

立法會
Legislative Council

LC Paper No. CB(4)11/13-14
(These minutes have been seen
by the Administration)

Ref : CB4/SS/9/12

**Subcommittee on Arbitration (Appointment of Arbitrators and
Mediators and Decision on Number of Arbitrators) Rules**

**Minutes of the meeting
held on Wednesday, 18 September 2013, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon Dennis KWOK (Chairman)
Hon TAM Yiu-chung, GBS, JP
Hon Cyd HO Sau-lan
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon SIN Chung-kai, SBS, JP

Members absent : Hon Ronny TONG Ka-wah, SC
Ir Dr Hon LO Wai-kwok, BBS, MH, JP
Hon Tony TSE Wai-chuen

Public officers attending : Agenda item I
Mr LEE Tin-yan
Assistant Solicitor General
Department of Justice

Attendance by invitation : Agenda item I
Hong Kong International Arbitration Centre
Mr Christopher TO
Council Member
Mr Dennis Cai
Assistant Secretary-General

Hong Kong Bar Association

Ms Kim ROONEY
Barrister-at-law

The Council of Mediation Development

Mr Henry CHIU
Secretary

The Council of SOCIAL Development

Mr Frankie TSANG
Consultant

The Law Society of Hong Kong

Mr Mark LIN
Member of the Law Society's Civil Litigation
Committee

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

**Staff in
attendance** : Mr Bonny LOO
Assistant Legal Adviser 3

Ms Cindy CHAN
Senior Council Secretary (4)5

Ms Mandy WAN
Administrative Assistant (4)1

I. Meeting with deputations and the Administration

(File Ref: LP 19/00/4C -- Legislative Council ("LegCo")
Brief

LC Paper No. LS67/12-13 -- Legal Service Division Report on
Subsidiary Legislation Gazetted
on 28 June 2013

Action

- LC Paper No. CB(4)914/12-13(01) -- Letter from the Assistant Legal Adviser of the Legislative Council dated 28 June 2013 to the Hong Kong International Arbitration Centre ("the HKIAC")
- LC Paper No. CB(4)914/12-13(02) -- Reply from the HKIAC dated 18 July 2013 to the letter from the Assistant Legal Adviser of the Legislative Council dated 28 June 2013
- LC Paper No. CB(4)970/12-13(01) -- Letter from the Assistant Legal Adviser of the Legislative Council dated 22 July 2013 to the HKIAC
- LC Paper No. CB(4)970/12-13(02) -- Reply from the HKIAC dated 19 August 2013 to the letter from the Assistant Legal Adviser of the Legislative Council dated 22 July 2013
- LC Paper No. CB(4)40/12-13(03) Letter dated 12 October 2012 from the HKIAC to the Panel on Administration of Justice and Legal Services seeking the Panel members' views on the draft Arbitration (Appointment of Arbitrators and Mediators and Decision on Number of Arbitrators) Rules
- LC Paper No. CB(4)988/12-13(01) -- Letter from the Assistant Legal Adviser of the Legislative Council dated 21 August 2013 to the HKIAC
- LC Paper No. CB(4)988/12-13(02) -- Reply from the HKIAC dated 16 September 2013 to the letter from the Assistant Legal Adviser of the Legislative Council dated 21 August 2013)

Action

Discussion

The Subcommittee deliberated (index of proceedings attached at **Annex**).

2. The Chairman declared that he was representing a client on an arbitration at the Hong Kong International Arbitration Centre ("HKIAC").

3. Ms Cyd HO asked about the arrangement for the parties to an arbitration to employ the mediation services in the course of an arbitration and the protection of the interests of the parties. The representative of the HKIAC advised that as mediators were required to conclude the mediation within a prescribed period of time, for some particular cases, parties to an arbitration might employ mediation services with a view to expediting the settlement of the dispute. Whenever mediation was adopted, the parties undertook, either by stipulation in the contract or by agreement, that the mediation should proceed in accordance with the Mediation Rules of the HKIAC and that failure by any mediators to abide by the Mediation Rules would lead to serious consequences, such as disqualification of the mediator concerned.

4. Mr TAM Yiu-chung enquired about the circumstances under which the HKIAC would decide whether one or three arbitrators was/were to be appointed for an arbitration. The representative of the HKIAC advised that the HKIAC would normally appoint one arbitrator if the parties to an arbitration requested the HKIAC to make the appointment. However, where three arbitrators were used, it was customary for each party to appoint one arbitrator and for the chairman to be appointed either by agreement between the party-appointed arbitrators or by an independent third party or in default by the HKIAC as provided in the Arbitration Ordinance (Cap. 609).

5. The Chairman considered that more support from the Administration was necessary for the HKIAC to promote and foster the development of arbitration services. The Administration responded that the introduction of the Arbitration (Appointment of Arbitrators and Mediators and Decision on Number of Arbitrators) Rules (L.N. 115) ("the new Rules") was aimed to bring the existing Arbitration (Appointment of Arbitrators and Umpires) Rules (Cap. 609 sub. leg. B) up-to-date and on a par with the international practice. The representative of the HKIAC advised that under the Government's Professional Services Development Assistance Scheme, it had been able to implement a two-year project on arbitration which received a positive response from the stakeholders on the Mainland.

Action

6. Noting that not all foreign parties were able to converse in English, Ms Cyd HO enquired whether there was sufficient supply of interpreters of various languages and dialects to provide assistance in arbitration proceedings. The representative of the HKIAC advised that the HKIAC had been able to identify the required interpreters from the pool of interpreters shared by the Judiciary and other government agencies. In addition, Hong Kong had been able to attract many experienced foreign arbitrators and legal professionals from across the globe, as evidenced by the wide variety of nationalities and jurisdictions represented by the arbitrators on the HKIAC Panel of Arbitrators. The representative of The Law Society of Hong Kong agreed with the HKIAC that the procurement of interpretation services for the conduct of arbitration in Hong Kong had not been a cause for concern. However, whether Hong Kong should devote more resources to nurturing multilingual arbitrators was a separate issue.

7. Assistant Legal Adviser 3 ("ALA3") advised that he was largely satisfied with the responses from the HKIAC dated 19 August 2013 [LC Paper No. CB(4)970/12-13)(02)] to his letter dated 22 July 2013 [LC Paper No. CB(4)970/12-03(01)], and further responses from the HKIAC dated 16 September 2013 [LC Paper No. CB(4)988/12-13)(02)] to his letter dated 21 August 2013 [LC Paper No. CB(4)988/12-13)(01)]. ALA3 pointed out that the policy intent of rule 13(2) of the new Rules was to empower the HKIAC to increase its fee from time to time up to a ceiling of \$15,000 without requiring the new fee to be subject to scrutiny by the Legislative Council ("LegCo") or published in the Gazette. ALA3 also drew members' attention to a suggested amendment to subrule (2)(b) under rule 13 of the new Rules that "referred to in subrule (1)" be inserted immediately after "is determined by the HKIAC to be a reasonable fee for the recovery of expenditure incurred or likely to be incurred by it in the exercise of the functions". Members agreed.

8. Responding to Ms Cyd HO's enquiry, the representative of the HKIAC clarified that it did not see the need to raise the \$15,000 ceiling of the fees in the near future for making the appointment of an arbitrator or a mediator, or a decision on the number of arbitrators that was appropriate for any particular case. If there was a need to further raise the \$15,000 ceiling, the HKIAC would gazette and table a new set of rules/amendments for LegCo's scrutiny.

9. In response to the view of the Hong Kong Institution of Engineers [LC Paper No. CB(4)976/12-13(03)], the HKIAC undertook to introduce a Guidelines for the new Rules for enhancing the parties' understanding of the arbitration proceedings.

Follow-up action to be taken by the Administration

Action

- Admin** 10. Members noted that the Administration would move amendments to the new Rules, including that mentioned in paragraph 7 above.

II. Any other business

Legislative timetable and report to the House Committee

- Chairman** 11. The Subcommittee had completed scrutiny of the new Rules and would not move amendments to them. If the amendments to the new Rules to be moved by the Administration would not be ready by 16 October 2013, members agreed that the Chairman would move a motion on behalf of the Subcommittee to extend the scrutiny period of the new Rules to the Council meeting of 6 November 2013.

12. Members noted that if the scrutiny period was to be extended, the Subcommittee should report its deliberations to the House Committee on 25 October 2013, and the deadline for giving notice of a motion to amend the new Rules, if any, at the Council meeting of 6 November 2013 was 30 October 2013.

13. There being no other business, the meeting ended at 11:55 am.

Council Business Division 4
Legislative Council Secretariat
16 October 2013

**Proceedings of the second meeting of the
Subcommittee on Arbitration (Appointment of Arbitrators and Mediators
and Decision on Number of Arbitrators) Rules
on Wednesday, 18 September 2013, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)	Action required
000330 - 000430	Chairman	The Chairman's declaration.	
000431 - 000712	Chairman Hong Kong International Arbitration Centre ("HKIAC")	Summary of views presented by the HKIAC – (a) the Arbitration (Appointment of Arbitrators and Mediators and Decision on Number of Arbitrators) Rules (L.N. 115) ("the new Rules") were supported in that they resembled the latest standards and practice of arbitration adopted by the international community; and (b) the new Rules were conducive to the development of Hong Kong as a regional arbitration service hub.	
000713 - 000804	Chairman Hong Kong Bar Association ("Bar Association")	Presentation of the view that the new Rules were fully supported by the Bar Association.	
000805 - 000850	Chairman The Law Society of Hong Kong ("Law Society")	Presentation of the view that the new Rules were fully supported by the Law Society.	
000851 - 000900	Chairman The Council of SOCIAL Development	Presentation of views [LC Paper No. CB(4)988/12-13(04)]	
000901 - 001240	Chairman The Council of Mediation Development ("the Mediation Development")	Summary of views presented by the Mediation Development – (a) more promotion efforts were necessary in order to encourage the use by foreign parties of the mediation services in Hong Kong; (b) the appointment of arbitrators as mediators in the course of arbitration proceedings should be avoided in order to safeguard the interests of the parties to an arbitration; and	

Time Marker	Speaker(s)	Subject(s)	Action required
		(c) the benefits brought about by arbitration conducted in Hong Kong under the local legal system.	
001241 - 001545	Chairman Administration	<p>The Administration's preliminary response to views of deputations as follows –</p> <p>(a) to enhance its competitive edge, it was important for Hong Kong to adopt the international standards and practice in the conduct of arbitration;</p> <p>(b) the new Rules had been drafted to incorporate the latest standards and practice of arbitration adopted internationally; and</p> <p>(c) the provisions for the appointment of mediators would not apply to those cases where the parties to a dispute had not entered into an arbitration agreement which provided for the appointment of a mediator by a person who was not one of the parties.</p>	
001546 - 002330	Chairman Ms Cyd HO HKIAC	<p>Ms Cyd HO's enquiry about the arrangement for the parties to an arbitration to employ the mediation services in the course of an arbitration and the protection of the interest of the parties.</p> <p>The response from the HKIAC that as mediators were required to conclude the mediation within a prescribed period of time, for some particular cases, parties to an arbitration might employ the mediation services with a view to expediting the settlement of the dispute. Whenever mediation was adopted, the parties undertook, either by stipulation in the contract or by agreement, that the mediation should proceed in accordance with the Mediation Rules of the HKIAC and that failure by any mediators to abide by the Mediation Rules would lead to serious consequences, such as disqualification of the mediator concerned.</p>	
002331 - 002635	Chairman Mr TAM Yiu-chung HKIAC	<p>Mr TAM Yiu-chung's enquiry about the circumstances under which the HKIAC would decide whether one or three arbitrators was/were to be appointed for an arbitration.</p> <p>The clarification of the HKIAC that the HKIAC</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>would normally appoint one arbitrator if the parties to an arbitration requested the HKIAC to make the appointment. However, where three arbitrators were used, it was customary for each party to appoint one arbitrator and for the chairman to be appointed either by agreement between the party-appointed arbitrators or by an independent third party or in default by the HKIAC as provided in the Arbitration Ordinance Cap. 609.</p>	
002636 - 003100	<p>Chairman Administration HKIAC</p>	<p>The Chairman's view that more support from the Administration was necessary for the HKIAC to promote and foster the development of arbitration services.</p> <p>The response from the Administration that the introduction of the new Rules was aimed to bring the existing Arbitration (Appointment of Arbitrators and Umpires) Rules (Cap. 609 sub. leg. B) up-to-date and on a par with the international practice. The response from the HKIAC that under the Government's Professional Services Development Assistance Scheme, it had been able to implement in 2009 a two-year project on arbitration which received a positive response from the stakeholders on the Mainland.</p>	
003101 - 004000	<p>Chairman Mediation Development Administration Bar Association HKIAC</p>	<p>Elaboration of views by the Mediation Development on the need to enhance the enforceability of mediation settlement agreement and to promote wider use of mediation to resolve disputes arising from cross-border activities between Hong Kong and the Mainland.</p> <p>The response from the Administration on the work undertaken in addressing the concerns.</p>	
004001 - 004720	<p>Chairman Ms Cyd HO HKIAC Law Society</p>	<p>Noting that not all foreign parties were able to converse in English, Ms Cyd HO's enquiry as to whether there was sufficient supply of interpreters of various languages and dialects to provide assistance in arbitration proceedings.</p> <p>The response from the HKIAC that the HKIAC had been able to identify the required interpreters from the pool of interpreters shared by the Judiciary and other government agencies. In addition, Hong Kong had been able to attract</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>many experienced foreign arbitrators and legal professionals from across the globe, as evidenced by the wide variety of nationalities and jurisdictions represented by the arbitrators on the HKIAC Panel of Arbitrators. The observation of the Law Society that the procurement of interpretation services for the conduct of arbitration in Hong Kong had not been a cause for concern. However, whether Hong Kong should devote more resources to nurturing multilingual arbitrators was a separate issue.</p>	
004721 - 004930	<p>Chairman Assistant Legal Adviser 3 ("ALA3") Administration</p>	<p>Clause-by-clause scrutiny of the new Rules. ALA3 pointed out that the policy intent of rule 13(2) of the new Rules was to empower the HKIAC to increase its fee from time to time up to a ceiling of \$15,000 without requiring the new fee to be subject to scrutiny by the Legislative Council ("LegCo") or published in the Gazette.</p>	
004931 - 010425	<p>Chairman Mr TAM Yiu-chung Ms Cyd HO HKIAC Administration</p>	<p>Mr TAM Yiu-chung's support for granting the flexibility to the HKIAC in the charging of fees provided that the fees were within the prescribed range between \$8,000 and \$15,000, and that the HKIAC would apply the principle of prudence in levying fees in every single case.</p> <p>Clarification of the HKIAC regarding Ms Cyd HO's enquiry that the HKIAC did not see the need to raise the \$15,000 ceiling of the fees in the near future for making the appointment of an arbitrator or a mediator, or a decision on the number of arbitrators that was appropriate for any particular case. If there was a need to further raise the \$15,000 ceiling, the HKIAC would gazette and table a new set of rules/amendments for LegCo's scrutiny.</p>	
010426 - 010635	<p>Chairman ALA3 HKIAC</p>	<p>Regarding the view of the Hong Kong Institution of Engineers, the undertaking of the HKIAC that the Guidelines for the new Rules would be introduced to enhance the parties' understanding of the arbitration proceedings. [LC Paper No. CB(4)976/12-13(03)]</p>	
010636 - 010845	<p>Chairman ALA3 Administration</p>	<p>The Administration would move amendments to the new Rules, including that mentioned in paragraph 7 of the minutes.</p>	<p>Admin (para 10 of minutes)</p>

Time Marker	Speaker(s)	Subject(s)	Action required
		If the amendments to the new Rules to be moved by the Administration would not be ready before 16 October 2013, members agreed that the Chairman would move a motion on behalf of the Subcommittee to extend the scrutiny period of the new Rules to the Council meeting of 6 November 2013.	Chairman (para 11 of minutes)

Council Business Division 4
Legislative Council Secretariat
16 October 2013