

律政司  
法律政策科  
香港金鐘道66號  
金鐘道政府合署高座1樓  
圖文傳真：852-2180 9928  
網址：www.doj.gov.hk



DEPARTMENT OF JUSTICE  
Legal Policy Division  
1/F., High Block  
Queensway Government Offices  
66 Queensway, Hong Kong  
Fax : 852-2180 9928  
Web Site : www.doj.gov.hk

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17 November 2009

Mr Kelvin Lee,  
Assistant Legal Adviser  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

via Mr Frank Poon, DSG(G)

*25,  
17/11*

Dear Mr Lee,

**Re: Arbitration Bill**

Thank you for your letter dated 6 November 2009.

The Arbitration Bill, as drafted, has set out in its main body those provisions of the UNCITRAL Model Law that are given the force of law in Hong Kong (“applicable Model Law provisions”). Those applicable Model Law provisions are subject to such modification and adaptation as set out in the Bill.

Accordingly, the Chinese version of the applicable Model Law provisions has been set out in the Chinese text of the Bill in quotation. However, the Chinese renditions adopted therein of a number of English expressions are different from the Chinese renditions of the same English expressions that are commonly used in our local legislation.

For example, the English term “appoint” is rendered as “指定” in the Chinese text of the applicable Model Law provisions (see Article 11(3) of the UNCITRAL Model Law set out in clause 24(1) of the Bill) while it is rendered as “委任” in clauses 24(2) and (3) of the Bill. The Chinese expression “委任” is the term commonly used in our local legislation for “appoint” whereas “指定” is usually the Chinese equivalent of “designate”. Therefore in preparing the Chinese text of the modifying and adapting provisions and other provisions of the Bill, those Chinese renditions commonly used in local legislation have been followed. This is to ensure consistency in the construction of similar expressions in our local legislation.

Clause 2(5) of the Bill is 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 are to be treated as identical in effect. This provision therefore has a wide application throughout the Bill.

The difference between the Chinese rendition of the English term “challenge” adopted in clause 26(3) of the Bill (i.e. “質疑”) and in Article 13(2) of the UNCITRAL Model Law set out in clause 26(1) of the Bill (i.e. “提出迴避申請”), as pointed out in your letter, is another example of the situation to which the interpretation provision of clause 2(5) of the Bill seeks to address.

Yours sincerely,



( LEE Tin Yan )

Senior Government Counsel  
Legal Policy Division