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6 October 2010

Miss Betty Ma  
Clerk to Bills Committee  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

via Mr Frank Poon, SG(Ag.)

Dear Betty,

**Bills Committee on Arbitration Bill ("the Bill")  
Issues Discussed at the Meeting Held on 20 September 2010**

At the meeting of the Bills Committee of the Legislative Council held on 20 September 2010, Members considered the revised draft Committee Stage Amendments ("draft CSAs") set out in LC Paper No. CB(2)2086/09-10(01). Members also made suggestions on the drafting of the Chinese version of Clause 60(5) of the Bill. The Administration has carefully considered the views expressed at the meeting. In this letter, we would like to set out the Administration's response to this issue as well as to set out a newly proposed amendment to the Chinese term "委托" in Clause 24(1) and Article 11(4)(c) of the UNCITRAL Model Law in Schedule 1 to the Bill.

**Clause 60(5) of the Bill**

2. Members made various suggestions at the meeting which sought to further improve the Chinese version of Clause 60(5) of the Bill proposed in the draft CSAs. After discussion at the meeting, the following

proposal made by the Assistant Legal Advisor (ALA's version) was found agreeable subject to any fine-tuning that the Administration considered appropriate -

“(5) 原訟法庭根據本條作出的命令，可規定該命令在仲裁庭作出使該命令完全或局部停止有效的命令時，按該仲裁庭命令完全或局部停止有效。”

3. After considering the ALA's version and having regard to the discussion at the meeting, the Administration proposes to adopt the ALA's version with slight modification as follows to make it more concise without affecting the legal effect of the provision –

“(5) 原訟法庭根據本條作出的命令，可規定該命令在仲裁庭作出使該命令完全或局部停止有效的命令時，完全或局部如此停止有效。”

#### **Clause 24(1) and Schedule 1 to the Bill**

4. The Administration also proposes to further add a minor technical amendment to the draft CSAs, i.e. by deleting the Chinese term "委托" in Clause 24(1) and Article 11(4)(c) of the UNCITRAL Model Law in Schedule 1 to the Bill and substituting "委託".

#### **The suggested way forward**

5. A complete set of the further revised draft CSAs, in both English and Chinese, which the Administration proposes to move in connection with the resumption of the Second Reading debate of the Bill is attached as **Annex A**. We would be grateful if you could let us know whether the further revised draft CSAs attached as **Annex A** hereto are acceptable to Members of the Bills Committee. Subject to the views of Members, our intention is to resume the Second Reading debate of the Bill on 10 November 2010.

Yours sincerely,



(Lee Tin Yan)

Senior Government Counsel  
Legal Policy Division

ARBITRATION BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Justice

<u>Clause</u>	<u>Amendment Proposed</u>
2(1)	(a) In the definition of “interim measure”, by deleting “保護” and substituting “保全”. (b) In the definition of “respondent”, by deleting “應訴” and substituting “被申請”.
8(2)	By adding “(other than section 2(5))” after “section 2”.
13(3)	By adding “23(3),” after “section”.
18(2)	By deleting paragraph (a) and substituting – “(a) if the publication, disclosure or communication is made – (i) to protect or pursue a legal right or interest of the party; or (ii) to enforce or challenge the award referred to in that subsection, in legal proceedings before a court or other judicial

authority in or outside Hong Kong;”.

- 20(3) By deleting “Subsections (1) and (2) have” and substituting “Subsection (1) has”.
- 24(1) In the Chinese text –  
(a) by deleting “委托” and substituting “委託”;  
(b) by deleting “交托” and substituting “交託”.
- 32(1)(a) By deleting “written agreement” and substituting “arbitration agreement”.
- 32(3) By deleting “written agreement” where it twice appears and substituting “arbitration agreement”.
- 53(3) In the Chinese text, by deleting “最終命令” and substituting “最後敦促令”.
- 53(4) In the Chinese text, by deleting “最終命令” where it twice appears and substituting “最後敦促令”.
- 54(2) By deleting paragraph (a) and substituting –  
“(a) the arbitral tribunal may appoint assessors to assist it on technical matters, and may allow any of those assessors to attend the proceedings; and”.
- 54(2)(b) By deleting “experts, legal advisers or”.

- 55 (a) By deleting subclause (3).
- (b) By adding –
- “(6) Section 81 (Warrant or order to bring up prisoner to give evidence) of the Evidence Ordinance (Cap. 8) applies as if a reference to any proceedings, either criminal or civil, in that section were any arbitral proceedings.”.
- 60 By deleting subclause (5) and substituting –
- “(5) An order made by the Court under this section may provide for the cessation of that order, in whole or in part, when the arbitral tribunal makes an order for the cessation.”.
- 75 By deleting subclause (1) and substituting –
- “(1) Without affecting section 74(1) and (2), if the parties have agreed that the costs of arbitral proceedings are to be taxed by the court, then unless the arbitral tribunal otherwise directs in an award, the award is deemed to have included the tribunal’s directions that the costs (other than the fees and expenses of the tribunal) are –
- (a) to be taxed by the court; and
- (b) to be paid on any basis on which the court can award costs in civil proceedings before the court.”.
- 77(3)(b)(ii) By deleting “expert, legal adviser or”.
- 86(2)(a) By adding “under the law of Hong Kong” after “arbitration”.

90(1) By adding “in Council” before “may, by order”.

98 By adding “under the repealed Ordinance as then in force” after “(2 of 2000)”.

New By adding –

**“100A. Opt-in provisions that automatically apply under section 100 deemed to apply to Hong Kong construction subcontracting cases**

- (1) If–
- (a) all the provisions in Schedule 2 apply under section 100(a) or (b) to an arbitration agreement, in any form referred to in section 19, included in a construction contract;
  - (b) the whole or any part of the construction operations to be carried out under the construction contract (“relevant operation”) is subcontracted to any person under another construction contract (“subcontract”); and
  - (c) that subcontract also includes an arbitration agreement (“subcontracting parties’ arbitration agreement”) in any form referred to in section 19,

then all the provisions in Schedule 2 also apply, subject to section 101, to the subcontracting parties’ arbitration agreement.

(2) Unless the subcontracting parties' arbitration agreement is an arbitration agreement referred to in section 100(a) or (b), subsection (1) does not apply if –

- (a) the person to whom the whole or any part of the relevant operation is subcontracted under the subcontract is –
  - (i) a natural person who is ordinarily resident outside Hong Kong;
  - (ii) a body corporate –
    - (A) incorporated under the law of a place outside Hong Kong; or
    - (B) the central management and control of which is exercised outside Hong Kong; or
  - (iii) an association –
    - (A) formed under the law of a place outside Hong Kong; or
    - (B) the central management and control of which is exercised outside Hong Kong;
- (b) the person to whom the whole or any part of the relevant operation is subcontracted under the subcontract has no place of business in Hong Kong; or
- (c) a substantial part of the relevant operation which is subcontracted under the subcontract is to be performed outside

Hong Kong.

- (3) If –
- (a) all the provisions in Schedule 2 apply to a subcontracting parties' arbitration agreement under subsection (1);
  - (b) the whole or any part of the relevant operation that is subcontracted under the subcontract is further subcontracted to another person under a further construction contract (“further subcontract”); and
  - (c) that further subcontract also includes an arbitration agreement in any form referred to in section 19,

subsection (1) has effect subject to subsection (2), and all the provisions in Schedule 2 apply, subject to section 101, to the arbitration agreement so included in that further subcontract as if that further subcontract were a subcontract under subsection (1).

- (4) In this section –
- “construction contract” (建造合約) has the meaning given to it by section 2(1) of the Construction Industry Council Ordinance (Cap. 587);
  - “construction operations” (建造工程) has the meaning given to it by Schedule 1 to the Construction Industry Council Ordinance (Cap. 587).”.



- 100A do”.
- 101(b)(i) By adding “or 100A” after “section 100”.
- 103 By adding –  
“(3) In this section, “mediator” (調解員) means a mediator appointed under section 32 or referred to in section 33.”.
- 104 By deleting subclause (5) and substituting –  
“(5) In this section –  
“appoint” (委任) includes nominate and designate;  
“mediator” (調解員) has the same meaning as in section 103,  
and “mediation proceedings” (調解程序) is to be construed accordingly.”.
- Schedule 1,  
Article 1(4)(b) In the Chinese text, by deleting “爲准” and substituting “爲準”.
- Schedule 1,  
Article 11(4)(c) In the Chinese text, by deleting “委托” and substituting “委託”.
- Schedule 1,  
Article 11(5) In the Chinese text, by deleting “交托” and substituting “交託”.
- Schedule 2 By adding “, 100A” before “& 101]”.
- Schedule 2,  
section 7(9) By adding “, direction” after “An order”.
- Schedule 4 By adding –

**“Arbitration (Parties to New York Convention) Order**

**34A. Schedule amended**

(1) The Schedule to the Arbitration (Parties to New York Convention) Order (Cap. 341 sub. leg. A) is amended by repealing “Bosnia-Herzegovina” and substituting “Bosnia and Herzegovina”.

(2) The Schedule is amended by repealing “Kazakstan” and substituting “Kazakhstan”.

(3) The Schedule is amended by repealing “Korea, Republic of” and substituting “Republic of Korea”.

(4) The Schedule is amended by repealing “Macedonia, the former Yugoslav Republic of” and substituting “The former Yugoslav Republic of Macedonia”.

(5) The Schedule is amended by repealing “Netherlands (including Netherlands Antilles and Surinam)” and substituting “Netherlands (including Netherlands Antilles)”.

(6) The Schedule is amended by repealing “Slovak Republic” and substituting “Slovakia”.

(7) The Schedule is amended, in the English text, by repealing “Tanzania, United Republic of” and substituting “United Republic of Tanzania”.

(8) The Schedule is amended by repealing “United Kingdom (including Belize, Bermuda, Cayman Islands, Gibraltar, Guernsey and Isle of Man)” and substituting “United Kingdom of Great Britain and Northern Ireland (including Bailiwick of Jersey, Cayman Islands, Bermuda, Gibraltar, Guernsey and Isle of Man)”.

(9) The Schedule is amended by repealing “Venezuela” and substituting “Venezuela (Bolivarian Republic of)”.

(10) The Schedule is amended, in the English text, by repealing “Vietnam” and substituting “Viet Nam”.

(11) The Schedule is amended by repealing “Yugoslavia”.

(12) The Schedule is amended, in the Chinese text, by repealing “丹麥(包括法羅群島及格陵蘭)” and substituting “丹麥(包括法羅群島及格陵蘭島)”.

(13) The Schedule is amended, in the Chinese text, by repealing “文萊” and substituting “文萊達魯薩蘭國”.

(14) The Schedule is amended, in the Chinese text, by repealing “尼日尼亞” and substituting “尼日利亞”.

(15) The Schedule is amended, in the Chinese text, by repealing “吉爾吉斯” and substituting “吉爾吉斯斯坦”.

(16) The Schedule is amended, in the Chinese text, by repealing “多米尼加” and substituting “多米尼克”.

(17) The Schedule is amended, in the Chinese text, by repealing “安提瓜及巴布達” and substituting “安提瓜和巴布達”.

(18) The Schedule is amended, in the Chinese text, by repealing “沙地阿拉伯” and substituting “沙特阿拉伯”.

(19) The Schedule is amended, in the Chinese text, by repealing “孟加拉” and substituting “孟加拉國”.

(20) The Schedule is amended, in the Chinese text, in the entry relating to “法國”, by adding “所有” before “領土”.

(21) The Schedule is amended, in the Chinese text, in

the entry relating to “美利堅合眾國”, by adding “所有” before “領土”.

(22) The Schedule is amended, in the Chinese text, by repealing “特立尼達及多巴哥” and substituting “特立尼達和多巴哥”.

(23) The Schedule is amended, in the Chinese text, in the entry relating to “澳大利亞”, by adding “，巴布亞新畿內亞除外” after “領土”.

(24) The Schedule is amended by adding –

“Afghanistan

Albania

Azerbaijan

Bahamas

Brazil

Cook Islands

Dominican Republic

Gabon

Honduras

Iceland

Iran (Islamic Republic of)

Jamaica

Lao People’s Democratic Republic

Lebanon

Liberia

Malta

Marshall Islands

Republic of Moldova

Montenegro

Mozambique  
Nepal  
Nicaragua  
Oman  
Qatar  
Rwanda  
Saint Vincent and the Grenadines  
Serbia  
United Arab Emirates  
Zambia”.”.

Schedule 4

By adding –

“38A. **Decision by HKIAC**

Rule 10(1) is amended by repealing “6(2)” and substituting “8(2)”.”.

Schedule 4,  
section 39

By adding before subsection (1) –

“(1A) The Schedule is amended, in the English text, by repealing “[ss. 6 & 8]” and substituting “[rules 6 & 8]”.”.

Schedule 4,  
section 56(a)

By deleting “55(2) and (3)” and substituting “55(2) and (6)”.