

LC: Speech by SJ in moving the Second Reading of the
Arbitration Bill

Following is the speech (English translation) by the Secretary for Justice, Mr Wong Yan Lung, SC, in moving the Second Reading of the Arbitration Bill in the Legislative Council meeting today (July 8):

President,

I move that the Arbitration Bill be read a second time.

The Bill proposes to reform arbitration law in Hong Kong. The reform is to be implemented through the creation of a unitary regime for all types of arbitration on the basis of the UNCITRAL Model Law on International Commercial Arbitration (Model Law) adopted by the United Nations Commission on International Trade Law.

The current Arbitration Ordinance provides separate regimes for "domestic" and "international" arbitrations. The domestic regime is mainly based on the English Arbitration Acts. The international regime is based on the Model Law. The parties may by agreement in writing switch from one regime to another.

In April 2003, the Committee on Hong Kong Arbitration Law set up by the Hong Kong Institute of Arbitrators and the Hong Kong International Arbitration Centre issued a report recommending that the current Arbitration Ordinance should be completely redrawn and replaced by the adoption of the Model Law so as to keep pace with the needs of the modern arbitration community both domestically and internationally.

The Department of Justice set up a Working Group to examine the proposals in September 2005. In December 2007, the Department of Justice published a Consultation Paper on Reform of the Law of Arbitration in Hong Kong and draft Arbitration Bill to seek views on the proposed reform.

There is general support in the submissions received on the proposal to abolish the distinction between domestic and international arbitrations under the current Arbitration Ordinance and to adopt a unitary regime of arbitration based on the Model Law.

The purpose of the Bill is to reform arbitration law to make it more user-friendly. The Bill is intended to be self-contained so that it will be easier for users to find all relevant provisions in one place.

The Bill gives legal effect to those provisions of the Model Law that are to apply in Hong Kong. Those provisions, with such modifications or supplements where necessary, are arranged in the same order as the Model Law.

With the enactment of the Bill, the law relating to arbitration will become clearer, more certain and easily accessible to arbitration users.

The Model Law is developed by the United Nations Commission on International Trade Law and commended for international use.

A unitary arbitration regime on the basis of the Model Law would enable the business community and other professions in Hong Kong to operate an arbitration regime which accords with international arbitration practices and development. Parties to an arbitration will be saved from the trouble of having to identify whether any particular arbitral proceeding is "domestic" or "international" and as to the law that is applicable.

One of the objectives of the proposed reform is to attract more parties to choose Hong Kong as the place to conduct arbitral proceedings and help to promote Hong Kong as a regional centre for international arbitration.

The Bill provides for a fair and speedy method of resolution of disputes by arbitration without unnecessary expense.

It limits the extent to which the court may interfere in the arbitration of a dispute to those circumstances as expressly provided for in the Bill.

It accords a greater degree of autonomy to the parties in the conduct of arbitral proceedings.

New provisions governing the delivery of communications in arbitral proceedings have been added in the Bill to take into account the development in electronic communications.

Following the majority view expressed during the consultation exercise, the Bill specifies that, as a starting point, court proceedings relating to arbitration are to be heard otherwise than in open court. This takes into account the importance of confidentiality which is also a main reason that parties choose arbitration over litigation.

To balance the desire of parties for confidentiality against the public interest in transparency of court proceedings and further development of arbitration law, the Bill further provides that on the application of any party, or in any particular case where the court is satisfied that any court proceeding relating to arbitration ought to be heard in open court, the court may make an order for an open hearing.

There are also provisions in the Bill which provide for the publication of judgments of major legal interest relating to arbitral proceedings. This may be subject to direction by the court as to the action that may be taken to conceal certain matters in a report of a judgment.

There are special "opt-in" provisions in the Bill which allow arbitration users to continue to use certain provisions that only apply to domestic arbitration under the current Arbitration Ordinance. This is to address the concern of certain arbitration users such as the construction industry who are accustomed to the use of standard form contracts that provide for the use of "domestic arbitration" in the resolution of disputes.

As the current Arbitration Ordinance is to be repealed after the enactment of the Bill, there are transitional arrangements that govern the application of the relevant laws to arbitral proceedings commenced before and after the enactment of the Bill. The Bill will be brought into force on a date to be notified in the Gazette after enactment by this Council.

The Bill represents a major milestone in the reform of arbitration law in Hong Kong. It represents years of hard work by the Department of Justice, working closely together with arbitration users in Hong Kong. It is our major initiative to make Hong Kong a friendlier place for arbitration. Its enactment will be a significant contribution to developing Hong Kong as a hub for international arbitration in the Asia Pacific region.

I commend the Bill to this Council.

Ends/Wednesday, July 8, 2009