

立法會
Legislative Council

LC Paper No. CB(2)2475/08-09
(These minutes have been
seen by the Administration)

Ref : CB2/BC/9/08

Bills Committee on Arbitration Bill

**Minutes of the first meeting
held on Tuesday, 28 July 2009, at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Dr Hon Margaret NG (Chairman)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Dr Hon Priscilla LEUNG Mei-fun
Hon Paul TSE Wai-chun

Members absent : Hon LAU Kong-wah, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung

Public Officers attending : Item II

Mr Frank POON
Deputy Solicitor General (General)

Ms Phyllis KO
Senior Assistant Law Draftsman

Mr LEE Tin-yan
Senior Government Counsel

Mr Christopher NG
Senior Government Counsel

Clerk in attendance : Miss Betty MA
Chief Council Secretary (2) 4

Staff in attendance : Mr Kelvin LEE
Assistant Legal Adviser 1

Miss Florence WONG
Senior Council Secretary (2)5

Miss Maggie CHIU
Legislative Assistant (2)4

Action

I. Election of Chairman

Dr Hon Margaret NG was elected Chairman of the Bills Committee.

II. Meeting with the Administration

[The Bill, Legislative Council Brief, LC Paper Nos. LS101/08-09 and CB(2)2261/08-09(01) to (03)]

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).

Admin

3. The Administration was requested to –

- (a) explain the rationale for adopting the current approach in drafting the Arbitration Bill (the Bill), and advise whether similar approach was adopted in other ordinances and if so, what were the guiding principles for adopting the approach;
- (b) consider whether reproducing the UNCITRAL Model Law on International Commercial Arbitration (Model Law) adopted by the United Nations Commission on International Trade Law (UNCITRAL) in the Bill would be the best way to make the Bill more user-friendly, and advise whether consequential amendments would have to be made to the Ordinance in the event the Model Law was amended;
- (c) give an account of the consultation with users of arbitration on the proposed arbitration regime, and the concerns raised by the construction industry;

Action

- (d) provide a comparison table showing the differences between the domestic and international arbitration regimes;
- (e) provide a comparison on the arbitration provisions in the current Arbitration Ordinance, the Bill and the Model Law;
- (f) give an account of the differences between the arbitration provisions in the Bill and the international arbitration practices, such as the confidentiality in arbitral proceedings and the enforcement of arbitral awards;
- (g) provide information on the arbitration practices adopted by Hong Kong's major competitors as a regional arbitration centre, and advise how the Bill, when enacted, would enable the business community and arbitration practitioners to choose Hong Kong as a place to conduct arbitral proceedings;
- (h) advise how the Bill, when enacted, would facilitate the fair and speedy resolution of disputes by arbitration without unnecessary expense, together with the fees and charges for conducting arbitral proceedings in Hong Kong, and give an account for not including in the Bill the simplified arbitral proceedings proposed by the Hong Kong International Arbitration Centre; and
- (i) provide a list of the respondents to the Consultation Paper on Reform of the Law of Arbitration in Hong Kong and Draft Arbitration Bill published by the Department of Justice and a gist of the responses on the Consultation Paper.

III. Date of next meeting

4. Members agreed that the next meeting would be held in mid September 2009. Members also agreed to hold a meeting in early October to receive views of deputations on the Bill.
5. There being no other business, the meeting ended at 9:44 am.

**Proceedings of the first meeting of the
Bills Committee on Arbitration Bill
on Tuesday, 28 July 2009, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda item I – Election of Chairman</i>			
000000 - 000411	Ir Dr Raymond HO Dr Margaret NG Prof Patrick LAU	Election of Chairman	
<i>Agenda item II – Meeting with the Administration</i>			
000412 - 001608	Administration Chairman	Briefing by the Administration on the background of the Arbitration Bill (the Bill) and the proposal for reform of the arbitration law Highlight that an "opting-in" system was provided under Part 11 of the Bill to enable users of arbitration to continue to use certain provisions that only apply to domestic arbitrations under the current Arbitration Ordinance (Cap. 341) (the current Ordinance). All the opt-in provisions under Schedule 2 would automatically apply to an arbitration agreement entered into before, or at any time within a period of six years after, the commencement of the Bill and which had provided that arbitration under the agreement was a domestic arbitration	
001609 – 002545	Chairman Administration	Briefing by the Administration on the following - (a) the Bill sought to create a unitary regime of arbitration on the basis of the UNCITRAL Model Law on International Commercial Arbitration (Model Law) adopted by the United Nations Commission on International Trade Law (UNCITRAL) for all types of arbitration, thereby abolishing the distinction between domestic and international arbitrations under the current Ordinance. The purpose of the Bill was to make the law of arbitration more user-friendly to arbitration users both in and outside Hong Kong; (b) the object of the Bill (Clause 3) was to facilitate the fair and speedy resolution of disputes by arbitration without unnecessary expense; (c) the structure of the Bill; and (d) the general responses on the Consultation Paper on Reform of the Law of Arbitration in Hong Kong and the draft Arbitration Bill (Consultation Paper)	
002546 - 002629	Chairman Administration	Provisions relating to the repeal of the current Ordinance (Clause 108 of the Bill)	
002630 - 002721	Ms Miriam LAU Administration Chairman	Savings and transitional arrangements for arbitration agreements that had been entered into before the commencement of the Bill (Clause 110)	

Time marker	Speaker(s)	Subject(s)	Action required
002722 - 002919	Dr Priscilla LEUNG Administration Chairman	The applicability of the opt-in provisions to contracts which had been entered into before the commencement of the Bill, i.e. all the opt-in provisions under Schedule 2 to the Bill would automatically apply to an arbitration agreement entered into before, or at any time within a period of six years after, the commencement of the Bill and which had provided that arbitration under the agreement was a domestic arbitration	
002920 - 004240	Administration Chairman Prof Patrick LAU Ms Miriam LAU	The rationale for adopting the novel approach in drafting the Bill i.e. reproducing the full text of the Model Law and underlining those provisions that were not applicable to the local context. The Administration's explanation that the presentation of the Bill was made having regard to the deliberations of the Departmental Working Group to implement the Report of the Committee on Hong Kong Arbitration Law (Working Group). In gist, users of arbitration considered that the Bill should be self-contained and user-friendly such that they would not have to make cross reference to the Model Law if such needs arose	
004241 - 004332	Chairman Ir Dr Raymond HO	Concern that the Working Group lacked representatives from the Hong Kong Institution of Engineers who were major users of arbitration	
004333 - 004414	Dr Priscilla LEUNG Chairman	Necessity for incorporating the full text of the Model Law in the Bill as certain provisions were merely reference materials	
004415 - 004518	Prof Patrick LAU	Concern that the Working Group lacked representatives from architects and surveyors who were also major users of arbitration	
004519 - 004743	Chairman Administration ALA1	Schedules 2 to 4 to the Bill	
004744 - 005321	Chairman Prof Patrick LAU	<p>The Administration was requested to provide further information on the following –</p> <ul style="list-style-type: none"> (a) the rationale for adopting the current approach in drafting the Bill i.e. reproducing the full text of the Model Law in Schedule 1 and setting out certain Articles of the Model Law in the Bill with different presentations as well as underlining those provisions that were not applicable to the local context; whether similar approach was adopted in other ordinances and if so, what were the guiding principles for adopting the approach; (b) why it considered that the Bill was user-friendly and whether consequential amendments would have to be made to the Ordinance in the event that the Model Law was amended; (c) an account of the consultation with users of arbitration on the proposed arbitration, and whether and why users such as architects, surveyors, engineers as well as the insurance and shipping 	Admin

Time marker	Speaker(s)	Subject(s)	Action required
		<p>sectors were not consulted;</p> <p>(d) a comparison table showing the differences between the two arbitration regimes i.e. domestic and international arbitration; and</p> <p>(e) a comparison on the arbitration provisions in the current Ordinance, the Bill and the Model Law</p>	
005322 - 005442	Ms Miriam LAU Chairman	The arbitration regimes and practices adopted by Hong Kong's major competitors as a regional arbitration centre, such as London and Singapore	Admin
005443 - 005641	Dr Priscilla LEUNG Chairman	<p>The Administration was requested to provide further information on –</p> <p>(a) the concerns raised by the construction industry during the consultation period; and</p> <p>(b) the differences between the arbitration provisions in the Bill and the international arbitration practices, such as the confidentiality in arbitral proceedings and the enforcement of arbitral awards</p> <p>View of Dr Priscilla LEUNG that only reference to those provisions in the Model Law that were applicable to the local context should be made in the Bill</p>	Admin
005642 - 005847	Mr Abraham SHEK Chairman	Suggestion of inviting deputations' views on the Bill	
005848 - 010259	Chairman Ms Miriam LAU Administration	<p>Given that the object and the principles of the Bill were to, inter alia, enable the business community and arbitration practitioners to choose Hong Kong as a place to conduct arbitral proceedings and facilitate the fair and speedy resolution of disputes by arbitration, the Administration was requested to provide further information on –</p> <p>(a) how the Bill, when enacted, would achieve the above objectives;</p> <p>(b) the fees and charges for conducting arbitral proceedings in Hong Kong; and</p> <p>(c) the reasons for not including in the Bill the simplified arbitral proceedings proposed by the Hong Kong International Arbitration Centre</p>	Admin
010300 - 010344	Ir Dr Raymond HO Chairman	Invitation of deputations to give views on the Bill	Clerk
010345 - 010649	Chairman Administration Ms Miriam LAU	<p>Responses on the Consultation Paper published by the Department of Justice</p> <p>The Administration was requested to provide a list of respondents to and a gist of the responses on the Consultation Paper</p>	Admin
010650 - 010814	Chairman	The Administration was requested to identify Hong	Admin

Time marker	Speaker(s)	Subject(s)	Action required
	Mr Paul TSE	Kong's major competitors as a regional arbitration centre and make a comparison with these competitors in attracting business parties to choose Hong Kong as a place to conduct arbitral proceedings	
<i>Agenda item III – Dates of next meetings</i>			
010815 - 011422	Chairman Administration Dr Priscilla LEUNG	Date of next meeting to meet with the Administration	
011423 - 011556	Chairman Prof Patrick LAU	Date of a further meeting in October 2009 to meet with deputations and the Administration	

Council Business Division 2
Legislative Council Secretariat
14 September 2009