

立法會
Legislative Council

Ref : CB4/BC/2/16

LC Paper No. CB(4)1182/16-17
(These minutes have been seen
by the Administration)

**Bills Committee on Arbitration and Mediation Legislation
(Third Party Funding) (Amendment) Bill 2016**

**Minutes of the fourth meeting
held on Tuesday, 16 May 2017, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon Dennis KWOK Wing-hang (Chairman)
Hon James TO Kun-sun
Hon Jimmy NG Wing-ka, JP
Hon YUNG Hoi-yan
Hon CHAN Chun-ying

Members absent : Hon Paul TSE Wai-chun, JP
Hon CHUNG Kwok-pan
Dr Hon Junius HO Kwan-yiu, JP
Hon Holden CHOW Ho-ding
Dr Hon YIU Chung-yim

Public officers attending : Item I

Department of Justice

Mr Wesley WONG, SC
Solicitor General

Mr Peter WONG
Deputy Solicitor General (Policy Affairs)

Mr LEE Tin-yan
Senior Assistant Solicitor General
(Arbitration)

Miss Ada CHEN
Commissioner of the Joint Dispute Resolution Strategy
Office and Senior Assistant Law Officer (Civil Law)
(Mediation)

Mr Peter SZE
Senior Government Counsel

Mr Bernard YUE
Senior Government Counsel

Clerk in attendance : Ms Sophie LAU
Chief Council Secretary (4)2

Staff in attendance : Miss Evelyn LEE
Assistant Legal Adviser 10

Ms Jacqueline LAW
Council Secretary (4)2

Miss Vivian YUEN
Legislative Assistant (4)2

I. Meeting with the Administration

LC Paper No. CB(4)1025/16-17(01) -- Letter dated 11 May 2017
from the Assistant Legal
Adviser of the Legislative
Council ("LegCo")
Secretariat to the Department
of Justice

LC Paper No. CB(4)1025/16-17(02) -- Letter from the Department
of Justice dated 15 May 2017
responding to the letter dated
11 May 2017 from the
Assistant Legal Adviser of
the LegCo Secretariat

LC Paper No. CB(4)852/16-17(01)	--	Proposed Committee stage amendments ("CSAs") to the proposed section 98G(2) of the Arbitration Ordinance (Cap. 609) provided by the Administration
LC Paper No. CB(4)853/16-17(01) (English version only)	--	Submission from the Hong Kong Construction Association
LC Paper No. CB(4)843/16-17(01) (English version only)	--	Submission from the Law Society of Hong Kong
LC Paper No. CB(4)843/16-17(02) (English version only)	--	Submission from the Hong Kong Bar Association
LC Paper No. CB(4)843/16-17(03) (English version only)	--	Submission from the Hong Kong International Arbitration Centre
LC Paper No. CB(4)843/16-17(04) (English version only)	--	Submission from a member of the public
LC Paper No. CB(4)667/16-17(01)	--	List of follow-up actions arising from the discussion at the meeting on 28 February 2017
LC Paper No. CB(4)667/16-17(02)	--	Administration's response to the issues raised at the meeting on 28 February 2017
LC Paper No. CB(4)620/16-17(01)	--	List of follow-up actions arising from the discussion at the meeting on 14 February 2017
LC Paper No. CB(4)620/16-17(02)	--	Administration's response to the issues raised at the meeting on 14 February 2017

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| LC Paper No. CB(4)620/16-17(03) | -- | Draft CSAs proposed by the Administration |
| LC Paper No. CB(4)642/16-17(01) | -- | CSA proposed by Dr Hon Junius HO Kwan-yiu |

Other relevant papers

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|---------------------------------|----|---|
| File Ref.: LP 19/00/16C | -- | LegCo Brief |
| LC Paper No. CB(3)247/16-17 | -- | The Amendment Bill |
| LC Paper No. LS23/16-17 | -- | Legal Service Division Report |
| LC Paper No. CB(4)548/16-17(01) | -- | Letter from the Department of Justice dated 10 February 2017 responding to the letter dated 27 January 2017 from the Assistant Legal Adviser of the LegCo Secretariat |
| LC Paper No. CB(4)548/16-17(02) | -- | Marked-up copy of the Amendment Bill prepared by the Legal Service Division (Restricted to members) |
| LC Paper No. CB(4)548/16-17(03) | -- | Background brief on the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2016 prepared by the LegCo Secretariat |

Discussion

2. The Bills Committee deliberated (Index of proceedings attached at **Annex**).
3. The Chairman concluded that the Bills Committee had completed the scrutiny of the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2016 ("the Bill") and had no objection to the draft

Committee stage amendments ("CSAs") in relation to the proposed section 98G(2) of the Arbitration Ordinance (Cap. 609) proposed by the Administration. The Bills Committee would not move any CSAs in its name.

Legislative timetable

4. Members noted that the Administration would resume the Second Reading debate on the Bill at the Council meeting of 14 June 2017 and the Chairman would report the deliberations of the Bills Committee to the House Committee on 2 June 2017. The deadline for giving notice of moving CSAs would be 5 June 2017.

II. Any other business

5. There being no other business, the meeting ended at 4:45 pm.

Council Business Division 4
Legislative Council Secretariat
7 June 2017

**Bills Committee on Arbitration and Mediation Legislation
(Third Party Funding) (Amendment) Bill 2016**

**Proceedings of the fourth meeting
held on Tuesday, 16 May 2017, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)	Action required
Meeting with The Administration			
000330-000402	Chairman	Opening remarks	
000402-000815	Administration	The Administration briefed members on its proposed Committee stage amendments ("CSAs") to delete the proposed section 98G(2) and to insert a newly proposed section 98NA after the proposed section 98N under Division 3 of the new Part 10A (LC Paper No. CB(4)852/16-17(01)).	
000815-001011	Chairman Administration	The Chairman raised his enquiry as to the policy intent of including overseas lawyers in the newly proposed section 98NA(3)(c). The Administration explained that if the exclusion under the proposed section 98NA covered only arbitration funding providing by practising local solicitors, barristers and registered foreign lawyers, that would be considered a significant loophole as arbitration funding provided by overseas lawyers who are not registered foreign lawyers would not be excluded from the application of the Bill. The Administration was of the view that the newly proposed section 98NA could ensure that both arbitration funding provided by Hong Kong practising lawyers (including registered foreign lawyers) and by overseas lawyers would be excluded from the application of the Bill, thereby providing a level playing field for the legal profession.	

Time Marker	Speaker(s)	Subject(s)	Action required
		Regarding the Chairman's enquiry on the review of conditional and contingency fees arrangements in Hong Kong, the Administration responded that the review would be conducted separately so that the implementation of the Bill would not be impeded by such review.	
001011-001230	Ms YUNG Hoi-yan Administration	Ms YUNG Hoi-yan enquired whether the Administration would consider amending the Chinese expression of the newly proposed section 98NA(1) by adding the word "該" before "仲裁", so as to better reflect the meaning of the English expression "in relation to the arbitration" to ensure consistency in the meaning of the provision. The Administration advised that the Law Drafting Division of the Department of Justice had carefully considered the drafting of the said provision and was of the view that both the Chinese and English expressions of the provision had clearly stipulated the legislative intent of the newly proposed section 98NA. The Administration added that although the flow of the Chinese and English texts of the newly proposed section 98NA(1) was different, since the term "party" was defined under the new proposed section 98NA(3) as "a party to an arbitration within the meaning of section 98I", it was clear that in the Chinese text "仲裁" referred to the arbitration in respect of which the lawyer acted for any party.	
001230-001446	Mr Jimmy NG Administration	In response to Mr Jimmy NG's enquiry as to whether it was necessary to provide for a lengthy description of "legal practice" in the English version of the new proposed section 98NA(1), the Administration explained that under the newly proposed section 98NA, the new Part 10A was not applicable to a lawyer who, in the course of the lawyers' legal practice, acted for parties in arbitration. The Administration further explained that in determining whether a person's provision of	

Time Marker	Speaker(s)	Subject(s)	Action required
		arbitration funding was covered under the new Part 10A, whether the person had, in the course of the person's legal practice, acted for any party to the arbitration would be considered, rather than merely considering the identity of that person as a lawyer.	
001446-001602	Chairman Administration	On the Chairman's enquiry about the date of commencement of the Bill, the Administration advised that it did not have a specific timetable at this stage for the major operative provisions (i.e. those provisions mentioned in clause 1(3) of the Bill). Upon the enactment of the Bill, the Administration would require some time to prepare for the appointment of advisory body and authorized body provided under the new section 98W, and the authorized body would also require some time to draft the code of practice to be issued under the new section 98O, before the major operative provisions could be brought into operation. Subject to the above, the Administration would appoint the date of commencement of the major operative provisions by notice published in Gazette. Legislative timetable	
Any other business			
001602-001618	Chairman	Closing remarks	