

For discussion on
21 March 2000

**PANEL ON ADMINISTRATION OF JUSTICE
AND LEGAL SERVICES OF THE LEGISLATIVE COUNCIL**

**Proposed Amendment of Section 2GG of
the Arbitration Ordinance (Cap 341)**

Introduction

This paper informs Members of the views of the Administration on the practitioners' proposal that section 2GG of the Arbitration Ordinance (Cap 341) ("the Ordinance") be amended to make it clear that it is applicable to awards made either in or outside Hong Kong.

Background

2. 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 Justice Findlay held in 1998 that it applied only to awards made in Hong Kong.¹

3. When the Ordinance was last amended earlier this year, it was proposed that section 2GG be amended to enable awards made in those countries or territories which are not parties to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (such as Albania, Brazil, Iraq, Newfoundland and Taiwan), with the leave of the Court of First Instance, summarily enforceable in Hong Kong.²

4. The Administration agreed to follow up the proposal after it had the

¹ *Ng Fung Hong Limited v ABC* (1998) 1 HKC 213.

² For Convention awards, they may be summarily enforced under section 2GG pursuant to section 42(1) of the Ordinance.

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.³ That judgment was delivered on 27 January 2000.

Proposal

5. We share 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.

6. The CFA in its recent decision held that the bankruptcy order made by a Taiwan court, which related to private rights of the parties concerned and not for the benefit of the Taiwan government, was enforceable in Hong Kong. This followed the common law principle that particular acts of a government (which is recognized neither *de jure* nor *de facto*) may, in the interests of justice and common sense and for the preservation of law and order, be recognized by domestic courts where private rights are concerned and where no consideration of public policy to the contrary has to prevail.

7. In the light of the foregoing, we propose 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. Upon consulting local legal and arbitration professional bodies, the above proposal may be included in the next Statute Law (Miscellaneous Provisions) Bill for which we are seeking a legislative slot in the next session of

³ *Chen Li Hung & Other v Ting Lei Miao & Others* (FACV No.2 of 1999)

the Legislative Council.

Department of Justice
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