



THE  
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BY FAX / POST

17 March, 2000

Ms. Margaret Ng  
New Henry House, 10/F  
10 Ice House Street  
Hong Kong

Dear *Margaret*,

Re: Section 2GG Arbitration Ordinance

The Law Society's Arbitration Committee has seen the letter written by Mr. Robin Peard dated 17 March and is in complete agreement with the contents of that letter.

Yours sincerely,

Patrick Moss  
Secretary General

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**R. S. PEARD**, J.P., F.C.I. Arb., F.H.K.I.Arb., F.S.I. Arb.

Our Ref.: RSP/410

17th March 2000

Ms. Margaret Ng,  
New Henry House, 10th Floor,  
10 Ice House Street,  
Hong Kong.

By Fax No. 28017134  
(Total no. of pages: 2)

Dear Margaret,

I understand that on 21st March 2000, the LegCo Administration of Justice and Legal Services Panel of which you are Chairman is to consider Section 2GG of the Arbitration Ordinance.

You will remember that on 23rd October 1999 when the LegCo Bills Committee was considering the Arbitration (Amendment) Bill, I wrote to you on behalf of the Hong Kong International Arbitration Centre, the Hong Kong Institute of Arbitrators, the Chartered Institute of Arbitrators (East Asia Branch), the Hong Kong Bar Association and the Law Society of Hong Kong giving their joint views in respect of the Bill.

One of the points which we raised is that Section 2GG should be amended so as to allow awards made both inside and outside Hong Kong to be enforced under it.

As you will remember this suggested amendment was not pressed at the time since the Court of Final Appeal was considering the question of whether a Taiwan Bankruptcy Order should be recognised in Hong Kong and this was considered to have a bearing as to whether or not it was appropriate to amend the section. No one wished to delay the passage of the Bill into law.

The Court of Final Appeal has now decided that there is a positive public policy advantage in enforcing a Taiwan Bankruptcy Order in Hong Kong. This is considered to be a matter of enforcement of private rights and should be allowed.

On behalf of the organisations on whose behalf I wrote to you on 23rd October 1999, I would like to set out again the points which were made.

Prior to Section 2GG coming into force in June 1997, its predecessor Section 2H of the Arbitration Ordinance allowed summary enforcement (i.e. by originating summons) of any award made either in Hong Kong or outside Hong Kong in contrast to the original Common Law method of enforcement by action. The summary enforcement method is simpler and cheaper than enforcement by action. In contrast to enforcement of overseas judgments, it is appropriate to allow general summary enforcement of arbitration awards since this gives effect to the contractual obligations of the parties embodied in the original agreement to arbitrate.

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It was generally thought when Section 2GG was enacted that it would also apply both to arbitration awards made in Hong Kong and outside Hong Kong. However, as you know, Findlay J. in *Ng Fong Hong Limited v. ABC* (1998) 1 HKC 213 held that Section 2GG applies only to awards made in Hong Kong.

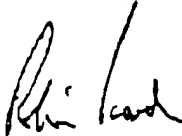
The reasons why we suggest that Section 2GG should be amended are as follows:-

- a. Since enforcement under the Geneva Convention has been abolished by the Arbitration (Amendment) Ordinance 2000, it seems appropriate to allow summary enforcement of awards from countries which are not parties to the New York Convention as a substitute for Geneva Convention enforcement.
- b. As pointed out in the CFA judgment, People's Courts in the People's Republic of China recognise and enforce Taiwan judgments. It would therefore seem appropriate for Hong Kong Courts to recognise and enforce Taiwan arbitration awards through the summary enforcement method. This amounts merely to the enforcement of private rights.
- c. I have enquired of Mr. Nigel N. T. Li, a well known lawyer practising with Lee and Li in Taipei, Taiwan as to the Taiwan Court's attitude to enforcement of Hong Kong arbitration awards. His response was that the Courts in Taiwan have enforced Hong Kong awards prior to 1997 with the object of initiating the establishment of a mutual arbitration enforcement system. Mr. Lee is of the view that, if the Hong Kong Courts extend recognition to Taiwan awards, then Taiwan law allows the Taiwan Courts to continue to recognise and enforce Hong Kong awards. Clearly the amendment of Section 2GG would be a positive step towards demonstrating Hong Kong's willingness to enforce Taiwan awards. Enforcement of Hong Kong awards in Taiwan is likely to be facilitated.
- d. Generally speaking the pre-amendment philosophy of allowing general summary enforcement of arbitration award should continue as part of Hong Kong efforts to remain a services centre for Asia.

If I can be of any further assistance, please let me know.

With best regards.

Yours sincerely,



R. S. Peard