if any, pertaining to applications for challenging arbitral award on ground of serious irregularity under section 4(2)</p>	Admin
013931 - 014143	Chairman Administration	Date of next meeting	