

立法會

Legislative Council

LC Paper No. CB(2)969/09-10

(These minutes have been
seen by the Administration)

Ref : CB2/BC/9/08

Bills Committee on Arbitration Bill

Minutes of the 8th meeting
held on Thursday, 14 January 2010, at 8:30 am
in Conference Room B of the Legislative Council Building

Members present : Dr Hon Margaret NG (Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon LAU Kong-wah, JP
Hon Miriam LAU Kin-yee, 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 Albert HO Chun-yan
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung

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 (02) and CB(2)2469/08-09(02) and (04)]

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

Admin

2. The Administration was requested to –
- (a) review the Chinese rendition of "peremptory order" in clause 53 of the Arbitration Bill (the Bill);
 - (b) explain the considerations for empowering the arbitral tribunal to appoint experts to assist in assessing the amount of costs of arbitral proceedings under clause 54(2), and provide examples of such experts appointed by the arbitral tribunal;
 - (c) consider if there was the need to provide in clause 54 the procedures for the parties concerned to raise objections before an arbitral tribunal appointed experts on specific issues;
 - (d) advise whether "person in custody" was within the meaning of "prisoner" for the purpose of clause 55(3);
 - (e) advise whether evidence given by affidavit outside Hong Kong was admissible for the purpose of clause 56;

Action

- (f) advise whether "intellectual property" was within the meaning "property" for the purpose of clause 56(6);
- (g) provide illustrative examples on the available arbitral procedures that must be exhausted before an application could be made for obtaining an extension of time as stipulated in clause 58; and
- (h) review the drafting of clause 60(5) of the Bill to better reflect the circumstances under which the arbitral tribunal might order that an order made by the Court cease to have effect.

II. Any other business

- 3. There being no other business, the meeting ended at 10:40 am.

Council Business Division 2
Legislative Council Secretariat
19 February 2010

**Proceedings of the 8th meeting of the
Bills Committee on Arbitration Bill
on Thursday, 14 January 2010, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda item I – Meeting with the Administration</i>			
000000 - 000633	Chairman	Continuation of the clause-by-clause examination of the Arbitration Bill (the Bill)	
000634 - 001002	Administration Mr LAU Kong-wah Administration	<u>Clause 49 – Article 21 of UNCITRAL Model Law (Commencement of arbitral proceedings)</u> Mr LAU Kong-wah expressed concern about the Chinese rendition of "the respondent" ("被申請人") adopted in clause 49 which was different from that commonly used in local legislation. The Administration advised that ("被申請人") was the Chinese rendition adopted by the UNCITRAL Model Law (Model Law) the applicable provisions of which were reproduced in the Bill. The interpretation in clause 2(5) would reconcile the difference between the Chinese equivalent of an English expression in the applicable Model Law provisions set out in the Bill and the Chinese equivalent of the same English expression in the other provisions of the Bill by providing that both of them were to be treated as identical in effect	
001003 – 001533	Administration Chairman	Members raised no question on clauses 50 to 52	
001534 – 003718	Administration Chairman Mr LAU Kong-wah	<u>Clause 53 – Article 25 of UNCITRAL Model Law (Default of a party)</u> Whether either party could produce documentary evidence to an arbitral tribunal after tribunal has made a peremptory order The Administration's advice that clause 53 gave effect to Article 25 of the Model Law which allowed the arbitral tribunal to continue the proceedings if a party failed to appear at a hearing or produce documentary evidence, and make the award on the evidence before it. Clause 53 further provided that if a party failed to comply with any order or direction of the arbitral tribunal, the tribunal could make a peremptory order requiring compliance within the time that the tribunal considered appropriate. Under clause 51, either party might amend any statement of claim or defence during the course of the arbitral proceedings The Administration was requested to review the Chinese rendition of "peremptory order" ("最終命令") to make it clear that peremptory order sought to require compliance within the time specified by an arbitral tribunal	Admin to consider

Time marker	Speaker(s)	Subject(s)	Action required
003719 – 010735	Administration Chairman Ms Miriam LAU Mr LAU Kong-wah	<u>Clause 54 – Article 26 of UNCITRAL Model Law (Expert appointed by arbitral tribunal)</u> Members raised the following concerns – (a) the need to appoint experts to assist in assessing the amount of the costs of arbitral proceedings; and (b) the mechanism for raising objection to the decision made by the arbitral tribunal regarding the appointment of experts The Administration's response that – (a) clause 54(2), which was modelled on the UK Arbitration Act, empowered the arbitral tribunal to appoint experts when necessary; and (b) if an objection was raised by any parties on the decision regarding the appointment of experts, the arbitral tribunal would hear the views expressed by the parties, whereas the arbitral tribunal still had the discretion to make the final decision on the appointment of experts The Administration was requested to – (a) explain the considerations for empowering the arbitral tribunal to appoint experts to assist in assessing the amount of costs of arbitral proceedings, and provide examples of such experts appointed by the arbitral tribunal; and (b) consider, in the light of the experience in civil proceedings, if there was a need to provide for the procedures in clause 54(2) for the parties concerned to raise objections before an arbitral tribunal appointed experts on specific issues	Admin
010736 – 011109	Administration Mr LAU Kong-wah Chairman	<u>Clause 55 – Article 27 of UNCITRAL Model Law (Court assistance in taking evidence)</u> The Administration was requested to advise whether "person in custody" was within the meaning of "prisoner" for the purpose of clause 55(3)	Admin
011110 – 012430	Administration Mr LAU Kong-wah Chairman Dr Priscilla LEUNG	<u>Clause 56 – General powers exercisable by arbitral tribunal</u> The Administration was requested to advise whether – (a) "intellectual property" was within the meaning of "property" for the purpose of clause 56(6); and (b) evidence given by affidavit outside Hong Kong was admissible for the purpose of clause 56	Admin
012431 – 012822	Chairman Administration	Members raised no question on clause 57	

Time marker	Speaker(s)	Subject(s)	Action required
012823 – 014724	Administration Chairman Ms Miriam LAU Dr Priscilla LEUNG	<u>Clause 58 – Power to extend time for arbitral proceedings</u> Concerns about the course of actions that need to be taken to satisfy the requirement of “exhausting any available arbitral procedures” for obtaining an extension of time, and whether an application for an extension of time could be made after the time or the period specified in the agreement The Administration would provide illustrative examples on the available arbitral procedures that must be exhausted before an application could be made for obtaining an extension of time as stipulated in clause 58	Admin
014725 – 015117	Administration Chairman	Members raised no question on clause 59	
015118 – 021000	Administration Chairman Ms Miriam LAU Dr Priscilla LEUNG	<u>Clause 60 – Special powers of Court in relation to arbitral proceedings</u> Concern that an order made by the Court would cease to have effect on the order of the arbitral tribunal The Administration's advice that the arbitral tribunal could order that an order made by the Court cease to have effect, in whole or in part, provided that that Court had allowed the arbitral tribunal to do so in the original order made by the Court. The Administration was requested to review the drafting of clause 60(5) to better reflect the circumstances under which the arbitral tribunal could do so	Admin
021001 – 021022	Chairman	Date of next meeting	