

Elaborations on the drafting approach of the Arbitration Bill (“the Bill”)

Members of the Bills Committee of the Legislative Council have raised questions about the drafting approach of the Bill and the role of the drafting counsel in the determination of that approach. This paper addresses these questions.

2. As explained in paragraph 6 of the paper entitled “Rationale and Justifications for the Drafting Approach for the Arbitration Bill” (LC Paper No. CB(2)2469/08-09(01)), the Departmental Working Group (“the Working Group”) to implement the Report of the Committee on Hong Kong Arbitration Law gave detailed consideration to the appropriate structure of the Bill. The Working Group was chaired by the Solicitor General and comprised members of the various stakeholders, including the Hong Kong International Arbitration Centre, the Hong Kong Institute of Arbitrators, the Law Society of Hong Kong and the Hong Kong Bar Association, as well as an experienced drafting counsel of the Department who advised on matters relating to legislative drafting.

3. The general consensus of the Working Group, which has now been adopted by the Administration as one of the major policy objectives in respect of the legislative proposal concerning the Bill, was that *Hong Kong should be “seen” as a Model Law jurisdiction.*

4. A number of working drafts of the Bill were submitted to the Working Group for consideration and it was decided after deliberation that in order to reflect the general consensus of the Working Group, the framework of the Bill should follow the structure and wording of the Model Law by setting out the Model Law provisions that are intended to have the force of law in Hong Kong in the main body of the Bill, with appropriate add-ons and/or modifications.

5. The decision to annex a copy of the Model Law (clearly showing the parts of the Model Law adopted and not adopted) was sanctioned by the Working Group which considered that this would help to enhance the perception that Hong Kong is a Model Law jurisdiction.

6. The Administration is of the view that the drafting approach taken in the Bill reflects the general consensus of the Working Group and also achieves the policy objective of the Administration.

Department of Justice
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