

For information

**Subcommittee on
Arbitration (Amendment) Ordinance 2013
(Commencement) Notice**

Background

This paper briefs the Subcommittee on the background to the two-phased commencement of the Arbitration (Amendment) Ordinance 2013 (Ord. No. 7 of 2013) (“Amendment Ordinance”).

The Amendment Ordinance

2. Hong Kong and Macao concluded the Arrangement Concerning Reciprocal Recognition and Enforcement of Arbitral Awards (“the Arrangement”) in January 2013. There have also been some recent developments in the field of arbitration which warrant certain amendments to the Arbitration Ordinance (Cap 609) in order to enhance the arbitration regime in Hong Kong.

3. The Administration introduced the Arbitration (Amendment) Bill 2013 into the LegCo on 24 April 2013. The Bill seeks to:

- (a) implement the Arrangement;
- (b) introduce amendments to the Arbitration Ordinance so as to make it clear that any emergency relief made by an emergency arbitrator is enforceable under the Arbitration Ordinance; and
- (c) introduce miscellaneous amendments to further enhance the arbitration regime of Hong Kong.

4. A Bills Committee was formed to discuss the Amendment Bill. After scrutiny by the Bills Committee, the Amendment Bill was passed on 10 July 2013.

Two-phased Commencement of the Amendment Ordinance

5. At the meeting of the Bills Committee on the Amendment Bill held on 10 May 2013, the Administration explained to the Bills Committee that a two-phased commencement of the Amendment Ordinance would be adopted.

6. Article 13 of the Arrangement provides that the Government of the HKSAR and the Government of the Macao SAR shall in writing notify each other of the completion of the internal procedures required to bring the Arrangement into force. It further stipulates that the Arrangement shall come into force on the designated date as agreed by both sides.

7. Section 1(3) of the Amendment Ordinance provides that sections 3, 9(1), 18 and 22(3), (6) and (9) shall come into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette. These sections relate to the enforcement of Macao awards under the Arrangement. Whereas under section 1(2) of the Amendment Ordinance, it is provided that the remaining provisions of the Ordinance come into operation on the day on which it is published in the Gazette.

8. The Amendment Ordinance was published in the Gazette on 19 July 2013 and hence those provisions relating to the “emergency arbitrators” and other miscellaneous amendments seeking to improve the arbitration regime of Hong Kong came into effect on 19 July 2013.

Commencement of the provisions relating to Macao awards

9. After the enactment of the Amendment Ordinance, the Administration has been holding discussions with the Macao authorities on the implementation date of the Arrangement. In early October 2013, the Administration received a written notice from the Macao authorities confirming that they had completed their internal procedure and it was agreed between Hong Kong and Macao that the commencement date of the Arrangement be fixed on 16 December 2013. In computing the commencement date, the negative vetting period of subsidiary legislation in the LegCo of the HKSAR has been taken into account.

10. The notice for the commencement of sections 3, 9(1), 18 and 22(3), (6) and (9) of the Amendment Ordinance was published in the Gazette on 11 October 2013, specifying that the commencement date be fixed on 16 December 2013. The Commencement notice was tabled before the LegCo on 16 October 2013. The negative vetting period for the Commencement notice, if extended, will end on 4 December 2013.

Conclusion

11. The Amendment Ordinance seeks to implement the Arrangement between Hong Kong and Macao, and to make corresponding legislative amendments to tie in with the new developments in the arbitration sector. With the full implementation of the Amendment Ordinance on 16 December 2013, the Administration believes that it will help to reinforce Hong Kong's position as a leading international arbitration centre in the Asia Pacific. The Department of Justice will, in consultation with the legal and arbitration stakeholders, continue to make vigorous efforts to promote Hong Kong as a centre for legal services and dispute resolution in the Asia Pacific.

Department of Justice
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