

立法會
Legislative Council

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LC Paper No. CB(4)651/16-17
(These minutes have been seen
by the Administration)

Bills Committee on Arbitration (Amendment) Bill 2016

**Minutes of the first meeting
held on Thursday, 5 January 2017, at 8:30 am
in Conference Room 2 of the Legislative Council Complex**

Members present : Hon Martin LIAO Cheung-kong, SBS, JP (Chairman)
Hon James TO Kun-sun
Hon Abraham SHEK Lai-him, GBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon Dennis KWOK Wing-hang
Hon Alvin YEUNG
Dr Hon Junius HO Kwan-yiu, JP
Hon Holden CHOW Ho-ding
Hon YUNG Hoi-yan
Hon CHAN Chun-ying
Dr Hon YIU Chung-yim

Members absent : Hon Jimmy NG Wing-ka, JP
Hon CHEUNG Kwok-kwan, JP

Public officers attending : Item II

Department of Justice

Miss LEE Sau-kong
Senior Assistant Solicitor General (Special Duties)

Miss Emma WONG
Senior Government Counsel

Miss Jessie LAU
Government Counsel

Intellectual Property Department

Ms Maria Kaiser NG
Deputy Director of Intellectual Property (Atg)
Intellectual Property Department

Miss Carole MOK
Solicitor (Registration) 3
Intellectual Property Department

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

Staff in attendance : Mr Alvin CHUI
Assistant Legal Adviser 3

Miss Joyce CHING
Senior Council Secretary (4)2

Ms Jacqueline LAW
Council Secretary (4)2

Miss Vivian YUEN
Legislative Assistant (4)2

I. Election of Chairman

Mr James TO, the member who had the highest precedence among members present at the meeting, presided over the election of the Chairman.

2. Mr James TO invited nominations for the chairmanship of the Bills Committee. Mr Holden CHOW nominated Mr Martin LIAO and the nomination was seconded by Mr CHAN Chun-ying. Mr Martin LIAO accepted the nomination. As there was no other nomination, Mr James TO declared that Mr Martin LIAO was elected Chairman of the Bills Committee.

II. Meeting with the Administration

- File Ref.: L/M (5) To LP 19/00/9C -- Legislative Council Brief
- LC Paper No. CB(3)190/16-17 -- The Amendment Bill
- LC Paper No. LS14/16-17 -- Legal Service Division Report
- LC Paper No. CB(4)365/16-17(01) -- Letter from the Department of Justice dated 22 December 2016 responding to the letter dated 12 December 2016 from the Assistant Legal Adviser of the Legislative Council Secretariat
- LC Paper No. CB(4)365/16-17(02) -- Marked-up copy of the Amendment Bill prepared by the Legal Service Division (Restricted to members)
- LC Paper No. CB(4)365/16-17(03) -- Background brief on the Amendment Bill prepared by the Legislative Council Secretariat

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

Briefing by the Department of Justice ("DoJ")

4. At the invitation of the Chairman, Senior Assistant Solicitor General (Special Duties) ("SASG (Special Duties)") briefed members on the object of the Arbitration (Amendment) Bill 2016 ("the Bill"), details of which were set out in the Legislative Council Brief issued by the Department of Justice ("DoJ") (File Ref.: L/M (5) To LP 19/00/9C).

5. Members noted that the Bill sought to (a) clarify that disputes over intellectual property rights ("IPRs") might be resolved by arbitration and that it was not contrary to the public policy of Hong Kong to enforce arbitral awards involving IPRs by adding a new Part 11A to the Arbitration Ordinance

("AO") (Cap. 609); and (b) update the list of contracting parties to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 ("New York Convention") in the Schedule to the Arbitration (Parties to New York Convention) Order (Cap. 609 sub. Leg. A).

Declaration of Interest

6. Dr YIU Chung-yim declared that he had undertaken a consultancy study on mediation in Hong Kong conducted by the Government. Dr Priscilla LEUNG declared that she had acted as arbitrators in Hong Kong and other overseas jurisdictions. Mr Martin LIAO declared that he was a member on the list of arbitrators under the Hong Kong Bar Association.

Discussion

Arbitrability of disputes over intellectual property rights ("IPR disputes")

7. Mr James TO said that, based on his understanding, arbitration was a consensual process, i.e. the parties must have consent to resolve the disputes by arbitration voluntarily. Mr TO asked whether under the current statutory regime concerning intellectual property ("IP") arbitration, there would be circumstance where a party could be forced to resolve a dispute by arbitration. SASG (Special Duties) responded in the negative.

8. Noting that the Bill proposed to add to the AO a new Part 11A, Dr Junius HO asked whether by virtue of the proposed section 103D(4)(b) (which stated that an intellectual property right ("IPR") dispute was not incapable of settlement by arbitration only because a law of Hong Kong or elsewhere did not mention possible settlement of the IPR dispute by arbitration), an IPR dispute could possibly be resolved by arbitration even without the consent of the disputing parties.

9. SASG (Special Duties) responded in the negative and supplemented that there must be an "arbitration agreement", as defined in section 19 of the AO which adopted the definition of arbitration agreement set out under Option I of Article 7 of UNCITRAL Model Law, i.e. an agreement between the parties to submit to arbitration disputes arising in respect of a defined legal relationship, whether contractual or not, in order to make a dispute capable of settlement by arbitration.

10. Mr Paul TSE said that he supported the Bill in principle and asked whether there was any specific provision, under the AO, setting out the issues/matters which were incapable of settlement by arbitration.

11. SASG (Special Duties) said that the question from Mr Paul TSE had pointed out the ambiguity in relation to the current arbitration regime. Currently, under the AO, enforcement of an arbitral award might be refused, among others, if it would be contrary to the public policy of Hong Kong to enforce the award, for instance, if an award concerned matters relating to criminal offences and execution of public law functions (such as right to land and nationality). Nevertheless, the AO did not have any specific provision dealing with the question of arbitrability of IPR disputes. Besides, there was no authoritative judgment in Hong Kong concerning the arbitrability of IPR disputes. Hence, the law was not entirely clear in this respect. SASG (Special Duties) further said that, traditionally, some IPRs, such as patents and trade marks, were granted by government authorities and thus some had taken the view that disputes over these rights should be adjudicated by the courts rather than arbitrated. To put the matter beyond doubt, the Bill sought to make it clear that IPR disputes, whether they arose as the main issue or an incidental issue, were capable of settlement by arbitration, and that it was not contrary to the public policy of Hong Kong to enforce the ensuing award.

Binding effect and enforceability of arbitral awards

12. Dr Junius HO asked whether, after passing of the Bill, the parties would be required to register their arbitral awards under the relevant registry of the Government. Deputy Director of Intellectual Property (Atg) ("DD of IP (Atg)") responded in the negative and said that arbitral awards only bind the parties to the arbitration, but not any other third parties who did not participate in the proceedings, and that owing to the *inter partes* effect of an arbitral award and the confidential nature of arbitration, there would not be any requirement as to the registration of arbitral awards.

13. Whilst noting that the effect of an award made by an arbitral tribunal pursuant to an arbitration agreement was binding only on the parties to the arbitration, Mr Alvin YEUNG expressed concern that, under the current regime of the AO, third parties would have no knowledge of the arbitral awards in relation to disputes over the validity of IPRs. Mr YEUNG asked whether there would be any measures to safeguard public interests, particularly for cases involving secondary infringement of IPRs.

14. Whilst supporting the provision of an additional choice to parties to resolve IPR disputes by arbitration, Mr Paul TSE pointed out that arbitration might not be the most appropriate forum to resolve disputes over the validity of registered patents or trade marks as arbitral awards do not have effect towards all.

15. SASG (Special Duties) responded that the general principle of the current legal regime of arbitration was that the binding effect of an arbitral award was only confined to the parties to arbitration since the rationale behind arbitration was to settle disputes between the parties. Currently, the Government did not have separate plan to make an exception for awards concerning the validity of IPRs. SASG (Special Duties) further said that the arbitration parties could, under consensual arrangement, join any related third parties as parties to the arbitral process if considered appropriate and/or make suitable adjustment to the confidentiality clauses of the arbitration agreement. DD of IP (Atg) emphasized that, in any case, arbitral awards only bind the parties to the arbitration. If the owner of an IPR would like to pursue his rights against other third parties, he would have to resort to another arbitral process or through court proceedings. Conversely, if a third party would like to challenge the right of the IPR owner, he would be not bound by the findings of the arbitral tribunal and could initiate separate proceedings against the IPR owner.

16. Despite agreeing that the integrity of the arbitration agreement should not be compromised, Mr Alvin YEUNG still considered, from the policy angle, the issues relating to the effect of arbitral awards on related third parties should be looked into. Owing to his concern in this regard, Mr YEUNG queried the merit of the Bill from the perspective of public interests.

17. SASG (Special Duties) responded that arbitration was just one of the methods for resolving disputes and it was an alternative to court proceedings. She agreed that the disputing parties might not always consider arbitration to be the most suitable way for resolving disputes for every single case. Depending on the merit of each case, for instance, the scale and nature of the dispute, the disputing parties might still opt to settle their cases by court proceedings. SASG (Special Duties) further said that the Government had been committed to improving the arbitration regime through regular reviews and proposing legislative improvements. SASG (Special Duties) supplemented that arbitration might be a favourable choice for parties who were disputing on large-scale intellectual property ("IP") projects involving several jurisdictions, say, technology transfer, joint research and development, or cross licensing. Among other advantages, arbitration could provide the parties with a single platform to resolve the disputed matters and the parties would also have the freedom to appoint their own arbitrators with the relevant expertise. The parties could also make use of the mechanism under the New York Convention to enforce the arbitral awards in over 150 countries around the world that are parties to the New York Convention.

18. Referring to para. 13 of the Legislative Council Brief (File Ref.: L/M (5) To LP 19/00/9C), Mr Holden CHOW sought clarification on the meaning of "*erga omnes* effect". Using the example given under the same paragraph of the Legislative Council Brief mentioned above, Mr CHOW asked whether the declaratory award in relation to the invalidation of a registered trade mark would have binding effect towards all.

19. SASG (Special Duties) clarified that, even if an arbitral award was enforced by the court, the finality and binding effect of the arbitral award would still be confined to the parties to the arbitration and "any person claiming through or under any of the parties" to the arbitration. Therefore, in the example given, a declaration made by an arbitral tribunal that a registered trade mark was invalid would have binding effect on the parties only (i.e. *inter partes* effect) but not towards all (*erga omnes* effect).

Registration of arbitral awards

20. Following up on the questions and concerns raised by Mr Alvin YEUNG, Mr James TO suggested to require parties to IPR disputes to register their arbitral awards, if any, with the Intellectual Property Department ("IPD"), to safeguard public interests. He gave the example of a situation where party A (the registered owner of an IPR under the register at IPD) and party B submitted their dispute on the ownership of the IPR to arbitration, and the arbitrator decided in favour of B, yet B did not seek an assignment of the IPR from A, and the parties instead agreed that A should remain the owner of the IPR. In his given example, Mr TO suggested that the parties should be required to register the arbitral award or at least have a choice to make remarks under the register at IPD so as to make known to the world at large the outcome of the arbitration.

21. Whilst supporting the proposed legislative amendment, Dr Priscilla LEUNG suggested that the Government considers whether registration should be required for arbitral awards in relation to disputes over the validity of patents.

22. SASG (Special Duties) said that under section 70 of the AO, an arbitral tribunal might, in deciding a dispute, award any remedy or relief that could have been ordered by the Court if the dispute had been the subject of civil proceedings in the Court. Unless otherwise agreed by the parties pursuant to proposed section 103D(6) of the Bill, the arbitral tribunal also had the power to order specific performance, for instance, requiring the parties to amend the register of the IPR concerned. The rationale behind section 103D(6) of the Bill was to allow flexibility for the arbitration parties to decide on the availability of specific performance as a remedy / relief in arbitration

as they see fit, consistent with party autonomy in arbitration. DD of IP (Atg) supplemented that only matters that are binding towards all (*erga omnes* effect) should be entered on the registers of IPRs maintained by IPD and there were specific statutory provisions on the type of matters or documents that should be so entered on the registers. The Registrar has no power or authority to record other documents at the request of the parties.

23. Whilst acknowledging the confidentiality of arbitration agreement, the Chairman was very concerned about the lack of registration of IPR arbitral awards on commercial operations, especially the rights in relation to technology transfer, licensing of IPRs and compulsory licensing of patents. Using the example given by Mr James TO, the Chairman considered that the "unregistered" beneficiary interest of party B was unknown to any third party, and thus it would probably create pitfalls for the third parties who intended to obtain licence or enter into other commercial dealings in respect of that IPR. Making reference to the land register, the Chairman suggested the Government to consider providing the arbitration parties with the choice of registering their arbitral award if they consent to do so, thereby facilitating the parties to IPR disputes to give notice to the world at large about their interests in the IPR. Mr Alvin YEUNG made a similar suggestion.

24. DD of IP (Atg) said that, basically, only documents which have effect towards all (*erga omnes* effect), such as court orders and decisions of the Registrar would be recorded on the registers maintained by IPD. In response to the Chairman's suggestion, DD of IP (Atg) said that arbitral decisions were made based on the actual documents and evidence submitted by the parties to the proceedings and given that the arbitral awards have effect only as between the arbitration parties, they would be of limited relevance to third parties. Recordal of arbitral awards containing adverse findings on the validity of an IPR may even mislead third parties to believe that the IPR is no longer valid and is free for exploitation by the public.

25. The Chairman was unconvinced and pointed out that the land register maintained by the Land Registry also included memorials of mortgage and other agreements made between the parties themselves and not handed down by the court.

26. SASG (Special Duties) supplemented that under the current legislative framework, parties to the arbitration, upon mutual consent, could still disclose information about the arbitration, including the arbitral awards, to third parties (say, publishing information on their websites) and/or disclose relevant information to any third party upon enquiry.

27. Dr Junius HO also opined that registration of arbitral awards should be required in order to protect third parties' right. Based on his understanding, such registration could be effected by virtue of the proposed section 103H. SASG (Special Duties) clarified that the proposed section 103H concerned court judgments entered in terms of an arbitral award involving IPR upon enforcement of the award by the court, but not registration of the award with IPD.

28. Noting SASG (Special Duties)'s clarification, Dr Junius HO considered that the wordings of the proposed section 103H were not clear enough to reflect its legislative intent. The Chairman said that the drafting aspects of individual sections would be dealt with later, when the Bills Committee proceeded to the clause-by-clause examination of the Bill.

Policy considerations on safeguarding competition and public interests

29. Mr Dennis KWOK also raised similar query as to how the Government was going to balance public interests and the interests of the parties to arbitration under a confidential arrangement. Mr KWOK considered the current situation unsatisfactory since the Government was effectively allowing the parties, through an arbitration agreement with a confidentiality clause, to create probably a false impression that a certain IPR still belonged to a certain individual while that individual might already had lost that right through the arbitration. Mr Dennis KWOK urged the Government to take measures to address the issues arising from the "inaccurate record" on the public registration system.

30. Mr Dennis KWOK also queried the adequacy of the Bill in safeguarding competition and asked whether the views from the Competition Commission had been sought in this regard. SASG (Special Duties) responded that legal advice from lawyers in DoJ with expertise in this area had been sought in this regard. Mr KWOK considered that it was necessary to seek the views from Competition Commission.

31. In response to Mr Holden CHOW's suggestion of extending the binding effect of arbitral award to third parties, SASG (Special Duties) responded that when the Arbitration Bill was introduced into the Legislative Council in 2009, a provision concerning confidentiality of arbitral proceedings and arbitral awards was added, which demonstrated the importance of confidentiality as an attractive feature in Hong Kong's arbitration regime. SASG (Special Duties) further said that the confidentiality provision in the AO had sought to strike a balance between public interests and the interests of the parties to the arbitration. SASG (Special Duties) further said that, as she mentioned earlier, under the AO, enforcement of

arbitral award might be refused, among others, if it would be contrary to the public policy of Hong Kong to enforce the award. If it was considered that an arbitral award was contrary to the public policy with regard to safeguarding competition, the enforcement of such arbitral award could be refused by the court. SASG (Special Duties) further pointed out that arbitration was *inter partes* and arbitral awards were made by the arbitrator based on arguments and materials before him and applying arbitration procedures. The court in a different set of proceedings and applying different procedural rules and considering other arguments and materials, may not necessarily come to the same view. It would be misconceived to regard the arbitral finding as conclusive as to the legal position of the IPR.

32. Mr Paul TSE opined that safeguarding competition might not be the legislative intent of the Bill and/or the main consideration of any review relating to the current arbitration regime. SASG (Special Duties) said that it was well accepted in the international community that IPRs were not anti-competitive by nature.

DoJ 33. To address the issues and concerns raised by members, DoJ undertook to provide written responses to the following issues before the next meeting:

- (a) the adequacy of the Bill in safeguarding competition, including the views of the Competition Commission on the confidentiality of the arbitration agreement and the arbitral award, given that a third party who had no knowledge of the arbitral award in relation to a dispute over the validity of an IPR might not be able to ascertain who was the true owner of that IPR when the third party intended to obtain a licence in respect of that IPR; and
- (b) the suggestion of requiring parties to the IPR disputes to register their arbitral awards, if any, with the IPD, to safeguard public interest without compromising the integrity of the arbitration agreement.

Power of arbitral tribunal

34. Looking into the proposed section 103D(6) which mentioned the power of an arbitral tribunal under section 70 of the AO, Dr Junius HO sought clarification on whether the proposed section 103D(6) envisaged parallel proceedings before the Court and arbitral tribunal and whether it provided that the arbitral tribunal had to follow the Court's decision. SASG (Special Duties) replied in the negative and said that the proposed section 103D(6) under the

Bill was to clarify matters relating to the power of an arbitral tribunal to award any remedy or relief that could have been ordered by the Court if the dispute had been the subject of the civil proceedings in the Court, subject to any contrary agreement between the parties to IPR disputes.

Right of appeal to arbitral awards in relation to IPR disputes

35. Ms YUNG Hoi-yan noted from para. 9 of the Legislative Council Brief (File Ref.: L/M (5) To LP 19/00/9C) that "*An IPR dispute includes a dispute over the enforceability, infringement, subsistence, validity, ownership, scope, duration or any other aspect of an IPR*". Based on her understanding, IPR disputes were factual in nature. Ms YUNG further said that pursuing an appeal to an arbitral award of IPR dispute was very difficult and that the grounds for appeal were mainly based on the misconduct of arbitrators and/ or procedural matters. Owing to her concern as to the limited right to appeal to arbitral awards of IPR disputes, Ms YUNG considered that most people would choose to resolve IPR disputes by the courts in the first place rather than by arbitration and thus she queried the efficacy of the proposed legislative amendment.

36. SASG (Special Duties) responded that under the current regime of the AO, the parties to the arbitration could agree to opt in the provisions in Schedule 2 to the AO with regard to appeal against arbitral award on question of law in the arbitration agreement. Responding to Ms YUNG Hoi-yan's query on the efficacy of the proposed legislative amendment, SASG (Special Duties) emphasized that, among others, the proposed amendments to the AO aimed at clarifying any ambiguity in relation to "arbitrability of IPR disputes" and making Hong Kong more appealing than other jurisdictions for conducting arbitration involving IPR disputes, thereby facilitating and attracting more parties to resolve their IPR disputes by arbitration in Hong Kong.

Support services for arbitration

37. Dr YIU Chung-yim asked whether an information/ support centre for arbitration services would be set up to facilitate members of the public, especially those who wished to pursue arbitration but lack financial resources and/or relevant professional knowledge, to gain access to information and/or seek preliminary advice on matters relating to arbitration; and whether a list of arbitrators who have attained recognised qualifications and/or experience in resolving IPR disputes by arbitration, with details of their qualifications, would be made available to the public.

38. SASG (Special Duties) said that despite not having any plan to set up such kind of information/support centre for arbitration services, the Government had been committed to promoting arbitration services in Hong Kong in the commercial sector and to the general public locally and internationally. SASG (Special Duties) supplemented that the Government was also proposing to introduce the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2016 to the Legislative Council to facilitate third party funding for arbitration and mediation. She believed that the aforesaid legislative proposal and related measures would facilitate the users of arbitration and mediation services. Moreover, useful information, such as, the arbitration rules of the Hong Kong International Arbitration Centre ("HKIAC") was available on its website. HKIAC also had a Panel of Arbitrators for Intellectual Property Disputes ("the Panel"). Currently, there were over 40 arbitrators with experience in resolving IPR disputes from over 10 jurisdictions on the Panel.

Promoting the competitive edge of arbitration over litigation in resolving IPR disputes

39. Mr CHAN Chun-ying expressed concern and raised questions on matters relating to resolving IPR disputes by arbitration from commercial/users' point of view:

- (a) as one of the legislative intents of the Bill was to enhance Hong Kong's status as a leading centre for international legal and dispute resolution services and a premier hub for IP trading in the Asia-Pacific region, Mr CHAN said that the users would be most concerned about the adequacy of qualified IPR arbitrators; and
- (b) efforts should be dedicated to promote "cost effectiveness" as the competitive edge of Hong Kong in the provision of arbitration services since commercial users would be most concerned about saving in cost and enhancement in efficiency in opting to resolve their IPR disputes by arbitration. With reference to the cases in other jurisdictions, Mr CHAN sought information on the amount of time and cost saved in using arbitration to resolve their IPR disputes, to demonstrate its competitive edges over litigation.

40. SASG (Special Duties) said that the Government had all along been actively promoting the arbitration services of Hong Kong in the Mainland and other jurisdictions, including Burma, Cambodia, Indonesia and Thailand. DD of IP (Atg) supplemented that IPD had also joined force with DoJ in

organizing workshops to promote the settlement of IPR disputes by mediation. IPD had also been organizing training courses for small and medium enterprises to promote their awareness of IP protection and enhance their capacity in managing their IPRs. Upon passing of the Bill, workshops and seminars on topics related to arbitration would also be organized.

41. SASG (Special Duties) quoted the results of a survey conducted by World Intellectual Property Organization (“WIPO”) in 2013¹, with regard to resolving disputes on technology transactions, to demonstrate the amount of time and cost saved in using arbitration to resolve their IPR disputes. Results of the survey showed that the average time spent in resolving the disputes by court proceedings was 3 to 3.5 years while that for resolving disputes by arbitration was on average more than 1 year. As regards the experience of the WIPO Arbitration and Mediation Center, arbitration cases under the WIPO Expedited Arbitration Rules and the WIPO Arbitration Rules took on average around 7 months and 23 months respectively. In terms of legal cost, the average cost of litigation was US\$ 475,000 to slightly over US\$850,000 while the cost for arbitration (including the cost for arbitrators) was slightly over US\$ 400,000, whereas the average cost of WIPO expedited arbitration and WIPO arbitration was only around US\$48,000 and US\$165,000 respectively.

Criminal liability arising from IPR disputes

42. Dr YIU Chung-yim sought clarification as to the criminal liability arising from IPR disputes. In a hypothetical situation where a person had obtained Government funding for scientific research and was granted a patent which was subsequently held by an arbitral tribunal to have infringed the IPR of an overseas IPR owner, Dr YIU asked whether that person would be liable to any criminal offence, such as fraud, in relation to the government funding for scientific research in respect of that patent.

43. SASG (Special Duties) responded that, while there was no statutory elaboration on what subject matter of a dispute was not capable of settlement by arbitration, it was understood, based on case law and legal writings, that the power of an arbitral tribunal was confined to resolving civil disputes between the parties to the arbitration (but not criminal matters) and the legal effect of arbitral awards would be binding on the parties to the arbitration only. As to the situation mentioned by Dr YIU Chung-yim, SASG (Special Duties) said that while she had no personal knowledge of the application procedures of the funding concerned, the requirements as to the submission of information and the liability arising from failure of disclosure would be subject to the terms and conditions set by the authority concerned.

¹ Results of the WIPO Arbitration and Mediation Center International Survey on Dispute Resolution in Technology Transactions March 2013, available at <http://www.wipo.int/amc/en/center/survey/results.html>

44. Dr Priscilla LEUNG also sought clarification as to whether an arbitral tribunal/ arbitrator would only handle issues relating to the dispute resolution between the parties to the arbitration, but not any suspected criminal offence of the disputed parties. Dr LEUNG said, as far as she understood, the charging of criminal offence would be outside the scope of any arbitral tribunal/arbitrator and that it would be a separate matter to be dealt with, if the case so required, by the relevant prosecution authorities, say, if there was enough evidence to charge the individuals/entities concerned. SASG (Special Duties) responded in affirmative.

Public Views on the Bill

45. The Chairman sought members' view on whether deputations should be invited to give views on the Bill.

46. Mr Dennis KWOK considered that it would not be necessary for the Bills Committee to invite deputations to give views on the Bill and reiterated that views of the Competition Commission had to be sought. Members agreed.

III. Any other business

47. The Chairman advised that the next meeting would be scheduled on a day after the requisite information to be provided by the Government was available.

(Post-meeting note: The next meeting was scheduled for Saturday, 11 February 2017 at 9:30 am. The notice of meeting was issued to members vide LC Paper No. CB(4)393/16-17 on 5 January 2017. The Government was requested to provide written response to the issues set out at para 33 above by 3 February 2017. Subsequently, the meeting was rescheduled to Monday, 20 February 2017 at 8:30 am. The notice of rescheduling of meeting was issued to members vide LC Paper No. CB(4)493/16-17 on 2 February 2017.)

48. There being no other business, the meeting ended at 10:21 am.

Bills Committee on Arbitration (Amendment) Bill 2016

Proceedings of the first meeting held on Thursday, 5 January 2017, at 8:30 am in Conference Room 2 of the Legislative Council Complex

Time Marker	Speaker(s)	Subject(s)	Action required
Election of Chairman			
000139-000342	Hon James TO Hon Holden CHOW Hon Martin LIAO	Election of Chairman	
Meeting with The Administration			
000342-001250	Chairman The Administration	Briefing by the Department of Justice ("DoJ") on the Arbitration (Amendment) Bill 2016 ("the Bill")	
001250-001925	Hon Alvin YEUNG The Administration	Binding effect and enforceability of arbitral awards Scrutiny of the Bill from the perspective of public interests.	
001925-002740	Hon James TO The Administration	Arbitrability of IPR disputes Suggestion on requiring the parties to IPR disputes to register their arbitral awards.	
002740-003302	Hon YIU Chung-yim The Administration	Declaration of interest Enquiry on support services for arbitration Criminal liability arising from IPR disputes	
003302-003816	Dr Hon Priscilla LEUNG The Administration	Declaration of interest Registration of arbitral awards in relation to disputes over the validity of patents. Criminal liability arising from IPR disputes	
003816-004340	Hon CHAN Chun-ying The Administration	Promoting the competitive edge of arbitration over litigation in resolving IPR disputes	
004340-004958	Chairman The Administration	Declaration of interest Suggestion on establishing a mechanism, similar to the land register, to facilitate the parties to IPR disputes to register their arbitral awards.	

Time Marker	Speaker(s)	Subject(s)	Action required
004958-005241	Hon YUNG Hoi-yan The Administration Chairman	Right of appeal to arbitral awards in relation to IPR disputes	
005241-005840	Hon Holden CHOW The Administration	Clarification on the meaning of " <i>erga omnes</i> effect" under para. 13 of the Legislative Council Brief (File Ref.: L/M (5) to LP 19/00/9C).	
005840-010516	Hon Paul YSE The Administration	Binding effect and enforceability of arbitral awards Scrutiny of the Bill from the perspective of public interests.	
010516-011303	Dr Hon Junius HO The Administration Chairman	Arbitrability of IPR disputes Power of an arbitral tribunal	
011303-011703	Hon Paul TSE The Administration	Arbitrability of IPR disputes	
011703-011955	Dr Hon Junius HO The Administration	Binding effect and registration of arbitral awards	
011955-012722	Hon Dennis KWOK The Administration Chairman	Scrutiny of the Bill from the perspectives of safeguarding competition and public interests Suggestion of seeking the views of Competition Commission on the Bill	
012722-013034	Hon Alvin YEUNG Chairman	Suggestion on establishing a mechanism, similar to the land register, to facilitate the parties to IPR disputes to register their arbitral awards.	
013034-013623	Hon Holden CHOW The Administration	In response to the suggestion of extending the binding effect of arbitral awards to third parties, the Administration stressed the importance of the confidentiality of arbitration agreement. Grounds for refusal of arbitral awards	
013623-014151	Hon Paul TSE The Administration	Current arbitration regime and legislative intent of the Bill	
014151-014744	Dr Hon Junius HO The Administration Chairman	Registration of arbitral awards Drafting aspect of Clause 103H	
014744-015030	Hon Dennis KWOK Chairman Hon Junius HO	The Administration was requested to provide written responses to the following issues: (a) the adequacy of the Bill in safeguarding competition, including the views of the Competition Commission on the confidentiality of the arbitration agreement and the arbitral award, given that a third	Para 33 of the minutes refers

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>party who had no knowledge of the arbitral award in relation to a dispute over the validity of an intellectual property right ("IPR") might not be able to ascertain who was the true owner of that IPR when the third party intended to obtain a licence in respect of that IPR; and</p> <p>(b) the suggestion of requiring parties to the IPR disputes to register their arbitral awards, if any, with the Intellectual Property Department, to safeguard public interest without compromising the integrity of the arbitration agreement.</p>	
015030-015123	Hon Dennis KWOK Chairman The Administration	<p>The Chairman sought members' view on whether deputations should be invited to give views on the Bill.</p> <p>Members agreed that it would not be necessary for the Bills Committee to invite deputations to give views on the Bill.</p>	
Any other business			
015123-015157	Chairman Hon Alvin YEUNG	<p>The Chairman advised that the next meeting would be scheduled on a day after the requisite information to be provided by the Administration was available.</p>	