Summary of submissions and comments on the Consultation Paper on Reform of the Law of Arbitration in Hong Kong and Draft Arbitration Bill

The Consultation Paper

1. The Department of Justice set up the Departmental Working Group to implement the Report of the Committee on Hong Kong Arbitration Law ("Working Group"). A membership list of the Working Group can be found at Annex A. With the assistance of the Working Group, the Department of Justice published the Consultation Paper on Reform of the Law of Arbitration in Hong Kong and draft Arbitration Bill (the "Consultation Paper") in December 2007 and invited comments on the proposals and the consultation draft of the Arbitration Bill attached to the Consultation Paper (the "draft Bill").

2. At Annex B is a distribution list according to which over 60 copies of the Consultation Paper were sent at the commencement of the consultation period. The consultation period ended on 30 June 2008, after the initial consultation period of four months was extended by two months. Over 40 submissions were received. A list of respondents is at Annex C.

3. The Working Group, with the help of its Sub-committee, has carefully reviewed and considered all the submissions received and has made recommendations with regard to most of these issues. Having taken into account the recommendations and deliberations of the Working Group and having regard to the submissions received, the Administration has made decisions on the major issues highlighted in the Consultation Paper.

4. A summary of the proposals, the submissions received and the decisions of the Administration, which are arranged in accordance

with major issues identified by the Consultation Paper, is set out below[1].

Issue 1
General Approach to Reform

The proposal

5. The Consultation Paper proposes the creation of a unitary regime of arbitration on the basis of the UNCITRAL Model Law on International Commercial Arbitration (the "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 Arbitration Ordinance (Cap. 341). The Articles of the Model Law were set out in the draft Bill with the intended effect of having the force of law in Hong Kong where appropriate. A number of the Articles of the Model Law are modified and adapted in accordance with the suggestions made by the Working Group.

The submissions

6. There is general agreement in the submissions on the approach of having a unitary regime for arbitration on the basis of the Model Law.

7. There are however dissenting views from a few respondents who are opposed to the unification of the domestic and international arbitration regimes. Some respondents have expressed concern that the way in which the Model Law has been adopted may lead to misconception that Hong Kong is not a Model Law jurisdiction.

8. However, it was also pointed out that neither Hong Kong nor its Model Law rivals can be said to be "pure" Model Law regimes. In fact, they are all hybrids, seeking to apply an amended version of the

[1] Unless indicated otherwise, all references are to the draft Bill attached to the Consultation Paper. Readers should refer to the Consultation Paper and the draft Bill for details. The decisions of the Administration on the various issues covered in this paper are reflected in the Arbitration Bill introduced to the Legislative Council on 8 July 2009.

Model Law by different routes.

Decision

9. As there is general support for the proposed approach based on a unitary regime, the Administration accepted the Working Group's recommendation that the reform of arbitration law should proceed on the basis of the draft Bill incorporating the articles of the Model Law and also providing for the necessary adaptations and modifications to suit the circumstances of Hong Kong.

Issue 2
Clause 10 – Article 3 of UNCITRAL Model Law (Receipt of written communications)

The proposal

10. Clause 10(2) and (3) of the draft Bill provides that without prejudice to Article 3 of the Model Law in Clause 10(1), a written communication will be deemed to have been received on the day it is sent, if it is sent by any means by which information can be recorded and transmitted to the addressee and if there is a record of the receipt of the communication by the addressee.[2]

The submissions

11. All three submissions on Clause 10 express reservation on the acceptance of the service of Notice of Arbitration by e-mail. They further submit that such practice has not been adopted in the UK. The International Chamber of Commerce - Hong Kong, China (ICC) is concerned that e-mail may well be delayed or lost after being sent out by

[2] Subsection (2) of Clause 10 of the draft Bill provides: "Without prejudice to subsection (1), where a written communication (other than communications in court proceedings) is sent by any means by which information can be recorded and transmitted to the addressee, the communication is deemed to have been received on the day it is so sent." Subsection (3) of Clause 10 of the draft Bill provides: "Subsection (2) applies only if there is a record of receipt of the communication by the addressee."

the addressor and it may be difficult to apply Clause 10(3) when it comes to e-mail communication if the addressee does not cooperate.

Decision

12. The Working Group considered that the issue raised by the submissions was a question of proof as it would be up to the arbitral tribunal to look at the evidence to decide whether there is good service in each particular case on the basis of Clause 10(2) and (3) of the draft Bill. The Administration accepted the recommendation of the Working Group that there is no need to amend Clause 10 of the draft Bill.

Issue 3
Clause 14 - Application of Limitation Ordinance and other limitation enactments to arbitrations - Whether an order of the court under Clause 14(4) should be subject to appeal

The proposal

13. The Consultation Paper proposes that an order of the court made under Clause 14(4) of the draft Bill should not be subject to any further appeal in order not to cause undue delay to the commencement of new arbitral proceedings over the same subject matter in dispute. Under Clause 14(4) of the draft Bill, where a court sets aside an award, the court may further order that the period between the commencement of the arbitration and the date of the order of the court shall be excluded in the computation of the limitation period in respect of the matter submitted to arbitration.

The submissions

14. Out of the 10 submissions on this issue, the submissions from the Hong Kong Bar Association, the Hong Kong General Chamber of Commerce and Herbert Smith do not agree with the proposal that an order of the court under Clause 14(4) should not be subject to any further appeal. Herbert Smith further suggests that the court should not be left

with the discretion to extend the limitation period if it sets aside an arbitral award. Instead, it should be a rule the period between the commencement of arbitration and the date of the order setting order the award should be excluded in computing the time prescribed in any limitation legislation for commencement of proceedings with respect to the matters submitted to arbitration. This will enhance certainty and would avoid unnecessary intervention by the court.

Decision

15. The Administration accepted the recommendation of the Working Group i.e. to follow the approach advocated by Herbert Smith. Clause 14(4) of the draft Bill should be amended to give effect to the following: where a court orders an arbitral award to be set aside, the period between the commencement of the arbitration and the date of the order of the court should be excluded in computing the limitation period with respect to the matter submitted to arbitration.

Issue 4
Clause 15 - Reference of interpleader issue to arbitration by court - Whether an order of the court under Clause 15(1) should be subject to appeal

The proposal

16. Where an interpleader issue is covered by an arbitration agreement, a court before which an action is brought may refuse to refer the parties to arbitration under Clause 15(1) of the draft Bill where it finds that an arbitration agreement is null and void, inoperative or incapable of being performed. The Consultation Paper proposes that a direction of the court under Clause 15(1) should be subject to appeal with leave of the court as an order to grant or refuse mandatory stay of legal proceedings would bring about serious consequence on the parties.

The submissions

17. There is general consensus from the submissions that there should be a right to appeal with leave. Lovells comments that a direction of the court under Clause 15(1) of the draft Bill refusing the stay of legal proceedings should be subject to appeal with leave, but a direction under Clause 15(1) granting the stay of legal proceedings should not be subject to appeal.

Decision

18. The Administration adopted the approach proposed in the submissions by Lovells on this issue. It would not be necessary to provide for appeal against a decision of the court under Clause 15(1) of the draft Bill which refers the parties to arbitration.

Issue 5
Clause 16 - Proceedings to be heard in open court unless otherwise ordered

The proposal

19. Clause 16(1) of the draft Bill provides that proceedings under the draft Bill shall be heard in open court. Under Clause 16(2), upon application of any party, the court shall order those proceedings to be heard otherwise than in open court unless, in any particular case, the court is satisfied that those proceedings ought to be heard in open court. Section 2D of the current Arbitration Ordinance (Cap. 341) makes it mandatory for proceedings under that Ordinance in the Court of First Instance or the Court of Appeal in Hong Kong to be heard otherwise than in open court upon the application of any party to the proceedings.

The submissions

20. There are three submissions on the proposal under Clause 16(1).

21. The Hong Kong Bar Association and the Hong Kong Institute of Arbitrators take the view that "(i)t may be more logical to start off providing that proceedings under the new Ordinance shall be heard otherwise than in open court, unless on application of any party or even on the court's initiatives and, in any particular case, the court is satisfied that the proceedings ought to be heard in open court. This would save the parties from having to incur expenses or time to formally make the application each time for the proceedings to be heard otherwise than in open court."

22. Pinsent Masons makes the following comments: "Whilst recognising the balancing considerations set out in the report, we are not in favour of the presumption of court proceedings concerning arbitrations being in open court. We are particularly concerned that this will be perceived by non-Hong Kong international businesses and advisers to be an undesirable erosion of arbitral confidentiality – particularly in the context of the dilution of the Model Law. We would recommend the retention of the existing Section 2D".

Decision

23. Having considered the requirement to preserve the requirement for confidentiality as a key aspect of arbitration on the one hand, and the need to protect the public interest in having transparency of process and the public accountability of the judicial system on the other, the Working Group suggested that court proceedings relating to arbitration shall be heard otherwise than in open court unless upon the application of any party or on the court's initiative, the court is satisfied that the proceedings shall be heard in open court. The Administration endorsed this suggestion and Clause 16 of the draft Bill was amended accordingly.

Issue 6
Clause 18 – Disclosure of information relating to arbitral proceedings and awards prohibited

The proposal

24. The purpose of the proposal under Clause 18 of the draft Bill is to safeguard the confidentiality in arbitration. Under Clause 18, the parties are deemed to have agreed not to publish, disclose or communicate any information relating to arbitral proceedings under the arbitration agreement or to an award made in those proceedings, subject to certain exceptions stated in that clause. The first exception is where the parties otherwise agree. The second exception is that disclosure or communication is contemplated by the draft Bill; or if a party is obliged by law to make such publication, disclosure or communication to any government body, regulatory body, court or tribunal; or if the publication, disclosure, or communication is made to a professional or other advisor of any party.

The submissions

25. Pinsent Masons supports the inclusion of Clause 18 and considers it to be an important measure. It is suggested that a clause providing for injunctive relief might lend weight to the wording in Clause 18. Their experience shows that the lack of effective sanction for a breach of arbitral confidentiality is a real issue. The International Chamber of Commerce – Hong Kong, China expresses the view that the exceptions of the confidentiality of arbitration provided for in Clause 18(2) may not cover all the circumstances under which disclosure should be allowed or, it may give rise to grey areas. It is however suggested that strict confidentiality is rarely necessary or essential. Hong Kong should move away from the excessive position under the English case law and this legislation should provide for more liberal exceptions to confidentiality.

Decision

26. The Administration considers that Clause 18 of the draft Bill strikes the right balance in safeguarding the confidentiality in arbitration and the need to disclose information relating to arbitral proceedings and awards under exceptional circumstances. No amendments were made to this clause of the draft Bill.

Issue 7

Clause 20 - Article 8 of UNCITRAL Model Law (Arbitration agreement and substantive claim before court) - Proposal under Clause 20(2) to include matters involving claims or disputes made pursuant to or arising under any employment contract

The proposal

27. The purpose of the proposal under Clause 20(2) of the draft Bill is to expand the types of employment-related cases in which the court may decide whether or not to refer the parties to arbitration where there is an arbitration agreement. The proposal is to include not only matters falling within the jurisdiction of the Labour Tribunal but also matters involving claims or disputes made pursuant to or arising under an employment contract.

28. However, in the recent decision in *Paquito Lima Buton v. Rainbow Joy Shipping Ltd. Inc.*[3], the Court of Final Appeal ("CFA") reversed the judgment of the Court of Appeal and decided, after reviewing the public policy justifications, that section 18A(1) of the Employees' Compensation Ordinance (Cap. 282) ("ECO") confers exclusive jurisdiction on the District Court to deal with all ECO claims save in the cases expressly excepted. The Court of Final Appeal held that the court does not have a discretion to stay ECO proceedings in favour of arbitration even though there is an arbitration agreement as arbitration is not such an exception.

29. Under the proposal in the Consultation Paper, ECO claims are made pursuant to or arising under an employment contract, and are thus within the category of claims referred to in Clause 20(2) under which the court may, subject to the conditions set out in paragraphs (a) and (b) of that Clause, either refer or refuse to refer the parties to arbitration.

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[3] [2008] 4 HKC 14. The facts of the case and the decision of the Court of Appeal have been discussed in Footnote 33 to paragraph 3.9 of the Consultation Paper.

The submission by the Labour Department

30. The Labour Department is concerned that section 6(2) of the current Arbitration Ordinance (Cap. 341) has already given the court a discretion to stay claims falling within the Labour Tribunal's jurisdiction in favour of arbitration, which should otherwise come under the Labour Tribunal's exclusive jurisdiction. By expanding the provision to all matters involving claims and disputes made pursuant to or arising out of an employment contract under the proposed Clause 20(2), the exclusive jurisdiction of District Court on employees' compensation claims and of Minor Employment Claims Adjudication Board ("MECAB") would be eroded. Hence, the Labour department is not in favour of the proposal.

31. The Labour Department further proposed to revisit Clause 20(2) of the draft Bill, with a view to preserving the exclusive jurisdiction of the Labour Tribunal, the MECAB and the District Court on various employment claims.

Other submissions

32. While acknowledging the CFA judgment on the *Paquito Lima Buton v. Rainbow Joy Shipping Ltd. Inc.*[4] and the public policy justifications behind the exclusive jurisdiction given to the District court over ECO cases, the Hong Kong Bar Association and the Hong Kong Institute of Arbitrators take the view that arbitration agreements over other employment matters should be respected and propose that arbitration should be used in appropriate employment disputes to cover matters currently within the jurisdiction of the Labour Tribunal.

33. Pinsent Masons and the Hong Kong Construction Association support the proposal under Clause 20(2).

Decision

34. In view of the decision of the Court of Final Appeal in *Paquito Lima Buton v. Rainbow Joy Shipping Ltd. Inc.* which clarified the

[4] [2008] HKC 14

scope of the power of the court to stay claims in relation to employees' compensation, the Working Group considered that there would not be a need to go beyond what has been provided for in section 6(2) of the current Arbitration Ordinance (Cap. 341). Clause 20(2) of the draft Bill should be amended accordingly to give effect to the above decision. The Administration endorsed this suggestion.

Issue 8
Proposed appeal procedure in relation to court orders for retention of property arrested in admiralty proceedings as security for the satisfaction of any arbitral award where admiralty proceedings are stayed under Clause 20(6)

The proposal

35. Clause 20(6) and (7) of the draft Bill allows the court to order retention of property arrested in admiralty proceedings as security for the satisfaction of any arbitral award where admiralty proceedings are stayed. Alternatively, the court may order a stay of admiralty proceedings and refer them to arbitration upon the giving of equivalent security.

36. The Consultation Paper proposes that an order of the court made under Clause 20(6) should not be subject to any appeal as such an order of the court apparently involves a relatively minor procedural matter.

The submissions

37. Most of the submissions are against the proposal in the Consultation Paper and those respondents propose that a decision of the court under Clause 20(6) should be subject to appeal with leave.

38. There are however two submissions in support of the proposal in the Consultation Paper.

Decision

39. The Working Group took the view that no appeal should be provided as the provision was only concerned with a procedural matter involving the giving or retention of security for the satisfaction of any of any arbitral award where admiralty proceedings were stayed and recommended that an order of the court under Clause 20(6) of the draft Bill should not be subject to any appeal. The Administration agreed and has given effect to the recommendation of the Working Group by an express provision.

Issue 9

Clause 31 - Functions of umpire in arbitral proceedings - Whether decision of the Court of First Instance under Clause 31(11) to grant or refuse leave for appeal should be subject to appeal

The proposal

40. Clause 31(8) of the draft Bill provides that where the arbitrators fail to observe the procedure for their replacement by an umpire, a party may seek the assistance of the Court of First Instance which may order their replacement by the umpire as the arbitral tribunal. Under Clause 31(11), leave is required for any appeal against the decision of the Court**.**

41. Views have been sought as to whether a decision of the Court of First Instance under Clause 31(11) to grant or refuse leave for appeal should be subject to further appeal.

The submissions

42. There are five submissions in support of the proposal to provide for an appeal. There are three submissions against the proposal.

Decision

43. The Working Group was of the view that there should be no further appeal from a decision of the Court of First Instance under Clause 31(11) of the draft Bill as it is only concerned with a matter of procedure. The Administration agreed that there should be no right to appeal. Clause 31(11) of the draft Bill was amended to make this express.

Issue 10
Clause 32 - Appointment of Judges as arbitrators

The proposal

44. Paragraph 4.25 of the Consultation Paper refers to an alternative proposal to replace section 13A of the current Arbitration Ordinance (Cap. 341) which provides for the appointment of judges as arbitrators or umpires. Under the alternative proposal, the draft Bill would not make any provisions with regard to appointment of judicial officers as arbitrators or umpires with two exceptions. The first exception is that a judicial officer may accept appointment as a sole arbitrator only in relation to arbitral proceedings of which he or she has been acting as a sole arbitrator prior to his or her taking up appointment as a judicial officer. The second exception is when a judicial officer is required to act as a sole arbitrator in any particular arbitral proceedings for any constitutional reason.

The submissions

45. The majority of respondents, including the Judiciary, are in favour of the alternative proposal. However, the Hong Kong Bar Association, the Hong Kong Institute of Arbitrators, Pinsent Masons and the International Chamber of Commerce – Hong Kong, China are of the view that section 13A of the current Ordinance should be retained as it is.

Decision

46. The Administration agreed with the Working Group which recommended that the alternative proposal of deleting all references to appointment of judges as arbitrators and Schedule 2 of the draft Bill should be adopted. Consideration will have to be given to the question of whether the first exception can be achieved by administrative means and whether the second exception needs to be set out expressly in future legislation.

Issue 11
Clause 35 - Article 16 of UNCITRAL Model Law (Competence of arbitral tribunal to rule on its jurisdiction)

The proposal

47. Clause 35(1) of the draft Bill gives effect to Article 16 of the Model Law. It enables an arbitral tribunal to rule on its own jurisdiction. This provision is mandatory such that the parties cannot by agreement decide that an arbitral tribunal shall not have the power to rule on its own jurisdiction.

The submissions

48. Both the International Chamber of Commerce – Hong Kong, China and Pinsent Masons suggest that the draft Bill should provide for an appeal from an arbitrator's negative ruling on jurisdiction. In particular, Pinsent Masons holds the strong view that a decision by an arbitral tribunal to the effect that it does not have jurisdiction should also be capable of an appeal. They consider it wrong that a party who wishes to arbitrate in circumstances where an arbitral tribunal has erroneously decided that there is no jurisdiction should be left without redress.

Decision

49. Working Group considered that it was not desirable to depart from the Model Law as there should be finality in arbitration. It would not be appropriate to force an arbitral tribunal to conduct an arbitration when it ruled that it had no jurisdiction. The Administration agrees and is of the view that no change to the draft Bill is required.

Issue 12
Clause 59 - Power to extend time for arbitral proceedings – whether a decision of the Court of First Instance made under Clause 59(7) should be subject to appeal with leave

The proposal

50. It has been proposed in the Consultation Paper that a decision of the Court of First Instance under Clause 59(7) on whether to extend time for the commencement of arbitral proceedings, or any other dispute resolution procedure that must be exhausted before arbitral proceedings may be commenced, shall be subject to appeal with leave of the Court. Clause 59(7) stipulates that the power of an arbitral tribunal to extend time is exercisable by the Court of First Instance if no arbitral tribunal which is capable of exercising that power exists at the relevant time.

The submissions

51. With the exception of the comments from the Hong Kong Law Society[5] and Lovells[6], there is general support for a decision of the Court of First Instance made under Clause 59(7) to be subject to appeal

[5] Hong Kong Law Society suggested that there should be an appeal as of right.

[6] Lovells proposed that a decision of the Court of First Instance under Clause 59(7) to extend time for the commencement of relevant proceedings should not be subject to appeal, but a decision of the Court under Clause 59(7) not to extend time should be subject to appeal with leave.

with leave.

Decision

52. The Working Group was of the view that the Clause 59(7) only deals with a procedural matter and no appeal should be provided for. The Administration agreed with the Working Group and decided to adopt the suggestion that an express provision is required to provide that there shall be no right to appeal against an order under Clause 59(7) of the draft Bill.

Issue 13
Clause 60 - Order to be made in case of delay in pursuing claims in arbitral proceedings – whether a decision of the Court of First Instance made under Clause 60(5) should be subject to appeal with leave

The proposal

53. It has been proposed in the Consultation Paper that an appeal procedure where leave of the court is required should be provided in respect of a decision of the Court of First Instance made under Clause 60(5). Clause 60(5) stipulates that the power of an arbitral tribunal to dismiss a claim or to prohibit a party from commencing further arbitral proceedings in respect of a claim for unreasonable delay in pursuing the claim is exercisable by the Court of First Instance if no arbitral tribunal which is capable of exercising that power exists at the relevant time.

The submissions

54. All the submissions are in support of the proposal for a decision of the Court of First Instance made under Clause 60(5) to be subject to appeal with leave.

Decision

55. The Working Group was of the view that since no appeal was allowed where such order was made by an arbitral tribunal, there was no reason why a right to appeal should be provided when the same power was exercised by the court stepping into the shoes of the tribunal. The Administration agreed with the Working Group's view that there should be no right to appeal and an express provision is required to provide that there should be no appeal against an order under Clause 60(5) of the draft Bill.

Issue 14
Clause 62 - Enforcement of orders and directions of arbitral tribunal

The proposal

56. The Consultation Paper seeks to preserve the present statutory position under section 2GG(1) of the current Ordinance. Leave should be granted for the enforcement of any orders or directions including interim measures made by arbitral tribunal irrespective of whether a court in the corresponding place of arbitration will act reciprocally in respect of such orders or directions made in arbitral proceedings conducted in Hong Kong. The Consultation Paper also proposes and Clause 62(4) provides that an order of the Court of First Instance under Clause 62(1) relating to the grant or refusal of leave to enforce an order or direction made, whether in or outside Hong Kong, in relation to arbitral proceedings by an arbitral tribunal shall not be subject to appeal. The rationale for the proposal is that such orders are generally concerned with procedural matters.

The submissions

57. The general consensus of the respondents is that there should be no reciprocity requirement for enforcement of any order or directions made by an arbitral tribunal outside Hong Kong. Hong Kong Bar

Association and the Hong Kong Institute of Arbitrators reported that there are diverging views on whether the regime of enforcement under Articles 35 and 36 of the Model Law can still apply in the context of recognition and enforcement of an interim measure granted by an arbitral tribunal in the form of an award.

58. The Judiciary is of the view that an order of the Court of First Instance made under Clause 62(1) should be subject to appeal as the order may or may not be "minor" in effect.

Decision

59. The Working Group recommended that there should be no right to appeal against a decision of the court to grant or refuse leave for the enforcement of an order or direction made, whether in or outside Hong Kong, in relation to arbitral proceedings by an arbitral tribunal under Clause 62(1). As Clause 62(4) of the draft Bill already gave effect to the above proposal, it was agreed that no amendment to Clause 62 is required.

60. The Working Group further recommended that there should also be no right to appeal against a decision of the Court of First Instance under Clause 46 of the draft Bill relating to interim measures for similar reasons as those stated in relation to Clause 62. An express provision should be added under Clause 46 to give effect to the above decision.

61. The Administration adopted the above two recommendations of the Working Group.

Issue 15
Clause 67 - Article 30 of UNCITRAL Model Law (Settlement)

The proposal

62. It has been proposed in the Consultation Paper that a procedure for appeal against a decision of the court under Clause 67(2) to grant or refuse leave to enforce a settlement agreement should be

provided with leave of the court being required as such a decision is likely to affect the substantive rights of the parties and disputes may arise as to whether a settlement agreement is in existence.

The submissions

63. There is general agreement from the submissions that an appeal procedure with leave being required should be introduced. Some Working Group members considered that there was no need to include any provisions relating to settlement agreements.

Decision

64. The Administration considered that there are merits in retaining the provisions giving settlement agreements the same effect as arbitral awards in order to promote mediation. However, the relevant provisions may be simplified because once a settlement agreement is reached and regarded as an arbitral awards, clause 85 of the draft Bill would apply which provides for enforcement as well as the grounds for challenging the awards.

Issue 16
Clause 75 - Arbitral tribunal may award costs of arbitral proceedings - Clause 75(3) and (4)

The proposal

65. Clause 75(3) and (4) provides that an arbitral tribunal may direct that costs (including the fees and expenses of the tribunal) be paid forthwith or within a specified period by a party who makes or opposes a request to the tribunal for any order or direction, including an interim measure, which is found by the tribunal to be without merit.

The submissions

66. The majority of the respondents agree with the proposal that an arbitral tribunal may direct costs to be paid forthwith where

unmeritorious arguments are advanced. A proposal has been made by Pinsent Masons for the removal of the "without merit" limitation on the discretion of an arbitral tribunal to order costs to be paid forthwith or within a specified period under Clause 75(3) and (4) as it would set a very high threshold. It is proposed that the discretion of the arbitral tribunal should not be fettered. Similar submission for removal of the restriction on the discretion of the arbitral tribunal has been made by Lovells.[7]

Decision

67. The Working Group took the view that the "without merit" test might further prolong the arbitral proceedings by giving the parties an opportunity to argue whether the application or any opposition to an application was unmeritorious. The Working Group considered it appropriate to leave the question of costs to the discretion of the arbitral tribunal to be decided on the circumstances of each particular case.

68. The Working Group proposed that Clause 75(3)(b) of the draft Bill should be deleted. It was further agreed by the Working Group that Clause 75(3)(a) of the draft Bill should be amended to empower an arbitral tribunal to order, at its discretion, costs to be paid by a party in the case where that party failed in its application to the arbitral tribunal for any order or direction to be made by the tribunal or where the party concerned made an unsuccessful opposition to an application for any such order or direction.

69. The Administration agreed with the above proposals of the Working Group. Express provisions are required to give effect to these proposals.

Issue 17
Clause 82 - Article 34 of UNCITRAL Model Law (Application for setting aside as exclusive recourse against arbitral award)

[7] It was stated in Lovells' submission that: "We however do not see any reason why an arbitral tribunal should not be given these powers which are similar to those of the Court to order costs to be paid forthwith or at such time as the tribunal may otherwise specify."

The proposal

70. Clause 82(1) gives effect to Article 34 of the Model Law which provides that recourse to the Court of First Instance against an arbitral award may be made by a party by an application for setting aside the award within a specified period of time. The grounds that may justify the setting aside of an arbitral award are set out in the provision.

71. Views have been sought in the Consultation Paper on whether the decision of the Court of First Instance to set aside an arbitral award should be subject to appeal with leave.

The submissions

72. Most of the submissions support the proposal that a decision of the Court of First Instance to set aside an arbitral award should be subject to appeal with leave.

73. The International Chamber of Commerce – Hong Kong, China (ICC) requests the Department of Justice "to consider whether the grounds for setting aside an award under clause 82(1) (Article 34 of the Model Law) ought to be clarified or specified". The ICC has in mind grounds for setting aside based on serious irregularity as in the English Arbitration Act 1996.

Decision

74. The Working Group took the view that a decision of the Court of First Instance to set aside an arbitral award under Clause 82(1) of the draft Bill should be subject to appeal with leave. The Administration adopted this view.

75. The Working Group further reached the conclusion that the proposal by the ICC should not be adopted so as to avoid giving the impression that Hong Kong is not a Model Law jurisdiction. There was no need to introduce an additional ground for appeal based on "serious irregularity" as in the English Arbitration Act 1996 for the unified

arbitration regime under the draft Bill. The Administration agreed with the views of the Working Group and decided that it was not necessary to amend the provision under Article 34 of the Model Law as incorporated in Clause 82(1) of the draft Bill.

Issue 18
Clause 85 - Enforcement of awards of arbitral tribunal

The proposal

76. Clause 85(1) and (3) is adapted from section 2GG of the current Arbitration Ordinance (Cap. 341). Clause 85(1) makes it clear that leave of the court is required for enforcement of an arbitral award made, whether in or outside Hong Kong, by an arbitral tribunal. Views have been sought in the Consultation Paper on whether a decision of the court to grant or refuse leave to enforce an arbitral award made outside Hong Kong, which is neither a Convention award nor a Mainland award, should be subject to appeal with leave.

77. A new provision has also been added under Clause 85(2) which states that no leave shall be granted by the court unless the party seeking to enforce such award can demonstrate that the court in the place where the award is made will act reciprocally in respect of awards made in Hong Kong. The adding of the new requirement under Clause 85(2) is to ensure that the enforcement of arbitral awards made outside Hong Kong, whether a Convention award, a Mainland award or an award which is neither a Convention award nor a Mainland award, are all granted on the same principle, namely that there will be reciprocity of enforcement of an award made by an arbitral tribunal in Hong Kong in the corresponding place, state or territory where the arbitral award sought to be enforced in Hong Kong is made.

The submissions

78. Most of the submissions support the proposal that a decision of the court to grant or refuse leave to enforce an arbitral award made outside Hong Kong, which is neither a Convention award nor a Mainland

award, should be subject to appeal with leave.

79. A submission has been made by Pinsent Masons expressing reservations about the introduction of the reciprocity requirement for enforcement under Clause 85.[8]

80. There is also a submission by Ian Cocking and John Eaton on the enforcement of Macau awards in Hong Kong.

Decision

81. The Working Group was of the view that a decision of the court under Clause 85(1) to grant or refuse leave to enforce an arbitral award, whether made in or outside Hong Kong, should be subject to appeal with leave.

82. The Working Group further took the view that the requirement for reciprocity of enforcement in Clause 85(2) might carry with it the risk that arbitral awards made in Hong Kong could be refused recognition and enforcement in overseas jurisdictions. It was recommended by the Working Group that Clause 85(2) of the draft Bill should be deleted.

83. The Administration agreed with both proposals of the Working Group and the draft Bill was amended accordingly.

Issue 19
Clauses 88 and 93 - Enforcement of Convention and Mainland

[8] Pinsent Masons stated: "It seems to us that there may be a benefit of not including a reciprocity obligation in Clause 85 (and thus retaining the current Section 2GG in this regard) when it comes to making Hong Kong an attractive Place for international arbitrations. The current Section 2GG means that Hong Kong will enforce an award made in any other country and thus ensures that awards made in Hong Kong will always and very clearly satisfy any reciprocity obligation that may exist in a country where enforcement is sought. Given that enforcement is, in our experience, the most significant factor when determining the Place for an international arbitration, this may be perceived as a selling point for Hong Kong. It also reinforces Hong Kong's reputation for having a strong pro-enforcement bias. We recognise of course that the issue of reciprocity may also involve wider political or public policy considerations."

awards

The proposal

84. Views have been sought on whether a decision of the court to grant or refuse leave to enforce a Convention award or Mainland award should be subject to appeal with leave.

The submissions

85. Most of the submissions received support the proposal. Lovells suggests that a "decision of the court under Clause 88 (Convention award) and Clause 93 (Mainland award) refusing leave to enforce should be subject to appeal, but a decision of the court under the respective Clauses granting leave to enforce should not be subject to appeal". Pinsent Masons proposes that in each of these cases, there should be a right to appeal with leave of the court from a decision refusing to enforce an award and a right to appeal with leave from a decision granting leave to enforce the award but with no automatic stay of execution pending the appeal.

Decision

86. The Working Group took the view that it would not be preferable to have different treatment on a decision of the court relating to the enforcement of an arbitral award. The Working Group considered that a decision of court to grant or refuse leave to enforce a Convention award or Mainland award under Clause 88 and Clause 93 of the draft Bill should be subject to appeal with leave. The Working Group was of the view that the newly added sub-clause in Clause 85 (see issue 18) for appeal with leave against a Court's decision to grant or refuse leave for enforcement should be sufficient. The Administration agreed with this proposal.

Issue 20
Clause 102 - Opt-in provisions that automatically apply under section 101 deemed to apply in subcontracting cases

The proposal

87. Under Clause 102, where all the provisions in Schedule 3 automatically apply to an arbitration agreement under Clause 101 and where the whole or any part of the subject matter of the contract which includes that arbitration agreement is subcontracted to any person under a subcontract which also includes an arbitration agreement, all the provisions in Schedule 3 would also apply to the arbitration agreement in the subcontract.

The submissions

88. The submissions are overwhelmingly against the proposal. Clause 102 is criticised as creating a complicated system under which subcontractors would be deemed to have opted-in to the provisions in Schedule 3. The reasons for objections are threefold. Firstly, it is against party autonomy. Secondly, this is unnecessary given that most of the subcontract situations may be covered by Clause 101. Main contractors may also apply the Schedule 3 provisions to subcontracts if they wish to do so by using Clause 100. Thirdly, there is an arbitrary distinction between the application of the provision to local and overseas subcontractors.

89. The Hong Kong Construction Association however is in support of the retention of Clause 102. It also advocates that there should be no distinction between local and overseas subcontractors.

Decision

90. It was agreed by an overwhelming majority of the members of the Working Group that Clause 102 of the draft Bill should be deleted. The Administration agreed to this suggestion and Clause 102 and cross references to it in the draft Bill were deleted.

Issue 21

Clause 105 – Arbitral tribunal or mediator to be liable for certain acts or omissions
Clause 106 – Appointers and administrators to be liable only for certain acts or omissions

The proposal

91. Under Clause 105, the arbitral tribunal, a mediator and their employee or agent are liable for an act done or omitted to be done in relation to the exercise or performance of the tribunal's arbitral functions or the mediator's functions only if it is proved that the act was done or omitted to be done dishonestly. Clause 106 sets out the liability of persons who appoint an arbitral tribunal or a mediator or who exercise or perform administrative functions in connection with arbitral or mediation proceedings and the liability of their agents or employees for acts done or omitted to be done in the exercise or performance or those functions. Liability arises only if it is proved that an act was done or omitted to be done dishonestly. It is proposed that Clauses 105 and 106 should apply to mediators.

The submissions

92. The general consensus of the respondents is that Clauses 105 and 106 should be extended to mediators as proposed.

Decision

93. The Administration decided to extend Clauses 105 and 106 to mediators and express provisions are provided to give effect to these proposals.

Issue 22
Section 2 of Schedule 3 – Consolidation of arbitrations - power of arbitral tribunals in relation to costs of proceedings

Alternative proposals under section 2(5) of Schedule 3

94. There are two alternative proposals set out in paragraph 7(a) and (b) at page 79 of the Consultation Paper relating to section 2(5) of Schedule 3 of the draft Bill concerning the arbitral tribunal's power to order the payment of costs of the proceedings where the Court orders that two or more arbitral proceedings be heard at the same time or one immediately after another. The Consultation Paper seeks views on these proposals.

95. The first proposal under paragraph 7(a) at page 79 of the Consultation Paper is that the arbitral tribunal should only have the power to make order as to costs in each arbitration and should not have the power to order a party to any of those arbitral proceedings that are heard at the same time or one immediately after another to pay the costs of a party to any other of those proceedings.

96. The second proposal under paragraph 7(b) at page 79 of the Consultation Paper, which has been set out in section 2(5) of Schedule 3 of the draft Bill, is that where the arbitral tribunal is the same tribunal hearing all of those proceedings that have been ordered to be heard at the same time or one immediately after another, the tribunal should be empowered to make orders as to costs in respect of different parties to all those arbitral proceedings heard by it.

The submissions

97. The following respondents are in support of the first proposal under paragraph 7(a):

(1) The Hong Kong Federation of Electrical and Mechanical Contractors,
(2) The Judiciary,
(3) Herbert Smith,
(4) The Hong Kong Law Society,
(5) Pinsent Masons.

98. The respondents' reasons in support of the first proposal under paragraph 7(a) are the same as those set out in paragraph 8 at page

80 of the Consultation Paper.[9]

99. The following respondents are in support of the second proposal under paragraph 7(b):

(1) The Hong Kong Construction Association,
(2) The Hong Kong General Chamber of Commerce,
(3) Pinsent Masons (supports the proposal under paragraph 7(a) although it finds that the proposal under paragraph 7(b) is not unacceptable).

Decision

100. The Working Group considered that the second proposal under paragraph 7(b) as reflected under section 2(5) of Schedule 3 of the draft Bill should be adopted. Where an arbitral tribunal is the same tribunal hearing all of those proceedings that have been ordered to be heard at the same time or one immediately after another, the tribunal should be empowered to make orders as to costs in respect of different parties to all those arbitral proceedings heard by it. The Administration accepted the recommendation of the Working Group that no amendment is required to be made to section 2(5) of Schedule 3 of the draft Bill.

Issue 23
Section 2 of Schedule 3 – Consolidation of arbitrations - power of

[9] Paragraph 8 at page 80 of the Consultation Paper stated: "Arguments, however, have been put forward against the alternative proposal under paragraph 7(b) above:

(a) It would be difficult to make costs orders on the basis of different evidence that may have been adduced in arbitral proceedings that are conducted separately even if they are heard by the same arbitral tribunal.

(b) It would be difficult for an arbitral tribunal which is not constituted by legal practitioners or where the arbitrators are less experienced to make an appropriate decision on orders for costs against different parties involved in separate arbitral proceedings.

(c) It would cause great hardship to a party in a relatively weaker financial position such as a subcontractor if he is required to pay the costs of other parties to other arbitral proceedings in which he is not involved."

Court to appoint same arbitrator to hear arbitral proceedings ordered to be heard at the same time or one immediately after another

The proposal

101. The proposal as set out in paragraphs 9 to 11 on pages 80 and 81 of the Consultation Paper is whether the Court of First Instance should be given the power to appoint the same arbitrator to hear arbitral proceedings that have been ordered by the Court to be heard at the same time or one immediately after another.

The submissions

102. The following respondents are in support of the Court of First Instance being given such power:

(1) Hong Kong Law Society,
(2) The Hong Kong Construction Association,
(3) The Hong Kong General Chamber of Commerce.

103. The reasons given by the respondents in support of the proposal to give the Court the power to appoint the same arbitrator are summarised as follows:

(a) *Hong Kong Law Society*: "We fail to see how consolidation (*sic*) would work unless the different proceedings are heard by the same person, and are therefore in favour of the court being given such power."

(b) *The Hong Kong Construction Association*: "We would support the Court being given power to appoint the same arbitrator to hear proceedings that had been ordered by the Court to be heard at the same time or one immediately after another, subject to any agreement otherwise between the parties, whether in the original arbitration agreement or during the course of the Court proceedings."

(c) *The Hong Kong General Chamber of Commerce*: "We believe that the court should have the power to appoint the same arbitrator to hear arbitral proceedings that have been ordered to be heard at the same time or immediately one after another."

104. The following respondents are against the proposal that the Court of First Instance should be given such power:

(1) Mr Peter Caldwell,
(2) Pinsent Masons (unless with agreement of parties),
(3) The Hong Kong Federation of Electrical and Mechanical Contractors,
(4) The Judiciary (unless with agreement of parties),
(5) The Urban Renewal Authority.

105. The reasons given by the respondents against the proposal to give the Court the power to appoint the same arbitrator to hear arbitral proceedings that have been ordered by the Court to be heard at the same time or one immediately after another are summarised as follows:

(a) *Mr Caldwell*: "I am of the view that this should never happen. Unless the arbitrations are consolidated, they should be heard by different arbitrators. A typical scenario is that A and B have a contract and B and C have a related contract. B is common to both arbitrations and is privy to evidence in both arbitrations. The arbitrator is also aware of all of the evidence but A and C only see part of the picture. This almost inevitably leads to problems."

(b) *Pinsent Masons*: "We consider that party autonomy ought to prevail in these circumstances given that it will only arise in circumstances in which the court has decided that full consolidation is not appropriate."

(c) *The Judiciary*: "Although it would be convenient, a court power to appoint the same arbitrator to hear arbitral

proceedings ordered to be heard at the same time or one immediately after another may violate the parties' choice in the appointment of an arbitrator. The court should perhaps only be able to exercise such a power if there is agreement among all relevant parties."

(d) *The Hong Kong Federation of Electrical and Mechanical Contractors*: "We favour the alternative recommendation in paragraph 11 for the very reasons stated in that paragraph. We submit that sense of ownership in the choice of arbitrator is very important. For arbitral proceedings involving construction subcontracts(s), it is likely that the arbitrator appointed for the proceedings between the Employer and the Main Contractor will be chosen by the Court for the consolidated proceedings involving subcontractor(s). This concern will be more pertinent if only the "President of the Hong Kong Construction Association" but not the "President of the Hong Kong Federation of Electrical & Mechanical Contractors Limited" is added to the list of persons and organizations set out in Rule 3(2) of the Arbitration (Appointment of Arbitrators and Umpires) Rules."

Decision

106. The Working Group considered that it is important to have consistency of decisions in arbitral proceedings that have been ordered to be heard at the same time or one immediately after another where common issues of facts and law are likely to be involved.

107. It was recommended by the Working Group that the Court of First Instance should be given the power to appoint the same arbitrator to hear arbitral proceedings that have been ordered by the Court to be heard at the same time or one immediately after another. The Administration agreed to the recommendations of the Working Group and section 2 of Schedule 3 of the draft Bill was amended accordingly to empower the Court to appoint the same arbitrator for those proceedings.

Issue 24

Section 37 of Schedule 5 – Appointment to the Advisory Board under Rule 3(2) of the Arbitration (Appointment of Arbitrators and Umpires) Rules

The proposal

108. A proposal has been made under section 37 of Schedule 5 of the draft Bill to add the "President of the Hong Kong Construction Association" to the list of persons and organizations set out in Rule 3(2) of the Arbitration (Appointment of Arbitrators and Umpires) Rules (Cap. 341 sub. leg. B).

The submissions

109. The Hong Kong Law Society is against the proposal.

110. The Hong Kong Federation of Electrical and Mechanical Contractors Limited submits that in addition the "President of the Hong Kong Federation of Electrical & Mechanical Contractors Limited" should be added for arbitration references involving electrical and mechanical subcontractors.

Decision

111. The Working Group could not come to a consensus on this item. Views have been expressed that the reason for adding the President of the Hong Kong Construction Association was to balance the professional interests represented at the Advisory Board. The Administration decided that no change should be made to section 37 of Schedule 5. This would mean the addition of the President of the Hong Kong Construction Association to the Advisory Board.

Other issues

112. The following submissions from the respondents were also received:-

(1) The International Chamber of Commerce – Hong Kong, China (ICC) – proposes that the draft Bill should contain provisions for determining the governing law of arbitration an agreement in the absence of an express choice of governing law.

(2) ICC (on Clause 26) – proposes to dispense with the Model Law provision (Article 13) allowing the Arbitral Tribunal to first hear any challenge against an arbitrator. In its view, a challenge against an arbitrator should go straight to the court.

(3) ICC(HK) (on Clause 49)– proposes to replace the reference to "place of arbitration" in Article 20(1) with "seat of arbitration" or "judicial seat of arbitration".

(4) Law Society (on Clauses 75 and 76) – proposes that the draft Bill should set out the basis for assessment of costs.

(5) Law Society (on Clause 75) – opposes the removal of the solicitor's lien in section 2GJ(6)[10] of Cap. 341. This provision is applicable only to local solicitors.

[10] This section applies section 70 of the Legal Practitioners Ordinance (Cap. 159) to arbitration proceedings. Section 70 of Cap. 159 empowers a court before which proceedings are being heard or are pending to declare a solicitor employed in connection with the proceedings to be entitled to a charge on property recovered or preserved in the proceedings.

113. The Working Group considered that submissions (1) to (3) represented departure from the Model Law and did not accept them. As regards submission (4), the Working Group considered that it was not necessary for the draft Bill to provide for the basis for assessment of costs as the arbitral tribunal and the court should be given wide discretion to decide on costs. The Working Group rejected submission (5) for the reasons that section 2GJ(6) of Cap. 341 is applicable only to local solicitors and no similar provision can be found in the arbitration laws of other jurisdictions. The Administration endorsed the above views of the Working Group.

Department of Justice
September 2009

Annex A

Membership of the Departmental Working Group to implement the Report of the Committee on Hong Kong Arbitration Law

Mr Ian Wingfield (Chairman)
Solicitor General
Department of Justice

Mr Robert Allcock (from September 2005 to January 2007)
Former Solicitor General
Department of Justice

Mr Stephen Wong (from September 2005 to March 2007)
Deputy Solicitor General
Department of Justice

Mr Frank Poon
Acting Deputy Solicitor General
Department of Justice

Mr Robin Peard
Senior Consultant
Johnson Stokes & Master
Hong Kong Institute of Arbitrators

Mr Raymond Leung
President
Hong Kong Institute of Arbitrators

Mr Samuel Wong (from September 2005 to May 2006)
Past President of Hong Kong Institute of Arbitrators

Ms Sylvia Siu, JP
Past President of Hong Kong Institute of Arbitrators

Mr Glenn Haley
Deacons
Immediate Past Chairman of
the Chartered Institute of Arbitrators (East Asia Branch)

Mr Anthony Houghton
Barrister at law of Des Voeux Chambers
Former Chairman of the East Asia Branch of the Chartered Institute of Arbitrators

Mr Peter Caldwell
Council Member
The Hong Kong International Arbitration Centre

Mr Dean Lewis
Pinsent Masons
Legal Adviser to the Hong Kong Construction Association

Mr Andrew Jeffries
Council Member
The Law Society of Hong Kong

Mr Russell Coleman
Senior Counsel

Mr Edward Lee
Assistant Secretary (Works Policy) 2
Development Bureau (Works Branch)

Ms Phyllis Ko
Senior Assistant Law Draftsman
Department of Justice

Mr Ken Somerville
Deputy Legal Advisor (Works)
Development Bureau
Legal Advisory Division (Works)

Miss Amy Chan Wai Cheung (Secretary)
Senior Government Counsel
Department of Justice

Mr Thomas Leung (Secretary, from September 2005 to May 2006)
Senior Government Counsel
Department of Justice

Mr Bernard Yue (Secretary, from May 2007 to July 2007)
Government Counsel
Department of Justice

Annex B

Distribution List for Consultation Paper on Reform of the Law of Arbitration and Draft Arbitration Bill

1.	Law Society of Hong Kong
2.	Hong Kong Bar Association
3.	Judiciary
4.	Chartered Institute of Arbitrators (East Asia Branch)
5.	Hong Kong International Arbitration Centre
6.	Hong Kong Institute of Arbitrators
7.	Hong Kong Institution of Engineers
8.	Hong Kong Institute of Architects
9.	Hong Kong Institute of Surveyors
10.	Hong Kong Shipowners Association
11.	Hong Kong Society of Accountants
12.	Securities and Futures Commission
13.	Hong Kong Federation of Insurers
14.	Hong Kong General Chamber of Commerce
15.	The Chinese General Chamber of Commerce
16.	American Chamber of Commerce
17.	British Chamber of Commerce
18.	Swedish Chamber of Commerce
19.	Ms Mary Thompson
20.	International Chamber of Commerce
21.	Professor Tercier International Chamber of Commerce Court of Arbitration Jan Paulsson, President London Court of International Arbitration
22.	Mr Jason Fry, Secretary General International Court of Arbitration of the International Chamber of Commerce
23.	The Hong Kong Construction Association Limited
24.	Hong Kong Federation of Women Lawyers
25.	Hong Kong Young Legal Professionals Association Ltd
26.	Hong Kong Corporate Counsel Association
27.	Hong Kong Construction Association

28.	The Hong Kong Federation of Electrical and Mechanical Contractors Ltd City University of Hong Kong
29.	Mr Stephen Mau Lecturer, Department of Building and Real Estate The Hong Kong Polytechnic University
30.	Works Branch of Development Bureau [Responsible for circulation of the Paper to and coordination of reply from: Architectural Services Department, Civil Engineering and Development Department, Drainage Services Department, Electrical and Mechanical Services Department, Highways Department, Water Supplies Department]
31.	Buildings Department through Planning and Lands Branch of Development Bureau
32.	Transport Department through Transport and Housing Bureau
33.	Environmental Protection Department through Environment Bureau
34.	Agricultural, Fisheries and Conservation Department through Environment Bureau
35.	Home Affairs Department through Home Affairs Bureau
36.	Leisure and Cultural Services Department through Home Affairs Bureau
37.	Housing Department through the Housing Authority
38.	Hospital Authority
39.	Urban Renewal Authority
40.	Housing Society
41.	MTRC (Hong Kong Railway Corporation Limited)
42.	China Light and Power
43.	Hong Kong Electric
44.	PCCW Limited
45.	Hutchison Whampoa Limited
46.	The Hong Kong and China Gas Company Limited
47.	Commerce and Economic Development Bureau
48.	Office of the Commissioner of Insurance through the Financial Services and the Treasury Bureau

49.	Labour Department through Labour and Welfare Bureau
50.	Civil Aviation Department
51.	Department of Health through Food and Health Bureau
52.	Intellectual Property Department
53.	Lands Department
54.	Marine Department
55.	Official Receiver's Office
56.	Office of the Telecommunications Authority
57.	Broadcasting Authority
58.	Hong Kong Monetary Authority
59.	Mandatory Provident Fund Schemes Authority
60.	Law Faculty of the University of Hong Kong
61.	Law Faculty of the Chinese University of Hong Kong
62.	Law Faculty of the City University of Hong Kong
63.	Civil Division, Law Drafting Division, International Law Division, Prosecutions Division of DOJ, Secretary of Justice's Office, Library of DOJ
64.	The Law Reform Commission of Hong Kong

Annex C

List of respondents who gave comments on the Consultation Paper on Reform of the Law of Arbitration and Draft Arbitration Bill

1.	Legislative Council Secretariat Legal Service Division Legal Adviser (Jimmy Ma)
2.	Robin Peard
3.	Marine Department
4.	Herbert Smith
5.	Agriculture, Fisheries and Conservation Department
6.	The Hong Kong Federation of Insurers
7.	The Hong Kong Institution of Engineers
8.	The Hong Kong Federation of Electrical and Mechanical Contractors Limited
9.	Mandatory Provident Fund Scheme Authority
10.	Department of Health
11.	Hospital Authority
12.	Hong Kong Construction Association
13.	Buildings Department
14.	Doris Lo, D of J
15.	Environmental Protection Department
16.	Lands Department
17.	Commissioner of Insurance (Insurance Authority)
18.	Urban Renewal Authority
19.	Home Affairs Department
20.	Civil Aviation Department
21.	Samuel Wong Chat Chor
22.	The Law Society of Hong Kong
23.	Commerce and Economic Development Bureau
24.	Anderson Chan Che Bun, Barrister
25.	The Hong Kong Institute of Surveyors
26.	Housing Department

27.	Ian Cocking & John Eaton
28.	Home Affairs Bureau
29.	Hong Kong Institute of Arbitrators
30.	Lovells
31.	Peter Scott Caldwell
32.	Leisure and Cultural Services Department
33.	Hong Kong Monetary Authority
34.	Labour and Welfare Bureau & Labour Department
35.	Hong Kong General Chamber of Commerce
36.	Hong Kong Bar Association
37.	International Chamber of Commerce – Hong Kong China
38.	Hong Kong International Arbitration Centre
39.	Chartered Institute of Arbitrators (East Asia Branch)
40.	The Hong Kong Institute of Architects
41.	Pinsent Masons
42.	Judiciary

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