

立法會
Legislative Council

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Paper for the House Committee meeting on 22 November 2013

**Report of the Subcommittee on
Arbitration (Amendment) Ordinance 2013 (Commencement) Notice**

Purpose

This paper reports on the deliberations of the Subcommittee on Arbitration (Amendment) Ordinance 2013 (Commencement) Notice ("the Commencement Notice").

Background

2. Prior to the conclusion of the Arrangement Concerning Reciprocal Recognition and Enforcement of Arbitral Awards between the Hong Kong Special Administrative Region and the Macao Special Administrative Region in January 2013 ("the Arrangement"), there was no arrangement between Hong Kong and Macao on the reciprocal recognition and enforcement of arbitral awards.

3. The Arbitration (Amendment) Bill 2013 ("the Bill") was introduced by the Administration into the Council on 24 April 2013 to amend the Arbitration Ordinance (Cap. 609) ("the Ordinance") for implementing the Arrangement, providing for the enforcement of an emergency relief made by an emergency arbitrator and introducing miscellaneous amendments to further enhance the arbitration regime of Hong Kong.

4. A Bills Committee was formed by the House Committee ("HC") to discuss the Bill. After scrutiny by the Bills Committee, the Bill was passed by the Council on 10 July 2013 ("the Amendment Ordinance").

5. A two-phased approach is adopted for the commencement of the Amendment Ordinance. Section 1(3) of the Amendment Ordinance provides that sections 3, 9(1), 18 and 22(3), (6) and (9) of the Amendment Ordinance ("the Relevant Provisions") come into operation on a day to be appointed by the Secretary for Justice ("SJ") by notice published in the Gazette. The Relevant Provisions relate to the enforcement of Macao awards under the Arrangement. Whereas under section 1(2) of the Amendment Ordinance, it is provided that the remaining provisions of the Amendment Ordinance come into operation on the day on which it is published in the Gazette.

6. The Amendment Ordinance was published in the Gazette on 19 July 2013. Accordingly, those provisions relating to emergency arbitrators and other miscellaneous amendments seeking to improve the arbitration regime of Hong Kong came into effect on 19 July 2013.

Commencement Notice

7. By the Commencement Notice, SJ has appointed 16 December 2013 as the day on which the Relevant Provisions come into operation.

The Subcommittee

8. At the HC meeting held on 18 October 2013, Members agreed that a subcommittee should be formed to study the Commencement Notice in detail. The membership list of the Subcommittee is in the **Appendix**.

9. Under the chairmanship of Hon Dennis KWOK, the Subcommittee has held two meetings, including one meeting with the Administration.

10. A motion was moved by Hon Dennis KWOK, on behalf of the Subcommittee, at the Council meeting of 30 October 2013 to extend the scrutiny period of the Commencement Notice from the Council meeting of 13 November 2013 to that of 4 December 2013.

Deliberations of the Subcommittee

11. The Subcommittee noted that after the enactment of the Amendment Ordinance, the Administration had been holding discussions with the Macao authorities on the implementation date of the Arrangement. In early October 2013, the Administration received a written notice from the Macao authorities confirming that they had completed their internal procedure and it was agreed between Hong Kong and Macao that the commencement date of the Arrangement be fixed on 16 December 2013. In computing the commencement

date, the negative vetting period of subsidiary legislation in the Legislative Council of Hong Kong has been taken into account.

12. Hon Dennis KWOK pointed out that in the past five to 10 years, Singapore had put in vast resources to promote Singapore as a regional hub for arbitration services. In terms of revenue generated from arbitration services, Singapore had overtaken Hong Kong. Mr KWOK urged the Administration to allocate more resources and put in more efforts to promote Hong Kong as a regional centre for arbitration and dispute resolution services and to relay his view to the Working Group on Professional Services under the Economic Development Commission chaired by the Chief Executive. To highlight the competitive edge of Hong Kong in the provision of arbitration services, Mr KWOK suggested that it would be beneficial to Hong Kong if the International Council for Commercial Arbitration conference would be held in Hong Kong.

13. The Administration advised that to tie in with the introduction of the Hong Kong International Arbitration Centre ("HKIAC")'s Arbitration Rules 2013, amendments to the Ordinance were introduced into the Legislative Council and passed in July 2013 to provide for the enforcement of emergency arbitral awards. The Department of Justice ("DoJ") recognized the growth of arbitration sector in Singapore, and aimed to have healthy competition with the counterparts in Singapore. Whilst targeting at the Greater China region, DoJ was also having on-going discussions with the relevant stakeholders on the ways to promote Hong Kong's legal and arbitration services in other new or emerging markets in Southeast Asia, such as Vietnam and Cambodia. To promote Hong Kong's competitive edge in the legal services and dispute resolution, DoJ planned to organize the third Hong Kong Legal Services Forum in 2014 in the Mainland. In addition, DoJ joined forces with HKIAC and the relevant stakeholders to promote the use of arbitration services in Hong Kong and to foster the development of specialized arbitration.

14. Dr Hon Priscilla LEUNG considered that as arbitration was growing in popularity in the Mainland, and given Hong Kong's proximity to the Mainland as well as its strong legal support for arbitration, Hong Kong arbitrators could become a popular choice with the Chinese and foreign parties. She urged the Administration to put in more efforts to promote the arbitration services of Hong Kong in the Mainland and other countries. Further, the Administration should expedite the conclusion of an arrangement between Hong Kong and Taiwan for the reciprocal recognition and enforcement of arbitral awards similar to those concluded with the Mainland and Macao. In addition, she opined that the Administration should seize the opportunity arising from the setting up of the Qianhai Economic Zone and Shanghai Pilot Free Trade Zone.

15. The Administration advised that DoJ was seeking to establish an arrangement between Hong Kong and Taiwan for the reciprocal recognition and enforcement of arbitral awards. With the success of the first and second Hong Kong Legal Services Forum held in Shanghai and Guangzhou respectively, DoJ would engage the Hong Kong Bar Association, The Law Society of Hong Kong and other arbitration bodies in the preparation for the third Forum to be held in 2014. By highlighting the advantages of Hong Kong in the provision of arbitration services on similar occasions, DoJ hoped to attract more enterprises in the Mainland to choose Hong Kong as the place of arbitration.

Advice sought

16. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 4
Legislative Council Secretariat
20 November 2013

**Subcommittee on Arbitration (Amendment) Ordinance 2013
(Commencement) Notice**

Membership list

Chairman Hon Dennis KWOK

Members Hon TAM Yiu-chung, GBS, JP
Hon Ronny TONG Ka-wah, SC
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon SIN Chung-kai, SBS, JP
Hon Tony TSE Wai-chuen

(Total : 6 Members)

Clerk Mary SO

Legal adviser Wendy KAN