Arbitration Ordinance

(Cap. 609)

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An Ordinance to reform the law relating to arbitration, and to provide for related and consequential matters.

[1 June 2011] *L.N. 38 of 2011*

(Enacting provision omitted—E.R. 2 of 2014)

Part 1

Preliminary

(Format changes— E.R. 1 of 2018)

1. Short title

(Amended E.R. 2 of 2014)

(1) This Ordinance may be cited as the Arbitration Ordinance.

(2) *(Omitted as spent—E.R. 2 of 2014)*

2. Interpretation

(1) In this Ordinance—

arbitral tribunal (仲裁庭) means a sole arbitrator or a panel of arbitrators, and includes an umpire;

arbitration (仲裁) means any arbitration, whether or not administered by a permanent arbitral institution;

arbitration agreement (仲裁協議) has the same meaning as in section 19;

arbitrator (仲裁員), except in sections 23, 24, 30, 31, 32 and 65 and section 1 of Schedule 2, includes an umpire;

claimant (申索人) means a person who makes a claim or a counter-claim in an arbitration;

Commission (貿法委) means the United Nations Commission on International Trade Law;

Convention award (公約裁決) means an arbitral award made in a State or the territory of a State, other than China or any part of China, which is a party to the New York Convention;

Court (原訟法庭) means the Court of First Instance of the High Court;

dispute (爭議) includes a difference;

function (職能) includes a power and a duty;

HKIAC (香港國際仲裁中心) means the Hong Kong International Arbitration Centre, a company incorporated in Hong Kong under the Companies Ordinance (Cap. 32) as in force at the time of the incorporation and limited by guarantee; *(Amended 28 of 2012 ss. 912 & 920)*

interim measure (臨時措施)—

(a) if it is granted by an arbitral tribunal, has the same meaning as in section 35(1) and (2); or

(b) if it is granted by a court, has the same meaning as in section 45(9),

and ***interim measure of protection*** (臨時保全措施) is to be construed accordingly;

Macao (澳門) means the Macao Special Administrative Region; *(Added 7 of 2013 s. 3)*

Macao award (澳門裁決) means an arbitral award made in Macao in accordance with the arbitration law of Macao; *(Added 7 of 2013 s. 3)*

Mainland award (內地裁決) means an arbitral award made in the Mainland by a recognized Mainland arbitral authority in

accordance with the Arbitration Law of the People's Republic of China;

mediation (調解) includes conciliation;

New York Convention (《紐約公約》) means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards done at New York on 10 June 1958;

party (一方、方)—

(a) means a party to an arbitration agreement; or

(b) in relation to any arbitral or court proceedings, means a party to the proceedings;

recognized Mainland arbitral authority (認可內地仲裁當局) means an arbitral authority that is specified in the list of recognized Mainland arbitral authorities published by the Secretary for Justice under section 97;

repealed Ordinance (《舊有條例》) means the Arbitration Ordinance (Cap. 341) repealed by section 109;

respondent (被申請人) means a person against whom a claim or a counter-claim is made in an arbitration;

the Mainland (內地) means any part of China other than Hong Kong, Macao and Taiwan;

UNCITRAL Model Law (《貿法委示範法》) means the UNCITRAL Model Law on International Commercial Arbitration as adopted by the Commission on 21 June 1985 and as amended by the Commission on 7 July 2006, the full text of which is set out in Schedule 1.

(Amended E.R. 1 of 2018)

(2) If—

(a) a provision of this Ordinance refers to the fact that the parties have agreed, or in any other way refers to an

agreement of the parties, the agreement includes any arbitration rules referred to in that agreement; or

(b) a provision of this Ordinance provides that the parties may agree, the agreement, if any, may include any arbitration rules by referring to those rules in that agreement.

(3) If—

(a) a provision of this Ordinance (other than sections 53 and 68) refers to a claim, that provision also applies to a counter-claim; or

(b) a provision of this Ordinance (other than section 53) refers to a defence, that provision also applies to a defence to a counter-claim.

(4) A note located in the text of this Ordinance, a section heading of any provision of this Ordinance or a heading of any provision of the UNCITRAL Model Law is for reference only and has no legislative effect.

(5) If the Chinese equivalent of an English expression used in any provision of this Ordinance is different from the Chinese equivalent of the same English expression used in any provision of the UNCITRAL Model Law, those Chinese equivalents are to be treated as being identical in effect.

3. Object and principles of this Ordinance

(1) The object of this Ordinance is to facilitate the fair and speedy resolution of disputes by arbitration without unnecessary expense.

(2) This Ordinance is based on the principles—

(a) that, subject to the observance of the safeguards that are necessary in the public interest, the parties to a dispute

should be free to agree on how the dispute should be resolved; and

(b) that the court should interfere in the arbitration of a dispute only as expressly provided for in this Ordinance.

4. UNCITRAL Model Law to have force of law in Hong Kong

The provisions of the UNCITRAL Model Law that are expressly stated in this Ordinance as having effect have the force of law in Hong Kong subject to the modifications and supplements as expressly provided for in this Ordinance.

5. Arbitrations to which this Ordinance applies

(1) Subject to subsection (2), this Ordinance applies to an arbitration under an arbitration agreement, whether or not the agreement is entered into in Hong Kong, if the place of arbitration is in Hong Kong.

(2) If the place of arbitration is outside Hong Kong, only this Part, sections 20 and 21, Part 3A, sections 45, 60 and 61, Part 10 and sections 103A, 103B, 103C, 103D, 103G and 103H apply to the arbitration. *(Amended 7 of 2013 s. 4; 5 of 2017 s. 3)*

(3) If any other Ordinance provides that this Ordinance applies to an arbitration under that other Ordinance, this Ordinance (other than sections 20(2), (3) and (4), 22(1), 58 and 74(8) and (9)) applies to an arbitration under that other Ordinance, subject to the following—

(a) a reference in article 16(1) of the UNCITRAL Model Law, given effect to by section 34, to any objections with respect to the existence or validity of the arbitration agreement is to be construed as any objections with respect to the application of that other Ordinance to the dispute in question;

(b) that other Ordinance is deemed to have expressly provided that, subject to paragraph (c), all the provisions in Schedule 2 apply; and

(c) section 2 of Schedule 2 (if applicable) only applies so as to authorize 2 or more arbitral proceedings under the same Ordinance to be consolidated or to be heard at the same time or one immediately after another.

(4) Subsection (3) has effect, in relation to an arbitration under any other Ordinance, only in so far as this Ordinance is consistent with—

(a) that other Ordinance; and

(b) any rules or procedures authorized or recognized by that other Ordinance.

6. Application

This Ordinance applies to the Government and the Offices set up by the Central People's Government in the Hong Kong Special Administrative Region.

Part 2

General Provisions

(Format changes—E.R. 1 of 2018)

7. Article 1 of UNCITRAL Model Law (Scope of application)

Section 5 has effect in substitution for article 1 of the UNCITRAL Model Law.

8. Article 2 of UNCITRAL Model Law (Definitions and rules of interpretation)

(1) Section 2 has effect in substitution for article 2 of the UNCITRAL Model Law.

(2) For the purposes of subsection (1), a reference to this Ordinance in section 2 (other than section 2(5)) is to be construed as including the UNCITRAL Model Law.

(3) In the provisions of the UNCITRAL Model Law—

(a) a reference to this State is to be construed as Hong Kong;

(b) a reference to a State is to be construed as including Hong Kong;

(c) a reference to different States is to be construed as including Hong Kong and any other place;

(d) a reference to an article is to be construed as an article of the UNCITRAL Model Law; and

(e) (other than in article 2A of the UNCITRAL Model Law, given effect to by section 9) a reference to this Law is to be construed as this Ordinance.

9. Article 2A of UNCITRAL Model Law (International origin and

general principles)

Article 2A of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 2A. International origin and general principles*

(1) In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

(2) Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.".

10. Article 3 of UNCITRAL Model Law (Receipt of written communications)

(1) Article 3 of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 3. Receipt of written communications*

(1) Unless otherwise agreed by the parties:

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;

(b) the communication is deemed to have been received on the day it is so delivered.

(2) The provisions of this article do not apply to communications in court proceedings.".

(2) Without affecting subsection (1), if a written communication (other than communications in court proceedings) is sent by any means by which information can be recorded and transmitted to the addressee, the communication is deemed to have been received on the day it is so sent.

(3) Subsection (2) applies only if there is a record of receipt of the communication by the addressee.

11. Article 4 of UNCITRAL Model Law (Waiver of right to object)

Article 4 of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 4. Waiver of right to object*

A party who knows that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.".

12. Article 5 of UNCITRAL Model Law (Extent of court intervention)

Article 5 of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 5. Extent of court intervention*

In matters governed by this Law, no court shall intervene except where so provided in this Law.".

13. Article 6 of UNCITRAL Model Law (Court or other authority for certain functions of arbitration assistance and supervision)

(1) Subsections (2) to (6) have effect in substitution for article 6 of the UNCITRAL Model Law.

(2) The functions of the court or other authority referred to in article 11(3) or (4) of the UNCITRAL Model Law, given effect to by section 24, are to be performed by the HKIAC.

(3) The HKIAC may, with the approval of the Chief Justice, make rules to facilitate the performance of its functions under section 23(3), 24 or 32(1).

(4) The functions of the court or other authority referred to in—

(a) article 13(3) of the UNCITRAL Model Law, given effect to by section 26; or

(b) article 14(1) of the UNCITRAL Model Law, given effect to by section 27,

are to be performed by the Court.

(5) The functions of the court referred to in—

(a) article 16(3) of the UNCITRAL Model Law, given effect to by section 34; or

(b) article 34(2) of the UNCITRAL Model Law, given effect to by section 81,

are to be performed by the Court.

(6) The functions of the competent court referred to in article 27 of the UNCITRAL Model Law, given effect to by section 55, are to be performed by the Court.

14. Application of Limitation Ordinance and other limitation

enactments to arbitrations

(1) The Limitation Ordinance (Cap. 347) and any other Ordinance relating to the limitation of actions (***limitation enactments***) apply to arbitrations as they apply to actions in the court.

(2) For the purposes of subsection (1), a reference in a limitation enactment to bringing an action is to be construed as, in relation to an arbitration, commencing the arbitral proceedings.

(3) Despite any term in an arbitration agreement to the effect that no cause of action may accrue in respect of any matter required by the agreement to be submitted to arbitration until an award is made under the agreement, the cause of action is, for the purposes of the limitation enactments (whether in their application to arbitrations or to other proceedings), deemed to accrue in respect of that matter at the time when it would have accrued but for that term.

(4) If a court orders that an award is to be set aside, the period between—

(a) the commencement of the arbitral proceedings; and

(b) the date of the order of the court setting aside the award,

must be excluded in computing the time prescribed by a limitation enactment for the commencement of proceedings (including arbitral proceedings) with respect to the matter submitted to arbitration.

15. Reference of interpleader issue to arbitration by court

(1) If—

(a) relief by way of interpleader is granted by a court; and

(b) there is an arbitration agreement between the claimants in the interpleader proceedings in respect of any issue between those claimants,

the court granting the relief must, subject to subsection (2), direct that the issue is to be determined in accordance with the agreement.

(2) The court may refuse to make a direction under subsection (1) if the circumstances are such that legal proceedings brought by a claimant in respect of the issue would not be stayed.

(3) If the court refuses to make a direction under subsection (1), any provision of the arbitration agreement that an award is a condition precedent to the bringing of legal proceedings in respect of the issue does not affect the determination of the issue by the court.

(4) A direction of the court under subsection (1) is not subject to appeal.

(5) The leave of the court making a decision under subsection (2) is required for any appeal from that decision.

16. Proceedings to be heard otherwise than in open court

(1) Subject to subsection (2), proceedings under this Ordinance in the court are to be heard otherwise than in open court.

(2) The court may order those proceedings to be heard in open court—

(a) on the application of any party; or

(b) if, in any particular case, the court is satisfied that those proceedings ought to be heard in open court.

(3) An order of the court under subsection (2) is not subject to appeal.

17. Restrictions on reporting of proceedings heard otherwise than in open court

(1) This section applies to proceedings under this Ordinance in the court heard otherwise than in open court (***closed court***

proceedings).

(2) A court in which closed court proceedings are being heard must, on the application of any party, make a direction as to what information, if any, relating to the proceedings may be published.

(3) A court must not make a direction permitting information to be published unless—

(a) all parties agree that the information may be published; or

(b) the court is satisfied that the information, if published, would not reveal any matter (including the identity of any party) that any party reasonably wishes to remain confidential.

(4) Despite subsection (3), if—

(a) a court gives a judgment in respect of closed court proceedings; and

(b) the court considers that judgment to be of major legal interest,

the court must direct that reports of the judgment may be published in law reports and professional publications.

(5) If a court directs under subsection (4) that reports of a judgment may be published, but any party reasonably wishes to conceal any matter in those reports (including the fact that the party was such a party), the court must, on the application of the party—

(a) make a direction as to the action to be taken to conceal that matter in those reports; and

(b) if the court considers that a report published in accordance with the direction made under paragraph (a) would still be likely to reveal that matter, direct that the report may not be published until after the end of

a period, not exceeding 10 years, that the court may direct.

(6) A direction of the court under this section is not subject to appeal.

18. Disclosure of information relating to arbitral proceedings and awards prohibited

(1) Unless otherwise agreed by the parties, no party may publish, disclose or communicate any information relating to—

(a) the arbitral proceedings under the arbitration agreement; or

(b) an award made in those arbitral proceedings.

(2) Nothing in subsection (1) prevents the publication, disclosure or communication of information referred to in that subsection by a party—

(a) if the publication, disclosure or communication is made—

(i) to protect or pursue a legal right or interest of the party; or

(ii) to enforce or challenge the award referred to in that subsection,

in legal proceedings before a court or other judicial authority in or outside Hong Kong;

(b) if the publication, disclosure or communication is made to any government body, regulatory body, court or tribunal and the party is obliged by law to make the publication, disclosure or communication; or

(c) if the publication, disclosure or communication is made to a professional or any other adviser of any of the parties.

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Part 3

Arbitration Agreement

(Format changes—E.R. 1 of 2018)

19. Article 7 of UNCITRAL Model Law (Definition and form of arbitration agreement)

(1) Option I of Article 7 of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Option I*

Article 7. Definition and form of arbitration agreement

(1) "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(2) The arbitration agreement shall be in writing.

(3) An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means.

(4) The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference; "electronic communication" means any communication that the parties make by means of data messages; "data

message" means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.

(5) Furthermore, an arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

(6) The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.".

(2) Without affecting subsection (1), an arbitration agreement is in writing if—

(a) the agreement is in a document, whether or not the document is signed by the parties to the agreement; or

(b) the agreement, although made otherwise than in writing, is recorded by one of the parties to the agreement, or by a third party, with the authority of each of the parties to the agreement.

(3) A reference in an agreement to a written form of arbitration clause constitutes an arbitration agreement if the reference is such as to make that clause part of the agreement.

20. Article 8 of UNCITRAL Model Law (Arbitration agreement and substantive claim before court)

(1) Article 8 of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 8. Arbitration agreement and substantive claim before court*

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.".

(2) If a dispute in the matter which is the subject of an arbitration agreement involves a claim or other dispute that is within the jurisdiction of the Labour Tribunal established by section 3 (Establishment of tribunal) of the Labour Tribunal Ordinance (Cap. 25), the court before which an action has been brought may, if a party so requests, refer the parties to arbitration if it is satisfied that—

(a) there is no sufficient reason why the parties should not be referred to arbitration in accordance with the arbitration agreement; and

(b) the party requesting arbitration was ready and willing at the time the action was brought to do all things necessary for the proper conduct of the arbitration, and remains so.

(3) Subsection (1) has effect subject to section 15 (Arbitration agreements) of the Control of Exemption Clauses Ordinance (Cap. 71).

(4) If the court refuses to refer the parties to arbitration, any provision of the arbitration agreement that an award is a condition precedent to the bringing of legal proceedings

in respect of any matter is of no effect in relation to those proceedings.

(5) If the court refers the parties in an action to arbitration, it must make an order staying the legal proceedings in that action.

(6) In the case of Admiralty proceedings—

(a) the reference of the parties to arbitration and an order for the stay of those proceedings may, despite subsections (1) and (5), be made conditional on the giving of security for the satisfaction of any award made in the arbitration; or

(b) if the court makes an order under subsection (5) staying those proceedings, the court may (where property has been arrested, or bail or other security has been given to prevent or obtain release from arrest, in those proceedings) order that the property arrested, or the bail or security given, be retained as security for the satisfaction of any award made in the arbitration.

(7) Subject to any provision made by rules of court and to any necessary modifications, the same law and practice apply to the property, bail or security retained in pursuance of an order under subsection (6) as would apply if the property, bail or security retained were held for the purposes of proceedings in the court making the order.

(8) A decision of the court to refer the parties to arbitration under—

(a) article 8 of the UNCITRAL Model Law, given effect to by subsection (1); or

(b) subsection (2),

is not subject to appeal.

(9) The leave of the court making a decision to refuse to refer the parties to arbitration under—

(a) article 8 of the UNCITRAL Model Law, given effect to by subsection (1); or

(b) subsection (2),

is required for any appeal from that decision.

(10) A decision or order of the court under subsection (6) is not subject to appeal.

21. Article 9 of UNCITRAL Model Law (Arbitration agreement and interim measures by court)

Article 9 of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 9. Arbitration agreement and interim measures by court*

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.".

22. Whether agreement discharged by death of a party

(1) Unless otherwise agreed by the parties, an arbitration agreement is not discharged by the death of a party and may be enforced by or against the personal representatives of that party.

(2) Subsection (1) does not affect the operation of any enactment or rule of law by virtue of which a substantive right or obligation is extinguished by death.

Part 3A

Enforcement of Emergency Relief

(Part 3A added 7 of 2013 s. 5)

22A. Interpretation

In this Part—

emergency arbitrator (緊急仲裁員) means an emergency arbitrator appointed under the arbitration rules (including the arbitration rules of a permanent arbitral institution) agreed to or adopted by the parties to deal with the parties' applications for emergency relief before an arbitral tribunal is constituted.

22B. Enforcement of emergency relief granted by emergency arbitrator

(1) Any emergency relief granted, whether in or outside Hong Kong, by an emergency arbitrator under the relevant arbitration rules is enforceable in the same manner as an order or direction of the Court that has the same effect, but only with the leave of the Court.

(2) The Court may not grant leave to enforce any emergency relief granted outside Hong Kong unless the party seeking to enforce it can demonstrate that it consists only of one or more temporary measures (including an injunction) by which the emergency arbitrator orders a party to do one or more of the following—

(a) maintain or restore the status quo pending the determination of the dispute concerned;

(b) take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;

(c) provide a means of preserving assets out of which a subsequent award made by an arbitral tribunal may be satisfied;

(d) preserve evidence that may be relevant and material to resolving the dispute;

(e) give security in connection with anything to be done under paragraph (a), (b), (c) or (d);

(f) give security for the costs of the arbitration.

(3) If leave is granted under subsection (1), the Court may enter judgment in terms of the emergency relief.

(4) A decision of the Court to grant or refuse to grant leave under subsection (1) is not subject to appeal.

Part 4

Composition of Arbitral Tribunal

(Format changes—E.R. 3 of 2015)

Division 1—Arbitrators

23. Article 10 of UNCITRAL Model Law (Number of arbitrators)

(1) Article 10(1) of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 10. Number of arbitrators*

(1) The parties are free to determine the number of arbitrators.

(2) [*Not applicable.*]".

(2) For the purposes of subsection (1), the freedom of the parties to determine the number of arbitrators includes the right of the parties to authorize a third party, including an institution, to make that determination.

(3) The number of arbitrators in an arbitration is to be either 1 or 3 as decided by the HKIAC in the particular case if—

(a) the parties fail to agree on the number of arbitrators; and

(b) section 1 of Schedule 2 does not apply. *(Replaced 11 of 2015 s. 3)*

24. Article 11 of UNCITRAL Model Law (Appointment of arbitrators)

(1) Article 11 of the UNCITRAL Model Law, the text of which is set out below, has effect subject to section 13(2) and (3)—

"*Article 11. Appointment of arbitrators*

(1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.

(3) Failing such agreement,

(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;

(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.

(4) Where, under an appointment procedure agreed upon by the parties,

(a) a party fails to act as required under such procedure, or

(b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or

(c) a third party, including an institution, fails to perform any function entrusted to it under such procedure,

any party may request the court or other authority specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.".

(2) In an arbitration with an even number of arbitrators—

(a) if the parties have not agreed on a procedure for appointing the arbitrators under article 11(2) of the UNCITRAL Model Law, given effect to by subsection (1), each party is to appoint the same number of arbitrators; or

(b) if—

(i) a party fails to act as required under an appointment procedure agreed upon by the parties; or

(ii) in the case of paragraph (a), a party fails to appoint the appropriate number of arbitrators under that paragraph within 30 days of receipt of a request to do so from the other party,

the HKIAC must make the necessary appointment upon a request to do so from any party.

(3) In an arbitration with an uneven number of arbitrators greater than 3—

(a) if the parties have not agreed on a procedure for appointing the arbitrators under article 11(2) of the UNCITRAL Model Law, given effect to by subsection (1)—

(i) each party is to appoint the same number of arbitrators; and

(ii) unless otherwise agreed by the parties, the HKIAC must appoint the remaining arbitrator or arbitrators; or

(b) if—

(i) a party fails to act as required under an appointment procedure agreed upon by the parties; or

(ii) in the case of paragraph (a), a party fails to appoint the appropriate number of arbitrators under that paragraph within 30 days of receipt of a request to do so from the other party,

the HKIAC must make the necessary appointment upon a request to do so from any party.

(4) In any other case (in particular, if there are more than 2 parties) article 11(4) of the UNCITRAL Model Law, given effect to by subsection (1), applies as in the case of a failure to agree on an appointment procedure.

(5) If any appointment of an arbitrator is made by the HKIAC by virtue of this Ordinance, the appointment—

(a) has effect as if it were made with the agreement of all parties; and

(b) is subject to article 11(5) of the UNCITRAL Model Law, given effect to by subsection (1).

25. Article 12 of UNCITRAL Model Law (Grounds for challenge)

Article 12 of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 12. Grounds for challenge*

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.".

26. Article 13 of UNCITRAL Model Law (Challenge procedure)

(1) Article 13 of the UNCITRAL Model Law, the text of which is set out below, has effect subject to section 13(4)—

"*Article 13. Challenge procedure*

(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in article 12(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.".

(2) During the period that a request for the Court to decide on a challenge is pending, the Court may refuse to grant leave under section 84 for the enforcement of any award made during that period by the arbitral tribunal that includes the challenged arbitrator.

(3) An arbitrator who is challenged under article 13(2) of the UNCITRAL Model Law, given effect to by subsection (1), is entitled, if the arbitrator considers it appropriate in the circumstances of the challenge, to withdraw from office as an arbitrator.

(4) The mandate of a challenged arbitrator terminates under article 13 of the UNCITRAL Model Law, given effect to by subsection (1), if—

(a) the arbitrator withdraws from office;

(b) the parties agree to the challenge;

(c) the arbitral tribunal upholds the challenge and no request is made for the Court to decide on the challenge; or

(d) the Court, upon request to decide on the challenge, upholds the challenge.

(5) If the Court upholds the challenge, the Court may set aside the award referred to in subsection (2).

27. Article 14 of UNCITRAL Model Law (Failure or impossibility to act)

Article 14 of the UNCITRAL Model Law, the text of which is set out below, has effect subject to section 13(4)—

"*Article 14. Failure or impossibility to act*

(1) If an arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal.

(2) If, under this article or article 13(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not

imply acceptance of the validity of any ground referred to in this article or article 12(2).".

28. Article 15 of UNCITRAL Model Law (Appointment of substitute arbitrator)

Article 15 of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 15. Appointment of substitute arbitrator*

Where the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.".

29. Death of arbitrator or person appointing arbitrator

(1) The authority of an arbitrator is personal and the mandate of the arbitrator terminates on the arbitrator's death.

(2) Unless otherwise agreed by the parties, the death of the person by whom an arbitrator was appointed does not revoke the arbitrator's authority.

30. Appointment of umpire

In an arbitration with an even number of arbitrators, the arbitrators may, unless otherwise agreed by the parties, appoint an umpire at any time after they are themselves appointed.

31. Functions of umpire in arbitral proceedings

(1) The parties are free to agree what the functions of an umpire

are to be and, in particular—

(a) whether the umpire is to attend the arbitral proceedings; and

(b) when, and the extent to which, the umpire is to replace the arbitrators as the arbitral tribunal with the power to make orders, directions and awards.

(2) If or to the extent that there is no such agreement of the parties, the arbitrators are free to agree on the functions of the umpire.

(3) Subsections (4) to (11) apply subject to any agreement of the parties or the arbitrators.

(4) After an umpire is appointed, the umpire must attend the arbitral proceedings.

(5) The umpire must be supplied with the same documents and other materials as are supplied to the arbitrators.

(6) Orders, directions and awards are to be made by the arbitrators unless, subject to subsection (9), the arbitrators cannot agree on a matter relating to the dispute submitted to arbitration.

(7) If the arbitrators cannot agree on a matter relating to the dispute submitted to arbitration, they must forthwith give notice of that fact in writing to the parties and the umpire, in which case the umpire is to replace the arbitrators as the arbitral tribunal with the power to make orders, directions and awards, in respect of that matter only, subject to subsection (9)(b), as if the umpire were the sole arbitrator.

(8) If the arbitrators cannot agree on a matter relating to the dispute submitted to arbitration but—

(a) they fail to give notice of that fact; or

(b) any of them fails to join in the giving of notice,

any party may apply to the Court which may decide that the umpire is to replace the arbitrators as the arbitral tribunal with the power to make orders, directions and awards, in respect of that matter only, as if the umpire were the sole arbitrator.

(9) Despite the replacement by the umpire as the arbitral tribunal in respect of a matter, on which the arbitrators cannot agree, relating to the dispute submitted to arbitration, the arbitrators may—

(a) still make orders, directions and awards in respect of the other matters relating to the dispute if they consider that it would save costs by doing so; or

(b) refer the entirety of the dispute to the umpire for arbitration.

(10) For the purposes of this section, the arbitrators cannot agree on a matter relating to the dispute submitted to arbitration if any one of the arbitrators, in that arbitrator's view, disagrees with the other arbitrator or any of the other arbitrators over that matter.

(11) A decision of the Court under subsection (8) is not subject to appeal.

Division 2—Mediators

32. Appointment of mediator

(1) If—

(a) any arbitration agreement provides for the appointment of a mediator by a person who is not one of the parties; and

(b) that person—

(i) refuses to make the appointment; or

(ii) does not make the appointment within the time specified in the arbitration agreement or, if no time is so specified, within a reasonable time after being requested by any party to make the appointment,

the HKIAC may, on the application of any party, appoint a mediator.

(2) An appointment made by the HKIAC under subsection (1) is not subject to appeal.

(3) If any arbitration agreement provides for the appointment of a mediator and further provides that the person so appointed is to act as an arbitrator in the event that no settlement acceptable to the parties can be reached in the mediation proceedings—

(a) no objection may be made against the person's acting as an arbitrator, or against the person's conduct of the arbitral proceedings, solely on the ground that the person had acted previously as a mediator in connection with some or all of the matters relating to the dispute submitted to arbitration; or

(b) if the person declines to act as an arbitrator, any other person appointed as an arbitrator is not required first to act as a mediator unless it is otherwise expressed in the arbitration agreement.

33. Power of arbitrator to act as mediator

(1) If all parties consent in writing, and for so long as no party withdraws the party's consent in writing, an arbitrator may act as a mediator after the arbitral proceedings have commenced.

(2) If an arbitrator acts as a mediator, the arbitral proceedings must be stayed to facilitate the conduct of the mediation proceedings.

(3) An arbitrator who is acting as a mediator—

(a) may communicate with the parties collectively or separately; and

(b) must treat the information obtained by the arbitrator from a party as confidential, unless otherwise agreed by that party or unless subsection (4) applies.

(4) If—

(a) confidential information is obtained by an arbitrator from a party during the mediation proceedings conducted by the arbitrator as a mediator; and

(b) those mediation proceedings terminate without reaching a settlement acceptable to the parties,

the arbitrator must, before resuming the arbitral proceedings, disclose to all other parties as much of that information as the arbitrator considers is material to the arbitral proceedings.

(5) No objection may be made against the conduct of the arbitral proceedings by an arbitrator solely on the ground that the arbitrator had acted previously as a mediator in accordance with this section.

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Part 5

Jurisdiction of Arbitral Tribunal

(Format changes—E.R. 1 of 2018)

34. Article 16 of UNCITRAL Model Law (Competence of arbitral tribunal to rule on its jurisdiction)

(1) Article 16 of the UNCITRAL Model Law, the text of which is set out below, has effect subject to section 13(5)—

"*Article 16. Competence of arbitral tribunal to rule on its jurisdiction*

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.".

(2) The power of the arbitral tribunal to rule on its own jurisdiction under subsection (1) includes the power to decide as to—

(a) whether the tribunal is properly constituted; or

(b) what matters have been submitted to arbitration in accordance with the arbitration agreement.

(3) If a dispute is submitted to arbitration in accordance with an arbitration agreement and a party—

(a) makes a counter-claim arising out of the same dispute; or

(b) relies on a claim arising out of that dispute for the purposes of a set-off,

the arbitral tribunal has jurisdiction to decide on the counter-claim or the claim so relied on only to the extent that the subject matter of that counter-claim or that claim falls within the scope of the same arbitration agreement.

(4) A ruling of the arbitral tribunal that it does not have jurisdiction to decide a dispute is not subject to appeal.

(5) Despite section 20, if the arbitral tribunal rules that it does not have jurisdiction to decide a dispute, the court must, if it has jurisdiction, decide that dispute.

Part 6

Interim Measures and Preliminary Orders

(Format changes—E.R. 1 of 2018)

Division 1—Interim Measures

35. Article 17 of UNCITRAL Model Law (Power of arbitral tribunal to order interim measures)

(1) Article 17 of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 17. Power of arbitral tribunal to order interim measures*

(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures.

(2) An interim measure is any temporary measure, whether in the form of an award or in another form, by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party to:

(a) Maintain or restore the status quo pending determination of the dispute;

(b) Take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;

(c) Provide a means of preserving assets out of which a subsequent award may be satisfied; or

(d) Preserve evidence that may be relevant and material to the resolution of the dispute.".

(2) An interim measure referred to in article 17 of the UNCITRAL Model Law, given effect to by subsection (1), is to be construed as including an injunction but not including an order under section 56.

(3) If an arbitral tribunal has granted an interim measure, the tribunal may, on the application of any party, make an award to the same effect as the interim measure.

36. Article 17A of UNCITRAL Model Law (Conditions for granting interim measures)

Article 17A of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 17A. Conditions for granting interim measures*

(1) The party requesting an interim measure under article 17(2)*(a)*, *(b)* and *(c)* shall satisfy the arbitral tribunal that:

(a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and

(b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

(2) With regard to a request for an interim measure under article 17(2)*(d)*, the requirements in paragraphs (1)

(a) and *(b)* of this article shall apply only to the extent the arbitral tribunal considers appropriate.".

Division 2—Preliminary Orders

37. Article 17B of UNCITRAL Model Law (Applications for preliminary orders and conditions for granting preliminary orders)

Article 17B of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 17B. Applications for preliminary orders and conditions for granting preliminary orders*

(1) Unless otherwise agreed by the parties, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.

(2) The arbitral tribunal may grant a preliminary order provided it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure.

(3) The conditions defined under article 17A apply to any preliminary order, provided that the harm to be assessed under article 17A(1)*(a)*, is the harm likely to result from the order being granted or not.".

38. Article 17C of UNCITRAL Model Law (Specific regime for preliminary orders)

Article 17C of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 17C. Specific regime for preliminary orders*

(1) Immediately after the arbitral tribunal has made a determination in respect of an application for a preliminary order, the arbitral tribunal shall give notice to all parties of the request for the interim measure, the application for the preliminary order, the preliminary order, if any, and all other communications, including by indicating the content of any oral communication, between any party and the arbitral tribunal in relation thereto.

(2) At the same time, the arbitral tribunal shall give an opportunity to any party against whom a preliminary order is directed to present its case at the earliest practicable time.

(3) The arbitral tribunal shall decide promptly on any objection to the preliminary order.

(4) A preliminary order shall expire after twenty days from the date on which it was issued by the arbitral tribunal. However, the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order, after the party against whom the preliminary order is directed has been given notice and an opportunity to present its case.

(5) A preliminary order shall be binding on the parties but shall not be subject to enforcement by a court. Such a preliminary order does not constitute an award.".

Division 3—Provisions Applicable to Interim Measures and Preliminary Orders

39. Article 17D of UNCITRAL Model Law (Modification, suspension, termination)

Article 17D of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 17D. Modification, suspension, termination*

The arbitral tribunal may modify, suspend or terminate an interim measure or a preliminary order it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.".

40. Article 17E of UNCITRAL Model Law (Provision of security)

Article 17E of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 17E. Provision of security*

(1) The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

(2) The arbitral tribunal shall require the party applying for a preliminary order to provide security in connection with the order unless the arbitral tribunal considers it inappropriate or unnecessary to do so.".

41. Article 17F of UNCITRAL Model Law (Disclosure)

Article 17F of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 17F. Disclosure*

(1) The arbitral tribunal may require any party promptly to disclose any material change in the circumstances

on the basis of which the measure was requested or granted.

(2) The party applying for a preliminary order shall disclose to the arbitral tribunal all circumstances that are likely to be relevant to the arbitral tribunal's determination whether to grant or maintain the order, and such obligation shall continue until the party against whom the order has been requested has had an opportunity to present its case. Thereafter, paragraph (1) of this article shall apply.".

42. Article 17G of UNCITRAL Model Law (Costs and damages)

Article 17G of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 17G. Costs and damages*

The party requesting an interim measure or applying for a preliminary order shall be liable for any costs and damages caused by the measure or the order to any party if the arbitral tribunal later determines that, in the circumstances, the measure or the order should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.".

Division 4—Recognition and Enforcement of Interim Measures

43. Article 17H of UNCITRAL Model Law (Recognition and enforcement)

Section 61 has effect in substitution for article 17H of the UNCITRAL Model Law.

44. Article 17I of UNCITRAL Model Law (Grounds for refusing recognition or enforcement)

Article 17I of the UNCITRAL Model Law does not have effect.

Division 5—Court-ordered Interim Measures

45. Article 17J of UNCITRAL Model Law (Court-ordered interim measures)

(1) Article 17J of the UNCITRAL Model Law does not have effect.

(2) On the application of any party, the Court may, in relation to any arbitral proceedings which have been or are to be commenced in or outside Hong Kong, grant an interim measure.

(3) The powers conferred by this section may be exercised by the Court irrespective of whether or not similar powers may be exercised by an arbitral tribunal under section 35 in relation to the same dispute.

(4) The Court may decline to grant an interim measure under subsection (2) on the ground that—

(a) the interim measure sought is currently the subject of arbitral proceedings; and

(b) the Court considers it more appropriate for the interim measure sought to be dealt with by the arbitral tribunal.

(5) In relation to arbitral proceedings which have been or are to be commenced outside Hong Kong, the Court may grant an interim measure under subsection (2) only if—

(a) the arbitral proceedings are capable of giving rise to an arbitral award (whether interim or final) that may be

enforced in Hong Kong under this Ordinance or any other Ordinance; and

(b) the interim measure sought belongs to a type or description of interim measure that may be granted in Hong Kong in relation to arbitral proceedings by the Court.

(6) Subsection (5) applies even if—

(a) the subject matter of the arbitral proceedings would not, apart from that subsection, give rise to a cause of action over which the Court would have jurisdiction; or

(b) the order sought is not ancillary or incidental to any arbitral proceedings in Hong Kong.

(7) In exercising the power under subsection (2) in relation to arbitral proceedings outside Hong Kong, the Court must have regard to the fact that the power is—

(a) ancillary to the arbitral proceedings outside Hong Kong; and

(b) for the purposes of facilitating the process of a court or arbitral tribunal outside Hong Kong that has primary jurisdiction over the arbitral proceedings.

(8) The Court has the same power to make any incidental order or direction for the purposes of ensuring the effectiveness of an interim measure granted in relation to arbitral proceedings outside Hong Kong as if the interim measure were granted in relation to arbitral proceedings in Hong Kong.

(9) An interim measure referred to in subsection (2) means an interim measure referred to in article 17(2) of the UNCITRAL Model Law, given effect to by section 35(1), as if—

(a) a reference to the arbitral tribunal in that article were the court; and

(b) a reference to arbitral proceedings in that article were court proceedings,

and is to be construed as including an injunction but not including an order under section 60.

(10) A decision, order or direction of the Court under this section is not subject to appeal.

Part 7

Conduct of Arbitral Proceedings

(Format changes—E.R. 1 of 2018)

46. Article 18 of UNCITRAL Model Law (Equal treatment of parties)

(1) Subsections (2) and (3) have effect in substitution for article 18 of the UNCITRAL Model Law.

(2) The parties must be treated with equality.

(3) When conducting arbitral proceedings or exercising any of the powers conferred on an arbitral tribunal by this Ordinance or by the parties to any of those arbitral proceedings, the arbitral tribunal is required—

(a) to be independent;

(b) to act fairly and impartially as between the parties, giving them a reasonable opportunity to present their cases and to deal with the cases of their opponents; and

(c) to use procedures that are appropriate to the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for resolving the dispute to which the arbitral proceedings relate.

47. Article 19 of UNCITRAL Model Law (Determination of rules of procedure)

(1) Article 19(1) of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 19. Determination of rules of procedure*

(1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) [*Not applicable*]".

(2) If or to the extent that there is no such agreement of the parties, the arbitral tribunal may, subject to the provisions of this Ordinance, conduct the arbitration in the manner that it considers appropriate.

(3) When conducting arbitral proceedings, an arbitral tribunal is not bound by the rules of evidence and may receive any evidence that it considers relevant to the arbitral proceedings, but it must give the weight that it considers appropriate to the evidence adduced in the arbitral proceedings.

48. Article 20 of UNCITRAL Model Law (Place of arbitration)

Article 20 of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 20. Place of arbitration*

(1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.".

49. Article 21 of UNCITRAL Model Law (Commencement of

arbitral proceedings)

(1) Article 21 of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 21. Commencement of arbitral proceedings*

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.".

(2) A request referred to in article 21 of the UNCITRAL Model Law, given effect to by subsection (1), has to be made by way of a written communication as referred to in section 10.

50. Article 22 of UNCITRAL Model Law (Language)

Article 22 of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 22. Language*

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.".

51. Article 23 of UNCITRAL Model Law (Statements of claim and

defence)

Article 23 of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 23. Statements of claim and defence*

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.".

52. Article 24 of UNCITRAL Model Law (Hearings and written proceedings)

Article 24 of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 24. Hearings and written proceedings*

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However,

unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.".

53. Article 25 of UNCITRAL Model Law (Default of a party)

(1) Article 25 of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 25. Default of a party*

Unless otherwise agreed by the parties, if, without showing sufficient cause,

(a) the claimant fails to communicate his statement of claim in accordance with article 23(1), the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

(c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.".

(2) Unless otherwise agreed by the parties, subsections (3) and (4) apply except in relation to an application for security for costs.

(3) If, without showing sufficient cause, a party fails to comply with any order or direction of the arbitral tribunal, the tribunal may make a peremptory order to the same effect, prescribing the time for compliance with it that the arbitral tribunal considers appropriate.

(4) If a party fails to comply with a peremptory order, then without affecting section 61, the arbitral tribunal may—

(a) direct that the party is not entitled to rely on any allegation or material which was the subject matter of the peremptory order;

(b) draw any adverse inferences that the circumstances may justify from the non-compliance;

(c) make an award on the basis of any materials which have been properly provided to the arbitral tribunal; or

(d) make any order that the arbitral tribunal thinks fit as to the payment of the costs of the arbitration incurred in consequence of the non-compliance.

54. Article 26 of UNCITRAL Model Law (Expert appointed by arbitral tribunal)

(1) Article 26 of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 26. Expert appointed by arbitral tribunal*

(1) Unless otherwise agreed by the parties, the arbitral tribunal

(a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;

(b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.".

(2) Without affecting article 26 of the UNCITRAL Model Law, given effect to by subsection (1), in assessing the amount of the costs of arbitral proceedings (other than the fees and expenses of the tribunal) under section 74—

(a) the arbitral tribunal may appoint assessors to assist it on technical matters, and may allow any of those assessors to attend the proceedings; and

(b) the parties must be given a reasonable opportunity to comment on any information, opinion or advice offered by any of those assessors.

55. Article 27 of UNCITRAL Model Law (Court assistance in taking evidence)

(1) Article 27 of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 27. Court assistance in taking evidence*

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this State assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.".

(2) The Court may order a person to attend proceedings before an arbitral tribunal to give evidence or to produce documents or other evidence.

(3) The powers conferred by this section may be exercised by the Court irrespective of whether or not similar powers may be exercised by an arbitral tribunal under section 56 in relation to the same dispute.

(4) A decision or order of the Court made in the exercise of its power under this section is not subject to appeal.

(5) Section 81 (Warrant or order to bring up prisoner to give evidence) of the Evidence Ordinance (Cap. 8) applies as if a reference to any proceedings, either criminal or civil, in that section were any arbitral proceedings.

56. General powers exercisable by arbitral tribunal

(1) Unless otherwise agreed by the parties, when conducting arbitral proceedings, an arbitral tribunal may make an order—

(a) requiring a claimant to give security for the costs of the arbitration;

(b) directing the discovery of documents or the delivery of interrogatories;

(c) directing evidence to be given by affidavit; or

(d) in relation to any relevant property—

(i) directing the inspection, photographing, preservation, custody, detention or sale of the relevant property by the arbitral tribunal, a party to the arbitral proceedings or an expert; or

(ii) directing samples to be taken from, observations to be made of, or experiments to be conducted on the relevant property.

(2) An arbitral tribunal must not make an order under subsection (1)(a) only on the ground that the claimant is—

(a) a natural person who is ordinarily resident outside Hong Kong;

(b) a body corporate—

(i) incorporated under the law of a place outside Hong Kong; or

(ii) the central management and control of which is exercised outside Hong Kong; or

(c) an association—

(i) formed under the law of a place outside Hong Kong; or

(ii) the central management and control of which is exercised outside Hong Kong.

(3) An arbitral tribunal—

(a) must, when making an order under subsection (1)(a), specify the period within which the order has to be complied with; and

(b) may extend that period or an extended period.

(4) An arbitral tribunal may make an award dismissing a claim or stay a claim if it has made an order under subsection (1)(a) but the order has not been complied with within the period

specified under subsection (3)(a) or extended under subsection (3)(b).

(5) Despite section 35(2), sections 39 to 42 apply, if appropriate, to an order under subsection (1)(d) as if a reference to an interim measure in those sections were an order under that subsection.

(6) Property is a relevant property for the purposes of subsection (1)(d) if—

(a) the property is owned by or is in the possession of a party to the arbitral proceedings; and

(b) the property is the subject of the arbitral proceedings, or any question relating to the property has arisen in the arbitral proceedings.

(7) Unless otherwise agreed by the parties, an arbitral tribunal may, when conducting arbitral proceedings, decide whether and to what extent it should itself take the initiative in ascertaining the facts and the law relevant to those arbitral proceedings.

(8) Unless otherwise agreed by the parties, an arbitral tribunal may—

(a) administer oaths to, or take the affirmations of, witnesses and parties;

(b) examine witnesses and parties on oath or affirmation; or

(c) direct the attendance before the arbitral tribunal of witnesses in order to give evidence or to produce documents or other evidence.

(9) A person is not required to produce in arbitral proceedings any document or other evidence that the person could not be required to produce in civil proceedings before a court.

57. Arbitral tribunal may limit amount of recoverable costs

(1) Unless otherwise agreed by the parties, an arbitral tribunal may direct that the recoverable costs of arbitral proceedings before it are limited to a specified amount.

(2) Subject to subsection (3), the arbitral tribunal may make or vary a direction either—

(a) on its own initiative; or

(b) on the application of any party.

(3) A direction may be made or varied at any stage of the arbitral proceedings but, for the limit of the recoverable costs to be taken into account, this must be done sufficiently in advance of—

(a) the incurring of the costs to which the direction or the variation relates; or

(b) the taking of the steps in the arbitral proceedings which may be affected by the direction or the variation.

(4) In this section—

(a) a reference to costs is to be construed as the parties' own costs; and

(b) a reference to arbitral proceedings includes any part of those arbitral proceedings.

58. Power to extend time for arbitral proceedings

(1) This section applies to an arbitration agreement that provides for a claim to be barred or for a claimant's right to be extinguished unless the claimant, before the time or within the period specified in the agreement, takes a step—

(a) to commence arbitral proceedings; or

(b) to commence any other dispute resolution procedure that must be exhausted before arbitral proceedings may be commenced.

(2) On the application of any party to such an arbitration agreement, an arbitral tribunal may make an order extending the time or period referred to in subsection (1).

(3) An application may be made only after a claim has arisen and after exhausting any available arbitral procedures for obtaining an extension of time.

(4) An arbitral tribunal may make an order under this section extending the time or period referred to in subsection (1) only if it is satisfied—

(a) that—

(i) the circumstances were such as to be outside the reasonable contemplation of the parties when they entered into the arbitration agreement; and

(ii) it would be just to extend the time or period; or

(b) that the conduct of any party makes it unjust to hold the other party to the strict terms of the agreement.

(5) An arbitral tribunal may extend the time or period referred to in subsection (1), or the time or period extended under subsection (4), for a further period and on the terms that it thinks fit, and the tribunal may do so even though that time or period or the extended time or period has expired.

(6) This section does not affect the operation of section 14 or any other enactment that limits the period for commencing arbitral proceedings.

(7) The power conferred on an arbitral tribunal by this section is exercisable by the Court if at the relevant time there is not in existence an arbitral tribunal that is capable of exercising that power.

(8) An order of the Court made in exercise of its power conferred by subsection (7) is not subject to appeal.

59. Order to be made in case of delay in pursuing claims in arbitral proceedings

(1) Unless otherwise expressed in an arbitration agreement, a party who has a claim under the agreement must, after the commencement of the arbitral proceedings, pursue that claim without unreasonable delay.

(2) Without affecting article 25 of the UNCITRAL Model Law, given effect to by section 53(1), the arbitral tribunal—

(a) may make an award dismissing a party's claim; and

(b) may make an order prohibiting the party from commencing further arbitral proceedings in respect of the claim,

if it is satisfied that the party has unreasonably delayed in pursuing the claim in the arbitral proceedings.

(3) The arbitral tribunal may make an award or order either—

(a) on its own initiative; or

(b) on the application of any other party.

(4) For the purposes of subsection (2), delay is unreasonable if—

(a) it gives rise, or is likely to give rise, to a substantial risk that the issues in the claim will not be resolved fairly; or

(b) it has caused, or is likely to cause, serious prejudice to any other party.

(5) The power conferred on an arbitral tribunal by this section is exercisable by the Court if there is not in existence an arbitral tribunal that is capable of exercising that power.

(6) An award or order made by the Court in exercise of its power conferred by subsection (5) is not subject to appeal.

60. Special powers of Court in relation to arbitral proceedings

(1) On the application of any party, the Court may, in relation to any arbitral proceedings which have been or are to be commenced in or outside Hong Kong, make an order—

(a) directing the inspection, photographing, preservation, custody, detention or sale of any relevant property by the arbitral tribunal, a party to the arbitral proceedings or an expert; or

(b) directing samples to be taken from, observations to be made of, or experiments to be conducted on any relevant property.

(2) Property is a relevant property for the purposes of subsection (1) if the property is the subject of the arbitral proceedings, or any question relating to the property has arisen in the arbitral proceedings.

(3) The powers conferred by this section may be exercised by the Court irrespective of whether or not similar powers may be exercised by an arbitral tribunal under section 56 in relation to the same dispute.

(4) The Court may decline to make an order under this section in relation to a matter referred to in subsection (1) on the ground that—

(a) the matter is currently the subject of arbitral proceedings; and

(b) the Court considers it more appropriate for the matter to be dealt with by the arbitral tribunal.

(5) An order made by the Court under this section may provide for the cessation of that order, in whole or in part, when the arbitral tribunal makes an order for the cessation.

(6) In relation to arbitral proceedings which have been or are to be commenced outside Hong Kong, the Court may make an order under subsection (1) only if the arbitral proceedings are

capable of giving rise to an arbitral award (whether interim or final) that may be enforced in Hong Kong under this Ordinance or any other Ordinance.

(7) Subsection (6) applies even if—

(a) the subject matter of the arbitral proceedings would not, apart from that subsection, give rise to a cause of action over which the Court would have jurisdiction; or

(b) the order sought is not ancillary or incidental to any arbitral proceedings in Hong Kong.

(8) In exercising the power under subsection (1) in relation to arbitral proceedings outside Hong Kong, the Court must have regard to the fact that the power is—

(a) ancillary to the arbitral proceedings outside Hong Kong; and

(b) for the purposes of facilitating the process of a court or arbitral tribunal outside Hong Kong that has primary jurisdiction over the arbitral proceedings.

(9) Subject to subsection (10), an order or decision of the Court under this section is not subject to appeal.

(10) The leave of the Court is required for any appeal from an order of the Court under subsection (1) for the sale of any relevant property.

61. Enforcement of orders and directions of arbitral tribunal

(1) An order or direction made, whether in or outside Hong Kong, in relation to arbitral proceedings by an arbitral tribunal is enforceable in the same manner as an order or direction of the Court that has the same effect, but only with the leave of the Court.

(2) Leave to enforce an order or direction made outside Hong Kong is not to be granted, unless the party seeking to enforce

it can demonstrate that it belongs to a type or description of order or direction that may be made in Hong Kong in relation to arbitral proceedings by an arbitral tribunal.

(3) If leave is granted under subsection (1), the Court may enter judgment in terms of the order or direction.

(4) A decision of the Court to grant or refuse to grant leave under subsection (1) is not subject to appeal.

(5) An order or direction referred to in this section includes an interim measure.

62. Power of Court to order recovery of arbitrator's fees

(1) Where an arbitrator's mandate terminates under article 13 of the UNCITRAL Model Law, given effect to by section 26, or under article 14 of the UNCITRAL Model Law, given effect to by section 27, then on the application of any party, the Court, in its discretion and having regard to the conduct of the arbitrator and any other relevant circumstances—

(a) may order that the arbitrator is not entitled to receive the whole or part of the arbitrator's fees or expenses; and

(b) may order that the arbitrator must repay the whole or part of the fees or expenses already paid to the arbitrator.

(2) An order of the Court under subsection (1) is not subject to appeal.

63. Representation and preparation work

Section 44 (Penalty for unlawfully practising as a barrister or notary public), section 45 (Unqualified person not to act as solicitor) and section 47 (Unqualified person not to prepare certain instruments, etc.) of the Legal Practitioners Ordinance (Cap. 159) do not apply to—

(a) arbitral proceedings;

(b) the giving of advice and the preparation of documents for the purposes of arbitral proceedings; or

(c) any other thing done in relation to arbitral proceedings, except where it is done in connection with court proceedings—

(i) arising out of an arbitration agreement; or

(ii) arising in the course of, or resulting from, arbitral proceedings.

Part 8

Making of Award and Termination of Proceedings

(Format changes—E.R. 1 of 2018)

64. Article 28 of UNCITRAL Model Law (Rules applicable to substance of dispute)

Article 28 of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 28. Rules applicable to substance of dispute*

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

(4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.".

65. Article 29 of UNCITRAL Model Law (Decision-making by

panel of arbitrators)

Article 29 of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 29. Decision-making by panel of arbitrators*

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.".

66. Article 30 of UNCITRAL Model Law (Settlement)

(1) Article 30 of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 30. Settlement*

(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.".

(2) If, in a case other than that referred to in article 30 of the UNCITRAL Model Law, given effect to by subsection (1), the parties to an arbitration agreement settle their dispute and enter into an agreement in writing containing the terms of settlement (***settlement agreement***), the settlement agreement

is, for the purposes of its enforcement, to be treated as an arbitral award.

67. Article 31 of UNCITRAL Model Law (Form and contents of award)

(1) Article 31 of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 31. Form and contents of award*

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.

(3) The award shall state its date and the place of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at that place.

(4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.".

(2) Article 31(4) of the UNCITRAL Model Law, given effect to by subsection (1), has effect subject to section 77.

68. Article 32 of UNCITRAL Model Law (Termination of proceedings)

Article 32 of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 32. Termination of proceedings*

(1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:

(a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;

(b) the parties agree on the termination of the proceedings;

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34(4).".

69. Article 33 of UNCITRAL Model Law (Correction and interpretation of award; additional award)

(1) Article 33 of the UNCITRAL Model Law, the text of which is set out below, has effect—

"*Article 33. Correction and interpretation of award; additional award*

(1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:

(a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

(2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)*(a)* of this article on its own initiative within thirty days of the date of the award.

(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

(4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.

(5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.".

(2) The arbitral tribunal has the power to make other changes to an arbitral award which are necessitated by or consequential on—

(a) the correction of any error in the award; or

(b) the interpretation of any point or part of the award,

under article 33 of the UNCITRAL Model Law, given effect to by subsection (1).

(3) The arbitral tribunal may review an award of costs within 30 days of the date of the award if, when making the award, the tribunal was not aware of any information relating to costs (including any offer for settlement) which it should have taken into account.

(4) On a review under subsection (3), the arbitral tribunal may confirm, vary or correct the award of costs.

70. Award of remedy or relief

(1) Subject to subsection (2) and section 103D(6), an arbitral tribunal may, 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. *(Amended 5 of 2017 s. 4)*

(2) Unless otherwise agreed by the parties, the arbitral tribunal has the same power as the Court to order specific performance of any contract, other than a contract relating to land or any interest in land.

71. Awards on different aspects of matters

Unless otherwise agreed by the parties, an arbitral tribunal may

make more than one award at different times on different aspects of the matters to be determined.

72. Time for making award

(1) Unless otherwise agreed by the parties, an arbitral tribunal has the power to make an award at any time.

(2) The time, if any, limited for making an award, whether under this Ordinance or otherwise, may from time to time be extended by order of the Court on the application of any party, whether that time has expired or not.

(3) An order of the Court under subsection (2) is not subject to appeal.

73. Effect of award

(1) Unless otherwise agreed by the parties, an award made by an arbitral tribunal pursuant to an arbitration agreement is final and binding both on—

(a) the parties; and

(b) any person claiming through or under any of the parties.

(2) Subsection (1) does not affect the right of a person to challenge the award—

(a) as provided for in section 26 or 81, section 4 or 5 of Schedule 2, or any other provision of this Ordinance; or

(b) otherwise by any available arbitral process of appeal or review.

74. Arbitral tribunal may award costs of arbitral proceedings

(1) An arbitral tribunal may include in an award directions with respect to the costs of arbitral proceedings (including the fees and expenses of the tribunal).

(2) The arbitral tribunal may, having regard to all relevant circumstances (including the fact, if appropriate, that a written offer of settlement of the dispute concerned has been made), direct in the award under subsection (1) to whom and by whom and in what manner the costs are to be paid.

(3) The arbitral tribunal may also, in its discretion, order costs (including the fees and expenses of the tribunal) to be paid by a party in respect of a request made by any of the parties for an order or direction (including an interim measure).

(4) The arbitral tribunal may direct that the costs ordered under subsection (3) are to be paid forthwith or at the time that the tribunal may otherwise specify.

(5) Subject to section 75, the arbitral tribunal must—

(a) assess the amount of costs to be awarded or ordered to be paid under this section (other than the fees and expenses of the tribunal); and

(b) award or order those costs (including the fees and expenses of the tribunal).

(6) Subject to subsection (7), the arbitral tribunal is not obliged to follow the scales and practices adopted by the court on taxation when assessing the amount of costs (other than the fees and expenses of the tribunal) under subsection (5).

(7) The arbitral tribunal—

(a) must only allow costs that are reasonable having regard to all the circumstances; and

(b) unless otherwise agreed by the parties, may allow costs incurred in the preparation of the arbitral proceedings prior to the commencement of the arbitration.

(8) A provision of an arbitration agreement to the effect that the parties, or any of the parties, must pay their own costs in

respect of arbitral proceedings arising under the agreement is void.

(9) A provision referred to in subsection (8) is not void if it is part of an agreement to submit to arbitration a dispute that had arisen before the agreement was made.

75. Taxation of costs of arbitral proceedings (other than fees and expenses of arbitral tribunal)

(1) Without affecting section 74(1) and (2), if the parties have agreed that the costs of arbitral proceedings are to be taxed by the court, then unless the arbitral tribunal otherwise directs in an award, the award is deemed to have included the tribunal's directions that the costs (other than the fees and expenses of the tribunal) are to be taxed by the court on the party and party basis in accordance with rule 28(2) of Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A). *(Amended 7 of 2013 s. 7)*

(2) On taxation by the court, the arbitral tribunal must make an additional award of costs reflecting the result of such taxation.

(3) A decision of the court on taxation is not subject to appeal.

(4) This section does not apply to costs ordered to be paid under section 74(3).

76. Costs in respect of unqualified person

Section 50 (No costs for unqualified person) of the Legal Practitioners Ordinance (Cap. 159) does not apply to the recovery of costs in an arbitration.

77. Determination of arbitral tribunal's fees and expenses in case of dispute

(1) An arbitral tribunal may refuse to deliver an award to the parties unless full payment of the fees and expenses of the

tribunal is made.

(2) If the arbitral tribunal refuses to deliver an award to the parties under subsection (1), a party may apply to the Court, which—

(a) may order the tribunal to deliver the award on the payment into the Court by the applicant of—

(i) the fees and expenses demanded; or

(ii) a lesser amount that the Court may specify;

(b) may order that the amount of the fees and expenses payable to the tribunal is to be determined by the means and on the terms that the Court may direct; and

(c) may order that—

(i) the fees and expenses as determined under paragraph (b) to be payable are to be paid to the tribunal out of the money paid into the Court; and

(ii) the balance of the money paid into the Court, if any, is to be paid out to the applicant.

(3) For the purposes of subsection (2)—

(a) the amount of the fees and expenses payable is the amount which the applicant is liable to pay—

(i) under section 78; or

(ii) under any agreement relating to the payment of the arbitrators; and

(b) the fees and expenses of—

(i) an expert appointed under article 26 of the UNCITRAL Model Law, given effect to by section 54(1); or

(ii) an assessor appointed under section 54(2),

are to be treated as the fees and expenses of the arbitral tribunal.

(4) No application under subsection (2) may be made if—

(a) there is any available arbitral process for appeal or review of the amount of the fees or expenses demanded; or

(b) the total amount of the fees and expenses demanded has been fixed by a written agreement between a party and the arbitrators.

(5) Subsections (1) to (4) also apply to any arbitral or other institution or person vested by the parties with powers in relation to the delivery of the arbitral tribunal's award.

(6) If subsections (1) to (4) so apply under subsection (5), the references to the fees and expenses of the arbitral tribunal are to be construed as including the fees and expenses of that institution or person.

(7) If an application is made to the Court under subsection (2), enforcement of the award (when delivered to the parties), but only in so far as it relates to the fees or expenses of the arbitral tribunal, must be stayed until the application has been disposed of under this section.

(8) An arbitrator is entitled to appear and be heard on any determination under this section.

(9) If the amount of the fees and expenses determined under subsection (2)(b) is different from the amount previously awarded by the arbitral tribunal, the tribunal must amend the previous award to reflect the result of the determination.

(10) An order of the Court under this section is not subject to appeal.

78. Liability to pay fees and expenses of arbitral tribunal

(1) The parties to proceedings before an arbitral tribunal are jointly and severally liable to pay to the tribunal reasonable fees and expenses, if any, of the tribunal that are appropriate in the circumstances.

(2) Subsection (1) has effect subject to any order of the Court made under section 62 or any other relevant provision of this Ordinance.

(3) This section does not affect—

(a) the liability of the parties as among themselves to pay the costs of the arbitral proceedings; or

(b) any contractual right or obligation relating to payment of the fees and expenses of the arbitral tribunal.

(4) In this section, a reference to an arbitral tribunal includes—

(a) a member of the tribunal who has ceased to act; and

(b) an umpire who has not yet replaced members of the tribunal.

79. Arbitral tribunal may award interest

(1) Unless otherwise agreed by the parties, an arbitral tribunal may, in the arbitral proceedings before it, award simple or compound interest from the dates, at the rates, and with the rests that the tribunal considers appropriate, subject to section 80, for any period ending not later than the date of payment—

(a) on money awarded by the tribunal in the arbitral proceedings;

(b) on money claimed in, and outstanding at the commencement of, the arbitral proceedings but paid before the award is made; or

(c) on costs awarded or ordered by the tribunal in the arbitral proceedings.

(2) Subsection (1) does not affect any other power of an arbitral tribunal to award interest.

(3) A reference in subsection (1)(a) to money awarded by the tribunal includes an amount payable in consequence of a declaratory award by the tribunal.

80. Interest on money or costs awarded or ordered in arbitral proceedings

(1) Interest is payable on money awarded by an arbitral tribunal from the date of the award at the judgment rate, except when the award otherwise provides.

(2) Interest is payable on costs awarded or ordered by an arbitral tribunal from—

(a) the date of the award or order on costs; or

(b) the date on which costs ordered are directed to be paid forthwith,

at the judgment rate, except when the award or order on costs otherwise provides.

(3) In this section, ***judgment rate*** (判定利率) means the rate of interest determined by the Chief Justice under section 49(1)(b) (Interest on judgments) of the High Court Ordinance (Cap. 4).

Part 9

Recourse Against Award

(Format changes—E.R. 1 of 2018)

81. Article 34 of UNCITRAL Model Law (Application for setting aside as exclusive recourse against arbitral award)

(1) Article 34 of the UNCITRAL Model Law, the text of which is set out below, has effect subject to section 13(5)—

"*Article 34. Application for setting aside as exclusive recourse against arbitral award*

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

(2) An arbitral award may be set aside by the court specified in article 6 only if:

(a) the party making the application furnishes proof that:

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral

proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or

(b) the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or

(ii) the award is in conflict with the public policy of this State.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the

date on which that request had been disposed of by the arbitral tribunal.

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.".

(2) Subsection (1) does not affect—

(a) the power of the Court to set aside an arbitral award under section 26(5);

(b) the right to challenge an arbitral award under section 4 of Schedule 2 (if applicable); or

(c) the right to appeal against an arbitral award on a question of law under section 5 of Schedule 2 (if applicable).

(3) Subject to subsection (2)(c), the Court does not have jurisdiction to set aside or remit an arbitral award on the ground of errors of fact or law on the face of the award.

(4) The leave of the Court is required for any appeal from a decision of the Court under article 34 of the UNCITRAL Model Law, given effect to by subsection (1).

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Part 10

Recognition and Enforcement of Awards

(Format changes—E.R. 2 of 2014)

Division 1—Enforcement of Arbitral Awards

82. Article 35 of UNCITRAL Model Law (Recognition and enforcement)

Article 35 of the UNCITRAL Model Law does not have effect.

83. Article 36 of UNCITRAL Model Law (Grounds for refusing recognition or enforcement)

Article 36 of the UNCITRAL Model Law does not have effect.

84. Enforcement of arbitral awards

(1) Subject to section 26(2), an award, whether made in or outside Hong Kong, in arbitral proceedings by an arbitral tribunal is enforceable in the same manner as a judgment of the Court that has the same effect, but only with the leave of the Court.

(2) If leave is granted under subsection (1), the Court may enter judgment in terms of the award.

(3) The leave of the Court is required for any appeal from a decision of the Court to grant or refuse leave to enforce an award under subsection (1).

85. Evidence to be produced for enforcement of arbitral awards

The party seeking to enforce an arbitral award, whether made in or outside Hong Kong, which is not a Convention award, Mainland award or Macao award, must produce— *(Amended 7 of 2013 s. 9)*

(a) the duly authenticated original award or a duly certified copy of it;

(b) the original arbitration agreement or a duly certified copy of it; and

(c) if the award or agreement is not in either or both of the official languages, a translation of it in either official language certified by an official or sworn translator or by a diplomatic or consular agent. *(Replaced 7 of 2013 s. 9)*

86. Refusal of enforcement of arbitral awards

(1) Enforcement of an award referred to in section 85 may be refused if the person against whom it is invoked proves—

(a) that a party to the arbitration agreement was under some incapacity (under the law applicable to that party); *(Replaced 7 of 2013 s. 10)*

(b) that the arbitration agreement was not valid—

(i) under the law to which the parties subjected it; or

(ii) (if there was no indication of the law to which the arbitration agreement was subjected) under the law of the country where the award was made;

(c) that the person—

(i) was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings; or

(ii) was otherwise unable to present the person's case;

(d) subject to subsection (3), that the award—

(i) deals with a difference not contemplated by or not falling within the terms of the submission to arbitration; or

(ii) contains decisions on matters beyond the scope of the submission to arbitration;

(e) that the composition of the arbitral authority or the arbitral procedure was not in accordance with—

(i) the agreement of the parties; or

(ii) (if there was no agreement) the law of the country where the arbitration took place; or

(f) that the award—

(i) has not yet become binding on the parties; or

(ii) has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made.

(2) Enforcement of an award referred to in section 85 may also be refused if—

(a) the award is in respect of a matter which is not capable of settlement by arbitration under the law of Hong Kong;

(b) it would be contrary to public policy to enforce the award; or

(c) for any other reason the court considers it just to do so.

(3) If an award referred to in section 85 contains, apart from decisions on matters submitted to arbitration (***arbitral decisions***), decisions on matters not submitted to arbitration (***unrelated decisions***), the award may be enforced only in so far as it relates to the arbitral decisions that can be separated from the unrelated decisions. *(Replaced 7 of 2013 s. 10)*

(4) If an application for setting aside or suspending an award referred to in section 85 has been made to a competent authority as mentioned in subsection (1)(f), the court before

which enforcement of the award is sought— *(Amended 7 of 2013 s .10)*

(a) may, if it thinks fit, adjourn the proceedings for the enforcement of the award; and

(b) may, on the application of the party seeking to enforce the award, order the person against whom the enforcement is invoked to give security.

(5) A decision or order of the court under subsection (4) is not subject to appeal.

Division 2—Enforcement of Convention Awards

87. Enforcement of Convention awards

(1) A Convention award is, subject to this Division, enforceable in Hong Kong either—

(a) by action in the Court; or

(b) in the same manner as an award to which section 84 applies, and that section applies to a Convention award accordingly as if a reference in that section to an award were a Convention award. *(Amended 7 of 2013 s. 11)*

(2) A Convention award which is enforceable as mentioned in subsection (1) is to be treated as binding for all purposes on the parties, and may accordingly be relied on by any of them by way of defence, set off or otherwise in any legal proceedings in Hong Kong. *(Replaced 7 of 2013 s. 11)*

(3) A reference in this Division to enforcement of a Convention award is to be construed as including reliance on a Convention award.

88. Evidence to be produced for enforcement of Convention awards

The party seeking to enforce a Convention award must produce—

(a) the duly authenticated original award or a duly certified copy of it;

(b) the original arbitration agreement or a duly certified copy of it; and

(c) if the award or agreement is not in either or both of the official languages, a translation of it in either official language certified by an official or sworn translator or by a diplomatic or consular agent. *(Replaced 7 of 2013 s. 12)*

89. Refusal of enforcement of Convention awards

(1) Enforcement of a Convention award may not be refused except as mentioned in this section. *(Amended 7 of 2013 s. 13)*

(2) Enforcement of a Convention award may be refused if the person against whom it is invoked proves—

(a) that a party to the arbitration agreement was under some incapacity (under the law applicable to that party); *(Replaced 7 of 2013 s. 13)*

(b) that the arbitration agreement was not valid—

(i) under the law to which the parties subjected it; or

(ii) (if there was no indication of the law to which the arbitration agreement was subjected) under the law of the country where the award was made;

(c) that the person—

(i) was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings; or

(ii) was otherwise unable to present the person's case;

(d) subject to subsection (4), that the award—

(i) deals with a difference not contemplated by or not falling within the terms of the submission to arbitration; or

(ii) contains decisions on matters beyond the scope of the submission to arbitration;

(e) that the composition of the arbitral authority or the arbitral procedure was not in accordance with—

(i) the agreement of the parties; or

(ii) (if there was no agreement) the law of the country where the arbitration took place; or

(f) that the award—

(i) has not yet become binding on the parties; or

(ii) has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made.

(3) Enforcement of a Convention award may also be refused if—

(a) the award is in respect of a matter which is not capable of settlement by arbitration under the law of Hong Kong; or

(b) it would be contrary to public policy to enforce the award.

(4) If a Convention award contains, apart from decisions on matters submitted to arbitration (***arbitral decisions***), decisions on matters not submitted to arbitration (***unrelated decisions***), the award may be enforced only in so far as it relates to the arbitral decisions that can be separated from the unrelated decisions. *(Replaced 7 of 2013 s. 13)*

(5) If an application for setting aside or suspending a Convention award has been made to a competent authority as mentioned

in subsection (2)(f), the court before which enforcement of the award is sought— *(Amended 7 of 2013 s. 13)*

(a) may, if it thinks fit, adjourn the proceedings for the enforcement of the award; and

(b) may, on the application of the party seeking to enforce the award, order the person against whom the enforcement is invoked to give security.

(6) A decision or order of the court under subsection (5) is not subject to appeal.

90. Order for declaring party to New York Convention

(1) The Chief Executive in Council may, by order in the Gazette, declare that any State or territory that—

(a) is a party to the New York Convention; and

(b) is specified in the order,

is a party to that Convention.

(2) An order under subsection (1), while in force, is conclusive evidence that the State or territory specified in it is a party to the New York Convention.

(3) Subsections (1) and (2) do not affect any other method of proving that a State or territory is a party to the New York Convention.

91. Saving of rights to enforce Convention awards

This Division does not affect any right to enforce or rely on a Convention award otherwise than under this Division.

Division 3—Enforcement of Mainland Awards

92. Enforcement of Mainland awards

(1) A Mainland award is, subject to this Division, enforceable in

Hong Kong either—

(a) by action in the Court; or

(b) in the same manner as an award to which section 84 applies, and that section applies to a Mainland award accordingly as if a reference in that section to an award were a Mainland award. *(Amended 7 of 2013 s. 14)*

(2) A Mainland award which is enforceable as mentioned in subsection (1) is to be treated as binding for all purposes on the parties, and may accordingly be relied on by any of them by way of defence, set off or otherwise in any legal proceedings in Hong Kong. *(Replaced 7 of 2013 s. 14)*

(3) A reference in this Division to enforcement of a Mainland award is to be construed as including reliance on a Mainland award.

93. Restrictions on enforcement of Mainland awards

(1) A Mainland award is not, subject to subsection (2), enforceable under this Division if an application has been made on the Mainland for enforcement of the award.

(2) If a Mainland award is not fully satisfied by way of enforcement proceedings taken in the Mainland, or in any other place other than Hong Kong, that part of the award which is not satisfied in those proceedings is enforceable under this Division. *(Replaced 7 of 2013 s. 15)*

94. Evidence to be produced for enforcement of Mainland awards

The party seeking to enforce a Mainland award must produce—

(a) the duly authenticated original award or a duly certified copy of it;

(b) the original arbitration agreement or a duly certified copy of it; and

(c) if the award or agreement is not in either or both of the official languages, a translation of it in either official language certified by an official or sworn translator or by a diplomatic or consular agent. *(Replaced 7 of 2013 s. 16)*

95. Refusal of enforcement of Mainland awards

(1) Enforcement of a Mainland award may not be refused except as mentioned in this section. *(Amended 7 of 2013 s. 17)*

(2) Enforcement of a Mainland award may be refused if the person against whom it is invoked proves—

(a) that a party to the arbitration agreement was under some incapacity (under the law applicable to that party); *(Replaced 7 of 2013 s. 17)*

(b) that the arbitration agreement was not valid—

(i) under the law to which the parties subjected it; or

(ii) (if there was no indication of the law to which the arbitration agreement was subjected) under the law of the Mainland;

(c) that the person—

(i) was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings; or

(ii) was otherwise unable to present the person's case;

(d) subject to subsection (4), that the award—

(i) deals with a difference not contemplated by or not falling within the terms of the submission to arbitration; or

(ii) contains decisions on matters beyond the scope of the submission to arbitration;

(e) that the composition of the arbitral authority or the arbitral procedure was not in accordance with—

(i) the agreement of the parties; or

(ii) (if there was no agreement) the law of the Mainland; or

(f) that the award—

(i) has not yet become binding on the parties; or

(ii) has been set aside or suspended by a competent authority of the Mainland or under the law of the Mainland.

(3) Enforcement of a Mainland award may also be refused if—

(a) the award is in respect of a matter which is not capable of settlement by arbitration under the law of Hong Kong; or

(b) it would be contrary to public policy to enforce the award.

(4) If a Mainland award contains, apart from decisions on matters submitted to arbitration (***arbitral decisions***), decisions on matters not submitted to arbitration (***unrelated decisions***), the award may be enforced only in so far as it relates to the arbitral decisions that can be separated from the unrelated decisions. *(Replaced 7 of 2013 s. 17)*

96. Mainland awards to which certain provisions of this Division do not apply

(1) Subject to subsection (2), this Division has effect with respect to the enforcement of Mainland awards.

(2) If—

(a) a Mainland award was at any time before 1 July 1997 a Convention award within the meaning of Part IV of the repealed Ordinance as then in force; and

(b) the enforcement of that award had been refused at any time before the commencement of section 5 of the Arbitration (Amendment) Ordinance 2000 (2 of 2000) under section 44 of the repealed Ordinance as then in force,

then sections 92 to 95 have no effect with respect to the enforcement of that award.

97. Publication of list of recognized Mainland arbitral authorities

(1) The Secretary for Justice must, by notice in the Gazette, publish a list of recognized Mainland arbitral authorities supplied from time to time to the Government by the Legislative Affairs Office of the State Council of the People's Republic of China through the Hong Kong and Macao Affairs Office of the State Council.

(2) A list published under subsection (1) is not subsidiary legislation.

98. Saving of certain Mainland awards

Despite the fact that enforcement of a Mainland award had been refused in Hong Kong at any time during the period between 1 July 1997 and the commencement of section 5 of the Arbitration (Amendment) Ordinance 2000 (2 of 2000) under the repealed Ordinance as then in force, the award is, subject to section 96(2), enforceable under this Division as if enforcement of the award had not previously been so refused.

Division 4—Enforcement of Macao Awards

(Division 4 added 7 of 2013 s. 18)

98A. Enforcement of Macao awards

(1) A Macao award is, subject to this Division, enforceable in Hong Kong either—

(a) by action in the Court; or

(b) in the same manner as an award to which section 84 applies, and that section applies to a Macao award accordingly as if a reference in that section to an award were a Macao award.

(2) A Macao award which is enforceable as mentioned in subsection (1) is to be treated as binding for all purposes on the parties, and may accordingly be relied on by any of them by way of defence, set off or otherwise in any legal proceedings in Hong Kong.

(3) A reference in this Division to enforcement of a Macao award is to be construed as including reliance on a Macao award.

98B. Enforcement of Macao awards partially satisfied

If a Macao award is not fully satisfied by way of enforcement proceedings taken in Macao, or in any other place other than Hong Kong, that part of the award which is not satisfied in those proceedings is enforceable under this Division.

98C. Evidence to be produced for enforcement of Macao awards

The party seeking to enforce a Macao award must produce—

(a) the duly authenticated original award or a duly certified copy of it;

(b) the original arbitration agreement or a duly certified copy of it; and

(c) if the award or agreement is not in either or both of the official languages, a translation of it in either official language certified by an official or sworn translator or by a diplomatic or consular agent.

98D. Refusal of enforcement of Macao awards

(1) Enforcement of a Macao award may not be refused except as mentioned in this section.

(2) Enforcement of a Macao award may be refused if the person against whom it is invoked proves—

(a) that a party to the arbitration agreement was under some incapacity (under the law applicable to that party);

(b) that the arbitration agreement was not valid—

(i) under the law to which the parties subjected it; or

(ii) (if there was no indication of the law to which the arbitration agreement was subjected) under the law of Macao;

(c) that the person—

(i) was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings; or

(ii) was otherwise unable to present the person's case;

(d) subject to subsection (4), that the award—

(i) deals with a difference not contemplated by or not falling within the terms of the submission to arbitration; or

(ii) contains decisions on matters beyond the scope of the submission to arbitration;

(e) that the composition of the arbitral authority or the arbitral procedure was not in accordance with—

(i) the agreement of the parties; or

(ii) (if there was no agreement) the law of Macao; or

(f) that the award—

(i) has not yet become binding on the parties; or

(ii) has been set aside or suspended by a competent authority of Macao or under the law of Macao.

(3) Enforcement of a Macao award may also be refused if—

(a) the award is in respect of a matter which is not capable of settlement by arbitration under the law of Hong Kong; or

(b) it would be contrary to public policy to enforce the award.

(4) If a Macao award contains, apart from decisions on matters submitted to arbitration (***arbitral decisions***), decisions on matters not submitted to arbitration (***unrelated decisions***), the award may be enforced only in so far as it relates to the arbitral decisions that can be separated from the unrelated decisions.

(5) If an application for setting aside or suspending a Macao award has been made to a competent authority as mentioned in subsection (2)(f), the court before which enforcement of the award is sought—

(a) may, if it thinks fit, adjourn the proceedings for the enforcement of the award; and

(b) may, on the application of the party seeking to enforce the award, order the person against whom the enforcement is invoked to give security.

(6) A decision or order of the court under subsection (5) is not subject to appeal.

Part 10A

Third Party Funding of Arbitration

(Part 10A added 6 of 2017 s. 3)

Division 1—Purposes

98E. Purposes

The purposes of this Part are to—

(a) ensure that third party funding of arbitration is not prohibited by particular common law doctrines; and

(b) provide for measures and safeguards in relation to third party funding of arbitration.

Division 2—Interpretation

98F. Interpretation

In this Part—

advisory body (諮詢機構) means the person appointed by the Secretary for Justice under section 98X(1);

arbitration (仲裁) includes the following proceedings under this Ordinance—

(a) court proceedings;

(b) proceedings before an emergency arbitrator; and

(c) mediation proceedings;

arbitration body (仲裁機構)—

(a) in relation to an arbitration (other than the proceedings mentioned in paragraphs (b) and (c))—means the arbitral tribunal or court, as the case may be;

(b) in relation to proceedings before an emergency arbitrator—means the emergency arbitrator; or

(c) in relation to mediation proceedings—means the mediator appointed under section 32 or referred to in section 33, as the case may be;

arbitration funding (仲裁資助), in relation to an arbitration, means money, or any other financial assistance, in relation to any costs of the arbitration;

authorized body (獲授權機構) means the person appointed by the Secretary for Justice under section 98X(2);

code of practice (實務守則) means the code of practice issued under Division 4 and as amended from time to time;

costs (費用), in relation to an arbitration, means the costs and expenses of the arbitration and includes—

(a) pre-arbitration costs and expenses; and

(b) the fees and expenses of the arbitration body;

emergency arbitrator (緊急仲裁員) has the meaning given by section 22A;

funded party (受資助方)—see section 98I;

funding agreement (資助協議)—see section 98H;

mediation proceedings (調解程序) means mediation proceedings referred to in section 32(3) or 33;

potential third party funder (潛在出資第三者) means a person who carries on any activity with a view to becoming a third party funder;

provision (提供)—

(a) in relation to the provision of arbitration funding to a person (***recipient***)—includes the provision of the arbitration funding to another person (for example, to

the recipient's legal representative) at the recipient's request; and

(b) in relation to the provision of arbitration funding by a person (***funder***)—includes the provision of the arbitration funding by another person that is arranged by the funder;

third party funder (出資第三者)—

(a) means a third party funder within the meaning of section 98J; and

(b) in Division 4, includes a potential third party funder;

third party funding of arbitration (第三者資助仲裁)—see section 98G.

98G. Meaning of *third party funding of arbitration*

Third party funding of arbitration is the provision of arbitration funding for an arbitration—

(a) under a funding agreement;

(b) to a funded party;

(c) by a third party funder; and

(d) in return for the third party funder receiving a financial benefit only if the arbitration is successful within the meaning of the funding agreement.

98H. Meaning of *funding agreement*

A funding agreement is an agreement for third party funding of arbitration that is—

(a) in writing;

(b) made between a funded party and a third party funder; and

(c) made on or after the commencement date of Division 3.

98I. Meaning of *funded party*

(1) A funded party is a person—

(a) who is a party to an arbitration; and

(b) who is a party to a funding agreement for the provision of arbitration funding for the arbitration to the person by a third party funder.

(2) In subsection (1)(a), the reference to a party to an arbitration includes—

(a) a person who is likely to be a party to an arbitration that is yet to commence; and

(b) a person who was a party to an arbitration that has ended.

98J. Meaning of *third party funder*

(1) A third party funder is a person—

(a) who is a party to a funding agreement for the provision of arbitration funding for an arbitration to a funded party by the person; and

(b) who does not have an interest recognized by law in the arbitration other than under the funding agreement.

(2) In subsection (1)(b), the reference to a person who does not have an interest in an arbitration includes—

(a) a person who does not have an interest in the matter about which an arbitration is yet to commence; and

(b) a person who did not have an interest in an arbitration that has ended.

Division 3—Third Party Funding of Arbitration Not

Prohibited by Particular Common Law Offences or Tort

Editorial Note:
Part 10A comes into operation in so far as that Part relates to the application of Divisions 3 and 5 of that Part in relation to an arbitration within the meaning of that Part only (see L.N. 260 of 2018).

98K. Particular common law offences do not apply

The common law offences of maintenance (including the common law offence of champerty) and of being a common barrator do not apply in relation to third party funding of arbitration.

98L. Particular tort does not apply

The tort of maintenance (including the tort of champerty) does not apply in relation to third party funding of arbitration.

98M. Other illegality not affected

Sections 98K and 98L do not affect any rule of law as to the cases in which a contract is to be treated as contrary to public policy or otherwise illegal.

98N. Limited application of Part 10A for non-Hong Kong arbitration

Despite section 5, this Part applies in relation to an arbitration for which the place of arbitration is outside Hong Kong or there is no place of arbitration as if—

(a) the place of arbitration were in Hong Kong; and

(b) the definition of ***costs*** in section 98F were replaced by the following—

"***costs*** (費用), in relation to an arbitration, means only the costs and expenses of services that are provided in Hong Kong in relation to the arbitration;".

98O. Part 10A not applicable to lawyers acting for parties in

arbitration

(1) This Part does not apply in relation to the provision of arbitration funding to a party by a lawyer who, in the course of the lawyer's legal practice, acts for any party in relation to the arbitration.

(2) If a lawyer works for, or is a member of, a legal practice (however described or structured), the references in subsection (1) to "lawyer" include the legal practice and any other lawyer who works for, or is a member of, the legal practice.

(3) In this section—

lawyer (律師) means—

(a) a person who is enrolled on the roll of barristers kept under section 29 of the Legal Practitioners Ordinance (Cap. 159);

(b) a person who is enrolled on the roll of solicitors kept under section 5 of that Ordinance; or

(c) a person who is qualified to practise the law of a jurisdiction other than Hong Kong, including a foreign lawyer as defined by section 2(1) of that Ordinance;

party (一方) means a party to an arbitration within the meaning of section 98I.

Division 4—Code of Practice

98P. Code of practice may be issued

(1) The authorized body may issue a code of practice setting out the practices and standards with which third party funders are ordinarily expected to comply in carrying on activities in connection with third party funding of arbitration.

(2) The authorized body may amend or revoke the code of practice.

(3) Section 98R applies in relation to an amendment or revocation of the code of practice in the same way as it applies in relation to the code of practice.

98Q. Content of code of practice

(1) Without limiting section 98P, the code of practice may, in setting out practices and standards, require third party funders to ensure that—

(a) any promotional material in connection with third party funding of arbitration is clear and not misleading;

(b) funding agreements set out their key features, risks and terms, including—

(i) the degree of control that third party funders will have in relation to an arbitration;

(ii) whether, and to what extent, third party funders (or persons associated with the third party funders) will be liable to funded parties for adverse costs, insurance premiums, security for costs and other financial liabilities; and

(iii) when, and on what basis, parties to funding agreements may terminate the funding agreements or third party funders may withhold arbitration funding;

(c) funded parties obtain independent legal advice on funding agreements before entering into them;

(d) third party funders provide to funded parties the name and contact details of the advisory body;

(e) third party funders have a sufficient minimum amount of capital;

(f) third party funders have effective procedures for addressing potential, actual or perceived conflicts of interest and the procedures enhance the protection of funded parties;

(g) third party funders have effective procedures for addressing complaints against them by funded parties and the procedures allow funded parties to obtain and enforce meaningful remedies for legitimate complaints;

(h) third party funders follow the procedures mentioned in paragraphs (f) and (g);

(i) third party funders submit annual returns to the advisory body on—

(i) any complaints against them by funded parties received during the reporting periods; and

(ii) any findings by a court or arbitral tribunal of their failure to comply with the code of practice or Division 5; and

(j) third party funders provide to the advisory body any other information it reasonably requires.

(2) Without limiting subsection (1), the code of practice may—

(a) specify terms to be included, or not to be included, in funding agreements; and

(b) specify what is to be included, or not to be included, in order to have effective procedures.

(3) The code of practice—

(a) may be of general or special application; and

(b) may make different provisions for different circumstances and provide for different cases or classes of cases.

98R. Process for issuing code of practice

(1) Before issuing a code of practice, the authorized body must—

(a) consult the public about the proposed code of practice; and

(b) publish a notice to inform the public of the proposed code of practice.

(2) In preparing the proposed code of practice for public consultation, the authorized body may consult a person with knowledge or experience of arbitration or third party funding of arbitration.

(3) The notice must state the following information—

(a) the purpose and general effect of the proposed code of practice;

(b) how a copy of the proposed code of practice may be inspected; and

(c) that written submissions by any person about the proposed code of practice may be made to the authorized body before a specified time.

(4) After considering all written submissions made before the specified time, the authorized body may issue the code of practice (with or without revision) by publishing it in the Gazette.

(5) The code of practice comes into operation on the day on which it is published in the Gazette under subsection (4).

(6) The code of practice is not subsidiary legislation.

98S. Non-compliance with code of practice

(1) A failure to comply with a provision of the code of practice does not, of itself, render any person liable to any judicial or

other proceedings.

(2) However—

(a) the code of practice is admissible in evidence in proceedings before any court or arbitral tribunal; and

(b) any compliance, or failure to comply, with a provision of the code of practice may be taken into account by any court or arbitral tribunal if it is relevant to a question being decided by the court or arbitral tribunal.

Division 5—Other Measures and Safeguards

Editorial Note:
Part 10A comes into operation in so far as that Part relates to the application of Divisions 3 and 5 of that Part in relation to an arbitration within the meaning of that Part only (see L.N. 260 of 2018).

98T. Communication of information for third party funding of arbitration

(1) Despite section 18(1), information referred to in that section may be communicated by a party to a person for the purpose of having, or seeking, third party funding of arbitration from the person.

(2) However, the person may not further communicate anything communicated under subsection (1), unless—

(a) the further communication is made—

(i) to protect or pursue a legal right or interest of the person; or

(ii) to enforce or challenge an award made in the arbitration,

in legal proceedings before a court or other judicial authority in or outside Hong Kong;

(b) the further communication is made to any government body, regulatory body, court or tribunal and the person is obliged by law to make the communication; or

(c) the further communication is made to a professional adviser of the person for the purpose of obtaining advice in connection with the third party funding of arbitration.

(3) If a further communication is made by a person to a professional adviser under subsection (2)(c), subsection (2) applies to the professional adviser as if the professional adviser were the person.

(4) In this section—

communicate (傳達) includes publish or disclose.

98U. Disclosure about third party funding of arbitration

(1) If a funding agreement is made, the funded party must give written notice of—

(a) the fact that a funding agreement has been made; and

(b) the name of the third party funder.

(2) The notice must be given—

(a) for a funding agreement made on or before the commencement of the arbitration—on the commencement of the arbitration; or

(b) for a funding agreement made after the commencement of the arbitration—within 15 days after the funding agreement is made.

(3) The notice must be given to—

(a) each other party to the arbitration; and

(b) the arbitration body.

(4) For subsection (3)(b), if there is no arbitration body for the arbitration at the time, or at the end of the period, specified in

subsection (2) for giving the notice, the notice must instead be given to the arbitration body immediately after there is an arbitration body for the arbitration.

98V. Disclosure about end of third party funding of arbitration

(1) If a funding agreement ends (other than because of the end of the arbitration), the funded party must give written notice of—

(a) the fact that the funding agreement has ended; and

(b) the date the funding agreement ended.

(2) The notice must be given within 15 days after the funding agreement ends.

(3) The notice must be given to—

(a) each other party to the arbitration; and

(b) the arbitration body (if any).

98W. Non-compliance with Division 5

(1) A failure to comply with this Division does not, of itself, render any person liable to any judicial or other proceedings.

(2) However, any compliance, or failure to comply, with this Division may be taken into account by any court or arbitral tribunal if it is relevant to a question being decided by the court or arbitral tribunal.

Division 6—Miscellaneous

98X. Appointment of advisory body and authorized body

(1) The Secretary for Justice may, by notice published in the Gazette, appoint as the advisory body a person the Secretary for Justice considers appropriate to monitor and review the operation of this Part.

(2) The Secretary for Justice may, by notice published in the Gazette, appoint as the authorized body a person the Secretary for Justice considers appropriate to exercise the powers under section 98P.

Part 11

Provisions that may be Expressly Opted for or Automatically Apply

(Format changes—E.R. 3 of 2015)

99. Arbitration agreements may provide expressly for opt-in provisions

An arbitration agreement may provide expressly that any or all of the following provisions are to apply—

(a) section 1 of Schedule 2;

(b) section 2 of Schedule 2;

(c) section 3 of Schedule 2;

(d) sections 4 and 7 of Schedule 2;

(e) sections 5, 6 and 7 of Schedule 2.

100. Opt-in provisions automatically apply in certain cases

All the provisions in Schedule 2 apply, subject to section 102, to—

(a) an arbitration agreement entered into before the commencement of this Ordinance which has provided that arbitration under the agreement is a domestic arbitration; or

(b) an arbitration agreement entered into at any time within a period of 6 years after the commencement of this Ordinance which provides that arbitration under the agreement is a domestic arbitration.

101. Opt-in provisions that automatically apply under section 100 deemed to apply to Hong Kong construction subcontracting cases

(1) If—

(a) all the provisions in Schedule 2 apply under section 100(a) or (b) to an arbitration agreement, in any form referred to in section 19, included in a construction contract;

(b) the whole or any part of the construction operations to be carried out under the construction contract (***relevant operation***) is subcontracted to any person under another construction contract (***subcontract***); and

(c) that subcontract also includes an arbitration agreement (***subcontracting parties' arbitration agreement***) in any form referred to in section 19,

then all the provisions in Schedule 2 also apply, subject to section 102, to the subcontracting parties' arbitration agreement.

(2) Unless the subcontracting parties' arbitration agreement is an arbitration agreement referred to in section 100(a) or (b), subsection (1) does not apply if—

(a) the person to whom the whole or any part of the relevant operation is subcontracted under the subcontract is—

(i) a natural person who is ordinarily resident outside Hong Kong;

(ii) a body corporate—

(A) incorporated under the law of a place outside Hong Kong; or

(B) the central management and control of which is exercised outside Hong Kong; or

(iii) an association—

(A) formed under the law of a place outside Hong Kong; or

(B) the central management and control of which is exercised outside Hong Kong;

(b) the person to whom the whole or any part of the relevant operation is subcontracted under the subcontract has no place of business in Hong Kong; or

(c) a substantial part of the relevant operation which is subcontracted under the subcontract is to be performed outside Hong Kong.

(3) If—

(a) all the provisions in Schedule 2 apply to a subcontracting parties' arbitration agreement under subsection (1);

(b) the whole or any part of the relevant operation that is subcontracted under the subcontract is further subcontracted to another person under a further construction contract (***further subcontract***); and

(c) that further subcontract also includes an arbitration agreement in any form referred to in section 19,

subsection (1) has effect subject to subsection (2), and all the provisions in Schedule 2 apply, subject to section 102, to the arbitration agreement so included in that further subcontract as if that further subcontract were a subcontract under subsection (1).

(4) In this section—

construction contract (建造合約) has the meaning given to it by section 2(1) of the Construction Industry Council Ordinance (Cap. 587);

construction operations (建造工程) has the meaning given to it by Schedule 1 to the Construction Industry Council Ordinance (Cap. 587).

102. Circumstances under which opt-in provisions not automatically

apply

(1) Sections 100 and 101 do not apply if— *(Amended 11 of 2015 s. 4)*

(a) the parties to the arbitration agreement concerned so agree in writing; or

(b) the arbitration agreement concerned has provided expressly that—

(i) section 100 or 101 does not apply; or

(ii) section 2, 3, 4, 5, 6 or 7 of Schedule 2 applies or does not apply. *(Amended 11 of 2015 s. 4)*

(2) Subsection (1)(b)(ii) does not derogate from the operation of section 99. *(Added 11 of 2015 s. 4)*

103. Application of provisions under this Part

If there is any conflict or inconsistency between any provision that applies under this Part and any other provision of this Ordinance, the first-mentioned provision prevails, to the extent of the conflict or inconsistency, over that other provision.

Part 11A

Arbitrations Relating to Intellectual Property Rights

(Part 11A added 5 of 2017 s. 5)

103A. Interpretation

In this Part—

IPR (知識產權)—see section 103B;

IPR dispute (知識產權爭議)—see section 103C.

103B. Interpretation: IPR

(1) In this Part, an intellectual property right (***IPR***) means—

(a) a patent;

(b) a trade mark;

(c) a geographical indication;

(d) a design;

(e) a copyright or related right;

(f) a domain name;

(g) a layout-design (topography) of integrated circuit;

(h) a plant variety right;

(i) a right in confidential information, trade secret or know-how;

(j) a right to protect goodwill by way of passing off or similar action against unfair competition; or

(k) any other IPR of whatever nature.

(2) In this Part, a reference to an IPR is a reference to such an IPR—

(a) whether or not the IPR is protectible by registration; and

(b) whether or not the IPR is registered, or subsists, in Hong Kong.

(3) In this Part, a reference to an IPR includes an application for the registration of an IPR if the IPR is protectible by registration.

(4) In this section—

registration (註冊), in relation to an IPR, includes the grant of the IPR.

103C. Interpretation: IPR dispute

In this Part, a dispute over an IPR (***IPR dispute***) includes—

(a) a dispute over the enforceability, infringement, subsistence, validity, ownership, scope, duration or any other aspect of an IPR;

(b) a dispute over a transaction in respect of an IPR; and

(c) a dispute over any compensation payable for an IPR.

103D. IPR disputes may be arbitrated

(1) An IPR dispute is capable of settlement by arbitration as between the parties to the IPR dispute.

(2) In ascertaining whether there is an arbitration agreement between the parties within the meaning of section 19(1) (as it gives effect to Option I of Article 7(1) of the UNCITRAL Model Law), an agreement by the parties to submit to arbitration an IPR dispute is taken to be an agreement by the parties to submit to arbitration a dispute which has arisen or which may arise between them in respect of a defined legal relationship.

(3) Subsection (1) applies whether the IPR dispute is the main issue or an incidental issue in the arbitration.

(4) For the purposes of subsection (1), an IPR dispute is not incapable of settlement by arbitration only because a law of Hong Kong or elsewhere—

(a) gives jurisdiction to decide the IPR dispute to a specified entity; and

(b) does not mention possible settlement of the IPR dispute by arbitration.

(5) In subsection (4)(a)—

specified entity (指明實體) means any of the following entities under the law of Hong Kong or elsewhere—

(a) a court;

(b) a tribunal;

(c) a person holding an administrative or executive office;

(d) any other entity.

(6) The power given to an arbitral tribunal under section 70 to award any remedy or relief in deciding an IPR dispute is subject to any agreement between the parties to the IPR dispute.

103E. Effect of award involving IPR

(1) This section applies if an award deciding an IPR dispute is made in arbitral proceedings.

(2) The fact that an entity is a third party licensee in respect of the IPR does not of itself make the entity a person claiming through or under a party to the arbitral proceedings for the purposes of section 73(1)(b).

(3) However, subsection (2) does not affect any right or liability between a third party licensee and a party to the arbitral proceedings whether—

(a) arising in contract; or

(b) arising by operation of law.

(4) In this section—

third party licensee (第三方特許持有人), in relation to an IPR in dispute in arbitral proceedings, means an entity that is—

(a) a licensee (whether or not an exclusive licensee) of the IPR under a licence granted by a party to the arbitral proceedings; but

(b) not a party to the arbitral proceedings.

103F. Recourse against award involving IPR

(1) For the purposes of section 81 (as it gives effect to Article 34(2)(b)(i) of the UNCITRAL Model Law), the subject-matter of a dispute is not incapable of settlement by arbitration under the law of Hong Kong only because the subject-matter relates to an IPR dispute.

(2) For the purposes of section 81 (as it gives effect to Article 34(2)(b)(ii) of the UNCITRAL Model Law), an award is not in conflict with the public policy of Hong Kong only because the subject-matter in respect of which the award is made relates to an IPR dispute.

103G. Recognition and enforcement of award involving IPR

(1) For the purposes of sections 86(2)(a), 89(3)(a), 95(3)(a) and 98D(3)(a), a matter is not incapable of settlement by arbitration under the law of Hong Kong only because the matter relates to an IPR dispute.

(2) For the purposes of sections 86(2)(b), 89(3)(b), 95(3)(b) and 98D(3)(b), it is not contrary to public policy of Hong Kong to enforce an award only because the award is in respect of a matter that relates to an IPR dispute.

103H. Judgments entered in terms of award involving IPR

(1) This section applies if—

(a) an award (whether made in or outside Hong Kong) deciding an IPR dispute is made in arbitral proceedings; and

(b) a judgment in terms of the award is entered under section 84, 87, 92 or 98A.

(2) Section 73(1) applies in relation to the judgment as if a reference in that section to an award made by an arbitral tribunal pursuant to an arbitration agreement were a reference to the judgment.

(3) In this section—

award (裁決) includes a declaratory award.

103I. Validity of patent may be put in issue in arbitral proceedings

Section 101(2) of the Patents Ordinance (Cap. 514) does not prevent a party from putting the validity of a patent in issue in arbitral proceedings.

Part 12

Miscellaneous

(Format changes—E.R. 3 of 2015)

104. Arbitral tribunal or mediator to be liable for certain acts and omissions

(1) An arbitral tribunal or mediator is liable in law for an act done or omitted to be done by—

(a) the tribunal or mediator; or

(b) an employee or agent of the tribunal or mediator,

in relation to the exercise or performance, or the purported exercise or performance, of the tribunal's arbitral functions or the mediator's functions only if it is proved that the act was done or omitted to be done dishonestly.

(2) An employee or agent of an arbitral tribunal or mediator is liable in law for an act done or omitted to be done by the employee or agent in relation to the exercise or performance, or the purported exercise or performance, of the tribunal's arbitral functions or the mediator's functions only if it is proved that the act was done or omitted to be done dishonestly.

(3) In this section, ***mediator*** (調解員) means a mediator appointed under section 32 or referred to in section 33.

105. Appointors and administrators to be liable only for certain acts and omissions

(1) A person—

(a) who appoints an arbitral tribunal or mediator; or

(b) who exercises or performs any other function of an administrative nature in connection with arbitral or mediation proceedings,

is liable in law for the consequences of doing or omitting to do an act in the exercise or performance, or the purported exercise or performance, of the function only if it is proved that the act was done or omitted to be done dishonestly.

(2) Subsection (1) does not apply to an act done or omitted to be done by—

(a) a party to the arbitral or mediation proceedings; or

(b) a legal representative or adviser of the party,

in the exercise or performance, or the purported exercise or performance, of a function of an administrative nature in connection with those proceedings.

(3) An employee or agent of a person who has done or omitted to do an act referred to in subsection (1) is liable in law for the consequence of the act done or omission made only if it is proved that—

(a) the act was done or omission was made dishonestly; and

(b) the employee or agent was a party to the dishonesty.

(4) Neither a person referred to in subsection (1) nor an employee or agent of the person is liable in law for the consequences of any act done or omission made by—

(a) the arbitral tribunal or mediator concerned; or

(b) an employee or agent of the tribunal or mediator,

in the exercise or performance, or the purported exercise or performance, of the tribunal's arbitral functions or the mediator's functions merely because the person, employee or agent has exercised or performed a function referred to in that subsection.

(5) In this section—

appoint (委任) includes nominate and designate;

mediator (調解員) has the same meaning as in section 104, and ***mediation proceedings*** (調解程序) is to be construed accordingly.

106. Rules of court

(1) The power to make rules of court under section 54 (Rules of court) of the High Court Ordinance (Cap. 4) includes power to make rules of court for—

(a) the making of an application for an interim measure under section 45(2) or an order under section 60(1); or

(b) the service out of the jurisdiction of an application for the interim measure or order.

(2) Any rules made by virtue of this section may include the incidental, supplementary and consequential provisions that the authority making the rules considers necessary or expedient.

107. Making an application, etc. under this Ordinance

An application, request or appeal to the court under this Ordinance is, unless otherwise expressed, to be made in accordance with the Rules of the High Court (Cap. 4 sub. leg. A).

108. Decision, etc. of Court under this Ordinance

A decision, determination, direction or award of the Court under this Ordinance is to be treated as a judgment of the Court for the purposes of section 14 (Appeals in civil matters) of the High Court Ordinance (Cap. 4).

Part 13

Repeal, Savings and Transitional Provisions

(Format changes—E.R. 3 of 2015)

109. *(Omitted as spent—E.R. 3 of 2015)*

110. Effect of repeal on subsidiary legislation

Any subsidiary legislation made under the repealed Ordinance and in force at the commencement of this Ordinance, so far as it is not inconsistent with this Ordinance, continues in force and has the like effect for all purposes as if made under this Ordinance.

111. Savings and transitional provisions

(1) Part 1 of Schedule 3 provides for the savings and transitional arrangements that apply on, or relate to, the commencement of this Ordinance. *(Amended 11 of 2015 s. 5)*

(2) Part 2 of Schedule 3 provides for the savings and transitional arrangements that apply on, or relate to, the commencement* of the Arbitration (Amendment) Ordinance 2015 (11 of 2015). *(Added 11 of 2015 s. 5)*

(3) Part 3 of Schedule 3 provides for the savings and transitional arrangements that relate to the Arbitration (Amendment) Ordinance 2017 (5 of 2017). *(Added 5 of 2017 s. 6)*

* Commencement date: 17 July 2015.

Part 14

(Omitted as spent—E.R. 3 of 2015)

112. *(Omitted as spent—E.R. 3 of 2015)*

Schedule 1

[s. 2]

UNCITRAL Model Law on International Commercial Arbitration

(Format changes—E.R. 1 of 2018)

(As adopted by the United Nations Commission on International Trade Law on 21 June 1985, and as amended by the United Nations Commission on International Trade Law on 7 July 2006)

CHAPTER I. GENERAL PROVISIONS

*Article 1. Scope of application**

(1) This Law applies to international commercial** arbitration, subject to any agreement in force between this State and any other State or States.

(2) The provisions of this Law, except articles 8, 9, 17H, 17I, 17J, 35 and 36, apply only if the place of arbitration is in the territory of this State.

(*Article 1(2) has been amended by the Commission at its thirty-ninth session, in 2006*)

(3) An arbitration is international if:

(a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or

(b) one of the following places is situated outside the State in which the parties have their places of business:

(i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;

(ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or

(c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.

(4) For the purposes of paragraph (3) of this article:

(a) if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;

(b) if a party does not have a place of business, reference is to be made to his habitual residence.

(5) This Law shall not affect any other law of this State by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Law.

[Note: Section 5 has effect in substitution for article 1—see section 7.]

Article 2. Definitions and rules of interpretation

For the purposes of this Law:

(a) "arbitration" means any arbitration whether or not administered by a permanent arbitral institution;

(b) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

(c) "court" means a body or organ of the judicial system of a State;

(d) where a provision of this Law, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;

(e) where a provision of this Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;

(f) where a provision of this Law, other than in articles 25*(a)* and 32(2)*(a)*, refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim.

[Note: Section 2 has effect in substitution for article 2—see section 8.]

Article 2A. International origin and general principles
(*As adopted by the Commission at its thirty-ninth session, in 2006*)

(1) In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

(2) Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

[Note: See section 9.]

Article 3. Receipt of written communications

(1) Unless otherwise agreed by the parties:

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;

(b) the communication is deemed to have been received on the day it is so delivered.

(2) The provisions of this article do not apply to communications in court proceedings.

[Note: See section 10.]

Article 4. Waiver of right to object

A party who knows that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.

[Note: See section 11.]

Article 5. Extent of court intervention

In matters governed by this Law, no court shall intervene except where so provided in this Law.

[Note: See section 12.]

Article 6. Court or other authority for certain functions of arbitration assistance and supervision

The functions referred to in articles 11(3), 11(4), 13(3), 14, 16(3) and 34(2) shall be performed by … [Each State enacting this model law specifies the court, courts or, where referred to therein, other authority competent to perform these functions.]

[Note: Section 13(2) to (6) has effect in substitution for article 6—see section 13.]

CHAPTER II. ARBITRATION AGREEMENT

Option I

Article 7. Definition and form of arbitration agreement
(As adopted by the Commission at its thirty-ninth session, in 2006)

(1) "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(2) The arbitration agreement shall be in writing.

(3) An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means.

(4) The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference; "electronic communication" means any communication that the parties make by means of data messages; "data message" means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.

(5) Furthermore, an arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

(6) The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.

Option II

Article 7. Definition of arbitration agreement
(*As adopted by the Commission at its thirty-ninth session, in 2006*)

"Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

[Note: See section 19. Option I of this article is adopted.]

Article 8. Arbitration agreement and substantive claim before court

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

[Note: See section 20.]

Article 9. Arbitration agreement and interim measures by court

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

[Note: See section 21.]

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

Article 10. Number of arbitrators

(1) The parties are free to determine the number of arbitrators.

(2) Failing such determination, the number of arbitrators shall be three.

[Note: Article 10(2) is not applicable—see section 23.]

Article 11. Appointment of arbitrators

(1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.

(3) Failing such agreement,

(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;

(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.

(4) Where, under an appointment procedure agreed upon by the parties,

(a) a party fails to act as required under such procedure, or

(b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or

(c) a third party, including an institution, fails to perform any function entrusted to it under such procedure,

any party may request the court or other authority specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

[Note: See section 24.]

Article 12. Grounds for challenge

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

[Note: See section 25.]

Article 13. Challenge procedure

(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in article 12(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

[Note: See section 26.]

Article 14. Failure or impossibility to act

(1) If an arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these

grounds, any party may request the court or other authority specified in article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal.

(2) If, under this article or article 13(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12(2).

[Note: See section 27.]

Article 15. Appointment of substitute arbitrator

Where the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

[Note: See section 28.]

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

Article 16. Competence of arbitral tribunal to rule on its jurisdiction

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of

the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

[Note: See section 34.]

CHAPTER IVA. INTERIM MEASURES AND PRELIMINARY ORDERS

(*As adopted by the Commission at its thirty-ninth session, in 2006*)

Section 1. Interim measures

Article 17. Power of arbitral tribunal to order interim measures

(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures.

(2) An interim measure is any temporary measure, whether in the form of an award or in another form, by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party to:

(a) Maintain or restore the status quo pending determination of the dispute;

(b) Take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;

(c) Provide a means of preserving assets out of which a subsequent award may be satisfied; or

(d) Preserve evidence that may be relevant and material to the resolution of the dispute.

[Note: See section 35.]

Article 17A. Conditions for granting interim measures

(1) The party requesting an interim measure under article 17(2)*(a)*, *(b)* and *(c)* shall satisfy the arbitral tribunal that:

(a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and

(b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

(2) With regard to a request for an interim measure under article 17(2)*(d)*, the requirements in paragraphs (1)*(a)* and *(b)* of this article shall apply only to the extent the arbitral tribunal considers appropriate.

[Note: See section 36.]

Section 2. Preliminary orders

Article 17B. Applications for preliminary orders and conditions for granting preliminary orders

(1) Unless otherwise agreed by the parties, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.

(2) The arbitral tribunal may grant a preliminary order provided it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure.

(3) The conditions defined under article 17A apply to any preliminary order, provided that the harm to be assessed under article 17A(1)*(a)*, is the harm likely to result from the order being granted or not.

[Note: See section 37.]

Article 17C. Specific regime for preliminary orders

(1) Immediately after the arbitral tribunal has made a determination in respect of an application for a preliminary order, the arbitral tribunal shall give notice to all parties of the request for the interim measure, the application for the preliminary order, the preliminary order, if any, and all other communications, including by indicating the content of any oral communication, between any party and the arbitral tribunal in relation thereto.

(2) At the same time, the arbitral tribunal shall give an opportunity to any party against whom a preliminary order is directed to present its case at the earliest practicable time.

(3) The arbitral tribunal shall decide promptly on any objection to the preliminary order.

(4) A preliminary order shall expire after twenty days from the date on which it was issued by the arbitral tribunal. However, the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order, after the party against whom the preliminary order is directed has been given notice and an opportunity to present its case.

(5) A preliminary order shall be binding on the parties but shall not be subject to enforcement by a court. Such a preliminary order does not constitute an award.

[Note: See section 38.]

Section 3. Provisions applicable to interim measures and preliminary orders preliminary orders

Article 17D. Modification, suspension, termination

The arbitral tribunal may modify, suspend or terminate an interim measure or a preliminary order it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.

[Note: See section 39.]

Article 17E. Provision of security

(1) The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

(2) The arbitral tribunal shall require the party applying for a preliminary order to provide security in connection with the order unless the arbitral tribunal considers it inappropriate or unnecessary to do so.

[Note: See section 40.]

Article 17F. Disclosure

(1) The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the measure was requested or granted.

(2) The party applying for a preliminary order shall disclose to the arbitral tribunal all circumstances that are likely to be relevant to the arbitral tribunal's determination whether to grant or maintain the order, and such obligation shall continue until the party against whom the order has been requested has had an opportunity to present its case. Thereafter, paragraph (1) of this article shall apply.

[Note: See section 41.]

Article 17G. Costs and damages

The party requesting an interim measure or applying for a preliminary order shall be liable for any costs and damages caused by the measure or the order to any party if the arbitral tribunal later determines that, in the circumstances, the measure or the order should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

[Note: See section 42.]

Section 4. Recognition and enforcement of interim measures

Article 17H. Recognition and enforcement

(1) An interim measure issued by an arbitral tribunal shall be recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application to the competent court, irrespective of the country in which it was issued, subject to the provisions of article 17I.

(2) The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the court of any termination, suspension or modification of that interim measure.

(3) The court of the State where recognition or enforcement is sought may, if it considers it proper, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with

respect to security or where such a decision is necessary to protect the rights of third parties.

[Note: Section 61 has effect in substitution for article 17H—see section 43.]

*Article 17I. Grounds for refusing recognition or enforcement****

(1) Recognition or enforcement of an interim measure may be refused only:

(a) At the request of the party against whom it is invoked if the court is satisfied that:

(i) Such refusal is warranted on the grounds set forth in article 36(1)*(a)*(i), (ii), (iii) or (iv); or

(ii) The arbitral tribunal's decision with respect to the provision of security in connection with the interim measure issued by the arbitral tribunal has not been complied with; or

(iii) The interim measure has been terminated or suspended by the arbitral tribunal or, where so empowered, by the court of the State in which the arbitration takes place or under the law of which that interim measure was granted; or

(b) If the court finds that:

(i) The interim measure is incompatible with the powers conferred upon the court unless the court decides to reformulate the interim measure to the extent necessary to adapt it to its own powers and procedures for the purposes of enforcing that interim measure and without modifying its substance; or

(ii) Any of the grounds set forth in article 36(1)*(b)*(i) or (ii), apply to the recognition and enforcement of the interim measure.

(2) Any determination made by the court on any ground in paragraph (1) of this article shall be effective only for the purposes of the application to recognize and enforce the interim measure. The court where recognition or enforcement is sought shall not, in making that determination, undertake a review of the substance of the interim measure.

[Note: Article 17I does not have effect—see section 44.]

Section 5. Court-ordered interim measures

Article 17J. Court-ordered interim measures

A court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their place is in the territory of this State, as it has in relation to proceedings in courts. The court shall exercise such power in accordance with its own procedures in consideration of the specific features of international arbitration.

[Note: Article 17J does not have effect—see section 45.]

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

Article 18. Equal treatment of parties

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

[Note: Section 46(2) and (3) has effect in substitution for article 18—see section 46.]

Article 19. Determination of rules of procedure

(1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

[Note: Article 19(2) is not applicable—see section 47.]

Article 20. Place of arbitration

(1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

[Note: See section 48.]

Article 21. Commencement of arbitral proceedings

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

[Note: See section 49.]

Article 22. Language

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

[Note: See section 50.]

Article 23. Statements of claim and defence

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

[Note: See section 51.]

Article 24. Hearings and written proceedings

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any

expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

[Note: See section 52.]

Article 25. Default of a party

Unless otherwise agreed by the parties, if, without showing sufficient cause,

(a) the claimant fails to communicate his statement of claim in accordance with article 23(1), the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

(c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

[Note: See section 53.]

Article 26. Expert appointed by arbitral tribunal

(1) Unless otherwise agreed by the parties, the arbitral tribunal

(a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;

(b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

[Note: See section 54.]

Article 27. Court assistance in taking evidence

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this State assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

[Note: See section 55.]

CHAPTER VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

Article 28. Rules applicable to substance of dispute

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

(4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

[Note: See section 64.]

Article 29. Decision-making by panel of arbitrators

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

[Note: See section 65.]

Article 30. Settlement

(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

[Note: See section 66.]

Article 31. Form and contents of award

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.

(3) The award shall state its date and the place of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at that place.

(4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.

[Note: See section 67.]

Article 32. Termination of proceedings

(1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:

(a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;

(b) the parties agree on the termination of the proceedings;

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34(4).

[Note: See section 68.]

Article 33. Correction and interpretation of award; additional award

(1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:

(a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

(2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)*(a)* of this article on its own initiative within thirty days of the date of the award.

(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

(4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.

(5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

[Note: See section 69.]

CHAPTER VII. RECOURSE AGAINST AWARD

Article 34. Application for setting aside as exclusive recourse against arbitral award

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

(2) An arbitral award may be set aside by the court specified in article 6 only if:

(a) the party making the application furnishes proof that:

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or

(b) the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or

(ii) the award is in conflict with the public policy of this State.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

[Note: See section 81.]

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

Article 35. Recognition and enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the original award or a copy thereof. If the award is not made in an official language of this State, the court may request the party to supply a translation thereof into such language.****

(*Article 35(2) has been amended by the Commission at its thirty-ninth session, in 2006*)

[Note: Article 35 does not have effect—see section 82.]

Article 36. Grounds for refusing recognition or enforcement

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) if the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or

(ii) the recognition or enforcement of the award would be contrary to the public policy of this State.

(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)*(a)*(v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

[Note: Article 36 does not have effect—see section 83.]

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* Article headings are for reference purposes only and are not to be used for purposes of interpretation.

** The term "commercial" should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

*** The conditions set forth in article 17I are intended to limit the number of circumstances in which the court may refuse to enforce an interim measure. It would not be contrary to the level of harmonization sought to be achieved by these model provisions if a State were to adopt fewer circumstances in which enforcement may be refused.

**** The conditions set forth in this paragraph are intended to set maximum standards. It would, thus, not be contrary to the harmonization to be achieved by the model law if a State retained even less onerous conditions.

Note: The full text of the UNCITRAL Model Law is reproduced in this Schedule for information only. Provisions which are not applicable under this Ordinance are underlined. A note is added after each article to indicate the provision in this Ordinance which makes direct reference to that article. However, substituting provisions and other supplemental provisions to which the UNCITRAL Model Law are subject have not been shown in this Schedule. Reference has to be made therefore to this Ordinance which determines the extent to which the UNCITRAL Model Law applies.

Schedule 2

[ss. 2, 5, 23, 73, 81, 99, 100, 101 & 102]

Provisions that may be Expressly Opted for or Automatically Apply

(Format changes—E.R. 3 of 2015)

1. Sole arbitrator

If the parties to an arbitration agreement fail to agree on the number of arbitrators, any dispute arising between the parties is to be submitted to a sole arbitrator for arbitration.

(Amended 11 of 2015 s. 6)

2. Consolidation of arbitrations

(1) If, in relation to 2 or more arbitral proceedings, it appears to the Court—

(a) that a common question of law or fact arises in both or all of them;

(b) that the rights to relief claimed in those arbitral proceedings are in respect of or arise out of the same transaction or series of transactions; or

(c) that for any other reason it is desirable to make an order under this section,

the Court may, on the application of any party to those arbitral proceedings—

(d) order those arbitral proceedings—

(i) to be consolidated on such terms as it thinks just; or

(ii) to be heard at the same time or one immediately after another; or

(e) order any of those arbitral proceedings to be stayed until after the determination of any other of them.

(2) If the Court orders arbitral proceedings to be consolidated under subsection (1)(d)(i) or to be heard at the same time or one immediately after another under subsection (1)(d)(ii), the Court has the power—

(a) to make consequential directions as to the payment of costs in those arbitral proceedings; and

(b) if—

(i) all parties to those arbitral proceedings are in agreement as to the choice of arbitrator for those arbitral proceedings, to appoint that arbitrator; or

(ii) the parties cannot agree as to the choice of arbitrator for those arbitral proceedings, to appoint an arbitrator for those arbitral proceedings (and, in the case of arbitral proceedings to be heard at the same time or one immediately after another, to appoint the same arbitrator for those arbitral proceedings).

(3) If the Court makes an appointment of an arbitrator under subsection (2) for the arbitral proceedings to be consolidated or to be heard at the same time or one immediately after another, any appointment of any other arbitrator that has been made for any of those arbitral proceedings ceases to have effect for all purposes on and from the appointment under subsection (2).

(4) The arbitral tribunal hearing the arbitral proceedings that are consolidated under subsection (1)(d)(i) has the power under sections 74 and 75 in relation to the costs of those arbitral proceedings.

(5) If 2 or more arbitral proceedings are heard at the same time or one immediately after another under subsection (1)(d)(ii), the arbitral tribunal—

(a) has the power under sections 74 and 75 only in relation to the costs of those arbitral proceedings that are heard by it; and

(b) accordingly, does not have the power to order a party to any of those arbitral proceedings that are heard at the same time or one immediately after another to pay the costs of a party to any other of those proceedings unless the arbitral tribunal is the same tribunal hearing all of those arbitral proceedings.

(6) An order, direction or decision of the Court under this section is not subject to appeal.

3. Decision of preliminary question of law by Court

(1) The Court may, on the application of any party to arbitral proceedings, decide any question of law arising in the course of the arbitral proceedings.

(2) An application under subsection (1) may not be made except—

(a) with the agreement in writing of all the other parties to the arbitral proceedings; or

(b) with the permission in writing of the arbitral tribunal.

(3) The application must—

(a) identify the question of law to be decided; and

(b) state the grounds on which it is said that the question should be decided by the Court.

(4) The Court must not entertain an application under subsection (1) unless it is satisfied that the decision of the question of law might produce substantial savings in costs to the parties.

(5) The leave of the Court or the Court of Appeal is required for any appeal from a decision of the Court under subsection (1).

4. Challenging arbitral award on ground of serious irregularity

(1) A party to arbitral proceedings may apply to the Court challenging an award in the arbitral proceedings on the ground of serious irregularity affecting the tribunal, the arbitral proceedings or the award.

(2) Serious irregularity means an irregularity of one or more of the following kinds which the Court considers has caused or will cause substantial injustice to the applicant—

(a) failure by the arbitral tribunal to comply with section 46;

(b) the arbitral tribunal exceeding its powers (otherwise than by exceeding its jurisdiction);

(c) failure by the arbitral tribunal to conduct the arbitral proceedings in accordance with the procedure agreed by the parties;

(d) failure by the arbitral tribunal to deal with all the issues that were put to it;

(e) any arbitral or other institution or person vested by the parties with powers in relation to the arbitral proceedings or the award exceeding its powers;

(f) failure by the arbitral tribunal to give, under section 69, an interpretation of the award the effect of which is uncertain or ambiguous;

(g) the award being obtained by fraud, or the award or the way in which it was procured being contrary to public policy;

(h) failure to comply with the requirements as to the form of the award; or

(i) any irregularity in the conduct of the arbitral proceedings, or in the award which is admitted by the arbitral tribunal or by any arbitral or other institution or person vested by the parties with powers in relation to the arbitral proceedings or the award.

(3) If there is shown to be serious irregularity affecting the arbitral tribunal, the arbitral proceedings or the award, the Court may by order—

(a) remit the award to the arbitral tribunal, in whole or in part, for reconsideration;

(b) set aside the award, in whole or in part; or

(c) declare the award to be of no effect, in whole or in part.

(4) If the award is remitted to the arbitral tribunal, in whole or in part, for reconsideration, the tribunal must make a fresh award in respect of the matters remitted—

(a) within 3 months of the date of the order for remission; or

(b) within a longer or shorter period that the Court may direct.

(5) The Court must not exercise its power to set aside an award or to declare an award to be of no effect, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the arbitral tribunal for reconsideration.

(6) The leave of the Court or the Court of Appeal is required for any appeal from a decision, order or direction of the Court under this section.

(7) Section 7 of this Schedule also applies to an application or appeal under this section.

5. Appeal against arbitral award on question of law

(1) Subject to section 6 of this Schedule, a party to arbitral

proceedings may appeal to the Court on a question of law arising out of an award made in the arbitral proceedings.

(2) An agreement to dispense with the reasons for an arbitral tribunal's award is to be treated as an agreement to exclude the Court's jurisdiction under this section.

(3) The Court must decide the question of law which is the subject of the appeal on the basis of the findings of fact in the award.

(4) The Court must not consider any of the criteria set out in section 6(4)(c)(i) or (ii) of this Schedule when it decides the question of law under subsection (3).

(5) On hearing an appeal under this section, the Court may by order—

(a) confirm the award;

(b) vary the award;

(c) remit the award to the arbitral tribunal, in whole or in part, for reconsideration in the light of the Court's decision; or

(d) set aside the award, in whole or in part.

(6) If the award is remitted to the arbitral tribunal, in whole or in part, for reconsideration, the tribunal must make a fresh award in respect of the matters remitted—

(a) within 3 months of the date of the order for remission; or

(b) within a longer or shorter period that the Court may direct.

(7) The Court must not exercise its power to set aside an award, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the arbitral tribunal for reconsideration.

(8) The leave of the Court or the Court of Appeal is required for any further appeal from an order of the Court under subsection (5).

(9) Leave to further appeal must not be granted unless—

(a) the question is one of general importance; or

(b) the question is one which, for some other special reason, should be considered by the Court of Appeal.

(10) Sections 6 and 7 of this Schedule also apply to an appeal or further appeal under this section.

6. Application for leave to appeal against arbitral award on question of law

(1) An appeal under section 5 of this Schedule on a question of law may not be brought by a party to arbitral proceedings except—

(a) with the agreement of all the other parties to the arbitral proceedings; or

(b) with the leave of the Court.

(2) An application for leave to appeal must—

(a) identify the question of law to be decided; and

(b) state the grounds on which it is said that leave to appeal should be granted.

(3) The Court must determine an application for leave to appeal without a hearing unless it appears to the Court that a hearing is required.

(4) Leave to appeal is to be granted only if the Court is satisfied—

(a) that the decision of the question will substantially affect the rights of one or more of the parties;

(b) that the question is one which the arbitral tribunal was asked to decide; and

(c) that, on the basis of the findings of fact in the award—

(i) the decision of the arbitral tribunal on the question is obviously wrong; or

(ii) the question is one of general importance and the decision of the arbitral tribunal is at least open to serious doubt.

(5) The leave of the Court or the Court of Appeal is required for any appeal from a decision of the Court to grant or refuse leave to appeal.

(6) Leave to appeal from such a decision of the Court must not be granted unless—

(a) the question is one of general importance; or

(b) the question is one which, for some other special reason, should be considered by the Court.

7. Supplementary provisions on challenge to or appeal against arbitral award

(1) An application or appeal under section 4, 5 or 6 of this Schedule may not be brought if the applicant or appellant has not first exhausted—

(a) any available recourse under section 69; and

(b) any available arbitral process of appeal or review.

(2) If, on an application or appeal, it appears to the Court that the award—

(a) does not contain the arbitral tribunal's reasons for the award; or

(b) does not set out the arbitral tribunal's reasons for the award in sufficient detail to enable the Court properly to consider the application or appeal,

the Court may order the tribunal to state the reasons for the award in sufficient detail for that purpose.

(3) If the Court makes an order under subsection (2), it may make a further order that it thinks fit with respect to any additional costs of the arbitration resulting from its order.

(4) The Court—

(a) may order the applicant or appellant to give security for the costs of the application or appeal; and

(b) may, if the order is not complied with, direct that the application or appeal is to be dismissed.

(5) The power to order security for costs must not be exercised only on the ground that the applicant or appellant is—

(a) a natural person who is ordinarily resident outside Hong Kong;

(b) a body corporate—

(i) incorporated under the law of a place outside Hong Kong; or

(ii) the central management and control of which is exercised outside Hong Kong; or

(c) an association—

(i) formed under the law of a place outside Hong Kong; or

(ii) the central management and control of which is exercised outside Hong Kong.

(6) The Court—

(a) may order that any money payable under the award is to be paid into the Court or otherwise secured pending the determination of the application or appeal; and

(b) may, if the order is not complied with, direct that the application or appeal is to be dismissed.

(7) The Court or the Court of Appeal may impose conditions to the same or similar effect as an order under subsection (4) or (6) on granting leave to appeal under section 4, 5 or 6 of this Schedule.

(8) Subsection (7) does not affect the general discretion of the Court or the Court of Appeal to grant leave subject to conditions.

(9) An order, direction or decision of the Court or the Court of Appeal under this section is not subject to appeal.

Schedule 3

[s. 111]

Savings and Transitional Provisions

(Format changes—E.R. 3 of 2015)

Part 1

Savings and Transitional Provisions Relating to Commencement of this Ordinance

(Added 11 of 2015 s. 7)

1. Conduct of arbitral and related proceedings

(1) If an arbitration—

(a) has commenced under article 21 of the UNCITRAL Model Law as defined in section 2(1) of the repealed Ordinance before the commencement of this Ordinance; or

(b) has been deemed to be commenced under section 31(1) of the repealed Ordinance before the commencement of this Ordinance,

that arbitration and all related proceedings, including (where the award made in that arbitration has been set aside) arbitral proceedings resumed after the setting aside of the award, are to be governed by the repealed Ordinance as if this Ordinance had not been enacted.

(2) If an arbitration has commenced under any other Ordinance amended by this Ordinance before the commencement of this Ordinance, that arbitration and all related proceedings, including (where the award made in that arbitration has been

set aside) arbitral proceedings resumed after the setting aside of the award, are to be governed by that other Ordinance in force immediately before the commencement of this Ordinance as if this Ordinance had not been enacted.

2. Appointment of arbitrators

(1) Subject to subsection (2), the appointment of an arbitrator made before the commencement of this Ordinance is, after the commencement of this Ordinance, to continue to have effect as if this Ordinance had not been enacted.

(2) The enactment of this Ordinance does not revive the appointment of any arbitrator whose mandate has terminated before the commencement of this Ordinance.

3. Settlement agreements

If the parties to an arbitration agreement have entered into a settlement agreement under section 2C of the repealed Ordinance before the commencement of this Ordinance, that settlement agreement may be enforced in accordance with that section as if this Ordinance had not been enacted.

4. Appointment of members of the Appointment Advisory Board

The appointment of a member of the Appointment Advisory Board established under rule 3 of the Arbitration (Appointment of Arbitrators and Umpires) Rules (Cap. 341 sub. leg. B)* made before the commencement of this Ordinance is, after the commencement of this Ordinance, to continue to have effect until the expiry of the term of that appointment as if this Ordinance had not been enacted.

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* Now Cap. 609 sub. leg. B.

Part 2

Savings and Transitional Provisions Relating to Commencement of Arbitration (Amendment) Ordinance 2015

(Part 2 added 11 of 2015 s. 7)

1. Conduct of arbitral and related proceedings

(1) If an arbitration has commenced under article 21 of the UNCITRAL Model Law before the commencement date, that arbitration and all related proceedings are to be governed by the pre-amended Ordinance as if the Arbitration (Amendment) Ordinance 2015 (11 of 2015) had not been enacted.

(2) In subsection (1)—

all related proceedings (所有相關程序) includes arbitral proceedings resumed after the setting aside of the award made in the arbitration;

article 21 of the UNCITRAL Model Law (《貿法委示範法》第21條) means article 21 of the UNCITRAL Model Law as given effect to by section 49(1);

****commencement date*** (生效日期) means the day on which the Arbitration (Amendment) Ordinance 2015 (11 of 2015) comes into operation;

pre-amended Ordinance (《原本條例》) means this Ordinance as in force immediately before the commencement date.

* Commencement date: 17 July 2015.

Part 3

Savings and Transitional Provisions Relating to Arbitration (Amendment) Ordinance 2017

(Part 3 added 5 of 2017 s. 7)

1. Conduct of arbitral and related proceedings

(1) This section applies to an arbitration commenced before the commencement date* of this section, whether or not the place of the arbitration is in Hong Kong.

(2) The pre-amended Ordinance continues to apply to the arbitration and all of its related proceedings.

(3) However, Part 11A is to apply to the arbitration or any of its related proceedings if the parties to the arbitration or those related proceedings (as appropriate) agree.

(4) In this section—

pre-amended Ordinance (《原有條例》) means this Ordinance as in force immediately before the commencement date of this section;

related proceedings (相關程序), in relation to an arbitration, includes arbitral proceedings resumed after the setting aside of the award in the arbitration.

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* Commencement date: 1 January 2018.

Schedule 4

(Omitted as spent—E.R. 3 of 2015)