

立法會
Legislative Council

LC Paper No. CB(2)2159/09-10
(These minutes have been
seen by the Administration)

Ref : CB2/BC/9/08

Bills Committee on Arbitration Bill

Minutes of the 13th meeting
held on Wednesday, 12 May 2010, at 8:30 am
in Conference Room B 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-yee, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP

Members absent : 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

Ms Yvonne YU
Senior Council Secretary (2)5

Miss Maggie CHIU
Legislative Assistant (2)4

Action

I. Meeting with the Administration

[The Bill, LC Paper Nos. CB(2)2261/08-09(02), CB(2)2303/08-09(01) CB(2)2469/08-09(02) and CB(2)1477/09-10(01) to (03)]

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

2. Members noted that the Administration had provided two papers responding to issues raised at the meetings on 3 December 2009 and 14 January 2010. After taken into account members' views, the Administration would propose Committee Stage amendments ("CSAs") to clauses 53(3), 54(2), 55(3) and 60(5) of the Bill as set in its paper [LC Paper No. CB(2)1477/09-10(01)]. The Administration also proposed to amend clauses 32, 103 and 104 in the Bill in the light of the recent recommendations on mediator immunity as put forward by the Secretary of Justice's Working Group on Mediation. Members considered these proposed CSAs acceptable in the light of the policy intention. However, members requested the Administration to consider reviewing the Chinese rendition of "peremptory order" in clause 53 and recasting the Chinese text of clause 60(5) of the Bill. Members also requested the legal adviser to the Bills Committee to advise whether the Chinese text of the proposed CSAs was in order.

II. Any other business

3. To allow time for the Administration to prepare a complete set of draft CSAs to the Bill, members agreed that the next meeting originally scheduled for 24 May 2010 be cancelled. Members would be informed of the date of the next meeting in due course.

Action

(Post-meeting note: The next meeting would be held on 1 June 2010 at 8:30 am.)

4. There being no other business, the meeting ended at 9:40 am.

Council Business Division 2
Legislative Council Secretariat
5 August 2010

**Proceedings of the 13th meeting of the
Bills Committee on Arbitration Bill
on Wednesday, 12 May 2010, at 8:30 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 - 001030	Chairman Administration Ms Miriam LAU	The Administration's response to issues raised at the meeting on 14 January 2010 [LC Paper No. CB(2)1477/09-10(01)]	
001031 - 001936	Chairman Administration Mr Albert HO Ms Miriam LAU	The Administration was requested to review and the legal adviser to the Bills Committee to advise on the Chinese rendition of "peremptory order" in clause 53 of the Arbitration Bill ("the Bill") Concern whether the scope of section 81 of the Evidence Ordinance (Cap. 8) was narrower than that provided under clause 55(3) of the Bill and whether it was appropriate for the Administration to amend the High Court Rules in this context	Admin and ALA Admin to consider
001937 - 002433	Administration Chairman ALA1	The Administration was requested to recast the Chinese text of clause 60(5) of the Bill to improve comprehensibility	Admin
002434 - 003236	Chairman Administration	The Administration's response to members' concerns raised at the meeting on 3 December 2009 concerning the appointment of mediator by the Hong Kong International Arbitration Centre under clause 32(1) of the Bill The Administration's proposed amendments to clauses 32, 103 and 104 of the Bill in the light of the recent recommendations on mediator immunity as put forward by the Secretary for Justice's Working Group on Mediation [LC Paper No. CB(2)1477/09-10(02)]. Members considered the proposed amendments acceptable	
003237 - 004924	Chairman Administration	The Administration's proposal to amend the provisions relating to automatic opt-in for subcontractors as set out in its paper [LC Paper No. CB(2)1477/09-10(03)] Concern raised by the Chairman as to whether the proposed definition of "construction contract" under the new clause 100A would cover various types of construction subcontracts and activities perceived by the construction industry The Administration's advice that the new clause 100A sought to define "construction contract" and "construction operations" as having the meaning given to them in the CIC Ordinance. These two definitions were also adopted in section 19(1) of the Construction Workers Registration Ordinance (Cap. 583). The Administration explained that there were certain divided views among the stakeholders, such as whether "design, advice or consultation work" per se should be included as construction operations. In that regard, the	

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		<p>Administration was of the view that the current definition of construction operations in the CIC Ordinance (which required design, advice or consultation work to be incidental to an operation described in that definition in order to be a construction operation) was preferred. The Administration also explained that under the Bill the automatic opt-in mechanism would not have effect if the parties so agreed explicitly</p>	
004925 - 005406	Mr Abraham SHEK Administration Chairman	<p>Mr Abraham SHEK's enquiry about the response of the Hong Kong Federation of Electrical and Mechanical Contractors to the automatic opt-in mechanism for subcontracts under the new clause 100A. The Administration advised that it had met with representatives of the Hong Kong Federation of Electrical and Mechanical Contractors and discussed about its views, including its request that consolidation of arbitral proceedings be subject to party consent, and imposing a requirement for disclosure in a subcontract the arbitration clauses adopted in the immediate preceding subcontracts. The Administration had referred the representatives at the meeting to certain other provisions in the Arbitration Bill (such as an arbitral tribunal may make more than one award at different times on different aspects; the subcontracting parties may opt out from the new clause 100A) for their reference and consideration in practice.</p> <p>The Administration also explained that its proposal as set out in its paper had been provided to the stakeholders before the Bills Committee meeting</p>	
005407 - 005742	Chairman Administration	<p>Views of the Chairman that the Administration should ensure enough publicity so that the stakeholders, in particular the construction industry, would be aware that the automatic opt-in mechanism would cease after a transitional period, and the affected sectors would be able to make necessary preparation for the unitary arbitration regime</p> <p>The Administration's response that it would launch relevant publicity upon the enactment of the new ordinance. It was also working with the Construction Industry Council, Hong Kong Construction Association, Hong Kong International Arbitration Centre and Hong Kong Institute of Arbitrators to organise briefing sessions and programme in this regard</p>	
005743 - 010336	Chairman Administration ALAI Mr Abraham SHEK	<p>Examination of the drafting of the new clause 100A and the proposed definitions of "construction contract" and "construction operations". The Administration had also drawn attention to the opt-out provisions in clause 101. ALAI was of the view that any change of these definitions in CIC Ordinance might affect the operation of the new clause 100A and reminded the Administration to track future changes to those definitions against the new ordinance</p>	

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010337 - 010544	Mr Albert HO Administration Chairman	Mr Albert HO's enquiry about the responses received on the revised provisions relating to the automatic opt-in mechanism. The Administration's advice that it had organised a meeting with the stakeholders in October 2009 and had prepared and sent a paper incorporating its proposed amendments to Clause 102 to the stakeholders in January 2010 specifically on the concerns relating to the automatic opt-in mechanism. The attendance lists of the October 2009 meeting was set out in Annex 2 of the Administration's paper. A list of respondents who had responded to the Administration's proposed new clause 100A was set out in Annex 5 thereof, and a summary of the key comments received from the respondents thereon was provided in Annex 6	
010545 - 011044	Chairman Administration	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
5 August 2010