Speech of the Secretary for Justice
Hon Rimsky Yuen, SC, JP
at the Legislative Council on 4 February 2015

To move the Second Reading of the
Arbitration (Amendment) Bill 2015

Mr President,

I move that the Arbitration (Amendment) Bill 2015 ("the Bill") be read the Second time. The main objective of the Bill is to amend the current Arbitration Ordinance (Cap. 609) ("the Ordinance") so as to remove possible legal uncertainties that might arise from the opt-in mechanism provided for domestic arbitration in Part 11 of the Ordinance.

The opt-in mechanism for domestic arbitration

2. The current Arbitration Ordinance came into operation on 1 June 2011. The Ordinance has unified the separate domestic and international arbitration regimes under the now repealed Arbitration Ordinance (Cap. 341), and at the same time provides for an opt-in mechanism for domestic arbitration.

3. In response to requests made by the arbitration sector, a limited exception to this unified regime is provided in Part 11 of the Ordinance, and sections 1 to 7 of Schedule 2 thereto. First, the rights formerly granted to parties to domestic arbitration for seeking the assistance of the Court of First Instance of the Hong Kong the Special Administrative Region ("Hong Kong SAR") on certain matters shall be retained by way of opt-in provisions contained in sections 2 to 7 of Schedule 2 to the Ordinance. Second, if section 1 of Schedule 2 applies, "any dispute arising between the parties to an arbitration agreement is to be submitted to a sole arbitrator for arbitration". In such circumstances, the provisions relating to the determination of the number of arbitrators under section 23 of the Ordinance will not apply.

4. Under section 100 of the Ordinance, all of the provisions (i.e., the aforesaid sections 1 to 7) in Schedule 2 automatically apply to parties to two specified types of domestic arbitration agreements. This automatic opt-in mechanism is subject to section 102. Section 102(b)(ii) specifically provides that section 100 does not apply if the arbitration agreement concerned has provided expressly that "any of the provisions in Schedule 2 applies or does not apply".

5. Recently, the arbitration sector, through the Hong Kong International Arbitration Centre, pointed out that there could possibly be legal uncertainties arising from the above automatic opt-in mechanism. Their concern is, if parties opting for domestic arbitration specify the number of arbitrators in their arbitration agreements (be it one or more than one), that could possibly be considered as having the effect of rendering section 1 of Schedule 2 (i.e., the provision that "any dispute arising between the parties to an arbitration agreement is to be submitted to a sole arbitrator for arbitration") applicable or inapplicable. That could possibly cause the arbitration agreement to be caught by section 102(b)(ii), resulting in the disapplication of section 100 and thereby giving rise to doubts as to whether parties to a domestic arbitration agreement which specifies the number of arbitrators would still be able to seek the Court's assistance on matters set out in sections 2 to 7 of Schedule 2.

6. The arbitration sector requests that the matter be put beyond doubt, so that parties opting for domestic arbitration should be free to decide on the number of arbitrators, whilst retaining their right to seek the Court of First Instance's assistance on the matters set out in sections 2 to 7 of Schedule 2 to the Ordinance. After considering in detail the requests made by the arbitration sector, the Department of Justice proposes that the Ordinance be amended to put the matter beyond doubt, so that parties opting for domestic arbitration should be free to decide on the number of arbitrators, whilst retaining the right to seek the Court of First Instance's assistance on the matters set out in sections 2 to 7 of Schedule 2.

Other Amendments

7. There have been four new state parties to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (which is also known as the New York Convention) since the Arbitration Ordinance was amended in 2013. In addition, the official name of an existing state party has been changed and the application of the New York Convention has been extended to one of the territories of another existing state party. Therefore, we will also seek to amend the Arbitration (Parties to New York Convention) Order by way of the Bill in order to update the list of the parties to the Convention.

Consultation

8. The Government of the Hong Kong SAR ("the SAR Government") has consulted various stakeholders within the legal and arbitration sectors on the aforesaid proposed amendments to the Bill. They support the proposals and their comments and responses have been taken into account by the SAR Government in the drafting of the Bill. In addition, the Panel on Administration of Justice and Legal Services of the Legislative Council has also indicated support for the proposed amendments.

Conclusion

9. Mr President, in order to further enhance Hong Kong's position as a centre for international legal and dispute resolution services in the Asia Pacific region, the Department of Justice has been reviewing the Hong Kong arbitration regime from time to time and will also consider improvement to the Ordinance as and when appropriate. We believe that the Bill, when enacted, will help improve the opt-in mechanism for domestic arbitration, thereby reinforcing Hong Kong's position as a leading international arbitration centre in Asia Pacific.

10. With these remarks, I urge Members to support the Bill.

Thank you, President.

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