

立法會
Legislative Council

LC Paper No. CB(2)702/09-10
(These minutes have been
seen by the Administration)

Ref : CB2/BC/9/08

Bills Committee on Arbitration Bill

Minutes of the 5th meeting
held on Thursday, 19 November 2009, at 10:45 am
in Conference Room A of the Legislative Council Building

- Members present** : Dr Hon Margaret NG (Chairman)
Hon Albert HO Chun-yan
Hon LAU Kong-wah, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Prof Hon Patrick LAU Sau-shing, SBS, JP
Dr Hon Priscilla LEUNG Mei-fun
- Members absent** : Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon Paul TSE Wai-chun
- Public Officers attending** : Item I
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

Mr Peter SZE
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. Meeting with the Administration

[The Bill, Legislative Council Brief, LC Paper Nos. CB(2)2261/08-09(01) to (02), CB(2)2469/08-09(02), (04), CB(2)280/09-10(01) and CB(2)314/09-10(01)]

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

- Admin 2. The Administration was requested to –
- (a) consider the need for making reference to the UNCITRAL Model Law (Model Law) in the long title of the Bill;
 - (b) provide information on the arrangements in other major Model Law jurisdictions in respect of the restrictions on reporting of court proceedings;
 - (c) provide the relevant extract from the New Zealand Arbitration Act 1996 under which clause 18 was modelled on;
 - (d) review the reference to "contemplated" in clause 18(2)(a) of the Bill; and
 - (e) information on the practices in other Model Law jurisdictions in respect of the disclosure of information relating to arbitral proceedings and awards made in those arbitral proceedings.

Action

3. Members agreed that the Bills Committee should seek information from the relevant arbitration institutions (e.g. the Hong Kong International Arbitration Centre and the Hong Kong Institute of Arbitrators) on their preparation and respective plans for training programmes for arbitrators for the implementation of the Bill.

II. Any other business

4. The Chairman reminded members that the next meeting would be held on 3 December 2009.

5. There being no other business, the meeting ended at 12:47 pm.

Council Business Division 2
Legislative Council Secretariat
7 January 2010

**Proceedings of the 5th meeting of the
Bills Committee on Arbitration Bill
on Thursday, 19 November 2009, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda item I – Meeting with the Administration</i>			
000000 - 000429	Chairman	Opening remarks	
000430 – 001500	Administration Chairman Prof Patrick LAU Administration	<p>Clause-by-clause examination of the Bill [The Bill and LC Paper No. CB(2)2469/08-09(02)]</p> <p>Whether reference to the UNCITRAL Model Law (the Model Law) should be made in the long title of the Bill given that the objective of Bill was to make Hong Kong be perceived as a Model Law jurisdiction</p> <p>The Administration's advice that taking into account modifications were made to the Model Law in the Bill, it was not appropriate to make reference to the Model Law in the long title without explaining the modifications. Since clause 4 of the Bill had expressly stated that the Model Law had the force of law in Hong Kong subject to the modifications and supplements as expressly provided for in the Ordinance and the purpose for the reform of the arbitration law had been clearly stated in the Explanatory Memorandum of the Bill, it considered that the current drafting of the long title was appropriate</p> <p>The Administration was requested to consider members' view on the need for making reference to the Model Law in the long title of the Bill</p>	Admin
001501 – 001945	Chairman Administration Ms Miriam LAU	<p><u>Clause 1 – Short title and commencement</u></p> <p>Concerns about the commencement date of the Bill and the preparation and readiness of the arbitration sector for the implementation of the Bill</p> <p>The Administration's response that while it hoped that the Bill could be passed through LegCo in 2010, the Ordinance would come into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette after consulting the stakeholders, in particular the construction industry. The Administration would arrange press releases and briefings on the Bill. To its understanding, the relevant arbitration institutions, e.g. Hong Kong International Arbitration Centre (HKIAC) and the Hong Kong Institute of Arbitrators (HKIA), which had actively advocated the reform of the arbitration law, would arrange promotional activities in respect of the Bill</p> <p>The Bills Committee would write to the arbitration institutions on preparation and plans for training programmes for arbitrators for the implementation of the Bill</p>	Clerk

Time marker	Speaker(s)	Subject(s)	Action required
001946 - 002930	Chairman Administration ALA1 Prof Patrick LAU	<p><u>Clause 2 – Interpretation</u></p> <p>Interpretations of "umpire", "Court" and "interim measure" in the Bill</p> <p>The Administration's advice that since the Chinese renditions adopted by the Model Law of a number of English expressions were different from the Chinese renditions of the same English expressions that were commonly used in the local legislation, clause 2(5) was introduced as an interpretation provision to reconcile the difference between the Chinese rendition of an English expression in the applicable Model Law provision set out in the Bill and the Chinese equivalent of the same English expression in the other provision of the Bill by providing that both of them were to be treated as identical in effect [LC Paper Nos. CB(2)280/09-10(01) and CB(2)314/09-10(01)]</p>	
002931 - 003128	Ms Miriam LAU Administration Chairman ALA1	Enquiries about the repeal of the existing Arbitration Ordinance (Cap. 341) and transitional provisions	
003129 - 004930	Administration Chairman Mr Abraham SHEK	Members raised no questions on clauses 3 to 8	
004931 - 005956	Administration Ms Miriam LAU Chairman Dr Priscilla LEUNG	<p><u>Clause 9 – Article 2A of UNCITRAL Model Law (International origin and general principles)</u></p> <p>Elaboration on the meaning of "good faith" and "general principles on which this Law is based"</p> <p>The Administration's advice that Article 2A of the Model Law provided guidance to the court and arbitral tribunal that reference should be made to the international practice in the interpretation and application of the Model Law for the purpose of the Bill. As regards the general principles on which the Law was based, clause 3 set out the major principles of the Bill. As it was difficult to provide exhaustive principles, the court and arbitral tribunal could also make reference to the relevant case law</p>	
005957 – 010920	Administration Ms Miriam LAU Chairman	<p><u>Clause 10 – Article 3 of UNCITRAL Model Law (receipt of written communications)</u></p> <p>Scenarios under which a written communication would be deemed to have been received</p>	
010921 - 011954	Administration Chairman	Members raised no question on clause 11 to 14	
011955 - 013103	Administration Chairman ALA1	<p><u>Clause 15 – Reference of interpleader issue to arbitration by court</u></p> <p>Rationale for direction of the court under clause 15(1) not being subject to appeal</p>	

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		<p>The Administration's explanation that having taken into account the views received during the consultation that arbitration should be encouraged, it considered unnecessary to provide for appeal against a direction of the court under clause 15(1) referring the parties to arbitration in accordance with an arbitration agreement. On the other hand, a party might appeal with the leave of the court if the court refused to refer the parties to arbitration under clause 15(2)</p>	
013104 - 013343	Administration	Members raised no question on clause 16	
013344 - 013829	Administration Chairman Dr Priscilla LEUNG	<p><u>Clause 17 – Restrictions on reporting of proceedings heard otherwise than in open court</u></p> <p>The Administration was requested to provide information on the arrangements in other major Model Law jurisdictions in respect of the restrictions on reporting of court proceedings</p>	Admin
013830 - 020105	Administration Ms Miriam LAU Chairman Dr Priscilla LEUNG	<p><u>Clause 18 – Disclosure of information relating to arbitral proceedings and award prohibited</u></p> <p>Concerns about –</p> <ul style="list-style-type: none"> (a) the scope of disclosure of information relating to arbitral proceedings and awards made in those arbitral proceedings that was contemplated by the Bill, and the meaning of the expression "contemplated by this Ordinance" in clause 18(2)(a); (b) the time limit for not publishing, disclosing or communicating the above information; and (c) exceptions to the prohibition against publication, disclosure or communication of information relating to arbitral proceedings and awards stated in clause 18 <p>The Administration's response that –</p> <ul style="list-style-type: none"> (a) clause 18 was modelled on the New Zealand Arbitration Act 1996; (b) clause 18 was to safeguard the confidentiality in arbitration under which the parties were, subject to agreement to the otherwise by the parties, prohibited from publishing, disclosing or communicating any information relating to arbitral proceedings under the arbitration agreement or awards made in those arbitral proceedings, except under certain circumstances as stated in the clause. It did not see the need to set out time limit for not publishing, disclosing or communicating such information as this could be agreed by the parties concerned; and (c) exceptions stated in clause 18(2) served to provide guidance for disclosure of information relating to arbitral proceedings and awards 	

Time marker	Speaker(s)	Subject(s)	Action required
		<p>The Administration was requested to –</p> <ul style="list-style-type: none">(a) review the reference to "contemplated" in clause 18(2)(a) of the Bill;(b) provide the relevant extract from the New Zealand Arbitration Act 1996 under which the clause was modelled on; and(c) provide information on the practices in other Model Law jurisdictions in respect of the disclosure of information relating to arbitral proceedings and awards made in those arbitral proceedings	Admin
020106 - 020116	Chairman	Date of next meeting	

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