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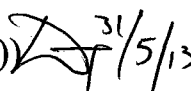
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31 May 2013

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

(via Mr Peter Wong, DSG(G))  31/5/13

Dear Ms Kan,

Arbitration (Amendment) Bill 2013

I refer to the meeting of the Bills Committee on the Arbitration (Amendment) Bill 2013 held on 10 May 2013. I wish to set out the Administration's responses on the following issues raised at the said meeting.

Section 87(2) of Cap. 609

At the suggestion of the Chairman the Administration has considered whether "倚據" in the Chinese text of the proposed section 87(2) of the Arbitration Ordinance (Cap. 609) ("the Ordinance") (in clause 11(2) of the Bill) should be replaced with a more commonly used expression.

Usage in legislation

We note that “倚據” is used in the current provisions of the Arbitration Ordinance (Cap. 609), such as sections 53(4)(a), 87(3) and 91. Furthermore, “倚據” has been used as the equivalent to “relied on” in the Rules of High Court (Cap. 4A) (for example, O. 82, r. 3(1) and O. 118, r. 3(2)), O. 12, r. 8(2A)(b) of the Rules of District Court (Cap. 336H), rule 11(1) of the Pneumoconiosis and Mesothelioma (Compensation) Appeal Rules (Cap. 360C) and section 33(3)(b) of the Building Energy Efficiency Ordinance (Cap. 610). In all these examples, “倚據” (and “relied on” in the corresponding English text) was used in relation to court or hearing matters (such as evidence relied on in an affidavit, facts and matters in support of a legal action, documents relied on in an appeal).

Ordinary usage

“倚據” has also been used in a variety of publications of the Hong Kong government, as well as newspapers and journals in the Mainland.

(a) Publications of the Hong Kong government and other bodies

These include a press release issued by the Development Bureau (in 2009), the Principles, Procedures and Practice Directions of the Torture Claims Appeal Board by the Security Bureau (“SB”) (in 2012), a disclaimer in a trade circular by the Trade and Industry Department (in 2009) and the Law Reform Commission’s (“LRC”) Report on Local Completed Residential Properties: Sales Descriptions and Pre-contractual Matters (in 2002). In all these materials, “倚據” was the equivalent to “relied on / upon” or “reliance”. In particular, the expression was used in the LRC’s Report and SB’s guidelines in a legal sense, namely “rely upon the law of misrepresentation” and “documents and submissions relied upon by the Director and the Appellant”.

(b) Mainland materials

The term is used in articles in China Economic Times (in 2003), the Beijing News (in 2006) and the Southern Weekly (in 2012). The relevant phrases are “倚據權力”, “倚據於制度層面” and “倚據中國海外品牌的強大優勢”. They carry the meaning of “rely on” or “reliance” in these contexts.

The above suggests that "倚據" is quite commonly used in both legislative and non-legislative writings. With a further consideration of achieving consistency with the Ordinance, the Administration is of the view that it is appropriate to use "倚據" to reflect the meaning of "relied on" in clauses 11(2) and 14(2) of the Bill.

Proposed CSAs

As indicated in the meeting of 10 May 2013, the Administration intends to move the following Committee Stage amendments :

(a) Clause 1

Clause 1 is proposed to be amended to facilitate the 2 phase commencement of the amendment Ordinance. Provisions relating to Macao awards are to commence on a day to be appointed by SJ by notice published in the Gazette. All the other provisions, including those miscellaneous amendments seeking to improve the language of the relevant provisions of the Ordinance, will commence upon the gazettal of the amendment Ordinance.

(b) Clause 4

The clause is proposed to be amended to include a further amendment to section 5(2) of the Ordinance to make it clear that the proposed new Part 3A of the Ordinance would also apply to an arbitration held outside Hong Kong;

(c) Clause 5, Chinese text

It is proposed to amend the Chinese rendition of "maintain or restore status quo" in the proposed section 22B(2)(a) of the Ordinance as "維持現狀或恢復原狀";

(d) Clause 20

- (i) add "Myanmar", 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; and

- (ii) in the Chinese text, delete “聖多美及普林西比島” and substitute “聖多美和普林西比” to align with the Chinese text relating to the New York Convention.

The draft CSAs are attached. Members are invited to note and consider the proposed CSAs to be moved by the Administration.

As discussed with Miss Mary So, Ch. Council Secretary, the Administration intends to resume second reading of the Bill on 10 July 2013.

Thank you for your attention in the matter.

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)

Arbitration (Amendment) Bill 2013

Committee Stage

Amendments to be moved by the Secretary for Justice

<u>Clause</u>	<u>Amendment Proposed</u>
1	<p>By deleting subclause (2) and substituting—</p> <p>“(2) Subject to subsection (3), this Ordinance comes into operation on the day on which it is published in the Gazette.</p> <p>(3) Sections 3, 9(1), 18 and 22(3), (6) and (9) come into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette.”.</p>
4	<p>By deleting the clause and substituting—</p> <p>“4. Section 5 amended (arbitrations to which this Ordinance applies)</p> <p>Section 5(2)—</p> <p>Repeal</p> <p>“sections 20, 21,”</p> <p>Substitute</p> <p>“this Part, sections 20 and 21, Part 3A, sections”.”.</p>
5	<p>In the proposed section 22B(2)(a), in the Chinese text, by deleting “現狀;” and substituting “原狀;”.</p>
20	<p>By adding “Myanmar” after “Liechtenstein”.</p>
20	<p>In the Chinese text, by deleting “聖多美及普林西比島” and substituting “聖多美和普林西比”.</p>