

For discussion
On 28 May 2007

LegCo Panel on Administration of Justice and Legal Services

Information Paper on Reform of the law of arbitration

Introduction

On 27 June 2005, the Department of Justice sought the views of the Members of the Panel on the proposal for the reform of the law of arbitration to make it more user-friendly and readily comprehensible by local users as well as the international arbitration community. The object of this paper is to inform the Panel of the progress of the above reform.

The progress of the reform

2. A working group, chaired by the Solicitor General, consisting of representatives from the legal profession, arbitration experts and government officials was set up in September 2005 to examine the proposals in a report issued by the Committee on Hong Kong Arbitration Law of The Hong Kong Institute of Arbitrators in 2003 (“the 2003 report”) with a view to implementing those proposals. The 2003 report suggested the creation of a unitary regime under the arbitration law on the basis of the UNCITRAL Model Law for all types of arbitration, thereby abolishing the distinction between domestic and international arbitrations under the existing Arbitration Ordinance (Chapter 341).¹

3. A working draft of the new Arbitration Bill (“the draft Bill”) was produced by the Law Drafting Division of the Department of Justice in December 2005 to facilitate discussion of the proposals in the 2003 report by the working group. A sub-committee formed by the working

¹ The Model Law was adopted by the United Nations Commission on International Trade Law on 21 June 1985 “in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial practice”: Resolution of the General Assembly of United Nations on 11 December 1985.

group has held over 30 meetings during January 2006 to May 2007 to examine in detail the legislative proposals reflected in the draft Bill. The working group itself met on seven occasions during that period to review progress and to discuss major policy issues that required its consideration. The sub-committee has not yet completed reviewing the draft Bill and is, in the meantime, also studying the new provisions of the UNCITRAL Model Law adopted by the UN Commission on International Trade Law in 2006.

The objective of the draft Bill

4. The objective of the draft Bill is to provide a unitary regime for arbitration whilst adhering to the following principles as set out in section 2AA of the Arbitration Ordinance (Chapter 341):

- (a) to facilitate fair and speedy resolution of disputes by arbitration without unnecessary expenses;
- (b) to ensure that the parties concerned are free to agree on how the dispute should be resolved, subject to necessary safeguards in the public interest; and
- (c) to minimize court intervention in arbitration proceedings to the extent expressly provided for in the draft Bill.

The framework and contents of the draft Bill

5. The draft Bill adopts the structure of the Model Law as its framework. The relevant provisions of the Model Law are reproduced in the draft Bill and will be given the force of law upon the coming into force of the new Arbitration Ordinance. Where appropriate, the Model law provisions may be supplemented by other provisions having regard to the proposals made in the 2003 report and the relevant existing provisions of the Arbitration Ordinance (Chapter 341) that, it is thought, should be retained.

6. The Panel was informed in the meeting held on June 2005 that an “opting in” system would be adopted to enable users of arbitration to continue to use certain provisions of the existing domestic arbitration regime. These provisions are now included as part of the draft Bill and they are: appeal against an arbitral tribunal’s award on point of law; determination of a preliminary point of law by the Court; consolidation of two or more arbitral proceedings, or for such hearings to be heard at the same time or one immediately after another; the challenge of an arbitral award on the ground of serious irregularity; and the requirement for a dispute to be referred to a sole arbitrator for arbitration in default of agreement between the parties.

Public consultation

7. Upon the completion of the scrutiny of the draft Bill by the sub-committee and the working group, the Department of Justice will issue a Consultation Paper on the reform of the law of arbitration annexing a consultation draft of the Arbitration Bill. The reform of arbitration law is a complex and time-consuming exercise. Barring any unforeseen circumstances, the Consultation Paper is expected to be published by the end of this year. There will be a consultation period of four to six months. The soonest that the draft Bill may be introduced into the Legislative Council is likely to be during the 2008-2009 legislative session.

Legal Policy Division
Department of Justice
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