

**立法會**  
***Legislative Council***

Ref : CB4/BC/2/12

LC Paper No. CB(4)739/12-13

(These minutes have been seen  
by the Administration)

**Bills Committee on Arbitration (Amendment) Bill 2013**

**Minutes of the first meeting  
held on Friday, 10 May 2013, at 5:30 pm  
in Conference Room 3 of the Legislative Council Complex**

**Members present** : Dr Hon Priscilla LEUNG Mei-fun (Chairman)  
Hon TAM Yiu-chung, GBS, JP  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon Dennis KWOK

**Public Officers attending** : Item II  
  
Mr Peter WONG  
Deputy Solicitor General  
Department of Justice  
  
Mr Sunny CHAN  
Senior Assistant Law Draftsman  
Department of Justice  
  
Ms Alice CHOY  
Senior Government Counsel  
Department of Justice  
  
Miss Cindy CHEUK  
Government Counsel  
Department of Justice

**Clerk in attendance** : Miss Mary SO  
Chief Council Secretary (4) 2

**Staff in attendance** : Ms Wendy KAN  
Assistant Legal Adviser 6

Ms Cindy CHAN  
Senior Council Secretary (4)2

Ms Sandy SZETO  
Administrative Assistant I (4)2

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Action

**I. Election of Chairman**

Mr TAM Yiu-chung, the member present who had the highest precedence, presided at the meeting and called for nominations for the chairmanship of the Bills Committee. Mr Dennis KWOK nominated Dr Priscilla LEUNG. Mr Abraham SHEK seconded the nomination. Dr Priscilla LEUNG accepted the nomination. As there was no other nomination, Mr TAM Yiu-chung declared that Dr Priscilla LEUNG was elected Chairman of the Bills Committee.

2. The Chairman said that Mr Alan LEONG notified the Secretariat in writing on 9 May 2013 of his withdrawal from the membership of the Bills Committee.

**II. Meeting with the Administration**

(LC Paper Nos. CB(4) 634/12-13(02)-(04))

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

**Admin**

4. Members noted from the Administration's reply dated 26 April 2013 to the Legal Adviser to the Bills Committee's letter dated 24 April 2013 [LC Paper No. CB(4)634/12-13(03)] that the Administration agreed to:

- (a) amend section 5(2) of the Arbitration Ordinance (Cap. 609) ("the Ordinance") to make it clear that the proposed new Part 3A of the Ordinance on enforcement of emergency relief would also apply to an arbitration, if the place of arbitration is outside Hong Kong;
- (b) amend the "現" referred to in "恢復現狀" of the Chinese text of the proposed new section 22B(2)(a) of the Ordinance to "原"; and

- (c) amend the Chinese rendition in clause 20 of the Bill by replacing the "及" referred to in "聖多美及普林西比島" with "和" and deleting the word "島".

Clause-by-clause examination of the Bill

Admin

5. At the request of the Chairman, the Administration agreed to consider replacing "倚據" referred to in the Chinese text of the proposed section 87(2) of the Ordinance with a more commonly used expression.

Admin

6. Members noted that the Administration intended to move Committee Stage amendment ("CSA") to add "Myanmar" to the Schedule to the Arbitration (Parties to New York Convention) Order (Cap. 609 sub. leg. A), having regard to the fact that Myanmar had recently acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 ("the New York Convention") on 16 April 2013.

7. The Administration advised that the coming into operation of the Bill would be by phase. The first phase would comprise the coming into operation of the clauses on the emergency arbitrator procedure to tie in with that of the arbitration rules of the Hong Kong International Arbitration Centre, as well as clause 7 to amend section 75 of the Ordinance to provide that if the parties to arbitration had agreed that the costs of the arbitral proceedings were to be taxed by the court, the costs were to be taxed on a "party and party" basis under rule 28(2) of Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A) and the Schedule to Cap. 609 sub. leg. A. The second phase would comprise the coming into operation of the remaining clauses to implement the Arrangement Concerning Reciprocal Recognition and Enforcement of Arbitral Awards between the Hong Kong Special Administrative Region and the Macao Special Administrative Region ("the Arrangement") concluded in January 2013, after discussion with the Macao authorities on the timing to implement the Arrangement.

8. As the Bills Committee had completed clause-by-clause examination of the Bill, the Chairman said that the Administration's response to the issue set out in paragraph 5 above and the proposed CSAs to be moved by the Administration would be circulated to members for consideration. If there was no request for the Bills Committee to hold a further meeting to discuss the Administration's response and the proposed CSAs, the Bills Committee would report its deliberations to the House Committee. Members agreed.

### **III. Any other business**

9. There being no other business, the meeting ended at 6:15 pm.

Council Business Division 4  
Legislative Council Secretariat  
3 June 2013

**Proceedings of the first meeting of the  
Bills Committee on Arbitration (Amendment) Bill 2013  
on Friday, 10 May 2013, at 5:30 pm  
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject	Action required
000435 - 000530	Mr TAM Yiu-chung Mr Dennis KWOK Mr Abraham SHEK Dr Priscilla LEUNG	Election of Chairman	
000531 - 001600	Chairman Administration Mr TAM Yiu-chung Mr Dennis KWOK	<p>Briefing by the Administration on the Bill</p> <p>Mr TAM Yiu-chung asked the following questions -</p> <p>(a) why the Arrangement Concerning Reciprocal Recognition and Enforcement of Arbitral Awards between the Hong Kong Special Administrative Region and the Macao Special Administrative Region ("the Arrangement") was concluded in January 2013, which was years after the similar arrangement between Hong Kong and the Mainland was concluded in 1999; and</p> <p>(b) whether consideration would be given to implementing a similar arrangement on reciprocal recognition and enforcement of arbitral awards between Hong Kong and Taiwan.</p> <p>The Administration responded that -</p> <p>(a) due to the increasing economic interflow between Hong Kong and the Mainland, priority was accorded to establishing an arrangement on reciprocal recognition and enforcement of arbitral awards between Hong Kong and the Mainland after reunification;</p> <p>(b) although presently there existed no arrangement between Hong Kong and Macao on reciprocal enforcement of arbitral awards, a party might bring an action at common law to enforce a Macao arbitral award in a Hong Kong court. Alternatively, enforcement in Hong Kong of a Macao award might be summarily enforced under section 84 of the Arbitration Ordinance (Cap. 609) ("the Ordinance"). The enactment of the Bill was a step forward to foster reciprocal recognition and enforcement of arbitral awards between Hong Kong and Macao and to add certainty to the enforceability of Macao arbitral awards in Hong Kong and vice versa; and</p> <p>(c) it was the aim of the Administration to forge closer co-operation on arbitration in the</p>	

Time marker	Speaker	Subject	Action required
		<p>Greater China Region. After the enactment of the Bill to implement the Arrangement, the Administration would next explore actively the possibility of establishing an arrangement similar to the Arrangement between Hong Kong and Taiwan.</p> <p>Noting that Taiwan passed in 1992 a statute to recognize and enforce in Taiwan the Mainland arbitral awards, and the Mainland reciprocated in 1998 by issuing regulations permitting recognition and enforcement of Taiwan arbitral awards in the Mainland, the Chairman called on the Administration to expedite the implementation of similar arrangement between Hong Kong and Taiwan.</p> <p>Mr Dennis KWOK asked, apart from enacting the Bill, what other measures would be taken to promote Hong Kong as a regional arbitration hub.</p> <p>The Administration responded that it would –</p> <p>(a) facilitate the establishment and growth of world class arbitration organizations in Hong Kong; and</p> <p>(b) promote Hong Kong's arbitration service in the Mainland and other countries.</p>	
<b>Clause-by-clause examination of the Bill</b>			
001601 – 001620	Chairman Administration	<u>Clause 1 - Short title and commencement</u>	
001621 - 003245	Chairman Administration	<p><u>Clause 2 - Arbitration Ordinance amended</u></p> <p><u>Clause 3 - Section 2 amended (interpretation)</u></p> <p><u>Clause 4 - Section 5 amended (arbitrations to which this Ordinance applies)</u></p> <p>Members noted that the Administration agreed to amend section 5(2) of the Arbitration Ordinance (Cap. 609) to make it clear that the proposed new Part 3A of the Ordinance on enforcement of emergency relief would also apply to an arbitration, if the place of arbitration is outside Hong Kong.</p> <p><u>Clause 5 - Part 3A added</u></p> <p>Members noted that the Administration agreed to amend the "現" referred to in "恢復現狀" of the Chinese text of the proposed new section 22B(2)(a) of the Ordinance to "原".</p> <p><u>Clause 6 - Section 61 amended (enforcement of orders and directions of arbitral tribunal)</u></p> <p><u>Clause 7 - Section 75 amended (taxation of costs of</u></p>	<p><b>Admin</b> (paragraph 4(a) of the minutes)</p> <p><b>Admin</b> (paragraph 4(b) of the minutes)</p>

Time marker	Speaker	Subject	Action required
		<p><u>arbitral proceedings (other than fees and expenses of arbitral tribunal))</u></p> <p><u>Clause 8 - Section 84 amended (enforcement of arbitral awards)</u></p> <p><u>Clause 9 - Section 85 amended (evidence to be produced for enforcement of arbitral awards)</u></p> <p><u>Clause 10 - Section 86 amended (refusal of enforcement of arbitral awards)</u></p> <p><u>Clause 11 - Section 87 amended (enforcement of Convention awards)</u></p> <p>Members noted that at the request of the Chairman, the Administration agreed to consider replacing "倚據" referred to in the Chinese text of the proposed section 87(2) of the Ordinance with a more commonly used expression.</p> <p><u>Clause 12 - Section 88 amended (evidence to be produced for enforcement of Convention awards)</u></p> <p><u>Clause 13 - Section 89 amended (refusal of enforcement of Convention awards)</u></p> <p><u>Clause 14 - Section 92 amended (enforcement of Mainland awards)</u></p> <p><u>Clause 15 - Section 93 amended (restrictions on enforcement of Mainland awards)</u></p> <p><u>Clause 16 - Section 94 amended (evidence to be produced for enforcement of Mainland awards)</u></p> <p><u>Clause 17 - Section 95 amended (refusal of enforcement of Mainland awards)</u></p> <p><u>Clause 18 - Part 10, Division 4 added</u></p>	<p><b>Admin</b> (paragraph 5 of the minutes)</p>
003246 - 003420	Chairman Administration	<p><u>Clause 19 - Arbitration (Parties to New York Convention) Order amended</u></p> <p><u>Clause 20 - Scheduled amended</u></p> <p>Members noted that the Administration intended to move Committee Stage amendment to add "Myanmar" to the Schedule to the Arbitration (Parties to New York Convention) Order (Cap. 609 sub. leg. A), having regard to the fact that Myanmar had recently acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 on 16 April 2013.</p> <p>Members noted that the Administration agreed to amend the Chinese rendition in clause 20 of the Bill by replacing the "及" referred to in "聖多美及普林西比島" with "和" and deleting the word "島".</p>	<p><b>Admin</b> (paragraph 6 of the minutes)</p> <p><b>Admin</b> (paragraph 4(c) of the minutes)</p>

Time marker	Speaker	Subject	Action required
003421 - 003955	Chairman Administration	<u>Clause 21 - Rules of the High Court amended</u>  <u>Clause 22 - Order 73, rule 10 amended (enforcement of settlement agreement, award, order or direction under Arbitration Ordinance)</u>	
003956 - 004128	Chairman Administration	Commencement of the Bill	
004129 - 004445	Chairman Administration	Way forward	

Council Business Division 4  
Legislative Council Secretariat  
3 June 2013