



立法會秘書處 法律事務部  
LEGAL SERVICE DIVISION  
LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF : LP CLU 5037/35/1C  
本函檔號 OUR REF : LS/B/11/12-13  
電 話 TELEPHONE : 3919 3509

傳真 FACSIMILE : 2877 5029  
電郵 E-MAIL : wkan@legco.gov.hk

By Fax (2180 9928)

24 April 2013

Ms CHOY Mun-see, Alice  
Senior Government Counsel  
Legal Policy Division  
Department of Justice  
1st Floor, High Block,  
Queensway Government Offices,  
66 Queensway,  
Hong Kong

Dear Ms CHOY,

**Re: Arbitration (Amendment) Bill 2013**

I am scrutinizing the above Bill and should be grateful for your clarification on the matters set out below.

Clause 4

Section 5(2) of the Arbitration Ordinance (Cap. 609) (the Ordinance) currently states that if the place of arbitration is outside Hong Kong, only sections 20, 21, 45, 60 and 61 and Part 10 apply to the arbitration. As proposed new Part 3A of the Ordinance provides for the enforcement of emergency relief granted in or outside Hong Kong, please clarify whether section 5(2) of the Ordinance should further be amended so as to cover proposed new Part 3A of the Ordinance.

Clause 5

- (a) Please confirm whether an emergency arbitrator, as defined in proposed new section 22A of the Ordinance, has to be appointed by

both or all parties to arbitration. Proposed new Part 3A of the Ordinance does not seem to make such provision. However, paragraph 3 of the Explanatory Memorandum to the Bill appears to suggest so.

- (b) In proposed new section 22B(2)(a) of the Ordinance, "maintain or restore the status quo" in the English text is rendered as "維持現狀或恢復現狀" in the Chinese text. Should the Chinese rendition rather be "維持現狀或恢復原狀"?

#### Clause 18

- (a) Please explain whether an arbitral award made in Macao the enforcement of which has been refused in Hong Kong prior to the commencement of clause 18 of the Bill be enforced under proposed new Division 4 of Part 10 of the Ordinance after the commencement of the clause.
- (b) How about an arbitral award made in Macao the enforcement proceeding of which in Hong Kong has not yet been completed (for example, an application for leave has been made under section 84 of the Ordinance but the leave has not yet been granted) before the commencement of clause 18 of the Bill? Could such award be enforced under proposed new Division 4 of Part 10 of the Ordinance after the commencement of the clause?

#### Clause 20

In clause 20 of the Bill, "Sao Tome and Principe" in the English text is rendered as "聖多美及普林西比島" in the Chinese text. It is however noted that "Sao Tome and Principe" is rendered as "聖多美和普林西比" in the Chinese text of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards done at New York on 10 June 1958 and as "聖多美及普林西比" in the Chinese text of Schedule 1 to the Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) Order (Cap. 405 sub. leg. A). Please clarify.

#### Commencement

Clause 1(2) of the Bill provides that the Bill, if enacted, will come into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette. Please clarify if there is any intended commencement date of the Bill.

I would be grateful if you could let me have your reply in bilingual form before close of play on 26 April 2013.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Wendy KAN', written in a cursive style.

(Wendy KAN)  
Assistant Legal Adviser

cc. DoJ (Attn.: Mr Sunny CHAN, SALD (By Fax: 2845 2215) & Miss Cindy CHEUK, GC (By Fax: 2869 1302))

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

本司檔號	<b>Our Ref.:</b>	LP CLU 5037/35/1C
來函檔號	<b>Your Ref.:</b>	LS/B/1/2-13
電話號碼	<b>Tel. No.:</b>	2867 4727
電郵	<b>Email</b>	<a href="mailto:alicechoy@doj.gov.hk">alicechoy@doj.gov.hk</a>

**By Fax : 2877 5029**

26 April 2013

Ms Wendy Kan  
Assistant Legal Adviser  
Legal Service Division  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

(via Ms Adeline Wan, DSG(G) (Ag))

Dear Ms Kan,

**Re : Arbitration (Amendment) Bill 2013**

Thank you for your letter of 24 April 2013 on the Arbitration (Amendment) Bill 2013. We would set out our reply to the matters raised in your said letter as follows.

Clause 4

We agree that section 5(2) of the Arbitration Ordinance (“the Ordinance”) should be amended to make it clear that the proposed new Part 3A of the Ordinance would apply to an arbitration, if the place of arbitration is outside Hong Kong.

Clause 5

- (a) In the proposed s. 22A of the Ordinance, “emergency arbitrator” is defined to mean “an emergency arbitrator appointed under the arbitration rules (including the arbitration rules of a permanent arbitral institution) agreed to or adopted by the parties to deal with the parties’ applications for emergency relief before an arbitral tribunal is constituted.” (underline supplied). As such, an emergency arbitrator is to be appointed in accordance with the arbitration rules agreed upon by the parties to an arbitration. Different arbitration rules may provide differently in respect of the appointment of emergency arbitrators. Paragraph 3 of the explanatory memorandum of the Bill broadly reflects our policy intent that an emergency arbitrator is to be appointed in accordance with the agreed arrangement of the parties to an arbitration.
- (b) We agree to amend the relevant part of the Chinese text in the proposed new section 22B(2)(a) of the Ordinance as “維持現狀或恢復原狀”.

Clause 18

- (a) A Macao award the enforcement of which has been refused (presumably under s. 84 of the Ordinance) prior to the commencement of clause 18 of the Bill can be enforced under and in accordance with the provisions of the proposed Division 4 of Part 10 of the Ordinance. This is in line with the Arrangement, since Art 11 of the Arrangement only provides that the “Arrangement shall not apply to any requests for recognition and enforcement of arbitral awards made by parties before [the] Arrangement comes into force”.
- (b) In the light of (a) above, a party may make a new application after the commencement of clause 18, subject nevertheless to the provisions of the proposed Division 4.

Clause 20

We note that “Sao Tome and Principe” is rendered as “聖多美和普林西比” in the Chinese text of the 1958 New York Convention. Our research shows that the Convention was prepared in 5 languages, including Chinese. Having reviewed the Chinese text of the Convention ([http://www.uncitral.org/pdf/chinese/texts/arbitration/NY-conv/1958\\_NYC\\_CTC-c.pdf](http://www.uncitral.org/pdf/chinese/texts/arbitration/NY-conv/1958_NYC_CTC-c.pdf)), we note that the text is an authentic version.

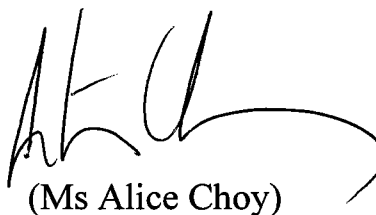
Given the above, we consider it appropriate to amend the Chinese rendition to “聖多美和普林西比” in clause 20 of the Bill.

Commencement

We intend that the Bill when enacted shall take effect as soon as possible, after we have completed the relevant procedures in accordance with Art 13 of the Arrangement.

Please let us know if you require further elaboration.

Yours sincerely,



(Ms Alice Choy)

Senior Government Counsel  
Legal Policy Division

c.c. DoJ (Attn.: Mr Sunny CHAN, SALD) (Fax: 2845 2215)  
(Attn.: Miss Cindy CHEUK, GC) (Fax: 2869 1302)