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Paper for the House Committee meeting on 24 March 2000

**Report of the Panel on Administration of Justice and Legal Services
on proposed amendment to section 2GG of
the Arbitration Ordinance (Cap 341)**

Purpose

This paper informs members of the Administration's proposal to amend section 2GG of the Arbitration Ordinance and invites the House Committee to support the recommendation of the Panel.

Background

2. The Arbitration (Amendment) Bill 1999 was introduced into the Legislative Council on 7 July 1999. The Bill sought to give effect to the agreed Arrangement for the reciprocal enforcement of arbitration awards between the Mainland and the Hong Kong Special Administrative Region.

3. The Bills Committee formed to study the Bill considered a submission made by the legal profession concerning section 2GG of the Ordinance. The Bills Committee noted that prior to section 2GG coming into force in June 1997, its predecessor section 2H allowed, with the leave of the former High Court, summary enforcement of any award made either in or outside Hong Kong, as an alternative to the common law method of enforcement by action. It was generally thought that section 2GG had the same effect until Mr Justice Findlay held in 1998 that it applied only to awards made in Hong Kong. The Bills Committee supported the proposal of practitioners that section 2GG should be amended to make it clear that it is applicable to awards made either in or outside Hong Kong.

4. The Administration advised the Bills Committee that it would follow up on the proposal after it had the chance to study the judgment of the Court of Final Appeal ("the CFA") on the enforcement in Hong Kong of a bankruptcy order made by a Taiwan court. The Bills Committee agreed to this approach and recommended that the matter be followed up by the Panel on Administration of Justice and Legal Services. The Bills Committee reported its deliberations to the House Committee on 17 December 1999, and the Second Reading debate on the Bill resumed on 5 January 2000.

Deliberations of the Panel

5. The matter was brought up and discussed at the Panel's meeting on 21 March 2000. The deliberations of the Panel are summarized below.

CFA's judgment

6. Members note that the CFA's judgment delivered on 27 January 2000 does not in any way suggest that an amendment to section 2GG would be wrong. Indeed, in upholding the bankruptcy order made by a Taiwan Court as enforceable in Hong Kong on the basis that it related to private rights of the parties concerned and not for the benefit of the Taiwan government, the judgment favours the amendment in spirit.

The Administration's proposal

7. The Administration shares the view that when section 2H was replaced by section 2GG, there was apparently no intention to change its effect that an award made either in or outside Hong Kong may be summarily enforceable in Hong Kong. The Administration proposes that section 2GG be amended by:

- (a) clarifying that it is applicable to awards whether made in or outside Hong Kong; and
- (b) setting out the relevant factors which the court should take into account when considering whether to grant leave for summary enforcement of Taiwan awards (including those highlighted in the CFA's recent judgment such as the private nature of the interests to be protected, justice and common sense, the needs of law and order, and public policy).

Way Forward

8. It is the Administration's intention to include the proposal in a "Statute Law (Miscellaneous Provisions) Bill" to be introduced in the next session of the Legislative Council (LegCo).

9. The Panel considers that early implementation of the proposal will save the public money and time, avoid wasting court time in unnecessary proceedings, and generally enhance Hong Kong's prestige and efficiency as an international arbitration centre. In addition, the proposal is straight-forward and involves no policy change. It requests the Administration to consider introducing the proposed amendment into LegCo within the current session.

10. At the Panel meeting on 21 March 2000, the Administration agreed to consider the Panel's request by adopting either one of the following options -

- (a) by way of a Committee Stage amendment to the Statute Law (Miscellaneous Provisions) Bill 1999 which is being studied by a Bills Committee; or
- (b) by way of an amendment bill.

On option (b), the Administration has drawn members' attention to the earlier advice of the Director of Administration to the House Committee that save for absolutely essential and urgent bills, no other bills will be introduced into the Council after 15 March 2000.

Recommendation of the Panel

11. The Panel supports implementation of the proposal within this LegCo session for reasons explained in paragraph 9 above and recommends that there is no need for a Bills Committee to be set up to study the bill if option (b) is adopted.

Advice sought

12. Members are invited to support the recommendation of the Panel in paragraph 11 above.

Council Business Division 2
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