

**《仲裁條例》
(第 609 章)**

**Arbitration Ordinance
(Cap. 609)**

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《仲裁條例》

(第 609 章)

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Arbitration Ordinance

(Cap. 609)

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本條例旨在改革與仲裁有關的法律，以及就相關及相應事宜訂定條文。

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

[2011 年 6 月 1 日] 2011 年第 38 號法律公告

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

(略去制定語式條文——2014 年第 2 號編輯修訂紀錄)

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

第 1 部

Part 1

導言

Preliminary

(格式變更——2018 年第 1 號編輯修訂紀錄)

(Format changes—E.R. 1 of 2018)

1. 簡稱

1. Short title

(編輯修訂——2014 年第 2 號編輯修訂紀錄)

(Amended E.R. 2 of 2014)

(1) 本條例可引稱為《仲裁條例》。

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

(2) (已失時效而略去——2014 年第 2 號編輯修訂紀錄)

(2) (Omitted as spent—E.R. 2 of 2014)

2. 釋義

2. Interpretation

(1) 在本條例中——

(1) In this Ordinance—

一方、方 (party) ——

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

(a) 指仲裁協議的一方；或

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

(b) 就仲裁程序或法院程序而言，指該程序的一方；

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

內地 (Mainland) 指香港、澳門及台灣以外的中國其他部分；(由 2021 年第 1 號第 3 條代替)

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

內地裁決 (Mainland award) 指按照《中華人民共和國仲裁法》作出的仲裁裁決；(由 2021 年第 1 號第 3 條修訂)

公約裁決 (Convention award) 指在某一國家或在某一國家的領土 (中國或其任何部分除外) 作出的仲裁裁決，而該國家或該領土是《紐約公約》的締約方；

申索人 (claimant) 指在仲裁中提出申索或反申索的人；

仲裁 (arbitration) 指不論是否由常設仲裁機構進行的任何仲裁；

仲裁協議 (arbitration agreement) 的涵義與第 19 條中該詞的涵義相同；

仲裁員 (arbitrator) 除在第 23、24、30、31、32 及 65 條及附表 2 第 1 條外，包括一名公斷人；

仲裁庭 (arbitral tribunal) 指一名獨任仲裁員或一組仲裁員，並包括一名公斷人；

爭議 (dispute) 包括分歧；

香港國際仲裁中心 (HKIAC) 指香港國際仲裁中心，該中心是一間根據在當其時有效的《公司條例》(第 32 章) 在香港成立為法團的擔保有限公司；(由 2012 年第 28 號第 912 及 920 條修訂)

原訟法庭 (Court) 指高等法院原訟法庭；

《紐約公約》 (New York Convention) 指在 1958 年 6 月 10 日在紐約簽訂的《承認及執行外國仲裁裁決公約》；

被申請人 (respondent) 指在仲裁中提出的申索或反申索所針對的人；

貿法委 (Commission) 指聯合國國際貿易法委員會；

《貿法委示範法》 (UNCITRAL Model Law) 指在 1985 年 6 月 21 日由貿法委通過、並經貿法委在 2006 年 7 月 7 日修訂的《貿易法委員會國際商事仲裁示範法》，該示範法全文列於附表 1；

調解 (mediation) 包括調停；

澳門 (Macao) 指澳門特別行政區；(由 2013 年第 7 號第 3 條增補)

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 (內地) means the part of China other than Hong Kong, Macao and Taiwan; (Added 1 of 2021 s. 3)

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澳門裁決 (Macao award) 指按照澳門的仲裁法律在澳門作出的仲裁裁決；(由 2013 年第 7 號第 3 條增補)

臨時措施 (interim measure) ——

- (a) 如屬仲裁庭批給者，其涵義與第 35(1) 及 (2) 條中該詞的涵義相同；或
- (b) 如屬法院批給者，其涵義與第 45(9) 條中該詞的涵義相同，

而**臨時保全措施** (interim measure of protection) 須據此解釋；

職能 (function) 包括權力及責任；(編輯修訂——2018 年第 1 號編輯修訂紀錄)

《舊有條例》 (repealed Ordinance) 指被第 109 條廢除的《仲裁條例》(第 341 章)。(編輯修訂——2018 年第 1 號編輯修訂紀錄)

(編輯修訂——2018 年第 1 號編輯修訂紀錄；由 2021 年第 1 號第 3 條修訂)

(2) 如 ——

- (a) 本條例的條文提述各方已達成協議此一事實，或在任何其他情況下提述各方的協議，該協議包括該協議所提述的任何仲裁規則；或
- (b) 本條例的條文規定各方可達成協議，該協議(如有的話)可藉在該協議內提述任何仲裁規則而包括該等規則。

(3) 如 ——

- (a) 本條例的條文(第 53 及 68 條除外)提述申索，該條文亦適用於反申索；或
- (b) 本條例的條文(第 53 條除外)提述抗辯，該條文亦適用於對反申索的抗辯。

(4) 在本條例文本中的附註、本條例的條文的標題或《貿法委示範法》的條文的標題，僅供參考，並無立法效力。

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Mainland award (內地裁決) means an arbitral award made in accordance with the Arbitration Law of the People's Republic of China; (Amended 1 of 2021 s. 3)

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;

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;

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; 1 of 2021 s. 3)

(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.

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- (5) 如本條例的任何條文所用的某英文詞句的中文對等詞句，有別於《貿法委示範法》的任何條文所用的同一英文詞句的中文對等詞句，則該等中文對等詞句須視為效力相同。

3. 本條例的目的及原則

- (1) 本條例的目的，是促進在省卻非必要開支的情況下，藉仲裁而公平及迅速地解決爭議。
- (2) 本條例建基於以下原則——
 - (a) 除須奉行為公眾利益而屬必要的保障措施外，爭議各方應有協議應該如何解決爭議的自由；及
 - (b) 法院應只在本條例明文規定的情況下，才干預爭議的仲裁。

4. 《貿法委示範法》在香港具有法律效力

《貿法委示範法》的在本條例中明文述明為有效的條文，經本

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- (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

條例明文規定的變通及補充後，在香港具有法律效力。

5. 本條例適用的仲裁

- (1) 在不抵觸第(2)款的條文下，如仲裁地點是在香港，則本條例適用於根據仲裁協議（不論該協議是否在香港訂立）而進行的仲裁。
- (2) 如仲裁地點是在香港以外地方，則只有本部、第 20 及 21 條、第 3A 部、第 45、60 及 61 條、第 10 部及第 103A、103B、103C、103D、103G 及 103H 條，適用於有關仲裁。
(由 2013 年第 7 號第 4 條修訂；由 2017 年第 5 號第 3 條修訂)
- (3) 如任何其他條例規定，本條例適用於該其他條例所指的仲裁，則在符合以下各項的規定下，本條例（第 20(2)、(3) 及 (4)、22(1)、58 及 74(8) 及 (9) 條除外）適用於該其他條例所指的仲裁——
 - (a) 在藉第 34 條而具有效力的《貿法委示範法》第 16(1) 條中，提述就仲裁協議的存在或效力而提出的異議，須解釋為就該其他條例適用於有關爭議而提出的反對；
 - (b) 該其他條例當作已明文規定，附表 2 的所有條文，在 (c) 段的規限下適用；及
 - (c) 附表 2 第 2 條（如適用的話）只適用以授權將 2 項或多於 2 項的同一條例所指的仲裁程序合併處理，或同時聆訊該等程序，或以一項緊接另一項的方式，聆訊該等程序。
- (4) 就任何其他條例所指的仲裁而言，第 (3) 款只在本條例不抵觸以下各項的範圍內，具有效力——
 - (a) 該其他條例；及
 - (b) 該其他條例所授權或認可的任何規則或程序。

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.

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第 6 條

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6. 適用範圍

本條例適用於政府及中央人民政府在香港特別行政區設立的機構。

(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.

第 2 部**一般條文***(格式變更——2018 年第 1 號編輯修訂紀錄)***7. 《貿法委示範法》第 1 條 (適用範圍)**

第 5 條取代《貿法委示範法》第 1 條而具有效力。

8. 《貿法委示範法》第 2 條 (定義及解釋規則)

- (1) 第 2 條取代《貿法委示範法》第 2 條而具有效力。
- (2) 為第 (1) 款的目的，在第 2 條 (第 2(5) 條除外) 中提述本條例，須解釋為包括《貿法委示範法》。
- (3) 在《貿法委示範法》的條文中——
 - (a) 提述本國，須解釋為香港；
 - (b) 提述國或國家，須解釋為包括香港；
 - (c) 提述不同的國家，須解釋為包括香港及任何其他地方；
 - (d) 提述某條文，須解釋為《貿法委示範法》的條文；及
 - (e) (藉第 9 條而具有效力的《貿法委示範法》第 2A 條除外) 提述本法，須解釋為本條例。

9. 《貿法委示範法》第 2A 條 (國際淵源和一般原則)**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

《貿法委示範法》第 2A 條具有效力，其文本列出如下——

“第 2A 條. 國際淵源和一般原則

- (1) 在解釋本法時，應考慮到其國際淵源和促進其統一適用及遵循誠信原則的必要性。
- (2) 與本法所管轄的事項有關的問題，在本法中未予明確解決的，應依照本法所基於的一般原則加以解決。”。

10. 《貿法委示範法》第 3 條 (收到書面通訊)

(1) 《貿法委示範法》第 3 條具有效力，其文本列出如下——

“第 3 條. 收到書面通訊

- (1) 除非當事人另有約定：
 - (a) 任何書面通訊，經當面遞交收件人，或投遞到收件人的營業地點、慣常住所或通信地址的，或經合理查詢不能找到上述任一地點而以掛號信或能提供作過投遞企圖的記錄的其他任何方式投遞到收件人最後一個為人所知的營業地點、慣常住所或通信地址的，視為已經收到；
 - (b) 通訊視為已於以上述方式投遞之日收到。
- (2) 本條規定不適用於法院程序中的通訊。”。
- (2) 在不影響第 (1) 款的原則下，如書面通訊 (法院程序的通訊除外) 以任何能夠將資料記錄及傳送給收件人的方法發送，則該通訊當作已在它如此發送當日收到。

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;

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- (3) 只有在有收件人收到有關通訊的紀錄的情況下，第 (2) 款方適用。

11. **《貿法委示範法》第 4 條 (放棄提出異議的權利)**
《貿法委示範法》第 4 條具有效力，其文本列出如下——

“第 4 條. 放棄提出異議的權利

一方當事人知道本法中當事人可以背離的任何規定或仲裁協議規定的任何要求未得到遵守，但仍繼續進行仲裁而沒有不過分遲延地或在為此訂有時限的情況下沒有在此時限內對此種不遵守情事提出異議的，應視為已放棄其提出異議權利。”。

12. **《貿法委示範法》第 5 條 (法院干預的限度)**
《貿法委示範法》第 5 條具有效力，其文本列出如下——

“第 5 條. 法院干預的限度

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(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*

由本法管轄的事情，任何法院不得干預，除非本法有此規定。”。

13. 《貿法委示範法》第 6 條 (法院或其他機構對仲裁予以協助和監督的某種職責)

- (1) 第 (2) 至 (6) 款取代《貿法委示範法》第 6 條而具有效力。
- (2) 藉第 24 條而具有效力的《貿法委示範法》第 11(3) 或 (4) 條所提述的法院或其他機構的職能，由香港國際仲裁中心執行。
- (3) 在獲得終審法院首席法官批准後，香港國際仲裁中心可訂立規則，以利便執行第 23(3)、24 或 32(1) 條所指的該中心的職能。
- (4) 藉 ——
 - (a) 第 26 條而具有效力的《貿法委示範法》第 13(3) 條所提述的法院或其他機構的職能；或
 - (b) 第 27 條而具有效力的《貿法委示範法》第 14(1) 條所提述的法院或其他機構的職能，
由原訟法庭執行。
- (5) 藉 ——
 - (a) 第 34 條而具有效力的《貿法委示範法》第 16(3) 條所提述的法院的職能；或
 - (b) 第 81 條而具有效力的《貿法委示範法》第 34(2) 條所提述的法院的職能，
由原訟法庭執行。
- (6) 藉第 55 條而具有效力的《貿法委示範法》第 27 條所提述的管轄法院的職能，由原訟法庭執行。

14. 《時效條例》及其他時效法規適用於仲裁

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

- (1) 《時效條例》(第 347 章)及任何其他關乎訴訟時效的條例(**時效法規**),均適用於仲裁,猶如它們適用於法院的訴訟一樣。
- (2) 為施行第(1)款,在時效法規中提述提出訴訟,就仲裁而言,須解釋為展開仲裁程序。
- (3) 凡仲裁協議規定任何事宜須提交仲裁,而該協議有任何條款,表明訴訟因由不可在根據該協議作出裁決前就該項事宜產生,則儘管有該條款,為施行時效法規(不論是在其適用於仲裁或其他法律程序方面),訴訟因由須當作在如非因該條款則本會已就該項事宜產生之時產生。
- (4) 如法院命令撤銷某裁決,則在計算時效法規所訂明的就提交仲裁的事宜展開法律程序(包括仲裁程序)的時限時,在——
 - (a) 展開仲裁程序;與
 - (b) 該法院撤銷該裁決的命令的日期,之間的期間,不得計算在內。

15. 法院將互爭權利訴訟的爭論點轉介仲裁

- (1) 如——
 - (a) 藉互爭權利訴訟尋求濟助,而法院已批給該濟助;及
 - (b) 在該互爭權利訴訟的法律程序中的申索人之間,有就任何在他們之間的爭論點訂立的仲裁協議,

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,

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則除第 (2) 款另有規定外，批給該濟助的法院，須指示按照該協議裁定該爭論點。

- (2) 如情況是申索人就有關爭論點提出的法律程序不會被擱置，則法院可拒絕根據第 (1) 款作出指示。
- (3) 如法院拒絕根據第 (1) 款作出指示，則在仲裁協議中任何規定裁決是就有關爭論點提出法律程序的先決條件的條文，並不影響法院裁定該爭論點。
- (4) 任何人不得針對第 (1) 款所指的法院指示提出上訴。
- (5) 凡法院根據第 (2) 款作出決定，則須獲該法院許可，方可針對該決定提出上訴。

16. 以非公開聆訊方式進行聆訊的法律程序

- (1) 除第 (2) 款另有規定外，在法院進行的本條例所指的法律程序的聆訊，須以非公開聆訊方式進行。
- (2) 如 ——
 - (a) 任何一方提出申請；或
 - (b) 法院在任何個別個案中，信納上述法律程序應在公開法庭進行聆訊，
 法院可命令該法律程序在公開法庭進行聆訊。
- (3) 任何人不得針對第 (2) 款所指的法院命令提出上訴。

17. 對以非公開聆訊方式進行聆訊的法律程序的報導的限制

- (1) 本條適用於在法院以非公開聆訊方式進行聆訊的、本條例所指的法律程序（**非公開法院程序**）。

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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**

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- (2) 法院在聆訊非公開法院程序時，須應任何一方的申請，作出哪些關於該程序的資料(如有的話)可予發表的指示。
- (3) 除非符合以下條件，否則法院不得作出准許發表資料的指示——
 - (a) 所有各方均同意該等資料可予發表；或
 - (b) 法院信納如發表該等資料的話，並不會透露任何一方合理地希望保密的任何事宜(包括任何一方的身分)。
- (4) 儘管有第(3)款的規定，如法院——
 - (a) 就非公開法院程序作出判決；及
 - (b) 認為該判決具有重大法律意義，
 法院須指示該判決的報告可於法律彙報及專業刊物發表。
- (5) 如法院根據第(4)款指示，判決的報告可予發表，但任何一方合理地希望隱藏該等報告中的任何事宜(包括他是該方的事實)，則法院須應該方的申請——
 - (a) 就採取何種行動以隱藏該等報告中的該項事宜，作出指示；及
 - (b) (如法院認為，按照根據(a)段作出的指示而發表的報告，依然相當可能會透露該項事宜)指示在某段限期內不得發表該報告，該限期由法院指示，但不得超過 10 年。
- (6) 任何人不得針對本條所指的法院指示提出上訴。

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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

18. 禁止披露關乎仲裁程序及裁決的資料

- (1) 除非各方另有協議，否則任何一方不得發表、披露或傳達——
- (a) 任何關乎仲裁協議所指的仲裁程序的資料；或
 - (b) 任何關乎在該仲裁程序中作出的裁決的資料。
- (2) 如有以下情況，第 (1) 款並不禁止任何一方作出該款所提述的資料發表、披露或傳達——
- (a) 該項發表、披露或傳達，是——
 - (i) 為保障或體現有關一方的法律權利或利益；或
 - (ii) 為強制執行或質疑該款所提述的裁決，而在香港或香港以外地方的法院或其他司法當局的法律程序中作出的；
 - (b) 該項發表、披露或傳達，是向任何政府團體、規管團體、法院或審裁處作出的，而在法律上，有關一方是有責任作出該項發表、披露或傳達的；或

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

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- (c) 該項發表、披露或傳達，是向任何一方的專業顧問或任何其他顧問作出的。
-

- (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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第 3 部**仲裁協議***(格式變更——2018 年第 1 號編輯修訂紀錄)***19. 《貿法委示範法》第 7 條 (仲裁協議的定義和形式)**

- (1) 《貿法委示範法》第 7 條的備選案文一具有效力，其文本列出如下——

“備選案文一

第 7 條. 仲裁協議的定義和形式

(1) “仲裁協議”是指當事人同意將他們之間一項確定的契約性或非契約性的法律關係中已經發生或可能發生的一切爭議或某些爭議交付仲裁的協議。仲裁協議可以採取合同中的仲裁條款形式或單獨的協議形式。

(2) 仲裁協議應為書面形式。

(3) 仲裁協議的內容以任何形式記錄下來的，即為書面形式，無論該仲裁協議或合同是以口頭方式、行為方式還是其他方式訂立的。

(4) 電子通信所含信息可以調取以備日後查用的，即滿足了仲裁協議的書面形式要求；“電子通信”是指當事人以數據電文方式發出的任何通信；“數據電文”是指經由電子手段、磁化手段、光學手段或類似手段生成、發送、接收或儲存的信息，這些手段包括但不限於電子數據交換、電子郵件、電報、電傳或傳真。

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

(5) 另外，仲裁協議如載於相互往來的索賠聲明和抗辯聲明中，且一方當事人聲稱有協議而另一方當事人不予否認的，即為書面協議。

(6) 在合同中提及載有仲裁條款的任何文件的，只要此種提及可使該仲裁條款成為該合同一部分，即構成書面形式的仲裁協議。”。

- (2) 在不影響第 (1) 款的原則下，仲裁協議如符合以下規定，即屬以書面訂立——
- (a) 該協議是載於文件之內的，不論該文件是否由該協議的各方簽署；或
 - (b) 該協議雖然並非以書面訂立，但卻是在該協議的每一方的授權下，由該協議的其中一方或由第三者記錄下來的。
- (3) 如在協議中提述書面形式的仲裁條款，而該項提述的效果是使該條款成為該協議的一部分的，該項提述即構成仲裁協議。

20. 《貿法委示範法》第 8 條 (仲裁協議和向法院提出的實體性申訴)

- (1) 《貿法委示範法》第 8 條具有效力，其文本列出如下——

“第 8 條. 仲裁協議和向法院提出的實體性申訴

(1) 就仲裁協議的標的向法院提起訴訟時，一方當事人在不遲於其就爭議實體提出第一次申述時要求

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

仲裁的，法院應讓當事人訴諸仲裁，除非法院認定仲裁協議無效、不能實行或不能履行。

(2) 提起本條第(1)款所指訴訟後，在法院對該問題未決期間，仍然可以開始或繼續進行仲裁程序，並可作出裁決。”。

- (2) 如仲裁協議的標的事宜中的爭議，涉及在根據《勞資審裁處條例》(第 25 章)第 3 條(審裁處的設立)設立的勞資審裁處的司法管轄權內的申索或其他爭議，而有人並已向法院提出訴訟，則如一方向該法院提出請求，而該法院信納以下情況，該法院可將各方轉介仲裁——
 - (a) 並無充分理由支持不應按照仲裁協議將各方轉介仲裁；及
 - (b) 要求仲裁的一方在提出訴訟時，已準備和願意作出一切為使仲裁恰當地進行而需要的事情，並一直準備和願意作出該等事情。
- (3) 第(1)款在《管制免責條款條例》(第 71 章)第 15 條(仲裁協議)的規限下具有效力。
- (4) 如法院拒絕將各方轉介仲裁，則在仲裁協議中任何規定裁決是就任何事宜提出法律程序的先決條件的條文，就該法律程序而言均屬無效。
- (5) 如法院將訴訟的各方轉介仲裁，法院須作出命令，擱置該訴訟的法律程序。
- (6) 如屬海事法律程序，則——
 - (a) 儘管有第(1)及(5)款的規定，將各方轉介仲裁及擱置該法律程序的命令，可在附帶須為履行仲裁中作出的任何裁決提供保證的條件下作出；或
 - (b) (凡在該法律程序中，財產已被扣押，或已為防止財產被扣押或為使被扣押的財產得以發還，而提供保釋金或其他保證)如法院根據第(5)款作出命令，擱置該法律程序，該法院可命令將被扣押的財產或將

(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

提供的保釋金或保證，予以保留，以作為履行仲裁中作出的任何裁決的保證。

- (7) 除法院規則訂定的任何條文另有規定外，並在經必要的變通後，適用於依據第 (6) 款所指的命令而保留的財產、保釋金或保證的法律及常規，與假使該財產、保釋金或保證是為作出該命令的法院的法律程序的目的而保留便會適用的法律及常規相同。
- (8) 法院如根據 ——
 - (a) 藉第 (1) 款而具有效力的《貿法委示範法》第 8 條；或
 - (b) 第 (2) 款，決定將各方轉介仲裁，任何人不得針對該決定提出上訴。
- (9) 凡法院根據 ——
 - (a) 藉第 (1) 款而具有效力的《貿法委示範法》第 8 條；或
 - (b) 第 (2) 款，決定拒絕將各方轉介仲裁，則須獲該法院許可，方可針對該決定提出上訴。
- (10) 任何人不得針對第 (6) 款所指的法院決定或命令提出上訴。

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.

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第 21 條

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21. 《貿法委示範法》第 9 條 (仲裁協議和法院的臨時措施)

《貿法委示範法》第 9 條具有效力，其文本列出如下 ——

“第 9 條. 仲裁協議和法院的臨時措施

在仲裁程序開始前或進行期間，一方當事人請求法院採取臨時保全措施和法院准予採取這種措施，並不與仲裁協議相抵觸。”。

22. 協議會否因一方死亡而解除

- (1) 除非各方另有協議，否則仲裁協議並不因一方死亡而解除，而該協議可由該方的遺產代理人強制執行，或可針對該遺產代理人而強制執行。
- (2) 如某實質權利或義務憑藉任何成文法則或法律規則，因有人死亡而終絕，第(1)款並不影響該法則或規則的實施。

- (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.

第 3A 部

緊急濟助的強制執行

(第 3A 部由 2013 年第 7 號第 5 條增補)

22A. 釋義

在本部中——

緊急仲裁員 (emergency arbitrator) 指為處理各方在仲裁庭組成前提出的緊急濟助申請，而根據各方協議或採用的仲裁規則(包括常設仲裁機構的仲裁規則)委任的緊急仲裁員。

22B. 強制執行緊急仲裁員批給的緊急濟助

- (1) 緊急仲裁員根據有關仲裁規則批給的任何緊急濟助，不論是在香港或香港以外地方批給的，均可猶如具有同等效力的原訟法庭命令或指示般，以同樣方式強制執行，但只有在原訟法庭許可下，方可如此強制執行。
- (2) 凡任何一方尋求強制執行在香港以外地方批給的任何緊急濟助，則除非該方能顯示，該濟助只包含一項或多於一項短期措施(包括強制令)，而緊急仲裁員是藉該項或該等措施，命令一方作出以下一項或多於一項事情——
 - (a) 在有關爭議得以裁定之前，維持現狀或恢復原狀；
 - (b) 採取行動防止目前或即將對仲裁程序造成的危害或損害，或不採取可能造成這種危害或損害的行動；
 - (c) 提供一種保存資產以履行仲裁庭其後作出的裁決的方法；
 - (d) 保存可能與解決爭議有關、並對解決爭議具關鍵性的證據；

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;

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- (e) 就根據 (a)、(b)、(c) 或 (d) 段須作出的任何事情，提供相關連的保證；
 - (f) 就仲裁費用提供保證，
- 否則原訟法庭不得批予強制執行該濟助的許可。
- (3) 原訟法庭如根據第 (1) 款批予許可，可按有關緊急濟助的條款，登錄判決。
 - (4) 如原訟法庭決定根據第 (1) 款批予許可，或決定拒絕根據第 (1) 款批予許可，任何人不得針對該決定提出上訴。
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- (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.
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第 4 部**仲裁庭的組成***(格式變更——2015 年第 3 號編輯修訂紀錄)***第 1 分部 —— 仲裁員****23. 《貿法委示範法》第 10 條 (仲裁員人數)**

- (1) 《貿法委示範法》第 10(1) 條具有效力，其文本列出如下——

“第 10 條. 仲裁員人數

- (1) 當事人可以自由確定仲裁員的人數。
- (2) [不適用。]”。
- (2) 為施行第 (1) 款，各方的確定仲裁員人數的自由，包括各方的授權第三者 (包括機構) 作出該確定的權利。
- (3) 如——
- (a) 各方沒有就仲裁中仲裁員人數，達成協議；及
- (b) 附表 2 第 1 條不適用，
- 則該仲裁中仲裁員人數須為 1 名或 3 名，由香港國際仲裁中心在個別個案中決定。(由 2015 年第 11 號第 3 條代替)

24. 《貿法委示範法》第 11 條 (仲裁員的指定)

- (1) 《貿法委示範法》第 11 條在第 13(2) 及 (3) 條的規限下具有效力，其文本列出如下——

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)—

“第 11 條. 仲裁員的指定

(1) 除非當事人另有協議，不應以所屬國籍為由排除任何人擔任仲裁員。

(2) 當事人可以自由約定指定一名或多名仲裁員的程序，但須遵從本條第 (4) 和 (5) 款的規定。

(3) 未達成此種約定的，

(a) 在仲裁員為三名的仲裁中，由一方當事人指定一名仲裁員，並由如此指定的兩名仲裁員指定第三名仲裁員；一方當事人在收到對方當事人提出指定仲裁員的要求後三十天內未指定仲裁員的，或兩名仲裁員在被指定後三十天內未就第三名仲裁員達成協議的，經一方當事人請求，由第 6 條規定的法院或其他機構加以指定；

(b) 在獨任仲裁員的仲裁中，當事人未就仲裁員達成協議的，經一方當事人請求，由第 6 條規定的法院或其他機構加以指定。

(4) 根據當事人約定的指定程序，有下列情形之一的，

(a) 一方當事人未按這種程序規定的要求行事的，或

(b) 當事人或兩名仲裁員未能根據這種程序達成預期的協議的，或

(c) 第三人（包括機構）未履行根據此種程序所委託的任何職責的，

任何一方當事人均可請求第 6 條規定的法院或其他機構採取必要措施，除非指定仲裁員程序的協議訂有確保能指定仲裁員的其他方法。

(5) 本條第 (3) 或 (4) 款交託由第 6 條規定的法院或其他機構受理的事項一經作出裁定，不得上訴。該

“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

法院或其他機構在指定仲裁員時應適當顧及當事人約定的仲裁員所需具備的任何資格，並適當顧及有可能確保指定獨立和公正的仲裁員的考慮因素；在指定獨任仲裁員或第三名仲裁員時，還應考慮到指定一名非當事人國籍的仲裁員的可取性。”。

(2) 在仲裁員人數為雙數的仲裁中 ——

- (a) 如各方未有根據藉第 (1) 款而具有效力的《貿法委示範法》第 11(2) 條，在委任仲裁員的程序方面達成協議，則每一方須委任相同數目的仲裁員；或
- (b) 如 ——
 - (i) 一方未有按各方議定的委任程序的規定行事；或
 - (ii) (如屬 (a) 段的情況) 一方未有在收到另一方提出委任仲裁員的請求後 30 天內，根據該段委任適當數目的仲裁員，

則香港國際仲裁中心須應任何一方的請求，作出所需的委任。

(3) 在仲裁員人數為單數並且多於 3 名的仲裁中 ——

- (a) 如各方未有根據藉第 (1) 款而具有效力的《貿法委示範法》第 11(2) 條，在委任仲裁員的程序方面達成協議，則 ——
 - (i) 每一方須委任相同數目的仲裁員；及
 - (ii) 除非各方另有協議，否則香港國際仲裁中心須委任餘下的一名或多於一名仲裁員；或
- (b) 如 ——
 - (i) 一方未有按各方議定的委任程序的規定行事；或
 - (ii) (如屬 (a) 段的情況) 一方未有在收到另一方提出委任仲裁員的請求後 30 天內，根據該段委任適當數目的仲裁員，

(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,

則香港國際仲裁中心須應任何一方的請求，作出所需的委任。

- (4) 如屬任何其他情況（尤其是有多於兩方的情況），則藉第(1)款而具有效力的《貿法委示範法》第 11(4) 條適用，猶如它在沒有在委任程序方面達成協議的情況下適用一樣。
- (5) 如香港國際仲裁中心憑藉本條例作出任何仲裁員的委任，該項委任——
 - (a) 須猶如它是經所有各方協議作出般具有效力；及
 - (b) 須受藉第(1)款而具有效力的《貿法委示範法》第 11(5) 條所規限。

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

25. 《貿法委示範法》第 12 條 (迴避的理由)

《貿法委示範法》第 12 條具有效力，其文本列出如下 ——

“第 12 條. 迴避的理由

- (1) 在被詢及有關可能被指定為仲裁員之事時，被詢問人應該披露可能引起對其公正性或獨立性產生正當懷疑的任何情況。仲裁員自被指定之時起並在整個仲裁程序進行期間，應毫不遲延地向各方當事人披露任何此類情況，除非其已將此情況告知各方當事人。
- (2) 只有存在引起對仲裁員的公正性或獨立性產生正當懷疑的情況或仲裁員不具備當事人約定的資格時，才可以申請仲裁員迴避。當事人只有根據其作出指定之後知悉的理由，才可以對其所指定的或其所參與指定的仲裁員提出迴避。”。

26. 《貿法委示範法》第 13 條 (申請迴避的程序)

- (1) 《貿法委示範法》第 13 條在第 13(4) 條的規限下具有效力，其文本列出如下 ——

“第 13 條. 申請迴避的程序

- (1) 當事人可自由約定申請仲裁員迴避的程序，但須遵從本條第 (3) 款的規定。

- (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

(2) 未達成此種約定的，擬對仲裁員提出迴避申請的當事人應在知悉仲裁庭的組成或知悉第 12(2) 條所指的任何情況後十五天內向仲裁庭提出書面陳述，說明提出迴避申請的理由。除非被申請迴避的仲裁員辭職或對方當事人同意所提出的迴避，仲裁庭應就是否迴避作出決定。

(3) 根據當事人約定的任何程序或本條第 (2) 款的程序而提出的迴避不成立的，提出迴避申請的一方當事人可以在收到駁回其所提出的迴避申請的決定通知後三十天內，請求第 6 條規定的法院或其他機構就是否迴避作出決定，該決定不得上訴；在對該請求未決期間，仲裁庭包括被申請迴避的仲裁員可以繼續進行仲裁程序和作出裁決。”。

- (2) 如原訟法庭被要求就對某仲裁員提出的質疑作出決定，則在該請求仍待決期間內，原訟法庭可拒絕根據第 84 條就任何由包括該仲裁員在內的仲裁庭在該期間內作出的裁決，批予強制執行的許可。
- (3) 根據藉第 (1) 款而具有效力的《貿法委示範法》第 13(2) 條提出的質疑所針對的仲裁員，如認為在有關質疑的情況下屬適當的話，有權辭去仲裁員一職。
- (4) 如有以下情況，遭質疑的仲裁員的任命，即根據藉第 (1) 款而具有效力的《貿法委示範法》第 13 條終止 ——
 - (a) 該仲裁員辭職；
 - (b) 各方同意該項質疑；
 - (c) 仲裁庭判決質疑得直，而且沒有人請求原訟法庭就該項質疑作出決定；或
 - (d) 原訟法庭應就該項質疑作出決定的請求，判決質疑得直。
- (5) 如原訟法庭判決質疑得直，原訟法庭可撤銷有關的第 (2) 款所提述的裁決。

(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.

27. 《貿法委示範法》第 14 條 (未行事或不能行事)

《貿法委示範法》第 14 條在第 13(4) 條的規限下具有效力，其文本列出如下 ——

“第 14 條. 未行事或不能行事

(1) 仲裁員無履行職責的法律行為能力或事實行為能力或者由於其他原因未能毫無不過分遲延地行事的，其若辭職或者當事人約定其委任終止的，其委任即告終止。但對上述任何原因仍有爭議的，任何一方當事人可以請求第 6 條規定的法院或其他機構就是否終止委任作出決定，該決定不得上訴。

(2) 依照本條或第 13(2) 條一名仲裁員辭職或者一方當事人同意終止對一名仲裁員的委任的，並不意味着本條或第 12(2) 條所指任何理由的有效性得到承認。”。

- (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

28. 《貿法委示範法》第 15 條 (指定替代仲裁員)

《貿法委示範法》第 15 條具有效力，其文本列出如下 ——

“第 15 條. 指定替代仲裁員

依照第 13 或 14 條的規定或因為仲裁員由於其他任何原因辭職或因為當事人約定解除仲裁員的委任或在其他任何情況下終止仲裁員的委任的，應當依照指定所被替換的仲裁員時適用的規則指定替代仲裁員。”。

29. 仲裁員或委任仲裁員的人的死亡

- (1) 仲裁員的權限屬個人的，其任命於其死亡時終止。
- (2) 除非各方另有協議，否則仲裁員的權限，並不因委任他的人的死亡而撤銷。

30. 公斷人的委任

除非各方另有協議，否則在仲裁員人數為雙數的仲裁中，仲裁員可在本身獲委任後，隨時委任一名公斷人。

31. 公斷人在仲裁程序中的職能

- (1) 各方有就公斷人的職能為何達成協議的自由，尤其

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

是 ——

- (a) 公斷人是否須出席仲裁程序；及
 - (b) 公斷人於何時及在甚麼範圍內，替代仲裁員作為仲裁庭，並具有作出命令、指示及裁決的權力。
- (2) 如各方沒有任何上述協議，或在各方沒有任何上述協議的範圍內，各仲裁員有就公斷人的職能達成協議的自由。
- (3) 除各方或各仲裁員另有協議外，第 (4) 至 (11) 款適用。
- (4) 公斷人在獲委任後，須出席仲裁程序。
- (5) 如仲裁員獲提供文件和其他材料，則公斷人須獲提供相同的文件和材料。
- (6) 除第 (9) 款另有規定外，除非各仲裁員不能夠就關乎提交仲裁的爭議的事宜達成協議，否則各命令、指示及裁決均須由仲裁員作出。
- (7) 如各仲裁員不能夠就關乎提交仲裁的爭議的事宜達成協議，他們須立即以書面通知，將該事實通知各方及公斷人，而除第 (9)(b) 款另有規定外，在該情況下，公斷人須只就該項事宜替代仲裁員作為仲裁庭，並具有作出命令、指示及裁決的權力，猶如該公斷人是獨任仲裁員一樣。
- (8) 如各仲裁員不能夠就關乎提交仲裁的爭議的事宜達成協議，但 ——
- (a) 他們沒有就該事實給予通知；或
 - (b) 他們其中任何人沒有參與共同給予通知，
- 則任何一方可向原訟法庭申請，而原訟法庭可決定如下：公斷人只就該項事宜替代仲裁員作為仲裁庭，並具有作出命令、指示及裁決的權力，猶如該公斷人是獨任仲裁員一樣。
- (9) 凡各仲裁員不能夠就關乎提交仲裁的爭議的事宜達成協議，則儘管由公斷人替代作為仲裁庭，仲裁員 ——

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,

- (a) 如認為仍然由他們就關乎該爭議的其他事宜作出命令、指示及裁決，會節省費用，則可作出該命令、指示及裁決；或
- (b) 可將整項爭議轉介給公斷人作仲裁。
- (10) 為施行本條，如任何一位仲裁員認為在關乎提交仲裁的爭議的某事宜上，他不同意另外的一位仲裁員的意見，或不同意其他仲裁員中任何一位的意見，各仲裁員即屬不能夠就該項事宜達成協議。
- (11) 任何人不得針對第 (8) 款所指的原訟法庭決定提出上訴。

第 2 分部 —— 調解員

32. 調解員的委任

- (1) 如 ——
 - (a) 任何仲裁協議規定由並非協議一方的人委任調解員；而
 - (b) 該人 ——
 - (i) 拒絕作出該項委任；或
 - (ii) 未有在仲裁協議指明的時間內作出該項委任，或（如協議並無指明時間）未有在任何一方提

- 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

出作出該項委任的請求後的一段合理時間內作出該項委任，

則香港國際仲裁中心可應任何一方的申請，委任調解員。

- (2) 任何人不得針對香港國際仲裁中心根據第 (1) 款作出的委任提出上訴。
- (3) 如任何仲裁協議規定委任調解員，並進一步規定，倘在調解程序中未能夠達成各方接受的和解，即由該名獲如此委任為調解員的人出任仲裁員——
 - (a) 則不可僅以該人先前曾在關乎提交仲裁的爭議的某些或全部事宜相關連的情況下出任調解員為理由，而反對該人出任仲裁員，或反對由該人進行仲裁程序；或
 - (b) 如該人拒絕出任仲裁員，則除非仲裁協議另有表明，否則任何其他獲委任為仲裁員的人無須先行出任調解員。

33. 仲裁員出任調解員的權力

- (1) 如所有各方以書面同意，仲裁員可在仲裁程序展開之後出任調解員，直至任何一方以書面撤回同意為止。
- (2) 如仲裁員出任調解員，則仲裁程序須予擱置，以利便調解程序進行。
- (3) 出任調解員的仲裁員——
 - (a) 可與各方集體或個別通訊；及

- (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—

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- (b) 須將他從一方取得的資料視為機密處理，但如該方另外同意或第 (4) 款適用，則屬例外。
- (4) 如 ——
- (a) 仲裁員在由他以調解員身分進行的調解程序中，從一方取得機密資料；及
- (b) 該調解程序在沒有達成各方接受的和解下終止，則該仲裁員在恢復進行仲裁程序之前，須向所有其他各方盡量披露該等資料中他認為對仲裁程序具關鍵性的資料。
- (5) 不可僅以仲裁員先前曾按照本條出任調解員為理由，而反對由他進行仲裁程序。
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- (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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第 5 部

仲裁庭的管轄權

(格式變更——2018 年第 1 號編輯修訂紀錄)

34. 《貿法委示範法》第 16 條 (仲裁庭對其管轄權作出裁定的權力)

- (1) 《貿法委示範法》第 16 條在第 13(5) 條的規限下具有效力，其文本列出如下——

“第 16 條. 仲裁庭對其管轄權作出裁定的權力

(1) 仲裁庭可以對其管轄權，包括對關於仲裁協議的存在或效力的任何異議作出裁定。為此目的，構成合同一部分的仲裁條款應當視為獨立於合同其他條款的一項協議。仲裁庭作出關於合同無效的決定，在法律上不導致仲裁條款無效。

(2) 有關仲裁庭無管轄權的抗辯不得在提出答辯書之後提出。一方當事人指定或參與指定仲裁員的事實，不妨礙其提出此種抗辯。有關仲裁庭超越其權限範圍的抗辯，應當在仲裁程序出現被指稱的越權事項時立即提出。在其中任何一種情況下，仲裁庭如認為遲延有正當理由的，可准許推遲提出抗辯。

(3) 仲裁庭可以根據案情將本條第 (2) 款所指抗辯作為一個初步問題裁定或在實體裁決中裁定。仲裁庭作為一個初步問題裁定其擁有管轄權的，任何一方當事人可在收到裁定通知後三十天內請求第 6 條規定的法院對此事項作出決定，該決定不得上訴；在對該請求未決期間，仲裁庭可以繼續進行仲裁程序和作出裁決。”。

- (2) 仲裁庭根據第 (1) 款對自己的管轄權作出裁定的權力，包括——

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.

- (a) 決定仲裁庭是否恰當地組成的權力；或
 - (b) 決定甚麼事宜已按照仲裁協議提交仲裁的權力。
- (3) 如按照仲裁協議將爭議提交仲裁，而一方——
- (a) 提出在同一爭議中產生的反申索；或
 - (b) 倚據在該爭議中產生的申索作為抵銷，
- 則仲裁庭有管轄權決定該反申索或該被如此倚據的申索，但該管轄權只可在該反申索或申索的標的事宜屬同一仲裁協議的範圍內行使。
- (4) 如仲裁庭裁定它並無管轄權就某爭議作出決定，任何人不得針對該項裁定提出上訴。

- (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.

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第 609 章

第 5 部
第 34 條

- (5) 儘管有第 20 條的規定，如仲裁庭裁定它並無管轄權就某爭議作出決定，則如法院具有司法管轄權，法院須就該爭議作出決定。
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Part 5
Section 34

5-6
Cap. 609

- (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.
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第 6 部

臨時措施和初步命令

(格式變更——2018 年第 1 號編輯修訂紀錄)

第 1 分部 —— 臨時措施

35. 《貿法委示範法》第 17 條 (仲裁庭下令採取臨時措施的權力)

(1) 《貿法委示範法》第 17 條具有效力，其文本列出如下 ——

“第 17 條. 仲裁庭下令採取臨時措施的權力

(1) 除非當事人另有約定，仲裁庭經一方當事人請求，可以准予採取臨時措施。

(2) 臨時措施是以裁決書為形式的或另一種形式的任何短期措施，仲裁庭在發出最後裁定爭議的裁決書之前任何時候，以這種措施責令一方當事人實施以下任何行為：

(a) 在爭議得以裁定之前維持現狀或恢復原狀；

(b) 採取行動防止目前或即將對仲裁程序發生的危害或損害，或不採取可能造成這種危害或損害的行動；

(c) 提供一種保全資產以執行後繼裁決的手段；
或

(d) 保全對解決爭議可能具有相關性和重要性的證據。”。

(2) 藉第 (1) 款而具有效力的《貿法委示範法》第 17 條所提述的臨時措施，須解釋為包括強制令，但不包括第 56 條所指的命令。

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

- (3) 如仲裁庭批給臨時措施，該仲裁庭可應任何一方的申請，作出與該臨時措施具同等效力的裁決。

36. 《貿法委示範法》第 17A 條 (准予採取臨時措施的條件)
《貿法委示範法》第 17A 條具有效力，其文本列出如下 ——

“第 17A 條. 准予採取臨時措施的條件

(1) 一方當事人請求採取第 17(2)(a)、(b) 和 (c) 條所規定的臨時措施的，應當使仲裁庭確信：

(a) 不下令採取這種措施可能造成損害，這種損害無法通過判給損害賠償金而充分補償，而且遠遠大於准予採取這種措施而可能對其所針對的當事人造成的損害；以及

(b) 根據索賠請求所依據的案情，請求方當事人相當有可能勝訴。對這種可能性的判定不影響仲裁庭此後作出任何裁定的自由裁量權。

(2) 關於對第 17(2)(d) 條所規定的臨時措施的請求，本條第 (1)(a) 和 (b) 款的要求僅在仲裁庭認為適當的情況下適用。”。

- (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)

第 2 分部 —— 初步命令**37. 《貿法委示範法》第 17B 條 (初步命令的申請和下达初步命令的條件)**

《貿法委示範法》第 17B 條具有效力，其文本列出如下 ——

“第 17B 條. 初步命令的申請和下达初步命令的條件

- (1) 除非各方當事人另有約定，一方當事人可以通知其他任何當事人而提出臨時措施請求，同時一併申請下达初步命令，指令一方當事人不得阻撓所請求的臨時措施的目的。
- (2) 當仲裁庭認為事先向臨時措施所針對的當事人披露臨時措施請求有可能阻撓這種措施目的時，仲裁庭可以下达初步命令。
- (3) 第 17A 條中規定的條件適用於任何初步命令，條件是根據第 17A(1)(a) 條估測的損害是下达命令或不下達命令而有可能造成的損害。”。

38. 《貿法委示範法》第 17C 條 (初步命令的具體制度)

《貿法委示範法》第 17C 條具有效力，其文本列出如下 ——

“第 17C 條. 初步命令的具體制度

(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—

- (1) 仲裁庭就初步命令申請作出判定之後，應當立即通知所有當事人，使之了解臨時措施請求、初步命令申請、任何已下達的初步命令以及任何一方當事人與仲裁庭之間與此有關的所有其他通信，包括指明任何口頭通信的內容。
- (2) 同時，仲裁庭應當在實際可行的最早時間內給予初步命令所針對的當事人陳述案情的機會。
- (3) 仲裁庭應當迅速就任何針對初步命令的異議作出裁定。
- (4) 初步命令自仲裁庭下達該命令之日起二十天後失效。但在向初步命令所針對的當事人發出通知並為其提供陳述案情的機會之後，仲裁庭可以下達對初步命令加以採納或修改的臨時措施。
- (5) 初步命令對當事人具有約束力，但不由法院執行。這種初步命令不構成仲裁裁決。”。

第 3 分部 —— 適用於臨時措施和初步命令的條文

39. 《貿法委示範法》第 17D 條 (修改、中止和終結)

“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)

《貿法委示範法》第 17D 條具有效力，其文本列出如下 ——

“第 17D 條. 修改、中止和終結

仲裁庭可以在任何一方當事人提出申請時修改、中止或終結其已准予採取的臨時措施或已下達的初步命令，在非常情況下並事先通知各方當事人後，亦可自行修改、中止或終結其已准予採取的臨時措施或已下達的初步命令。”。

40. 《貿法委示範法》第 17E 條 (提供擔保)

《貿法委示範法》第 17E 條具有效力，其文本列出如下 ——

“第 17E 條. 提供擔保

- (1) 仲裁庭可以要求請求臨時措施的一方當事人提供與這種措施有關的適當擔保。
- (2) 仲裁庭應當要求申請初步命令的一方當事人提供與這種命令有關的擔保，除非仲裁庭認為這樣做不妥當或者沒有必要。”。

41. 《貿法委示範法》第 17F 條 (披露)

《貿法委示範法》第 17F 條具有效力，其文本列出如下 ——

“第 17F 條. 披露

- (1) 仲裁庭可以要求任何當事人迅速披露在請求或者准予採取臨時措施時而依據的情形所發生的任何重大變化。

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

(2) 申請初步命令的一方當事人應當向仲裁庭披露一切可能與仲裁庭判定是否下達或維持該命令有關的情形，這種義務應當持續到該命令所針對的當事人有機會陳述案情之時。在此之後，應當適用本條第(1)款。”。

42. 《貿法委示範法》第 17G 條 (費用與損害賠償)

《貿法委示範法》第 17G 條具有效力，其文本列出如下 ——

“第 17G 條. 費用與損害賠償

如果仲裁庭之後裁定根據情形本不應當准予採取臨時措施或下達初步命令，則請求臨時措施或申請初步命令的一方當事人應當就該措施或命令對其所針對的當事人造成的任何費用和損害承擔賠償責任。仲裁庭可以在仲裁程序的任何時候判給這種費用和損害賠償金。”。

第 4 分部 —— 臨時措施的承認與執行

43. 《貿法委示範法》第 17H 條 (承認和執行)

第 61 條取代《貿法委示範法》第 17H 條而具有效力。

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. 《貿法委示範法》第 17I 條 (拒絕承認或執行的理由)

《貿法委示範法》第 17I 條不具效力。

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

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

第 5 分部 —— 法院下令採取的臨時措施**Division 5—Court-ordered Interim Measures****45. 《貿法委示範法》第 17J 條 (法院下令採取的臨時措施)**

(1) 《貿法委示範法》第 17J 條不具效力。

(2) 原訟法庭可應任何一方的申請，就已在或將會在香港或香港以外地方展開的任何仲裁程序，批給臨時措施。

(3) 本條授予的權力，可由原訟法庭行使，不論仲裁庭是否可根據第 35 條就同一爭議行使類似的權力。

(4) 原訟法庭可基於以下理由，拒絕根據第 (2) 款批給臨時措施 ——

(a) 所尋求的臨時措施，在當時是仲裁程序的標的；及

(b) 原訟法庭認為，由仲裁庭處理所尋求的臨時措施，更為適當。

(5) 原訟法庭只有在以下情況下，方可根據第 (2) 款，就已在或將會在香港以外地方展開的仲裁程序，批給臨時措施 ——

(a) 該仲裁程序能引起一項可根據本條例或任何其他條例在香港強制執行的仲裁裁決 (不論是臨時裁決或最終裁決)；及

(b) 所尋求的臨時措施，屬原訟法庭可就仲裁程序而在香港批給的臨時措施的類型或種類。

(6) 即使有以下情況，第 (5) 款仍適用 ——

(a) 若非因該款，仲裁程序的標的事宜不會引起原訟法庭對之具有司法管轄權的訴訟因由；或

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

- (b) 所尋求的命令，並非附屬於或附帶於任何在香港進行的仲裁程序。
- (7) 在根據第 (2) 款就在香港以外地方進行的仲裁程序而行使權力時，原訟法庭須顧及以下事實 ——
- (a) 該權力是附屬於在香港以外地方進行的仲裁程序的；及
- (b) 該權力的目的，是為利便在香港以外地方的、並對該仲裁程序具有基本司法管轄權的法院的程序，或具有基本管轄權的仲裁庭的程序。
- (8) 為確保就在香港以外地方進行的仲裁程序而批給的臨時措施的有效性的目的，原訟法庭具有相同的權力作出任何附帶命令或指示，猶如該臨時措施是就在香港進行的仲裁程序而批給的一樣。
- (9) 第 (2) 款所提述的臨時措施，指藉第 35(1) 條而具有效力的《貿法委示範法》第 17(2) 條所提述的臨時措施，猶如 ——
- (a) 在該第 17(2) 條中提述仲裁庭，是指法院；及

- 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

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- (b) 在該第 17(2) 條中提述仲裁程序，是指法院程序，並須解釋為包括強制令，但不包括第 60 條所指的命令。
- (10) 任何人不得針對本條所指的原訟法庭決定、命令或指示提出上訴。
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- (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.
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第 7 部**仲裁程序的進行***(格式變更——2018 年第 1 號編輯修訂紀錄)***46. 《貿法委示範法》第 18 條 (當事人平等待遇)**

- (1) 第 (2) 及 (3) 款取代《貿法委示範法》第 18 條而具有效力。
- (2) 各方須獲平等相待。
- (3) 仲裁庭在進行仲裁程序時，或在行使藉本條例或由任何該等仲裁程序的各方授予該仲裁庭的任何權力時，須——
 - (a) 獨立；
 - (b) 在各方之間公平和公正地行事，給予各方合理的機會鋪陳其論據和處理其對手的論據；及
 - (c) 採用適合個別個案的程序，避免不必要的拖延或開支，從而提供公平的方法以解決有關仲裁程序所關乎的爭議。

47. 《貿法委示範法》第 19 條 (程序規則的確定)

- (1) 《貿法委示範法》第 19(1) 條具有效力，其文本列出如下——

“第 19 條. 程序規則的確定

- (1) 在不違背本法規定的情況下，當事人可以自由約定仲裁庭進行仲裁時所應當遵循的程序。

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

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(2) [不適用。]

- (2) 除本條例的條文另有規定外，如各方沒有任何上述協議，或在各方沒有任何上述協議的範圍內，仲裁庭可用它認為適當的方式，進行仲裁。
- (3) 仲裁庭在進行仲裁程序時，不受證據規則所約束，並可收取該仲裁庭認為攸關該仲裁程序的任何證據，但對於在該仲裁程序中援引的證據，該仲裁庭須給予它認為適當的分量。

48. 《貿法委示範法》第 20 條 (仲裁地點)

《貿法委示範法》第 20 條具有效力，其文本列出如下——

“第 20 條. 仲裁地點

- (1) 當事人可以自由約定仲裁的地點。未達成此種約定的，由仲裁庭考慮到案件的情況，包括當事人的便利，確定仲裁地點。
- (2) 雖有本條第 (1) 款的規定，為在仲裁庭成員間進行磋商，為聽取證人、專家或當事人的意見，或者為檢查貨物、其他財產或文件，除非當事人另有約定，仲裁庭可以在其認為適當的任何地點會晤。”

49. 《貿法委示範法》第 21 條 (仲裁程序的開始)

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(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

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(1) 《貿法委示範法》第 21 條具有效力，其文本列出如下 ——

“第 21 條. 仲裁程序的開始

除非當事人另有約定，解決特定爭議的仲裁程序，
於被申請人收到將該爭議提交仲裁的請求之日開始。”。

(2) 藉第 (1) 款而具有效力的《貿法委示範法》第 21 條所提述
的請求，須以第 10 條所提述的書面通訊的方式作出。

50. 《貿法委示範法》第 22 條 (語文)

《貿法委示範法》第 22 條具有效力，其文本列出如下 ——

“第 22 條. 語文

(1) 當事人可以自由約定仲裁程序中擬使用的語文。
未達成此種約定的，由仲裁庭確定仲裁程序中擬使
用的語文。這種約定或確定除非其中另外指明，適
用於一方當事人的任何書面陳述、仲裁庭的任何開
庭、裁決、決定或其他通訊。

(2) 仲裁庭可以命令任何書面證據附具當事人約定的
或仲裁庭確定的語文的譯本。”。

51. 《貿法委示範法》第 23 條 (申請書和答辯書)

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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

《貿法委示範法》第 23 條具有效力，其文本列出如下——

“第 23 條. 申請書和答辯書

(1) 在當事人約定的或仲裁庭確定的時間期限內，申請人應當申述支持其請求的各種事實、爭議點以及所尋求的救濟或補救，被申請人應當逐項作出答辯，除非當事人就這種申述和答辯所要求的項目另有約定。當事人可以隨同其陳述提交其認為相關的一切文件，也可以附帶述及其將要提交的文件或其他證據。

(2) 除非當事人另有約定，在仲裁程序進行中，任何一方當事人可以修改或補充其請求或答辯，除非仲裁庭考慮到為時已遲，認為不宜允許作此更改。”。

52. 《貿法委示範法》第 24 條 (開庭和書面審理程序)

《貿法委示範法》第 24 條具有效力，其文本列出如下——

“第 24 條. 開庭和書面審理程序

(1) 除當事人有任何相反約定外，仲裁庭應當決定是否舉行開庭聽審，以便出示證據或進行口頭辯論，或者是否應當以文件和其他材料為基礎進行仲裁程序。但是除非當事人約定不開庭聽審，一方當事人請求開庭的，仲裁庭應當在進行仲裁程序的適當階段舉行開庭聽審。

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,

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(2) 任何開庭和仲裁庭為了檢查貨物、其他財產或文件而舉行的任何會議，應當充分提前通知當事人。

(3) 一方當事人向仲裁庭提供的一切陳述書、文件或其他資料應當送交對方當事人。仲裁庭在作出決定時可能依賴的任何專家報告或證據性文件也應當送交各方當事人。”。

53. 《貿法委示範法》第 25 條 (一方當事人的不為)

(1) 《貿法委示範法》第 25 條具有效力，其文本列出如下——

“第 25 條. 一方當事人的不為

除非當事人另有約定，在不提出充分理由的情況下：

(a) 申請人未能依照第 23(1) 條的規定提交申請書的，仲裁庭應當終止仲裁程序；

(b) 被申請人未能依照第 23(1) 條的規定提交答辯書的，仲裁庭應當繼續進行仲裁程序，但不將此種缺失行為本身視為認可了申請人的申述；

(c) 任何一方當事人不出庭或不提供書面證據的，仲裁庭可以繼續進行仲裁程序並根據其所收到的證據作出裁決。”。

(2) 除非各方另有協議，否則除就費用保證的申請外，第 (3) 及 (4) 款適用。

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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;

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- (3) 如某方在不提出充分理由的情況下，沒有遵從仲裁庭的任何命令或指示，則該仲裁庭可作出一項具有同等效力的最後敦促令，訂明該仲裁庭認為適當的遵從該命令或指示的時限。
- (4) 如一方沒有遵從最後敦促令，則在不影響第 61 條的原則下，仲裁庭可——
- 指示該方無權倚據屬最後敦促令的標的事宜之任何指稱或材料；
 - 就該項不遵從，作出在有關情況下屬有充分理由支持的任何不利推斷；
 - 基於已恰當地提供給該仲裁庭的任何材料，作出裁決；或
 - 就因該項不遵從而招致的仲裁費用的支付，作出該仲裁庭認為合適的任何命令。

54. 《貿法委示範法》第 26 條 (仲裁庭指定的專家)

- (1) 《貿法委示範法》第 26 條具有效力，其文本列出如下——

“第 26 條. 仲裁庭指定的專家

- (1) 除非當事人另有約定，仲裁庭：

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- (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—
- direct that the party is not entitled to rely on any allegation or material which was the subject matter of the peremptory order;
 - draw any adverse inferences that the circumstances may justify from the non-compliance;
 - make an award on the basis of any materials which have been properly provided to the arbitral tribunal; or
 - 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

(a) 可以指定一名或多名專家就仲裁庭待決之特定問題向仲裁庭提出報告；

(b) 可以要求一方當事人向專家提供任何相關資料，或出示或讓他接觸任何相關的文件、貨物或其他財產以供檢驗。

(2) 除非當事人另有約定，經一方當事人提出請求或仲裁庭認為必要的，專家在提出其書面或口頭報告後應當參加開庭，各方當事人可向其提問，專家證人就爭議點作證。”。

(2) 在不影響藉第 (1) 款而具有效力的《貿法委示範法》第 26 條的原則下，在根據第 74 條評估仲裁程序的費用（仲裁庭的收費及開支除外）的款額時——

- (a) 仲裁庭可委任評估人員，以在技術事宜上協助該仲裁庭，並可容許任何該等評估人員出席該程序；及
- (b) 各方須獲合理機會，評論任何該等評估人員提供的任何資料、看法或意見。

55. 《貿法委示範法》第 27 條（法院協助取證）

(1) 《貿法委示範法》第 27 條具有效力，其文本列出如下——

“第 27 條. 法院協助取證

(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—

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仲裁庭或一方當事人在仲裁庭同意之下，可以請求本國內的管轄法院協助取證。法院可以在其權限範圍內並按照其關於取證的規則執行上述請求。”。

- (2) 原訟法庭可命令某人出席在仲裁庭席前進行的程序作證、出示文件或出示其他證據。
- (3) 本條授予的權力，可由原訟法庭行使，不論仲裁庭是否可根據第 56 條就同一爭議行使類似的權力。
- (4) 如原訟法庭根據本條行使其權力而作出決定或命令，任何人不得針對該決定或命令提出上訴。
- (5) 《證據條例》(第 8 章) 第 81 條 (將囚犯帶上法庭以提供證據的手令或命令) 適用，猶如在該條中提述任何刑事或民事法律程序，是指任何仲裁程序。

56. 仲裁庭可行使的一般權力

- (1) 除非各方另有協議，否則仲裁庭在進行仲裁程序時，可作出命令——
 - (a) 要求申索人就仲裁費用提供保證；
 - (b) 指示透露文件或交付質詢書；
 - (c) 指示以誓章提出證據；或
 - (d) 就任何有關財產——
 - (i) 指示由仲裁庭、仲裁程序的一方或專家檢查、拍攝、保存、保管、扣留或出售該有關財產；或

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“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—

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- (ii) 指示從該有關財產檢走樣本，或對該有關財產進行觀察或試驗。
- (2) 仲裁庭不得僅基於以下理由，而根據第 (1)(a) 款作出命令——
- (a) 申索人是通常居於香港以外地方的自然人；
- (b) 申索人——
- (i) 是根據香港以外地方的法律成立的法人團體；或
- (ii) 是一個法人團體，而其中央管理及控制是在香港以外地方行使的；或
- (c) 申索人——
- (i) 是根據香港以外地方的法律組成的組織；或
- (ii) 是一個組織，而其中央管理及控制是在香港以外地方行使的。
- (3) 仲裁庭——
- (a) 在根據第 (1)(a) 款作出命令時，須指明遵從該命令的限期；及
- (b) 可延長該限期，或延長任何經延長的限期。
- (4) 如仲裁庭已根據第 (1)(a) 款作出命令，但該命令未有在根據第 (3)(a) 款指明或根據第 (3)(b) 款延長的限期內獲遵從，則仲裁庭可作出撤銷有關申索的裁決，或擱置有關申索。
- (5) 儘管有第 35(2) 條的規定，第 39 至 42 條（如適當的話）適用於第 (1)(d) 款所指的命令，猶如在該等條文中提述臨時措施，是指該款所指的命令。
- (6) 為施行第 (1)(d) 款，如任何財產符合以下說明，即屬有關財產——
- (a) 該財產是由仲裁程序的一方擁有或管有的；而
- (b) 該財產是仲裁程序的標的，或在仲裁程序中產生關乎該財產的任何問題。

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- (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

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- (7) 除非各方另有協議，否則仲裁庭在進行仲裁程序時，可決定本身應否和應在甚麼程度上採取主動，以確定攸關該仲裁程序的事實及法律。
- (8) 除非各方另有協議，否則仲裁庭——
 - (a) 可為證人及各方監誓；
 - (b) 可在證人及各方宣誓後，予以訊問；或
 - (c) 可指示證人到仲裁庭席前作證、出示文件或出示其他證據。
- (9) 凡在法院的民事法律程序中，不能要求某人出示某文件或其他證據，則該人不得被要求在仲裁程序中出示該文件或證據。

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- 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

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- (1) 除非各方另有協議，否則仲裁庭可指示在其席前進行的仲裁程序的可予追討的費用，以某指明款額為限。
- (2) 在第 (3) 款的規限下，仲裁庭可 ——
 - (a) 主動地作出或更改指示；或
 - (b) 應任何一方的申請，作出或更改指示。
- (3) 指示可在有關仲裁程序的任何階段作出或更改，但為使有關可予追討的費用的限額能獲得考慮，該指示或更改須事先在有充分時間的情況下 ——
 - (a) 在招致該指示或更改所關乎的費用前作出；或
 - (b) 在採取該仲裁程序中可能受到該指示或更改影響的步驟前作出。
- (4) 在本條中 ——
 - (a) 提述費用，須解釋為各方自己的費用；及
 - (b) 提述仲裁程序，包括該仲裁程序的任何部分。

58. 延長仲裁程序時限的權力

- (1) 本條在以下情況下適用於仲裁協議：該仲裁協議規定，除非申索人在該協議所指明的時限前或所指明的限期內，採取步驟以展開以下程序，否則禁止提出申索，或申索人的權利即告終絕 ——
 - (a) 仲裁程序；或
 - (b) 須先行窮竭方可展開仲裁程序的任何其他解決爭議的程序。

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- (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.

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- (2) 仲裁庭可應上述仲裁協議的任何一方的申請，作出命令，延長第 (1) 款所提述的時限或限期。
- (3) 上述申請只可在已有申索產生，並且已窮竭任何可用以獲得延長時限的仲裁的程序後，方可提出。
- (4) 仲裁庭只可在以下情況下根據本條作出命令，延長第 (1) 款所提述的時限或限期——
 - (a) 該仲裁庭信納——
 - (i) 有關情況超乎各方在訂立仲裁協議時的合理預期；及
 - (ii) 延長該時限或限期會屬公正；或
 - (b) 該仲裁庭信納由於任何一方的行為舉措，以致若按該協議的嚴格條款約束其他方，即屬不公正。
- (5) 仲裁庭可按它認為合適的條款，將第 (1) 款所提述的時限或限期，或將根據第 (4) 款延長的時限或限期，延長一段它認為合適的較長期間，而即使該時限或限期已屆滿，或該經延長的時限或限期已屆滿，仲裁庭仍可如此行事。
- (6) 本條並不影響第 14 條的實施，或任何對展開仲裁程序的限期加以限制的其他成文法則的實施。
- (7) 如在有關時間，並沒有能夠行使本條授予仲裁庭的權力的仲裁庭存在，則該權力可由原訟法庭行使。
- (8) 如原訟法庭行使第 (7) 款授予它的權力而作出命令，任何人不得針對該命令提出上訴。

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- (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. 在仲裁程序中拖延繼續申索的情況下作出命令

- (1) 除非仲裁協議另有表明，否則在仲裁程序展開後，根據該協議而有申索的一方，須繼續該申索，不得有不合理的拖延。
- (2) 在不影響藉第 53(1) 條而具有效力的《貿法委示範法》第 25 條的原則下，仲裁庭如信納某方在仲裁程序中不合理地拖延繼續該方的申索，可——
 - (a) 作出裁決，撤銷該申索；及
 - (b) 作出命令，禁止該方就該申索展開進一步的仲裁程序。
- (3) 仲裁庭可——
 - (a) 主動地作出裁決或命令；或
 - (b) 應任何其他一方的申請，作出裁決或命令。
- (4) 為施行第 (2) 款，符合以下說明的拖延，即屬不合理的拖延——
 - (a) 引起或相當可能引起申索中的爭論點不會得到公平解決的重大風險；或
 - (b) 已對或相當可能對任何其他一方造成嚴重損害。
- (5) 如在有關時間，並沒有能夠行使本條授予仲裁庭的權力的仲裁庭存在，則該權力可由原訟法庭行使。
- (6) 如原訟法庭行使第 (5) 款授予它的權力而作出裁決或命令，任何人不得針對該裁決或命令提出上訴。

60. 原訟法庭就仲裁程序所具有的特別權力**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) 原訟法庭可應任何一方的申請，就已在或將會在香港或香港以外地方展開的任何仲裁程序，作出命令——
 - (a) 指示由仲裁庭、仲裁程序的一方或專家檢查、拍攝、保存、保管、扣留或出售任何有關財產；或
 - (b) 指示從任何有關財產檢走樣本，或對任何有關財產進行觀察或試驗。
- (2) 為施行第 (1) 款，如任何財產是仲裁程序的標的，或在仲裁程序中產生關乎該財產的任何問題，該財產即屬有關財產。
- (3) 本條授予的權力，可由原訟法庭行使，不論仲裁庭是否可根據第 56 條就同一爭議行使類似的權力。
- (4) 原訟法庭可基於以下理由，拒絕根據本條就第 (1) 款所描述的事宜作出命令——
 - (a) 該事宜當時是仲裁程序的標的；及
 - (b) 原訟法庭認為，由仲裁庭處理該事宜，更為適當。
- (5) 原訟法庭根據本條作出的命令，可規定該命令在仲裁庭作出使該命令完全或局部停止有效的命令時，如此停止有效。
- (6) 就已在或將會在香港以外地方展開的仲裁程序而言，只有在該仲裁程序能引起一項可根據本條例或任何其他條例在香港強制執行的仲裁裁決（不論是臨時裁決或最終裁決）的情況下，原訟法庭方可根據第 (1) 款作出命令。
- (7) 即使有以下情況，第 (6) 款仍適用——
 - (a) 若非因該款，仲裁程序的標的事宜不會引起原訟法庭對之具有司法管轄權的訴訟因由；或
 - (b) 所尋求的命令，並非附屬於或附帶於任何在香港進行的仲裁程序。
- (8) 在根據第 (1) 款就在香港以外地方進行的仲裁程序而行使權力時，原訟法庭須顧及以下事實——

- (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

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- (a) 該權力是附屬於在香港以外地方進行的仲裁程序的；及
 - (b) 該權力的目的，是為利便在香港以外地方的、並對該仲裁程序具有基本司法管轄權的法院的程序，或具有基本管轄權的仲裁庭的程序。
- (9) 除第 (10) 款另有規定外，任何人不得針對本條所指的原訟法庭命令或決定提出上訴。
- (10) 凡原訟法庭根據第 (1) 款命令出售任何有關財產，則須獲原訟法庭許可，方可針對該命令提出上訴。

61. 仲裁庭的命令及指示的強制執行

- (1) 仲裁庭就仲裁程序而作出的命令或指示，不論是在香港或香港以外地方作出的，均可猶如具有同等效力的原訟法庭命令或指示般，以同樣方式強制執行，但只有在原訟法庭許可下，方可如此強制執行。
- (2) 凡任何一方尋求強制執行在香港以外地方作出的命令或指示，則除非該方能顯示，該命令或指示屬仲裁庭可就

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- 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

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仲裁程序而在香港作出的命令或指示的類型或種類，否則原訟法庭不得批予強制執行該命令或指示的許可。

- (3) 原訟法庭如根據第 (1) 款批予許可，可按有關命令或指示的條款，登錄判決。
- (4) 如原訟法庭決定根據第 (1) 款批予許可，或決定拒絕根據第 (1) 款批予許可，任何人不得針對該決定提出上訴。(由 2013 年第 7 號第 6 條修訂)
- (5) 本條所提述的命令或指示，包括臨時措施。

62. 原訟法庭命令討回仲裁員費用的權力

- (1) 凡仲裁員的任命，根據藉第 26 條而具有效力的《貿法委示範法》第 13 條終止，或根據藉第 27 條而具有效力的《貿法委示範法》第 14 條終止，則原訟法庭應任何一方的申請，在顧及仲裁員的行為舉措及任何其他有關情況下，可行使其酌情決定權——
 - (a) 命令仲裁員無權收取其全部或部分的收費或開支；及
 - (b) 命令仲裁員須退還全部或部分已支付給他的收費或開支。
- (2) 任何人不得針對第 (1) 款所指的原訟法庭命令提出上訴。

63. 代表及擬備工作

《法律執業者條例》(第 159 章)第 44 條(非法執業為大律師或公證人的罰則)、第 45 條(不合資格人士不得以律師身分行事)及第 47 條(不合資格人士不得擬備某些文書等)，不適用於——

- (a) 仲裁程序；
- (b) 為仲裁程序的目的而提供意見及擬備文件；或

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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;

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- (c) 就仲裁程序作出的任何其他事情，但如該事情是在與以下的法院程序相關連的情況下作出的，則屬例外——
- (i) 因仲裁協議而產生的法院程序；或
 - (ii) 在仲裁程序的過程中產生的法院程序，或是仲裁程序所導致的法院程序。
-

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- (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.
-

第 8 部**作出裁決和程序終止***(格式變更——2018 年第 1 號編輯修訂紀錄)***64. 《貿法委示範法》第 28 條 (適用於爭議實體的規則)**

《貿法委示範法》第 28 條具有效力，其文本列出如下——

“第 28 條. 適用於爭議實體的規則

- (1) 仲裁庭應當依照當事人選擇的適用於爭議實體的法律規則對爭議作出決定。除非另有表明，指定適用某一國家的法律或法律制度應認為是直接指該國的實體法而不是其法律衝突規範。
- (2) 當事人沒有指定任何適用法律的，仲裁庭應當適用其認為適用的法律衝突規範所確定的法律。
- (3) 仲裁庭只有在各方當事人明示授權的情況下，才應當依照公平善意原則或作為友好仲裁員作出決定。
- (4) 在任何情況下，仲裁庭都應當按照合同條款並考慮到適用於該項交易的貿易慣例作出決定。”。

65. 《貿法委示範法》第 29 條 (仲裁團作出的決定)**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

《貿法委示範法》第 29 條具有效力，其文本列出如下——

“第 29 條. 仲裁團作出的決定

在有一名以上仲裁員的仲裁程序中，除非當事人另有約定，仲裁庭的任何決定應當按其全體成員的多數作出。但是，經各方當事人或仲裁庭全體成員授權的，首席仲裁員可以就程序問題作出決定。”。

66. 《貿法委示範法》第 30 條 (和解)

(1) 《貿法委示範法》第 30 條具有效力，其文本列出如下——

“第 30 條. 和解

(1) 在仲裁程序中，當事人就爭議達成和解的，仲裁庭應當終止仲裁程序，經各方當事人提出請求而仲裁庭又無異議的，還應當按和解的條件以仲裁裁決的形式記錄和解。

(2) 關於和解的條件的裁決應當依照第 31 條的規定作出，並應說明它是一項裁決。此種裁決應當與根據案情作出的其他任何裁決具有同等的地位和效力。”。

(2) 如在藉第 (1) 款而具有效力的《貿法委示範法》第 30 條所提述的情況以外的情況下，仲裁協議各方就其爭議達成和解，並以書面訂立包含和解條款的協議 (**和解協議**)，則為強制執行該和解協議的目的，該和解協議須視為仲裁裁決。

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

67. 《貿法委示範法》第 31 條 (裁決的形式和內容)

(1) 《貿法委示範法》第 31 條具有效力，其文本列出如下 ——

“第 31 條. 裁決的形式和內容

(1) 裁決應當以書面作出，並應當由仲裁員簽名。在有一名以上仲裁員的仲裁程序中，仲裁庭全體成員的多數簽名即可，但須說明缺漏任何簽名的理由。

(2) 裁決應說明其所依據的理由，除非當事人約定不需說明理由或該裁決是第 30 條所指的和解裁決。

(3) 裁決書應具明其日期和依照第 20(1) 條確定的仲裁地點。該裁決應視為是在該地點作出的。

(4) 裁決作出後，經仲裁員依照本條第 (1) 款簽名的裁決書應送達各方當事人各一份。”

(2) 藉第 (1) 款而具有效力的《貿法委示範法》第 31(4) 條，在第 77 條的規限下具有效力。

68. 《貿法委示範法》第 32 條 (程序的終止)

《貿法委示範法》第 32 條具有效力，其文本列出如下 ——

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)

“第 32 條. 程序的終止

- (1) 仲裁程序依終局裁決或仲裁庭按照本條第 (2) 款發出的裁定宣告終止。
- (2) 仲裁庭在下列情況下應當發出終止仲裁程序的裁定：
- (a) 申請人撤回其申請，但被申請人對此表示反對且仲裁庭承認最終解決爭議對其而言具有正當利益的除外；
- (b) 各方當事人約定程序終止；
- (c) 仲裁庭認定仲裁程序因其他任何理由均無必要或不可能繼續進行。
- (3) 仲裁庭之委任隨仲裁程序的終止而終止，但須服從第 33 和 34(4) 條的規定。”。

69. 《貿法委示範法》第 33 條 (裁決的更正和解釋；補充裁決)

- (1) 《貿法委示範法》第 33 條具有效力，其文本列出如下——

“第 33 條. 裁決的更正和解釋；補充裁決

- (1) 除非當事人約定了另一期限，在收到裁決書後三十天內：

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

(a) 一方當事人可在通知對方當事人後請求仲裁庭更正裁決書中的任何計算錯誤、任何筆誤或打印錯誤或任何類似性質的錯誤；

(b) 當事人有約定的，一方當事人可以在通知對方當事人後請求仲裁庭對裁決書的具體某一點或某一部分作出解釋。

仲裁庭認為此種請求正當合理的，應當在收到請求後三十天內作出更正或解釋。解釋應構成裁決的一部分。

(2) 仲裁庭可在作出裁決之日起三十天內主動更正本條第 (1)(a) 款所指類型的任何錯誤。

(3) 除非當事人另有約定，一方當事人在收到裁決書後三十天內，可以在通知對方當事人後，請求仲裁庭對已在仲裁程序中提出但在裁決書中遺漏的請求事項作出補充裁決。仲裁庭如果認為此種請求正當合理的，應當在六十天內作出補充裁決。

(4) 如有必要，仲裁庭可以將依照本條第 (1) 或 (3) 款作出更正、解釋或補充裁決的期限，予以延長。

(5) 第 31 條的規定適用於裁決的更正或解釋，並適用於補充裁決。”。

(2) 凡根據藉第 (1) 款而具有效力的《貿法委示範法》第 33 條，就仲裁裁決作出以下任何事宜，則仲裁庭具有權力對該裁決作出因該事宜而需要或相應引致的其他更改——

(a) 改正該裁決中的任何錯誤；或

(b) 解釋該裁決中的任何一點或部分。

(3) 如仲裁庭在作出判給費用的裁決時，並不知悉它應考慮的與關乎費用的任何資料（包括要約和解），則該仲裁庭可在該裁決的日期的 30 天內，覆核該裁決。

(4) 在進行第 (3) 款所指的覆核時，仲裁庭可維持、更改或改正判給費用的裁決。

(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.

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70. 判給補救或濟助的裁決

- (1) 在第 (2) 款及第 103D(6) 條的規限下，假使仲裁庭決定的某項爭議，是原訟法庭民事法律程序的標的，原訟法庭可命令判給某項補救或濟助，則仲裁庭在決定該項爭議時，亦可判給該項補救或濟助。(由 2017 年第 5 號第 4 條代替)
- (2) 除非各方另有協議，否則仲裁庭一如原訟法庭般，具有相同的權力命令強制履行任何合約，但關乎土地或任何土地權益的合約除外。

71. 就事宜的不同方面作出裁決

除非各方另有協議，否則仲裁庭可就須裁定的事宜的不同方

- (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

面，在不同時間，作出多於一項裁決。

72. 作出裁決的時間

- (1) 除非各方另有協議，否則仲裁庭具有權力在任何時間作出裁決。
- (2) 原訟法庭可應任何一方的申請，不時藉命令延長作出裁決的時限（如有的話），不論該時限是否本條例所訂，亦不論該時限是否已經屆滿。
- (3) 任何人不得針對第 (2) 款所指的原訟法庭命令提出上訴。

73. 裁決的效力

- (1) 除非各方另有協議，否則仲裁庭依據仲裁協議作出的裁決，屬最終裁決，對以下所有的人均具約束力——
 - (a) 各方；及
 - (b) 透過或藉著任何一方提出申索的任何人。
- (2) 第 (1) 款並不影響任何人作出以下作為的權利——
 - (a) 按第 26 或 81 條、附表 2 第 4 或 5 條、或本條例任何其他條文的規定，質疑裁決；或
 - (b) 在其他情況下，按任何可用的上訴或覆核的仲裁程序，質疑裁決。

74. 仲裁庭可作出判給仲裁程序費用的裁決

- (1) 仲裁庭可將對仲裁程序的費用（包括該仲裁庭的收費及開支）方面的指示，包括在裁決內。
- (2) 仲裁庭在顧及所有有關情況（如適當的話，包括已就有關爭議作出書面要約和解此一事實）下，可在第 (1) 款所指

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).

- 的裁決中，指示費用須支付予誰人、由誰人支付及以何方式支付。
- (3) 凡任何一方要求作出命令或指示（包括臨時措施），則仲裁庭亦可就該請求，行使其酌情決定權，命令一方支付費用（包括該仲裁庭的收費及開支）。
 - (4) 仲裁庭可指示，根據第 (3) 款命令支付的費用須立即支付，或在該仲裁庭指明的其他時間支付。
 - (5) 除第 75 條另有規定外，仲裁庭須——
 - (a) 評估根據本條判給或命令支付的費用（該仲裁庭的收費及開支除外）的款額；及
 - (b) 判給或命令支付該等費用（包括該仲裁庭的收費及開支）。
 - (6) 在第 (7) 款的規限下，仲裁庭根據第 (5) 款評估費用（該仲裁庭的收費及開支除外）的款額時，無須跟隨法院在評定訟費時所採用的訟費收費表及常規。
 - (7) 仲裁庭——
 - (a) 須只准予在顧及整體情況下屬合理的費用；及
 - (b) 可准予在展開仲裁前為準備仲裁程序而招致的費用，但如各方另有協議則除外。
 - (8) 如仲裁協議的任何條文，規定各方或任何一方須就根據該協議產生的仲裁程序，支付其自己的費用，該條文屬無效。
 - (9) 如第 (8) 款所提述的條文屬協議的一部分，而該協議規定將在該協議訂立前已產生的爭議提交仲裁，則該條文並非無效。

- (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

75. 仲裁程序的費用 (仲裁庭的收費及開支除外) 的評定

- (1) 在不影響第 74(1) 及 (2) 條的原則下，如各方已協議仲裁程序的費用由法院評定，則除非仲裁庭在裁決中另有指示，否則該裁決即當作已包括仲裁庭的以下指示：由法院按照《高等法院規則》(第 4 章，附屬法例 A) 第 62 號命令第 28(2) 條規則，按訴訟各方對評基準，評定仲裁程序的費用 (仲裁庭的收費及開支除外)。(由 2013 年第 7 號第 7 條修訂)
- (2) 經法院作出評定後，仲裁庭須就經評定的費用作出追加裁決，以反映該評定的結果。
- (3) 任何人不得針對法院經評定而作的決定提出上訴。
- (4) 本條不適用於根據第 74(3) 條命令支付的費用。

76. 不合資格人士的費用

《法律執業者條例》(第 159 章) 第 50 條 (不得就不合資格人士討回訟費) 不適用於討回仲裁中的費用。

77. 在有爭議下裁定仲裁庭的收費及開支

- (1) 除非仲裁庭的收費及開支已全數支付，否則仲裁庭可拒絕將裁決發送予各方。

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

- (2) 如仲裁庭根據第 (1) 款拒絕將裁決發送予各方，任何一方可向原訟法庭申請，而原訟法庭 ——
- (a) 可命令該仲裁庭在申請人將以下款額繳存原訟法庭後，發送裁決 ——
- (i) 所要求的收費及開支；或
- (ii) 原訟法庭指明的較小款額；
- (b) 可命令以原訟法庭指示的方法，以及按原訟法庭指示的條款，裁定須向該仲裁庭支付的收費及開支的款額；及
- (c) 可命令 ——
- (i) 將根據 (b) 段裁定須支付的收費及開支，從繳存原訟法庭的款項中，撥付該仲裁庭；及
- (ii) 將繳存原訟法庭的款項的餘款 (如有的話)，撥付申請人。
- (3) 為施行第 (2) 款 ——
- (a) 須支付的收費及開支的款額，為申請人根據以下任何一項有責任支付的款額 ——
- (i) 第 78 條；或
- (ii) 關乎給仲裁員的付費的任何協議；及
- (b) 以下人士的收費及開支，均須視為仲裁庭的收費及開支 ——
- (i) 根據藉第 54(1) 條而具有效力的《貿法委示範法》第 26 條委任的專家；或
- (ii) 根據第 54(2) 條委任的評估人員。
- (4) 如有以下情況，第 (2) 款所指的申請不得提出 ——
- (a) 有任何可用以上訴或用以覆核所要求的收費或開支的款額的仲裁程序；或
- (b) 所要求的收費及開支的總款額，已由一方與仲裁員以書面協議訂定。

- 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),

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第 78 條

- (5) 凡任何仲裁或其他機構或人士，獲各方就發送仲裁庭裁決而賦予權力，則第 (1) 至 (4) 款亦適用於該機構或人士。
- (6) 如根據第 (5) 款，第 (1) 至 (4) 款如此適用，則提述仲裁庭的收費及開支，須解釋為包括該機構或人士的收費及開支。
- (7) 如某方根據第 (2) 款向原訟法庭提出申請，則有關裁決（經發送予各方後）的強制執行，須只在關乎仲裁庭的收費或開支的範圍內擱置，直至該申請已根據本條獲得處置為止。
- (8) 在本條所指的裁定作出時，仲裁員有權出席和陳詞。
- (9) 如根據第 (2)(b) 款裁定的收費及開支的款額，有別於仲裁庭先前判給的款額，則該仲裁庭須修訂先前的有關裁決，以反映該裁定的結果。
- (10) 任何人不得針對本條所指的原訟法庭命令提出上訴。

78. 支付仲裁庭的收費及開支的法律責任

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- 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

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第 79 條

- (1) 在仲裁庭席前進行的程序的各方，須負共同及各別的法律責任，向仲裁庭支付在有關情況下屬適當的該仲裁庭的合理收費及開支（如有的話）。
- (2) 除原訟法庭根據第 62 條作出的任何命令或本條例的任何其他有關條文另有規定外，第 (1) 款具有效力。
- (3) 本條並不影響——
 - (a) 各方在他們之間的支付有關仲裁程序的費用的法律責任；或
 - (b) 關乎支付仲裁庭的收費及開支的任何合約權利或義務。
- (4) 在本條中，提述仲裁庭，包括——
 - (a) 已停任的仲裁庭成員；及
 - (b) 尚未替代該仲裁庭各成員的公斷人。

79. 仲裁庭可判給利息

- (1) 除非各方另有協議，否則在第 80 條的規限下，仲裁庭可在其席前進行的仲裁程序中，就——
 - (a) 該仲裁庭在該仲裁程序中判給的款項；
 - (b) 在該仲裁程序展開時仍未支付，但在裁決作出前已支付的在該仲裁程序中申索的款項；或
 - (c) 該仲裁庭在該仲裁程序中判給或命令支付的費用，判給以該仲裁庭認為適當的利率計算的單利息或複利息，計息期為任何在該款項或費用的支付日期或之前結束的期間，而該利息的起計日期及結算期，則按該仲裁庭認為適當者而定。
- (2) 第 (1) 款並不影響仲裁庭判給利息的任何其他權力。

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- (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.

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第 80 條

- (3) 在第 (1)(a) 款中，提述仲裁庭判給的款項，包括因該仲裁庭作出屬宣布性質的裁決而須支付的款額。

80. 在仲裁程序中判給或命令支付的款項或費用的利息

- (1) 須就仲裁庭判給的款項支付利息，利息由裁決的日期起計，利率則為判定利率，但如該裁決另有規定則除外。
- (2) 須就仲裁庭判給或命令支付的費用支付利息，利息由——
 - (a) 判給費用的裁決或命令的日期起計；或
 - (b) 指示立即支付被命令支付的費用的日期起計，利率則為判定利率，但如該判給費用的裁決或命令另有規定則除外。
- (3) 在本條中，**判定利率** (judgment rate) 指根據《高等法院條例》(第 4 章) 第 49(1)(b) 條 (判決的利息) 由終審法院首席法官決定的利率。

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- (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).

第 9 部**對裁決的追訴***(格式變更——2018 年第 1 號編輯修訂紀錄)***81. 《貿法委示範法》第 34 條 (申請撤銷，作為不服仲裁裁決的唯一追訴)**

- (1) 《貿法委示範法》第 34 條在第 13(5) 條的規限下具有效力，其文本列出如下——

“第 34 條. 申請撤銷，作為不服仲裁裁決的唯一追訴

(1) 不服仲裁裁決而向法院提出追訴的唯一途徑是依照本條第 (2) 和 (3) 款的規定申請撤銷。

(2) 有下列情形之一的，仲裁裁決才可以被第 6 條規定的法院撤銷：

(a) 提出申請的當事人提出證據，證明有下列任何情況：

- (i) 第 7 條所指仲裁協議的當事人有某種無行為能力情形；或者根據各方當事人所同意遵守的法律或在未指明法律的情況下根據本國法律，該協議是無效的；或
- (ii) 未向提出申請的當事人發出指定仲裁員的適當通知或仲裁程序的適當通知，或因他故致使其不能陳述案情；或
- (iii) 裁決處理的爭議不是提交仲裁意圖裁定的事項或不在提交仲裁的範圍之列，或者裁決書中內含對提交仲裁的

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

範圍以外事項的決定；如果對提交仲裁的事項所作的決定可以與對未提交仲裁的事項所作的決定互為劃分，僅可以撤銷含有對未提交仲裁的事項所作的決定的那部分裁決；或

- (iv) 仲裁庭的組成或仲裁程序與當事人的約定不一致，除非此種約定與當事人不得背離的本法規定相抵觸；無此種約定時，與本法不符；或

(b) 法院認定有下列任何情形：

- (i) 根據本國的法律，爭議事項不能通過仲裁解決；或

- (ii) 該裁決與本國的公共政策相抵觸。

(3) 當事人在收到裁決書之日起三個月後不得申請撤銷裁決；已根據第 33 條提出請求的，從該請求被仲裁庭處理完畢之日起三個月後不得申請撤銷。

(4) 向法院申請撤銷裁決時，如果適當而且一方當事人也提出請求，法院可以在其確定的一段時間內暫時停止進行撤銷程序，以便仲裁庭有機會重新進行仲裁程序或採取仲裁庭認為能夠消除撤銷裁決理由的其他行動。”。

(2) 第 (1) 款並不影響——

- (a) 原訟法庭根據第 26(5) 條撤銷仲裁裁決的權力；
- (b) 根據附表 2 第 4 條 (如適用的話) 質疑仲裁裁決的權利；或
- (c) 根據附表 2 第 5 條 (如適用的話) 針對仲裁裁決的法律問題而提出上訴的權利。

(3) 除第 (2)(c) 款另有規定外，原訟法庭並無司法管轄權以仲裁裁決表面有事實或法律上的錯誤為理由，而撤銷或發還該裁決。

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

- (4) 凡原訟法庭根據藉第 (1) 款而具有效力的《貿法委示範法》第 34 條作出決定，則須獲原訟法庭許可，方可針對該決定提出上訴。
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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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第 10 部**裁決的承認和強制執行***(格式變更——2014 年第 2 號編輯修訂紀錄)***第 1 分部 —— 仲裁裁決的強制執行**

82. **《貿法委示範法》第 35 條 (承認和執行)**
《貿法委示範法》第 35 條不具效力。
83. **《貿法委示範法》第 36 條 (拒絕承認或執行的理由)**
《貿法委示範法》第 36 條不具效力。
84. **仲裁裁決的強制執行**
(1) 在第 26(2) 條的規限下，仲裁庭在仲裁程序中作出的裁決，不論是在香港或香港以外地方作出的，均可猶如具有同等效力的原訟法庭判決般，以同樣方式強制執行，但只有在原訟法庭許可下，方可如此強制執行。
(2) 原訟法庭如根據第 (1) 款批予許可，可按有關裁決的條款，登錄判決。
(3) 凡原訟法庭決定根據第 (1) 款批予強制執行裁決的許可，或決定拒絕根據第 (1) 款批予該許可，則須獲原訟法庭許可，方可針對該決定提出上訴。(由 2013 年第 7 號第 8 條修訂)
85. **為強制執行仲裁裁決而提供證據**
凡任何一方尋求強制執行仲裁裁決，而該裁決並非公約裁決、內地裁決或澳門裁決，則不論該裁決是在香港或香港以外地方作出的，該方須交出 —— (由 2013 年第 7 號第 9 條修訂)

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)*

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- (a) 該裁決的經妥為認證的正本，或該裁決的經妥為核證的副本；
- (b) 有關仲裁協議的正本，或有關仲裁協議的經妥為核證的副本；及
- (c) (如該裁決或協議並非採用一種或兩種法定語文) 由官方翻譯人員、經宣誓的翻譯人員、外交代表或領事代理人核證的一種法定語文的譯本。 (由 2013 年第 7 號第 9 條代替)

86. 拒絕強制執行仲裁裁決

- (1) 如某人屬強制執行第 85 條所提述的裁決的對象，而該人證明有以下情況，則該裁決的強制執行可遭拒絕 ——
 - (a) 根據適用於有關仲裁協議的一方的法律，該方缺乏某些行為能力；
 - (b) 有關仲裁協議根據以下法律屬無效 ——
 - (i) (凡各方使該協議受某法律規限) 該法律；或
 - (ii) (如該協議並無顯示規限法律) 作出該裁決所在的國家的法律；
 - (c) 該人 ——
 - (i) 並沒有獲得關於委任仲裁員或關於仲裁程序的恰當通知；或
 - (ii) 因其他理由而未能鋪陳其論據；
 - (d) 除第 (3) 款另有規定外 ——
 - (i) 該裁決所處理的分歧，並非提交仲裁的條款所預期者，或該項分歧並不屬該等條款所指者；或
 - (ii) 該裁決包含對在提交仲裁範圍以外事宜的決定；
 - (e) 有關仲裁當局的組成或仲裁的程序，並非按照 ——

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- (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

- (i) 各方的協議所訂者；或
- (ii) (如沒有協議) 進行仲裁所在的國家的法律所訂者；或
- (f) 該裁決 ——
 - (i) 對各方尚未具約束力；或
 - (ii) 已遭作出該裁決所在的國家的主管當局撤銷或暫時中止，或(如該裁決是根據某國家的法律作出的)已遭該國家的主管當局撤銷或暫時中止。
- (2) 如有以下情況，第 85 條所提述的裁決的強制執行亦可遭拒絕 ——
 - (a) 根據香港法律，該裁決所關乎的事宜是不能藉仲裁解決的；
 - (b) 強制執行該裁決，會違反公共政策；或
 - (c) 由於任何其他原因，法院認為予以拒絕是公正的。
- (3) 如第 85 條所提述的裁決除包含對已提交仲裁的事宜作出的決定 (**仲裁決定**) 外，亦包含對未有提交仲裁的事宜作出的決定 (**非相關決定**)，則該裁決只在它關乎能與非相關決定分開的仲裁決定的範圍內，可予強制執行。(由 2013 年第 7 號第 10 條代替)
- (4) 如任何人已向第 (1)(f) 款所述的主管當局，申請將第 85 條所提述的裁決撤銷或暫時中止，而某方向法院尋求強制執行該裁決，則該法院 ——
 - (a) 如認為合適，可將強制執行該裁決的法律程序押後；及
 - (b) 可應尋求強制執行該裁決的該方的申請，命令屬強制執行的對象的人，提供保證。
- (5) 任何人不得針對第 (4) 款所指的法院決定或命令提出上訴。

- (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

第 2 分部 —— 公約裁決的強制執行

87. 公約裁決的強制執行

- (1) 在本分部的規限下，公約裁決 ——
 - (a) 可藉原訟法庭訴訟而在香港強制執行；或
 - (b) 可按強制執行第 84 條適用的裁決的同樣方式，在香港強制執行，而該條據此而適用於公約裁決，猶如在該條中提述裁決，是指公約裁決。（由 2013 年第 7 號第 11 條修訂）
- (2) 可按第 (1) 款所述般強制執行的公約裁決，須就一切目的而言，視為對各方具約束力，而任何一方均可據此於在香港進行的任何法律程序中，倚據該裁決作為抗辯或抵銷，或以其他方式倚據該裁決。（由 2013 年第 7 號第 11 條代替）
- (3) 在本分部中，提述強制執行公約裁決，須解釋為包括倚據公約裁決。

88. 為強制執行公約裁決而提供證據

尋求強制執行公約裁決的一方，須交出 ——

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

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- (a) 該裁決的經妥為認證的正本，或該裁決的經妥為核證的副本；
- (b) 有關仲裁協議的正本，或有關仲裁協議的經妥為核證的副本；及
- (c) (如該裁決或協議並非採用一種或兩種法定語文) 由官方翻譯人員、經宣誓的翻譯人員、外交代表或領事代理人核證的一種法定語文的譯本。(由 2013 年第 7 號第 12 條代替)

89. 拒絕強制執行公約裁決

- (1) 除按本條所述外，不得拒絕強制執行公約裁決。(由 2013 年第 7 號第 13 條修訂)
- (2) 如某人屬強制執行公約裁決的對象，而該人證明有以下情況，則該裁決的強制執行可遭拒絕——
 - (a) 根據適用於有關仲裁協議的一方的法律，該方缺乏某些行為能力；
 - (b) 有關仲裁協議根據以下法律屬無效——
 - (i) (凡各方使該協議受某法律規限) 該法律；或
 - (ii) (如該協議並無顯示規限法律) 作出該裁決所在的國家的法律；
 - (c) 該人——
 - (i) 並沒有獲得關於委任仲裁員或關於仲裁程序的恰當通知；或
 - (ii) 因其他理由而未能鋪陳其論據；
 - (d) 除第 (4) 款另有規定外——
 - (i) 該裁決所處理的分歧，並非提交仲裁的條款所預期者，或該項分歧並不屬該等條款所指者；或

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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—

- (ii) 該裁決包含對在提交仲裁範圍以外事宜的決定；
- (e) 有關仲裁當局的組成或仲裁的程序，並非按照 ——
 - (i) 各方的協議所訂者；或
 - (ii) (如沒有協議) 進行仲裁所在的國家的法律所訂者；或
- (f) 該裁決 ——
 - (i) 對各方尚未具約束力；或
 - (ii) 已遭作出該裁決所在的主管當局撤銷或暫時中止，或 (如該裁決是根據某國家的法律作出的) 已遭該國家的主管當局撤銷或暫時中止。
- (3) 如有以下情況，公約裁決的強制執行亦可遭拒絕 ——
 - (a) 根據香港法律，該裁決所關乎的事宜是不能藉仲裁解決的；或
 - (b) 強制執行該裁決，會違反公共政策。
- (4) 如公約裁決除包含對已提交仲裁的事宜作出的決定 (**仲裁決定**) 外，亦包含對未有提交仲裁的事宜作出的決定 (**非相關決定**)，則該裁決只在它關乎能與非相關決定分開的仲裁決定的範圍內，可予強制執行。(由 2013 年第 7 號第 13 條代替)
- (5) 如任何人已向第 (2)(f) 款所述的主管當局，申請將公約裁決撤銷或暫時中止，而某方向法院尋求強制執行該裁決，則該法院 ——
 - (a) 如認為合適，可將強制執行該裁決的法律程序押後；及
 - (b) 可應尋求強制執行該裁決的該方的申請，命令屬強制執行的對象的人，提供保證。
- (6) 任何人不得針對第 (5) 款所指的法院決定或命令提出上訴。

- (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

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90. 宣布《紐約公約》締約方的命令

- (1) 行政長官會同行政會議可藉於憲報刊登的命令，宣布符合以下說明的任何國家或地區，為《紐約公約》的締約方——
 - (a) 屬該公約的締約方；及
 - (b) 在該命令內指明。
- (2) 在第 (1) 款所指的命令有效時，該命令即為它所指明的國家或地區屬《紐約公約》的締約方的確證。
- (3) 第 (1) 及 (2) 款並不影響任何其他證明某國家或地區屬《紐約公約》的締約方的方法。

91. 保留強制執行公約裁決的權利

本分部並不影響任何並非根據本分部而強制執行或倚據公約裁決的權利。

第 3 分部 —— 內地裁決的強制執行

92. 內地裁決的強制執行

- (1) 在本分部的規限下，內地裁決 ——

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

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- (a) 可藉原訟法庭訴訟而在香港強制執行；或
- (b) 可按強制執行第 84 條適用的裁決的同樣方式，在香港強制執行，而該條據此而適用於內地裁決，猶如在該條中提述裁決，是指內地裁決。(由 2013 年第 7 號第 14 條修訂)
- (2) 可按第 (1) 款所述般強制執行的內地裁決，須就一切目的而言，視為對各方具約束力，而任何一方均可據此於在香港進行的任何法律程序中，倚據該裁決作為抗辯或抵銷，或以其他方式倚據該裁決。(由 2013 年第 7 號第 14 條代替)
- (3) 在本分部中，提述強制執行內地裁決，須解釋為包括倚據內地裁決。

93. (由 2021 年第 1 號第 4 條廢除)

94. 為強制執行內地裁決而提供證據

尋求強制執行內地裁決的一方，須交出 ——

- (a) 該裁決的經妥為認證的正本，或該裁決的經妥為核證的副本；
- (b) 有關仲裁協議的正本，或有關仲裁協議的經妥為核證的副本；及
- (c) (如該裁決或協議並非採用一種或兩種法定語文) 由官方翻譯人員、經宣誓的翻譯人員、外交代表或領事代理人核證的一種法定語文的譯本。(由 2013 年第 7 號第 16 條代替)

95. 拒絕強制執行內地裁決

- (1) 除按本條所述外，不得拒絕強制執行內地裁決。(由

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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. (Repealed 1 of 2021 s. 4)

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

2013 年第 7 號第 17 條修訂)

- (2) 如某人屬強制執行內地裁決的對象，而該人證明有以下情況，則該裁決的強制執行可遭拒絕 ——
- (a) 根據適用於有關仲裁協議的一方的法律，該方缺乏某些行為能力；
 - (b) 有關仲裁協議根據以下法律屬無效 ——
 - (i) (凡各方使該協議受某法律規限) 該法律；或
 - (ii) (如該協議並無顯示規限法律) 內地法律；
 - (c) 該人 ——
 - (i) 並沒有獲得關於委任仲裁員或關於仲裁程序的恰當通知；或
 - (ii) 因其他理由而未能鋪陳其論據；
 - (d) 除第 (4) 款另有規定外 ——
 - (i) 該裁決所處理的分歧，並非提交仲裁的條款所預期者，或該項分歧並不屬該等條款所指者；或
 - (ii) 該裁決包含對在提交仲裁範圍以外事宜的決定；
 - (e) 有關仲裁當局的組成或仲裁的程序，並非按照 ——
 - (i) 各方的協議所訂者；或
 - (ii) (如沒有協議) 內地法律所訂者；或
 - (f) 該裁決 ——
 - (i) 對各方尚未具約束力；或
 - (ii) 已遭內地的主管當局撤銷或暫時中止，或已根據內地的法律撤銷或暫時中止。
- (3) 如有以下情況，內地裁決的強制執行亦可遭拒絕 ——
- (a) 根據香港法律，該裁決所關乎的事宜是不能藉仲裁解決的；或
 - (b) 強制執行該裁決，會違反公共政策。

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

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- (4) 如內地裁決除包含對已提交仲裁的事宜作出的決定(**仲裁決定**)外，亦包含對未有提交仲裁的事宜作出的決定(**非相關決定**)，則該裁決只在它關乎能與非相關決定分開的仲裁決定的範圍內，可予強制執行。(由 2013 年第 7 號第 17 條代替)

96. 本分部某些條文不適用於內地裁決

- (1) 除第 (2) 款另有規定外，本分部就內地裁決的強制執行具有效力。
- (2) 如 ——
- (a) 某內地裁決在 1997 年 7 月 1 日前的任何時間，屬當時有效的《舊有條例》第 IV 部所指的公約裁決；及
- (b) 該裁決曾在《2000 年仲裁(修訂)條例》(2000 年第 2 號)第 5 條生效前的任何時間，根據當時有效的《舊有條例》第 44 條遭拒絕強制執行，
- 則第 92 至 95 條並不就該裁決的強制執行具有效力。

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- (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.

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97. (由 2021 年第 1 號第 5 條廢除)

98. 保留某些內地裁決

儘管某內地裁決曾在 1997 年 7 月 1 日至《2000 年仲裁 (修訂) 條例》(2000 年第 2 號) 第 5 條生效的期間內的任何時間，根據當時有效的《舊有條例》在香港遭拒絕強制執行，則除第 96(2) 條另有規定外，該裁決仍可根據本分部強制執行，猶如該裁決先前未曾如此遭拒絕強制執行一樣。

第 4 分部 —— 澳門裁決的強制執行

(第 4 分部由 2013 年第 7 號第 18 條增補)

98A. 澳門裁決的強制執行

- (1) 在本分部的規限下，澳門裁決 ——
 - (a) 可藉原訟法庭訴訟而在香港強制執行；或
 - (b) 可按強制執行第 84 條適用的裁決的同樣方式，在香港強制執行，而該條據此而適用於澳門裁決，猶如在該條中提述裁決，是指澳門裁決。
- (2) 可按第 (1) 款所述般強制執行的澳門裁決，須就一切目的而言，視為對各方具約束力，而任何一方均可據此於在香港進行的任何法律程序中，倚據該裁決作為抗辯或抵銷，或以其他方式倚據該裁決。
- (3) 在本分部中，提述強制執行澳門裁決，須解釋為包括倚據澳門裁決。

97. (Repealed 1 of 2021 s. 5)

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.

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第 98B 條

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98B. 已獲部分履行的澳門裁決的強制執行

如澳門裁決並未藉在澳門或任何其他地方（香港除外）進行的強制執行法律程序獲完全履行，則該裁決在該程序中未獲履行的部分，可根據本分部強制執行。

98C. 為強制執行澳門裁決而提供證據

尋求強制執行澳門裁決的一方，須交出 ——

- (a) 該裁決的經妥為認證的正本，或該裁決的經妥為核證的副本；
- (b) 有關仲裁協議的正本，或有關仲裁協議的經妥為核證的副本；及
- (c) （如該裁決或協議並非採用一種或兩種法定語文）由官方翻譯人員、經宣誓的翻譯人員、外交代表或領事代理人核證的一種法定語文的譯本。

98D. 拒絕強制執行澳門裁決

- (1) 除按本條所述外，不得拒絕強制執行澳門裁決。
- (2) 如某人屬強制執行澳門裁決的對象，而該人證明有以下情況，則該裁決的強制執行可遭拒絕 ——
 - (a) 根據適用於有關仲裁協議的一方的法律，該方缺乏某些行為能力；
 - (b) 有關仲裁協議根據以下法律屬無效 ——
 - (i) （凡各方使該協議受某法律規限）該法律；或
 - (ii) （如該協議並無顯示規限法律）澳門法律；
 - (c) 該人 ——

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;

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- (i) 並沒有獲得關於委任仲裁員或關於仲裁程序的恰當通知；或
- (ii) 因其他理由而未能鋪陳其論據；
- (d) 除第 (4) 款另有規定外 ——
 - (i) 該裁決所處理的分歧，並非提交仲裁的條款所預期者，或該項分歧並不屬該等條款所指者；或
 - (ii) 該裁決包含對在提交仲裁範圍以外事宜的決定；
- (e) 有關仲裁當局的組成或仲裁的程序，並非按照 ——
 - (i) 各方的協議所訂者；或
 - (ii) (如沒有協議) 澳門法律所訂者；或
- (f) 該裁決 ——
 - (i) 對各方尚未具約束力；或
 - (ii) 已遭澳門的主管當局撤銷或暫時中止，或已根據澳門的法律撤銷或暫時中止。
- (3) 如有以下情況，澳門裁決的強制執行亦可遭拒絕 ——
 - (a) 根據香港法律，該裁決所關乎的事宜是不能藉仲裁解決的；或
 - (b) 強制執行該裁決，會違反公共政策。
- (4) 如澳門裁決除包含對已提交仲裁的事宜作出的決定 (**仲裁決定**) 外，亦包含對未有提交仲裁的事宜作出的決定 (**非相關決定**)，則該裁決只在它關乎能與非相關決定分開的仲裁決定的範圍內，可予強制執行。
- (5) 如任何人已向第 (2)(f) 款所述的主管當局，申請將澳門裁決撤銷或暫時中止，而某方向法院尋求強制執行該裁決，則該法院 ——
 - (a) 如認為合適，可將強制執行該裁決的法律程序押後；及

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- (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

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- (b) 可應尋求強制執行該裁決的該方的申請，命令屬強制執行的對象的人，提供保證。
- (6) 任何人不得針對第(5)款所指的法院決定或命令提出上訴。
-

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- 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.
-

第 10A 部

第三者資助仲裁

(第 10A 部由 2017 年第 6 號第 3 條增補)

第 1 分部 —— 目的

98E. 目的

本部的目的是 ——

- (a) 確保第三者資助仲裁不受個別普通法法則禁止；及
- (b) 就第三者資助仲裁訂定措施及保障。

第 2 分部 —— 釋義

98F. 釋義

在本部中 ——

出資第三者 (third party funder) ——

- (a) 指第 98J 條所指的出資第三者；及
- (b) 在第 4 分部中，包括潛在出資第三者；

仲裁 (arbitration) 包括本條例所指的以下程序 ——

- (a) 法院程序；
- (b) 在緊急仲裁員席前進行的程序；及
- (c) 調解程序；

仲裁資助 (arbitration funding) 就仲裁而言，指與該仲裁的任何費用有關的金錢或任何其他財務協助；

仲裁機構 (arbitration body) ——

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;

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第 98F 條

- (a) 就仲裁 ((b) 及 (c) 段所述的程序除外) 而言 —— 指仲裁庭或法院 (視屬何情況而定) ;
- (b) 就在緊急仲裁員席前進行的程序而言 —— 指緊急仲裁員 ; 或
- (c) 就調解程序而言 —— 指根據第 32 條委任的或第 33 條提述的調解員 (視屬何情況而定) ;

受資助方 (funded party) —— 參閱第 98I 條 ;

第三者資助仲裁 (third party funding of arbitration) —— 參閱第 98G 條 ;

提供 (provision) ——

- (a) 就向某人 (**收資者**) 提供仲裁資助而言 —— 包括按收資者的要求而向另一人 (例如收資者的法律代表) 提供該仲裁資助 ; 及
- (b) 就由某人 (**出資者**) 提供仲裁資助而言 —— 包括由出資者安排而由另一人提供該仲裁資助 ;

費用 (costs) 就仲裁而言, 指該仲裁的費用和開支, 並包括 ——

- (a) 仲裁前費用和開支 ; 及
- (b) 仲裁機構的收費和開支 ;

資助協議 (funding agreement) —— 參閱第 98H 條 ;

實務守則 (code of practice) 指根據第 4 分部發出的實務守則, 以不時修訂的版本為準 ;

緊急仲裁員 (emergency arbitrator) 具有第 22A 條所給予的涵義 ;

潛在出資第三者 (potential third party funder) 指以成為出資第三者為出發點而進行任何活動的人 ;

調解程序 (mediation proceedings) 指第 32(3) 或 33 條提述的調解程序 ;

諮詢機構 (advisory body) 指律政司司長根據第 98X(1) 條委任的人 ;

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- (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

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獲授權機構 (authorized body) 指律政司司長根據第 98X(2) 條委任的人。

98G. 第三者資助仲裁的涵義

第三者資助仲裁即就仲裁提供仲裁資助，而提供資助的情況符合以下說明 ——

- (a) 資助是根據資助協議提供的；
- (b) 資助是向受資助方提供的；
- (c) 資助是由出資第三者提供的；及
- (d) 提供資助，是藉此以換取由該出資第三者在限定情況下收取財務利益；限定情況是假若該仲裁按該資助協議所指屬成功者，該出資第三者方可收取該等財務利益。

98H. 資助協議的涵義

資助協議即是為第三者資助仲裁而訂立的協議，而該協議符合以下說明 ——

- (a) 屬書面協議；
- (b) 由受資助方與出資第三者訂立；及
- (c) 在第 3 分部的生效日期當日或之後訂立。

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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

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98I. 受資助方的涵義

- (1) 受資助方即符合以下說明的人 ——
 - (a) 屬某仲裁的一方；及
 - (b) 屬以下資助協議的一方：該協議訂定，某出資第三者須就該仲裁而向該人提供仲裁資助。
- (2) 在第 (1)(a) 款中，提述某仲裁的一方，包括 ——
 - (a) (如屬尚未展開的仲裁) 相當可能會是仲裁的一方的
人；及
 - (b) (如屬已完結的仲裁) 於仲裁當時是仲裁的一方的人。

98J. 出資第三者的涵義

- (1) 出資第三者即符合以下說明的人 ——
 - (a) 屬以下資助協議的一方：該協議訂定，該人須就某
仲裁而向某受資助方提供仲裁資助；及
 - (b) 除根據該資助協議外，在該仲裁中並無任何獲法律
承認的利害關係。
- (2) 在第 (1)(b) 款中，提述在某仲裁中並無利害關係的人，包
括 ——
 - (a) (如屬尚未展開的仲裁) 在仲裁所關乎的事宜中無利
害關係的人；及
 - (b) (如屬已完結的仲裁) 於仲裁當時在仲裁中無利害關
係的人。

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- (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.

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法禁止

編輯附註：

本分部尚未就《調解條例》(第 620 章)第 7A 條所述的調解而適用(參閱 2018 年第 260 號法律公告)。

98K. 個別普通法罪行不適用

普通法的助訟罪(包括普通法的包攬訴訟罪)及唆訟者罪，就第三者資助仲裁而言，並不適用。

98L. 個別侵權法律責任不適用

助訟的侵權法律責任(包括包攬訴訟的侵權法律責任)，就第三者資助仲裁而言，並不適用。

98M. 其他不合法事情，不受影響

凡任何法律規則關乎將合約視為違反公共政策或因其他原因而不合法的情況，第 98K 及 98L 條不影響該規則。

98N. 第 10A 部就非香港仲裁而局部適用

如某仲裁的仲裁地點是在香港以外地方，或某仲裁無仲裁地點，則儘管有第 5 條的規定，本部就該仲裁而適用，猶如——

- (a) 仲裁地點是在香港；及
- (b) 第 98F 條中**費用**的定義已被以下文本取代——
“**費用** (costs) 就仲裁而言，僅指就該仲裁而在香港提供的服務的費用和開支；”。

98O. 第 10A 部對在仲裁中代表某一方行事的律師不適用

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Prohibited by Particular Common Law Offences or Tort

Editorial Note:

This Division has yet to apply in relation to a mediation mentioned in section 7A of the Mediation Ordinance (Cap. 620) (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

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第 98P 條

- (1) 如律師就仲裁而在其法律執業的過程中代表某一方行事，則就該律師向任何一方提供仲裁資助而言，本部概不適用。
- (2) 如律師為某法律執業事務所（不論其描述或架構如何）工作，或屬此等事務所的成員，則在第 (1) 款中提述“律師”之處，包括該事務所，以及任何其他為該事務所工作，或屬該事務所的成員的律師。
- (3) 在本條中 ——
一方 (party) 指第 98I 條所指的仲裁的一方；
律師 (lawyer) 指 ——
 - (a) 登記於根據《法律執業者條例》(第 159 章) 第 29 條所備存的大律師登記冊上的人；
 - (b) 登記於根據該條例第 5 條所備存的律師登記冊上的人；或
 - (c) 合資格從事香港以外的司法管轄區的法律執業的人，包括該條例第 2(1) 條所界定的外地律師。

第 4 分部 —— 實務守則

98P. 可發出實務守則

- (1) 獲授權機構可發出實務守則，列出在通常情況下，期望出資第三者在進行與第三者資助仲裁相關的活動方面，須遵從的常規和標準。
- (2) 獲授權機構可修訂或撤銷實務守則。

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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.

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- (3) 第 98R 條就實務守則的修訂或撤銷而適用，一如該條就實務守則而適用一樣。

98Q. 實務守則的內容

- (1) 在不局限第 98P 條的原則下，實務守則在列出常規和標準時，可規定出資第三者須確保 ——
 - (a) 任何與第三者資助仲裁相關的推廣材料，均是清楚及不具誤導性的；
 - (b) 資助協議列出其主要特點、風險和條款，包括 ——
 - (i) 出資第三者就仲裁而言會擁有何等程度的控制權；
 - (ii) 出資第三者（或與出資第三者有聯繫的人），會否須為不利費用或不利訟費、保費、費用保證或訟費保證及其他財務法律責任，而對受資助方負上法律責任，以及所負法律責任的程度；及
 - (iii) 資助協議各方可於何時，和基於甚麼理由，終止資助協議，以及出資第三者可於何時，和基於甚麼理由，暫不提供仲裁資助；
 - (c) 受資助方在訂立資助協議前，就資助協議取得獨立法律意見；
 - (d) 出資第三者向受資助方提供諮詢機構的姓名或名稱以及聯絡詳情；
 - (e) 出資第三者備有足夠最低資本額；
 - (f) 出資第三者具備有效程序，供處理潛在、實際或視為存在的利益衝突；並且，該等程序加強對受資助方的保障；

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- (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;

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- (g) 出資第三者具備有效程序，供處理受資助方針對出資第三者而提出的投訴；並且，該等程序容許受資助方就合理的投訴取得和強制執行有意義的補救；
- (h) 出資第三者依循 (f) 及 (g) 段所述的程序；
- (i) 出資第三者就以下事項，向諮詢機構提交周年報表 ——
 - (i) 於報告期內收到的、受資助方針對出資第三者而提出的任何投訴；及
 - (ii) 法院或仲裁庭裁斷出資第三者沒有遵從實務守則或沒有遵守第 5 分部；及
- (j) 出資第三者向諮詢機構提供該機構合理地要求的任何其他資料。
- (2) 在不局限第 (1) 款的原則下，實務守則可 ——
 - (a) 指明須納入或不得納入資助協議的條款；及
 - (b) 指明須包括或不包括何等事項，方屬具備有效程序。
- (3) 實務守則 ——
 - (a) 可適用於一般情況或適用於特別情況；及
 - (b) 可就不同情況訂定不同條文，並可就不同個別情況或不同類別的個別情況作出規定。

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- (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.

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98R. 發出實務守則的過程

- (1) 在發出實務守則前，獲授權機構須 ——
 - (a) 就建議的實務守則 (**建議守則**) 諮詢公眾；及
 - (b) 就建議守則發布公告以告知公眾。
- (2) 在擬備建議守則作公眾諮詢的過程中，獲授權機構可諮詢對仲裁或第三者資助仲裁具備知識或經驗的人。
- (3) 上述公告須述明以下資料 ——
 - (a) 建議守則的目的和一般效力；
 - (b) 查閱建議守則文本的途徑；及
 - (c) 任何人均可在指明時間前，就建議守則向獲授權機構提出書面意見。
- (4) 獲授權機構在考慮所有在指明時間前提出的書面意見後，可藉於憲報刊登有關實務守則 (經修改或不經修改者) 而發出該實務守則。
- (5) 實務守則自其根據第 (4) 款於憲報刊登當日起實施。
- (6) 實務守則並非附屬法例。

98S. 不遵從實務守則

- (1) 凡任何人沒有遵從實務守則任何條文，該人不會僅因此事，而可在司法或其他程序中被起訴。

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

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(2) 然而 ——

- (a) 在任何法院或仲裁庭席前進行的程序中，實務守則可獲接納為證據；及
- (b) 如有任何遵從或沒有遵從實務守則條文的事項，而該事項攸關正由任何法院或仲裁庭決定的問題，則該法院或仲裁庭可考慮該事項。

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.

第 5 分部 —— 其他措施及保障

Division 5—Other Measures and Safeguards

編輯附註：

本分部尚未就《調解條例》(第 620 章)第 7A 條所述的調解而適用 (參閱 2018 年第 260 號法律公告)。

Editorial Note:

This Division has yet to apply in relation to a mediation mentioned in section 7A of the Mediation Ordinance (Cap. 620) (see L.N. 260 of 2018).

98T. 為第三者資助仲裁而傳達資料

- (1) 儘管有第 18(1) 條的規定，任何一方均可為以下目的而向某人傳達該條提述的資料：獲取或尋求該人提供的第三者資助仲裁。
- (2) 然而，除非有以下情況，否則凡某人根據第 (1) 款獲傳達資料，該人不得再傳達該等資料 (**再傳達資料**) ——
 - (a) 再傳達資料是在香港或香港以外地方的法院或其他司法當局席前進行的法律程序中作出 ——
 - (i) 以保障或體現該人的法律權利或利益；或
 - (ii) 以強制執行或質疑在有關仲裁中作出的裁決；
 - (b) 再傳達資料是向任何政府團體、規管團體、法院或審裁處作出，而在法律上，該人有責任作出該項傳達；或
 - (c) 再傳達資料是向該人的專業顧問作出，並且是為了取得與有關第三者資助仲裁相關的意見。

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;

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- (3) 如某人根據第 (2)(c) 款，向其專業顧問再傳達資料，則第 (2) 款適用於該專業顧問，猶如該專業顧問是該人一樣。
- (4) 在本條中 ——
傳達 (communicate) 包括發表或披露。

98U. 披露第三者資助仲裁

- (1) 如訂立資助協議，受資助方須就以下事項發出書面通知 ——
 - (a) 已訂立資助協議一事；及
 - (b) 出資第三者的姓名或名稱。
- (2) 上述通知須於以下時間或期間發出 ——
 - (a) 如資助協議是在仲裁展開時或之前訂立的 —— 在仲裁展開時；或
 - (b) 如資助協議是在仲裁展開之後訂立的 —— 在訂立資助協議後的 15 日內。
- (3) 上述通知須向以下人士發出 ——
 - (a) 仲裁的其他每一方；及
 - (b) 仲裁機構。
- (4) 就第 (3)(b) 款而言，如在第 (2) 款指明須發出通知的時間或期間完結時，有關仲裁並無仲裁機構，則通知須於該仲裁有仲裁機構後，立即向該仲裁機構發出。

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- (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

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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. 披露第三者資助仲裁完結

- (1) 如資助協議完結（因仲裁已完結者除外），受資助方須就以下事項發出書面通知——
 - (a) 資助協議已完結一事；及
 - (b) 資助協議完結的日期。
- (2) 上述通知須於資助協議完結後的 15 日內發出。
- (3) 上述通知須向以下人士發出——
 - (a) 仲裁的其他每一方；及
 - (b) 仲裁機構（如有的話）。

98W. 不遵守第 5 分部

- (1) 凡任何人沒有遵守本分部，該人不會僅因此事，而可在司法或其他程序中被起訴。
- (2) 然而，如有任何遵守或沒有遵守本分部的事項，而該事項攸關正由任何法院或仲裁庭決定的問題，則該法院或仲裁庭可考慮該事項。

第 6 分部 —— 雜項條文

98X. 諮詢機構及獲授權機構的委任

- (1) 律政司司長可藉於憲報刊登的公告，委任律政司司長認為適宜監察及檢討本部的實施的人為諮詢機構。

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.

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- (2) 律政司司長可藉於憲報刊登的公告，委任律政司司長認為適宜行使第 98P 條所賦權力的人為獲授權機構。
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- (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.
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第 11 部**可以明文選擇或自動適用的條文***(格式變更——2015 年第 3 號編輯修訂紀錄)***99. 仲裁協議可明文規定供選用的條文**

仲裁協議可明文規定以下任何或全部條文適用——

- (a) 附表 2 第 1 條；
- (b) 附表 2 第 2 條；
- (c) 附表 2 第 3 條；
- (d) 附表 2 第 4 及 7 條；
- (e) 附表 2 第 5、6 及 7 條。

100. 供選用的條文在某些情況下自動適用

除第 102 條另有規定外，附表 2 所有條文適用於符合以下說明的仲裁協議——

- (a) 在本條例生效前訂立，並規定該協議所指的仲裁為本地仲裁；或
- (b) 在本條例生效後的 6 年期間內的任何時間訂立，並規定該協議所指的仲裁為本地仲裁。

101. 根據第 100 條自動適用的供選用的條文當作適用於香港建造分判個案**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) 如 ——
- (a) 某建造合約內包括了第 19 條所提述的任何形式的仲裁協議，而根據第 100(a) 或 (b) 條，附表 2 的所有條文適用於該仲裁協議；
 - (b) 根據該建造合約而進行的建造工程的全部或任何部分 (**有關的工程**)，根據另一建造合約 (**分判合約**) 分判予任何人；及
 - (c) 該分判合約亦包括了第 19 條所提述的任何形式的仲裁協議 (**分判各方的仲裁協議**)，
- 則除第 102 條另有規定外，附表 2 的所有條文亦適用於該分判各方的仲裁協議。
- (2) 除非分判各方的仲裁協議是第 100(a) 或 (b) 條所提述的仲裁協議，否則在以下情況下，第 (1) 款不適用 ——
- (a) 有關的工程的全部或任何部分，根據分判合約而分判予某人，而 ——
 - (i) 該人是通常居於香港以外地方的自然人；
 - (ii) 該人 ——
 - (A) 是根據香港以外地方的法律成立的法人團體；或
 - (B) 是一個法人團體，而其中央管理及控制是在香港以外地方行使的；或
 - (iii) 該人 ——
 - (A) 是根據香港以外地方的法律組成的組織；或
 - (B) 是一個組織，而其中央管理及控制是在香港以外地方行使的；
 - (b) 有關的工程的全部或任何部分，根據分判合約而分判予某人，而該人在香港沒有營業地點；或

- (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

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- (c) 根據分判合約而分判予某人的有關的工程有相當部分是在香港以外地方履行的。
- (3) 如 ——
- (a) 根據第 (1) 款，附表 2 的所有條文適用於分判各方的仲裁協議；
- (b) 根據有關的分判合約而分判予某人的有關的工程的全部或任何部分，根據另一建造合約 (**再分判合約**) 再分判予另一人；及
- (c) 該再分判合約亦包括了第 19 條所提述的任何形式的仲裁協議，
- 則在第 (2) 款的規限下，第 (1) 款具有效力，而除第 102 條另有規定外，附表 2 的所有條文適用於如此包括在該再分判合約內的仲裁協議，猶如該再分判合約是第 (1) 款所指的分判合約一樣。
- (4) 在本條中 ——
- 建造工程** (construction operations) 具有《建造業議會條例》(第 587 章) 附表 1 給予該詞的涵義；
- 建造合約** (construction contract) 具有《建造業議會條例》(第 587 章) 第 2(1) 條給予該詞的涵義。

102. 供選用的條文不得自動適用的情況

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- (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

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- (1) 如 —— (由 2015 年第 11 號第 4 條修訂)
- (a) 有關的仲裁協議的各方，以書面方式協議第 100 條不適用；或
 - (b) 有關的仲裁協議明文規定 ——
 - (i) 第 100 或 101 條不適用；或
 - (ii) 附表 2 第 2、3、4、5、6 或 7 條適用或不適用，
(由 2015 年第 11 號第 4 條修訂)
- 則第 100 及 101 條不適用。
- (2) 第 (1)(b)(ii) 款並不減損第 99 條的施行。(由 2015 年第 11 號第 4 條增補)

103. 根據本部適用條文

如根據本部而適用的任何條文，與本條例的任何其他條文之間有矛盾或抵觸之處，則在該矛盾或抵觸之處的範圍內，首述的條文凌駕該其他條文。

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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.

第 11A 部**關乎知識產權權利的仲裁***(第 11A 部由 2017 年第 5 號第 5 條增補)***103A. 釋義**

在本部中——

知識產權 (IPR) —— 見第 103B 條；

知識產權爭議 (IPR dispute) —— 見第 103C 條。

103B. 釋義：知識產權

- (1) 在本部中，知識產權權利 (**知識產權**) 指 ——
- (a) 專利；
 - (b) 商標；
 - (c) 地理標誌；
 - (d) 外觀設計；
 - (e) 版權或有關權利；
 - (f) 域名；
 - (g) 集成電路的布圖設計 (拓撲圖)；
 - (h) 植物品種權利；
 - (i) 對機密資料、商業秘密或工業知識享有的權利；
 - (j) 藉提起關於假冒的訴訟 (或相類的針對不公平競爭的訴訟) 以保護商譽的權利；或
 - (k) 不論屬何性質的任何其他知識產權。
- (2) 在本部中，提述某項知識產權 ——
- (a) 不論該項知識產權，可否經註冊而受到保護；及
 - (b) 不論該項知識產權，是否於香港註冊或於香港存在，

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—

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即屬提述該項知識產權。

- (3) 如某項知識產權，可經註冊而受到保護，則在本部中，提述該項知識產權，包括該項知識產權的註冊申請。
- (4) 在本條中——
- 註冊** (registration) 就某項知識產權而言，包括批予該項知識產權。

103C. 釋義：知識產權爭議

在本部中，關於知識產權的爭議 (**知識產權爭議**) 包括——

- (a) 關於以下事宜的爭議：知識產權可否強制執行；侵犯知識產權；或知識產權的存在、有效性、擁有權、範圍、期限或任何其他方面；
- (b) 關於知識產權交易的爭議；及
- (c) 關於須就知識產權支付的補償的爭議。

103D. 可就知識產權爭議進行仲裁

- (1) 知識產權爭議能藉仲裁，在爭議的各方之間解決。
- (2) 在確定各方之間是否有第 19(1) 條 (《貿法委示範法》第 7(1) 條的備選案文一是藉該第 19(1) 條而具有效力) 所指的仲裁協議時，各方如達成協議，將某項知識產權爭議交付仲裁，該項協議即視為各方達成內容如下的協議：將各方之間一項確定的法律關係中已經發生或可能發生的爭議，交付仲裁。
- (3) 不論有關知識產權爭議在有關仲裁中，屬主要爭論點或附帶爭論點，第 (1) 款均適用。
- (4) 為施行第 (1) 款，某項知識產權爭議不會僅因有以下情況，而不能藉仲裁解決——

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- (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.

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- (a) 香港法律或其他地方的法律，給予某指明實體管轄權，裁定該項爭議；及
 - (b) 該等法律並無述明該項爭議有可能藉仲裁解決。
- (5) 在第 (4)(a) 款中——
- 指明實體** (specified entity) 指香港法律或其他地方的法律下的任何以下實體——
- (a) 法院；
 - (b) 審裁處；
 - (c) 出任政務或行政職位的人；
 - (d) 任何其他實體。
- (6) 根據第 70 條給予仲裁庭的、在裁定某項知識產權爭議時判給補救或濟助的權力，受該項爭議的各方之間的協議所規限。

103E. 涉及知識產權的裁決的效力

- (1) 如在仲裁程序中作出裁決，而該裁決就知識產權爭議作出決定，則本條適用。
- (2) 如某實體是有關知識產權的第三方特許持有人，則此事本身並不使該實體就第 73(1)(b) 條而言，成為透過或藉著有關仲裁程序的任何一方提出申索的人。
- (3) 然而，第三方特許持有人與有關仲裁程序的任何一方之間的任何權利或法律責任，不受第 (2) 款影響，而不論該項權利或法律責任是——
 - (a) 合約產生；或
 - (b) 藉法律的施行而產生的。

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- (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

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(4) 在本條中 ——

第三方特許持有人 (third party licensee) 就仲裁程序中受爭議的知識產權而言，指符合以下說明的實體 ——

- (a) 在某特許下，屬該項知識產權的特許持有人 (不論是否專用特許持有人)，而該特許是由該仲裁程序的一方批出的；但
- (b) 並非該仲裁程序的一方。

103F. 對涉及知識產權的裁決的追訴

- (1) 就第 81 條 (《貿法委示範法》第 34(2)(b)(i) 條是藉該第 81 條而具有效力) 而言，爭議事項不會僅因它關乎知識產權爭議，而不能根據香港法律，藉仲裁解決。
- (2) 就第 81 條 (《貿法委示範法》第 34(2)(b)(ii) 條是藉該第 81 條而具有效力) 而言，就某爭議事項作出的裁決，不會僅因該事項關乎知識產權爭議，而與香港公共政策相抵觸。

103G. 涉及知識產權的裁決：承認及強制執行

- (1) 就第 86(2)(a)、89(3)(a)、95(3)(a) 及 98D(3)(a) 條而言，某事宜不會僅因它關乎知識產權爭議，而不能根據香港法律，藉仲裁解決。
- (2) 就第 86(2)(b)、89(3)(b)、95(3)(b) 及 98D(3)(b) 條而言，強制執行就某事宜作出的裁決，不會僅因該事宜關乎知識產權爭議，而違反香港公共政策。

103H. 登錄依照涉及知識產權的裁決的條款的判決

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(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

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第 11A 部
第 103I 條

- (1) 在以下情況下，本條適用——
- (a) 在仲裁程序中作出裁決(不論是在香港作出，或在香港以外作出)，而該裁決就知識產權爭議作出決定；及
 - (b) 有依照該裁決的條款的判決，根據第 84、87、92 或 98A 條登錄。
- (2) 第 73(1) 條就有關判決而適用，猶如在該條中，提述仲裁庭依據仲裁協議作出的裁決，即提述該判決。
- (3) 在本條中——
- 裁決** (award) 包括屬宣布性質的裁決。

103I. 可在仲裁程序中對專利的有效性提出爭論

《專利條例》(第 514 章) 第 101(2) 條，並不阻止任何一方在仲裁程序中，對某項專利的有效性，提出爭論。

103J. 關於短期專利的仲裁程序

- (1) 不論《專利條例》第 129(1) 條 (a)、(b) 或 (c) 段所述的情況是否已出現，仲裁協議的一方如屬短期專利的所有人，該方可展開仲裁程序，以強制執行根據《專利條例》就該項專利賦予的權利。
- (2) 然而，如有關仲裁協議的各方另有協議，則第 (1) 款不適用。
- (3) 如有人展開仲裁程序，以強制執行根據《專利條例》就短期專利賦予的權利，《專利條例》第 129(2) 及 (3) 條即適用於該程序，猶如該程序是根據《專利條例》第 129(1) 條展開的強制執行情序一樣。
- (4) 然而，如在本條生效日期 * 之前，有人已展開仲裁，以強制執行根據《專利條例》就短期專利賦予的權利，則在

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- (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.

103J. Arbitral proceedings in relation to short-term patents

- (1) A party to an arbitration agreement who is the proprietor of a short-term patent may commence arbitral proceedings to enforce any right conferred under the PO in relation to the patent, whether or not paragraph (a), (b) or (c) of section 129(1) of the PO has been satisfied.
- (2) However, subsection (1) does not apply if the parties to the arbitration agreement agree otherwise.
- (3) If arbitral proceedings are commenced to enforce any right conferred under the PO in relation to a short-term patent, section 129(2) and (3) of the PO applies to the arbitral proceedings as if the proceedings were enforcement proceedings commenced under section 129(1) of the PO.

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第 103J 條

緊接該生效日期 * 之前有效的《專利條例》第 129 條，繼續適用於該仲裁及其所有相關程序。

(5) 在本條中 ——

相關程序 (related proceedings) 就某仲裁而言，包括在該仲裁中的裁決遭撤銷後恢復進行的仲裁程序；

《專利條例》 (PO) 指《專利條例》(第 514 章)；

短期專利 (short-term patent) 具有《專利條例》第 2(1) 條所給予的涵義。

編輯附註：

* 生效日期：2019 年 12 月 19 日。

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(4) However, if, before the commencement date* of this section, an arbitration has commenced to enforce any right conferred under the PO in relation to a short-term patent, section 129 of the PO, as in force immediately before that commencement date*, continues to apply to the arbitration and all of its related proceedings.

(5) In this section—

PO (《專利條例》) means the Patents Ordinance (Cap. 514);

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;

short-term patent (短期專利) has the meaning given by section 2(1) of the PO.

Editorial Note:

* Commencement date: 19 December 2019.

第 12 部**雜項***(格式變更——2015 年第 3 號編輯修訂紀錄)***104. 仲裁庭或調解員須為某些作為及不作為負上法律責任**

- (1) 仲裁庭或調解員在法律上，須為——
- (a) 該仲裁庭或調解員；或
 - (b) 該仲裁庭的僱員或代理人，或該調解員的僱員或代理人，

在行使或執行（或在宣稱行使或執行）該仲裁庭的仲裁職能或該調解員的職能方面作出或不作出的作為，負上法律責任，但只有在證明該作為是不誠實地作出或該不作為是不誠實的情況下，該仲裁庭或調解員方須如此負上法律責任。

- (2) 仲裁庭的僱員或代理人，或調解員的僱員或代理人，在法律上，須為其在行使或執行（或在宣稱行使或執行）該仲裁庭的仲裁職能或該調解員的職能方面作出或不作出的作為，負上法律責任，但只有在證明該作為是不誠實地作出或該不作為是不誠實的情況下，該僱員或代理人方須如此負上法律責任。
- (3) 在本條中，**調解員** (mediator) 指根據第 32 條委任的或第 33 條所提述的調解員。

105. 委任人及管理人只須為某些作為及不作為負上法律責任

- (1) 凡任何人——
- (a) 委任任何仲裁庭或調解員；或
 - (b) 行使或執行與仲裁程序或調解程序相關連、並具行政性質的任何其他職能，

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

則該人在法律上，須為在行使或執行（或在宣稱行使或執行）該職能方面作出或不作出的作為所造成的後果，負上法律責任，但只有在證明該作為是不誠實地作出或該不作為是不誠實的情況下，該人方須如此負上法律責任。

(2) 凡任何作為是——

- (a) 由仲裁程序或調解程序的一方；或
- (b) 由該方的法律代表或顧問，

在行使或執行（或在宣稱行使或執行）與該程序相關連、並具行政性質的任何職能方面作出或不作出的，則第(1)款不適用於該作為。

(3) 凡任何人的僱員或代理人作出或不作出第(1)款所提述的作為，則該僱員或代理人在法律上，須為該作為或該不作為所造成的後果，負上法律責任，但只有在證明有以下情況下，該僱員或代理人方須如此負上法律責任——

- (a) 該作為是不誠實地作出的，或該不作為是不誠實的；而
- (b) 該僱員或代理人參與該項不誠實的作為或不作為。

(4) 第(1)款所提述的人或該人的僱員或代理人，不得只因他行使或執行該款所提述的任何職能，而在法律上為——

- (a) 有關的仲裁庭或調解員；或
- (b) 該仲裁庭的僱員或代理人，或該調解員的僱員或代理人，

在行使或執行（或在宣稱行使或執行）該仲裁庭的仲裁職能或該調解員的職能方面作出或不作出的作為所造成的後果，負上法律責任。

(5) 在本條中——

委任 (appoint) 包括提名和指定；

調解員 (mediator) 的涵義與第 104 條中該詞的涵義相同，而**調解程序** (mediation proceedings) 須據此解釋。

- (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.

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第 12 部
第 106 條

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106. 法院規則

- (1) 根據《高等法院條例》(第 4 章)第 54 條(法院規則)訂立法院規則的權力，包括為以下事項訂立法院規則的權力——
- (a) 申請第 45(2) 條所指的臨時措施，或申請第 60(1) 條所指的命令；或
- (b) 在司法管轄權範圍外送達該臨時措施或命令的申請。
- (2) 任何憑藉本條訂立的規則，可包括訂立規則的機構認為有需要或適宜的附帶、補充及相應條文。

107. 根據本條例提出申請等

除非另有表明，否則根據本條例向法院提出的申請、請求或上訴，均須按照《高等法院規則》(第 4 章，附屬法例 A) 提出。

108. 本條例所指的原訟法庭決定等

本條例所指的原訟法庭決定、裁定、指示或裁決，須為《高等法院條例》(第 4 章)第 14 條(民事事宜的上訴)的目的，視為原訟法庭判決。

(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).

第 13 部**廢除、保留及過渡性條文***(格式變更——2015 年第 3 號編輯修訂紀錄)***109.** *(已失時效而略去——2015 年第 3 號編輯修訂紀錄)***110. 廢除附屬法例的效果**

任何根據《舊有條例》訂立的、在本條例生效時正有效的附屬法例，在不與本條例相抵觸的範圍內繼續有效，並就所有目的而言具有效力，猶如該附屬法例是根據本條例訂立一樣。

111. 保留及過渡性條文

- (1) 附表 3 第 1 部訂定於本條例生效時即適用或關乎本條例的生效的保留條文及過渡性安排。*(由 2015 年第 11 號第 5 條修訂)*
- (2) 附表 3 第 2 部訂定於《2015 年仲裁(修訂)條例》(2015 年第 11 號)生效*時即適用或關乎該條例的生效*的保留條文及過渡性安排。*(由 2015 年第 11 號第 5 條增補)*
- (3) 附表 3 第 3 部訂定關乎《2017 年仲裁(修訂)條例》(2017 年第 5 號)的保留條文及過渡安排。*(由 2017 年第 5 號第 6 條增補)*

* 生效日期：2015 年 7 月 17 日。

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.

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(已失時效而略去——2015 年第 3 號編輯修訂紀錄)

112. (已失時效而略去——2015 年第 3 號編輯修訂紀錄)

Part 14

(Omitted as spent—E.R. 3 of 2015)

112. (Omitted as spent—E.R. 3 of 2015)

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附表 1

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附表 1

[第 2 條]

《貿易法委員會國際商事仲裁示範法》

(格式變更——2018 年第 1 號編輯修訂紀錄)

(1985 年 6 月 21 日聯合國國際貿易法委員會通過，
2006 年 7 月 7 日聯合國國際貿易法委員會修訂)

第一章．總則

第 1 條．適用範圍*

(1) 本法適用於國際商事**仲裁，但須服從在本國與其他任何一國或多國之間有效力的任何協定。

(2) 本法之規定，除第 8、9、17H、17I、17J、35 及 36 條外，只適用於仲裁地點在本國領土內的情況。

(第 1(2) 條經由委員會 2006 年第三十九屆會議修訂)

(3) 有下列情形之一的，仲裁為國際仲裁：

(a) 仲裁協議的各方當事人在締結協議時，其營業地點位於不同的國家；或

(b) 下列地點之一位於各方當事人營業地點所在國以外：

(i) 仲裁協議中確定的或根據仲裁協議而確定的仲裁地點；

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:

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附表 1

(ii) 履行商事關係的大部分義務的任何地點或與爭議事項關係最密切的地點；或

(c) 各方當事人明確同意，仲裁協議的標的與一個以上的國家有關。

(4) 就本條第 (3) 款而言：

(a) 一方當事人有一個以上營業地點的，營業地點為與仲裁協議關係最密切的營業地點；

(b) 一方當事人沒有營業地點的，以其慣常住所為準。

(5) 本法不得影響規定某些爭議不可交付仲裁或僅根據本法之外的規定才可以交付仲裁的本國其他任何法律。

[註：本條例第 5 條取代本示範法第 1 條而具有效力——參看本條例第 7 條。]

第 2 條. 定義及解釋規則

在本法中：

(a) “仲裁”是指無論是否由常設仲裁機構進行的任何仲裁；

(b) “仲裁庭”是指一名獨任仲裁員或一個仲裁團；

(c) “法院”是指一國司法系統的一個機構或機關；

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(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;

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(d) 本法的規定，除第 28 條外，允許當事人自由決定某一問題時，這種自由包括當事人授權第三人（包括機構）作出此種決定的權利；

(e) 本法的規定提到當事人已達成協議或可能達成協議的事實時，或在任何其他情況下援引當事人的一項協議時，此種協議包括其所援引之任何仲裁規則；

(f) 本法的規定，除第 25(a) 和 32(2)(a) 條外，提及請求時，也適用於反請求；提及答辯時，也適用於對這種反請求的答辯。

[註：本條例第 2 條取代本示範法第 2 條而具有效力——參看本條例第 8 條。]

第 2A 條． 國際淵源和一般原則
(經由委員會 2006 年第三十九屆會議通過)

(1) 在解釋本法時，應考慮到其國際淵源和促進其統一適用及遵循誠信原則的必要性。

(2) 與本法所管轄的事項有關的問題，在本法中未予明確解決的，應依照本法所基於的一般原則加以解決。

[註：參看本條例第 9 條。]

第 3 條． 收到書面通訊

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(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

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(1) 除非當事人另有約定：

(a) 任何書面通訊，經當面遞交收件人，或投遞到收件人的營業地點、慣常住所或通信地址的，或經合理查詢不能找到上述任一地點而以掛號信或能提供作過投遞企圖的記錄的其他任何方式投遞到收件人最後一個為人所知的營業地點、慣常住所或通信地址的，視為已經收到；

(b) 通訊視為已於以上述方式投遞之日收到。

(2) 本條規定不適用於法院程序中的通訊。

[註：參看本條例第 10 條。]

(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.]

第 4 條． 放棄提出異議的權利

一方當事人知道本法中當事人可以背離的任何規定或仲裁協議規定的任何要求未得到遵守，但仍繼續進行仲裁而沒有不過分遲延地或在為此訂有時限的情況下沒有在此時限內對此種不遵守情事提出異議的，應視為已放棄其提出異議權利。

[註：參看本條例第 11 條。]

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.]

第 5 條． 法院干預的限度

由本法管轄的事情，任何法院不得干預，除非本法有此規定。

Article 5. Extent of court intervention

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[註：參看本條例第 12 條。]

第 6 條． 法院或其他機構對仲裁予以協助和監督的某種職責

第 11(3)、11(4)、13(3)、14、16(3) 和 34(2) 條所指的職責，應由
[本示範法每一頒布國具體指明履行這些職責的一個法院或多個法院或其他有管轄權的機構履行。]

[註：本條例第 13(2) 至 (6) 條取代本示範法第 6 條而具有效力——參看本條例第 13 條。]

第二章． 仲裁協議

備選案文一

第 7 條． 仲裁協議的定義和形式
(經由委員會 2006 年第三十九屆會議通過)

(1) “仲裁協議”是指當事人同意將他們之間一項確定的契約性或非契約性的法律關係中已經發生或可能發生的一切爭議或某些爭議交付仲裁的協議。仲裁協議可以採取合同中的仲裁條款形式或單獨的協議形式。

(2) 仲裁協議應為書面形式。

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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.

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(3) 仲裁協議的內容以任何形式記錄下來的，即為書面形式，無論該仲裁協議或合同是以口頭方式、行為方式還是其他方式訂立的。

(4) 電子通信所含信息可以調取以備日後查用的，即滿足了仲裁協議的書面形式要求；“電子通信”是指當事人以數據電文方式發出的任何通信；“數據電文”是指經由電子手段、磁化手段、光學手段或類似手段生成、發送、接收或儲存的信息，這些手段包括但不限於電子數據交換、電子郵件、電報、電傳或傳真。

(5) 另外，仲裁協議如載於相互往來的索賠聲明和抗辯聲明中，且一方當事人聲稱有協議而另一方當事人不予否認的，即為書面協議。

(6) 在合同中提及載有仲裁條款的任何文件的，只要此種提及可使該仲裁條款成為該合同一部分，即構成書面形式的仲裁協議。

備選案文二

第 7 條. 仲裁協議的定義 (經由委員會 2006 年第三十九屆會議通過)

“仲裁協議”是指當事人同意將其之間一項確定的契約性或非契約性的法律關係中已經發生或可能發生的一切爭議或某些爭議交付仲裁的協議。

[註：參看本條例第 19 條。本條備選案文一獲採納。]

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(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.]

第 8 條． 仲裁協議和向法院提出的實體性申訴

- (1) 就仲裁協議的標的向法院提起訴訟時，一方當事人在不遲於其就爭議實體提出第一次申述時要求仲裁的，法院應讓當事人訴諸仲裁，除非法院認定仲裁協議無效、不能實行或不能履行。
- (2) 提起本條第(1)款所指訴訟後，在法院對該問題未決期間，仍然可以開始或繼續進行仲裁程序，並可作出裁決。

[註：參看本條例第 20 條。]

第 9 條． 仲裁協議和法院的臨時措施

在仲裁程序開始前或進行期間，一方當事人請求法院採取臨時保全措施和法院准予採取這種措施，並不與仲裁協議相抵觸。

[註：參看本條例第 21 條。]

第三章． 仲裁庭的組成

第 10 條． 仲裁員人數

- (1) 當事人可以自由確定仲裁員的人數。
- (2) 未作此確定的，仲裁員的人數應為三名。

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.

[註：本示範法第 10(2) 條不適用 —— 參看本條例第 23 條。]

[Note: Article 10(2) is not applicable—see section 23.]

第 11 條. 仲裁員的指定

Article 11. Appointment of arbitrators

(1) 除非當事人另有協議，不應以所屬國籍為由排除任何人擔任仲裁員。

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

(2) 當事人可以自由約定指定一名或多名仲裁員的程序，但須遵從本條第 (4) 和 (5) 款的規定。

(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) 未達成此種約定的，

(3) Failing such agreement,

(a) 在仲裁員為三名的仲裁中，由一方當事人指定一名仲裁員，並由如此指定的兩名仲裁員指定第三名仲裁員；一方當事人在收到對方當事人提出指定仲裁員的要求後三十天內未指定仲裁員的，或兩名仲裁員在被指定後三十天內未就第三名仲裁員達成協議的，經一方當事人請求，由第 6 條規定的法院或其他機構加以指定；

(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) 在獨任仲裁員的仲裁中，當事人未就仲裁員達成協議的，經一方當事人請求，由第 6 條規定的法院或其他機構加以指定。

(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) 根據當事人約定的指定程序，有下列情形之一的，

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

(a) 一方當事人未按這種程序規定的要求行事的，或

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

(b) 當事人或兩名仲裁員未能根據這種程序達成預期的協議的，或

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

(c) 第三人(包括機構)未履行根據此種程序所委託的任何職責的，任何一方當事人均可請求第 6 條規定的法院或其他機構採取必要措施，除非指定仲裁員程序的協議訂有確保能指定仲裁員的其他方法。

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

(5) 本條第 (3) 或 (4) 款交託由第 6 條規定的法院或其他機構受理的事項一經作出裁定，不得上訴。該法院或其他機構在指定仲裁員時應

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適當顧及當事人約定的仲裁員所需具備的任何資格，並適當顧及有可能確保指定獨立和公正的仲裁員的考慮因素；在指定獨任仲裁員或第三名仲裁員時，還應考慮到指定一名非當事人國籍的仲裁員的可取性。

[註：參看本條例第 24 條。]

第 12 條. 迴避的理由

(1) 在被詢及有關可能被指定為仲裁員之事時，被詢問人應該披露可能引起對其公正性或獨立性產生正當懷疑的任何情況。仲裁員自被指定之時起並在整個仲裁程序進行期間，應毫不遲延地向各方當事人披露任何此類情況，除非其已將此情況告知各方當事人。

(2) 只有存在引起對仲裁員的公正性或獨立性產生正當懷疑的情況或仲裁員不具備當事人約定的資格時，才可以申請仲裁員迴避。當事人只有根據其作出指定之後知悉的理由，才可以對其所指定的或其所參與指定的仲裁員提出迴避。

[註：參看本條例第 25 條。]

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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.]

第 13 條． 申請迴避的程序

- (1) 當事人可自由約定申請仲裁員迴避的程序，但須遵從本條第 (3) 款的規定。
- (2) 未達成此種約定的，擬對仲裁員提出迴避申請的當事人應在知悉仲裁庭的組成或知悉第 12(2) 條所指的任何情況後十五天內向仲裁庭提出書面陳述，說明提出迴避申請的理由。除非被申請迴避的仲裁員辭職或對方當事人同意所提出的迴避，仲裁庭應就是否迴避作出決定。
- (3) 根據當事人約定的任何程序或本條第 (2) 款的程序而提出的迴避不成立的，提出迴避申請的一方當事人可以在收到駁回其所提出的迴避申請的決定通知後三十天內，請求第 6 條規定的法院或其他機構就是否迴避作出決定，該決定不得上訴；在對該請求未決期間，仲裁庭包括被申請迴避的仲裁員可以繼續進行仲裁程序和作出裁決。

[註：參看本條例第 26 條。]

第 14 條． 未行事或不能行事

- (1) 仲裁員無履行職責的法律行為能力或事實行為能力或者由於其他原因未能毫無不過分遲延地行事的，其若辭職或者當事人約定其委任終止的，其委任即告終止。但對上述任何原因仍有爭議的，任何一方

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

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當事人可以請求第 6 條規定的法院或其他機構就是否終止委任作出決定，該決定不得上訴。

(2) 依照本條或第 13(2) 條一名仲裁員辭職或者一方當事人同意終止對一名仲裁員的委任的，並不意味着本條或第 12(2) 條所指任何理由的有效性得到承認。

[註：參看本條例第 27 條。]

第 15 條． 指定替代仲裁員

依照第 13 或 14 條的規定或因為仲裁員由於其他任何原因辭職或因為當事人約定解除仲裁員的委任或在其他任何情況下終止仲裁員的委任的，應當依照指定所被替換的仲裁員時適用的規則指定替代仲裁員。

[註：參看本條例第 28 條。]

第四章． 仲裁庭的管轄權

第 16 條． 仲裁庭對其管轄權作出裁定的權力

(1) 仲裁庭可以對其管轄權，包括對關於仲裁協議的存在或效力的任何異議作出裁定。為此目的，構成合同一部分的仲裁條款應當視為獨立於合同其他條款的一項協議。仲裁庭作出關於合同無效的決定，在法律上不導致仲裁條款無效。

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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

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(2) 有關仲裁庭無管轄權的抗辯不得在提出答辯書之後提出。一方當事人指定或參與指定仲裁員的事實，不妨礙其提出此種抗辯。有關仲裁庭超越其權限範圍的抗辯，應當在仲裁程序中出現被指稱的越權事項時立即提出。在其中任何一種情況下，仲裁庭如認為遲延有正當理由的，可准許推遲提出抗辯。

(3) 仲裁庭可以根據案情將本條第(2)款所指抗辯作為一個初步問題裁定或在實體裁決中裁定。仲裁庭作為一個初步問題裁定其擁有管轄權的，任何一方當事人可在收到裁定通知後三十天內請求第 6 條規定的法院對此事項作出決定，該決定不得上訴；在對該請求未決期間，仲裁庭可以繼續進行仲裁程序和作出裁決。

[註：參看本條例第 34 條。]

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.]

第四 A 章． 臨時措施和初步命令

(經由委員會 2006 年第三十九屆會議通過)

第 1 節． 臨時措施

第 17 條． 仲裁庭下令採取臨時措施的權力

(1) 除非當事人另有約定，仲裁庭經一方當事人請求，可以准予採取臨時措施。

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.

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(2) 臨時措施是以裁決書為形式的或另一種形式的任何短期措施，仲裁庭在發出最後裁定爭議的裁決書之前任何時候，以這種措施責令一方當事人實施以下任何行為：

- (a) 在爭議得以裁定之前維持現狀或恢復原狀；
- (b) 採取行動防止目前或即將對仲裁程序發生的危害或損害，或不採取可能造成這種危害或損害的行動；
- (c) 提供一種保全資產以執行後繼裁決的手段；或
- (d) 保全對解決爭議可能具有相關性和重要性的證據。

[註：參看本條例第 35 條。]

第 17A 條． 准予採取臨時措施的條件

(1) 一方當事人請求採取第 17(2)(a)、(b) 和 (c) 條所規定的臨時措施的，應當使仲裁庭確信：

- (a) 不下令採取這種措施可能造成損害，這種損害無法通過判給損害賠償金而充分補償，而且遠遠大於准予採取這種措施而可能對其所針對的當事人造成的損害；以及
- (b) 根據索賠請求所依據的案情，請求方當事人相當有可能勝訴。對這種可能性的判定不影響仲裁庭此後作出任何裁定的自由裁量權。

(2) 關於對第 17(2)(d) 條所規定的臨時措施的請求，本條第 (1)(a) 和 (b) 款的要求僅在仲裁庭認為適當的情況下適用。

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(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.

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[註：參看本條例第 36 條。]

(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.]

第 2 節． 初步命令

第 17B 條． 初步命令的申請和下达初步命令的條件

- (1) 除非各方當事人另有約定，一方當事人可以不通知其他任何當事人而提出臨時措施請求，同時一併申請下达初步命令，指令一方當事人不得阻撓所請求的臨時措施的目的。
- (2) 當仲裁庭認為事先向臨時措施所針對的當事人披露臨時措施請求有可能阻撓這種措施目的時，仲裁庭可以下达初步命令。
- (3) 第 17A 條中規定的條件適用於任何初步命令，條件是根據第 17A(1)(a) 條估測的損害是下达命令或不下达命令而有可能造成的損害。

[註：參看本條例第 37 條。]

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.]

第 17C 條． 初步命令的具體制度

Article 17C. Specific regime for preliminary orders

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- (1) 仲裁庭就初步命令申請作出判定之後，應當立即通知所有當事人，使之了解臨時措施請求、初步命令申請、任何已下達的初步命令以及任何一方當事人與仲裁庭之間與此有關的所有其他通信，包括指明任何口頭通信的內容。
- (2) 同時，仲裁庭應當在實際可行的最早時間內給予初步命令所針對的當事人陳述案情的機會。
- (3) 仲裁庭應當迅速就任何針對初步命令的異議作出裁定。
- (4) 初步命令自仲裁庭下達該命令之日起二十天後失效。但在向初步命令所針對的當事人發出通知並為其提供陳述案情的機會之後，仲裁庭可以下達對初步命令加以採納或修改的臨時措施。
- (5) 初步命令對當事人具有約束力，但不由法院執行。這種初步命令不構成仲裁裁決。

[註：參看本條例第 38 條。]

第 3 節． 適用於臨時措施和初步命令的條文

第 17D 條． 修改、中止和終結

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- (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

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仲裁庭可以在任何一方當事人提出申請時修改、中止或終結其已准予採取的臨時措施或已下達的初步命令，在非常情況下並事先通知各方當事人後，亦可自行修改、中止或終結其已准予採取的臨時措施或已下達的初步命令。

[註：參看本條例第 39 條。]

第 17E 條． 提供擔保

- (1) 仲裁庭可以要求請求臨時措施的一方當事人提供與這種措施有關的適當擔保。
- (2) 仲裁庭應當要求申請初步命令的一方當事人提供與這種命令有關的擔保，除非仲裁庭認為這樣做不妥當或者沒有必要。

[註：參看本條例第 40 條。]

第 17F 條． 披露

- (1) 仲裁庭可以要求任何當事人迅速披露在請求或者准予採取臨時措施時而依據的情形所發生的任何重大變化。
- (2) 申請初步命令的一方當事人應當向仲裁庭披露一切可能與仲裁庭判定是否下達或維持該命令有關的情形，這種義務應當持續到該命令所針對的當事人有機會陳述案情之時。在此之後，應當適用本條第 (1) 款。

[註：參看本條例第 41 條。]

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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.

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Cap. 609**第 17G 條． 費用與損害賠償**

如果仲裁庭之後裁定根據情形本不應當准予採取臨時措施或下達初步命令，則請求臨時措施或申請初步命令的一方當事人應當就該措施或命令對其所針對的當事人造成的任何費用和損害承擔賠償責任。仲裁庭可以在仲裁程序的任何時候判給這種費用和損害賠償金。

[註：參看本條例第 42 條。]

第 4 節． 臨時措施的承認和執行**第 17H 條． 承認和執行**

(1) 仲裁庭發出的臨時措施應當被確認為具有約束力，並且除非仲裁庭另有規定，應當在遵從第 17I 條各項規定的前提下，經向有管轄權的法院提出申請後加以執行，不論該措施是在哪一國發出的。

(2) 正在尋求或已經獲得對某一項臨時措施的承認或執行的當事人，應當將該臨時措施的任何終結、中止或修改迅速通知法院。

(3) 受理承認或執行請求的國家的法院如果認為情況適當，在仲裁庭尚未就擔保作出決定的情況下，或者在這種決定對於保護第三人的權利是必要的情況下，可以命令請求方當事人提供適當擔保。

[註：本條例第 61 條取代本示範法第 17H 條而具有效力 —— 參看本條例第 43 條。]

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

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第 17I 條. 拒絕承認或執行的理由 ***

(1) 只有在下列任何情形下，才能拒絕承認或執行臨時措施：

(a) 應臨時措施所針對的當事人的請求，法院確信：

- (i) 這種拒絕因第 36(1)(a)(i)、(ii)、(iii) 或 (iv) 條中所述的理由而是正當的；或
- (ii) 未遵守仲裁庭關於與仲裁庭發出的臨時措施有關的提供擔保的決定的；或
- (iii) 該臨時措施已被仲裁庭終結或中止，或被已獲此項權限的仲裁發生地國法院或依據本國法律准予採取臨時措施的國家的法院所終結或中止的；或

(b) 法院認定：

- (i) 臨時措施不符合法律賦予法院的權力，除非法院決定對臨時措施作必要的重新擬訂，使之為了執行該臨時措施的目的而適應自己的權力和程序，但並不修改臨時措施的實質內容的；或
- (ii) 第 36(1)(b)(i) 或 (ii) 條中所述任何理由適用於對臨時措施的承認和執行的。

(2) 法院根據本條第 (1) 款中所述任何理由作出的任何裁定，效力範圍僅限於為了申請承認和執行臨時措施。受理承認或執行請求的法院不應在作出這一裁定時對臨時措施的實質內容進行審查。

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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

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[註：本示範法第 17I 條不具效力 —— 參看本條例第 44 條。]

(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.]

第 5 節． 法院下令採取的臨時措施

第 17J 條． 法院下令採取的臨時措施

法院發布與仲裁程序有關的臨時措施的權力應當與法院在法院訴訟程序方面的權力相同，不論仲裁程序的進行地是否在本國境內。法院應當根據自己的程序，在考慮到國際仲裁的具體特徵的情況下行使這一權力。

[註：本示範法第 17J 條不具效力 —— 參看本條例第 45 條。]

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.]

第五章． 仲裁程序的進行

第 18 條． 當事人平等待遇

當事人應當受到平等待遇，並應當被給予充分的機會陳述其案情。

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.

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[註：本條例第 46(2) 及 (3) 條取代本示範法第 18 條而具有效力 —— 參看本條例第 46 條。]

[Note: Section 46(2) and (3) has effect in substitution for article 18—see section 46.]

第 19 條． 程序規則的確定

Article 19. Determination of rules of procedure

(1) 在不違背本法規定的情況下，當事人可以自由約定仲裁庭進行仲裁時所應當遵循的程序。

(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) 未達成此種約定的，仲裁庭可以在不違背本法規定的情況下，按照仲裁庭認為適當的方式進行仲裁。授予仲裁庭的權力包括對任何證據的可採性、相關性、實質性和重要性的決定權。

(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.

[註：本示範法第 19(2) 條不適用 —— 參看本條例第 47 條。]

[Note: Article 19(2) is not applicable—see section 47.]

第 20 條． 仲裁地點

Article 20. Place of arbitration

(1) 當事人可以自由約定仲裁的地點。未達成此種約定的，由仲裁庭考慮到案件的情況，包括當事人的便利，確定仲裁地點。

(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) 雖有本條第 (1) 款的規定，為在仲裁庭成員間進行磋商，為聽取證人、專家或當事人的意見，或者為檢查貨物、其他財產或文件，除非當事人另有約定，仲裁庭可以在其認為適當的任何地點會晤。

(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.

[註：參看本條例第 48 條。]

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第 21 條． 仲裁程序的開始

除非當事人另有約定，解決特定爭議的仲裁程序，於被申請人收到將該爭議提交仲裁的請求之日開始。

[註：參看本條例第 49 條。]

第 22 條． 語文

(1) 當事人可以自由約定仲裁程序中擬使用的語文。未達成此種約定的，由仲裁庭確定仲裁程序中擬使用的語文。這種約定或確定除非其中另外指明，適用於一方當事人的任何書面陳述、仲裁庭的任何開庭、裁決、決定或其他通訊。

(2) 仲裁庭可以命令任何書面證據附具當事人約定的或仲裁庭確定的語文的譯本。

[註：參看本條例第 50 條。]

第 23 條． 申請書和答辯書

[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

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(1) 在當事人約定的或仲裁庭確定的時間期限內，申請人應當申述支持其請求的各種事實、爭議點以及所尋求的救濟或補救，被申請人應當逐項作出答辯，除非當事人就這種申述和答辯所要求的項目另有約定。當事人可以隨同其陳述提交其認為相關的一切文件，也可以附帶述及其將要提交的文件或其他證據。

(2) 除非當事人另有約定，在仲裁程序進行中，任何一方當事人可以修改或補充其請求或答辯，除非仲裁庭考慮到為時已遲，認為不宜允許作此更改。

[註：參看本條例第 51 條。]

第 24 條. 開庭和書面審理程序

(1) 除當事人有任何相反約定外，仲裁庭應當決定是否舉行開庭聽審，以便出示證據或進行口頭辯論，或者是否應當以文件和其他材料為基礎進行仲裁程序。但是除非當事人約定不開庭聽審，一方當事人請求開庭的，仲裁庭應當在進行仲裁程序的適當階段舉行開庭聽審。

(2) 任何開庭和仲裁庭為了檢查貨物、其他財產或文件而舉行的任何會議，應當充分提前通知當事人。

(3) 一方當事人向仲裁庭提供的一切陳述書、文件或其他資料應當送交對方當事人。仲裁庭在作出決定時可能依賴的任何專家報告或證據性文件也應當送交各方當事人。

[註：參看本條例第 52 條。]

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(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

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第 25 條. 一方當事人的不為

除非當事人另有約定，在不提出充分理由的情況下：

(a) 申請人未能依照第 23(1) 條的規定提交申請書的，仲裁庭應當終止仲裁程序；

(b) 被申請人未能依照第 23(1) 條的規定提交答辯書的，仲裁庭應當繼續進行仲裁程序，但不將此種缺失行為本身視為認可了申請人的申述；

(c) 任何一方當事人不出庭或不提供書面證據的，仲裁庭可以繼續進行仲裁程序並根據其所收到的證據作出裁決。

[註：參看本條例第 53 條。]

第 26 條. 仲裁庭指定的專家

(1) 除非當事人另有約定，仲裁庭：

(a) 可以指定一名或多名專家就仲裁庭待決之特定問題向仲裁庭提出報告；

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;

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(b) 可以要求一方當事人向專家提供任何相關資料，或出示或讓他接觸任何相關的文件、貨物或其他財產以供檢驗。

(2) 除非當事人另有約定，經一方當事人提出請求或仲裁庭認為必要的，專家在提出其書面或口頭報告後應當參加開庭，各方當事人可向其提問，專家證人就爭議點作證。

[註：參看本條例第 54 條。]

第 27 條． 法院協助取證

仲裁庭或一方當事人在仲裁庭同意之下，可以請求本國內的管轄法院協助取證。法院可以在其權限範圍內並按照其關於取證的規則執行上述請求。

[註：參看本條例第 55 條。]

第六章． 作出裁決和程序終止

第 28 條． 適用於爭議實體的規則

(1) 仲裁庭應當依照當事人選擇的適用於爭議實體的法律規則對爭議作出決定。除非另有表明，指定適用某一國家的法律或法律制度應認為是直接指該國的實體法而不是其法律衝突規範。

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(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.

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- (2) 當事人沒有指定任何適用法律的，仲裁庭應當適用其認為適用的法律衝突規範所確定的法律。
- (3) 仲裁庭只有在各方當事人明示授權的情況下，才應當依照公平善意原則或作為友好仲裁員作出決定。
- (4) 在任何情況下，仲裁庭都應當按照合同條款並考慮到適用於該項交易的貿易慣例作出決定。

[註：參看本條例第 64 條。]

第 29 條． 仲裁團作出的決定

在有一名以上仲裁員的仲裁程序中，除非當事人另有約定，仲裁庭的任何決定應當按其全體成員的多數作出。但是，經各方當事人或仲裁庭全體成員授權的，首席仲裁員可以就程序問題作出決定。

[註：參看本條例第 65 條。]

第 30 條． 和解

- (1) 在仲裁程序中，當事人就爭議達成和解的，仲裁庭應當終止仲裁程序，經各方當事人提出請求而仲裁庭又無異議的，還應當按和解的條件以仲裁裁決的形式記錄和解。

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- (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.

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(2) 關於和解的條件的裁決應當依照第 31 條的規定作出，並應說明它是一項裁決。此種裁決應當與根據案情作出的其他任何裁決具有同等的地位和效力。

[註：參看本條例第 66 條。]

第 31 條. 裁決的形式和內容

(1) 裁決應當以書面作出，並應當由仲裁員簽名。在有一名以上仲裁員的仲裁程序中，仲裁庭全體成員的多數簽名即可，但須說明缺漏任何簽名的理由。

(2) 裁決應說明其所依據的理由，除非當事人約定不需說明理由或該裁決是第 30 條所指的和解裁決。

(3) 裁決書應具明其日期和依照第 20(1) 條確定的仲裁地點。該裁決應視為是在該地點作出的。

(4) 裁決作出後，經仲裁員依照本條第 (1) 款簽名的裁決書應送達各方當事人各一份。

[註：參看本條例第 67 條。]

第 32 條. 程序的終止

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(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

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(1) 仲裁程序依終局裁決或仲裁庭按照本條第 (2) 款發出的裁定宣告終止。

(2) 仲裁庭在下列情況下應當發出終止仲裁程序的裁定：

(a) 申請人撤回其申請，但被申請人對此表示反對且仲裁庭承認最終解決爭議對其而言具有正當利益的除外；

(b) 各方當事人約定程序終止；

(c) 仲裁庭認定仲裁程序因其他任何理由均無必要或不可能繼續進行。

(3) 仲裁庭之委任隨仲裁程序的終止而終止，但須服從第 33 和 34(4) 條的規定。

[註：參看本條例第 68 條。]

第 33 條. 裁決的更正和解釋；補充裁決

(1) 除非當事人約定了另一期限，在收到裁決書後三十天內：

(a) 一方當事人可在通知對方當事人後請求仲裁庭更正裁決書中的任何計算錯誤、任何筆誤或打印錯誤或任何類似性質的錯誤；

(b) 當事人有約定的，一方當事人可以在通知對方當事人後請求仲裁庭對裁決書的具體某一點或某一部分作出解釋。

仲裁庭認為此種請求正當合理的，應當在收到請求後三十天內作出更正或解釋。解釋應構成裁決的一部分。

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(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.

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(2) 仲裁庭可在作出裁決之日起三十天內主動更正本條第 (1)(a) 款所指類型的任何錯誤。

(3) 除非當事人另有約定，一方當事人在收到裁決書後三十天內，可以在通知對方當事人後，請求仲裁庭對已在仲裁程序中提出但在裁決書中遺漏的請求事項作出補充裁決。仲裁庭如果認為此種請求正當合理的，應當在六十天內作出補充裁決。

(4) 如有必要，仲裁庭可以將依照本條第 (1) 或 (3) 款作出更正、解釋或補充裁決的期限，予以延長。

(5) 第 31 條的規定適用於裁決的更正或解釋，並適用於補充裁決。

[註：參看本條例第 69 條。]

第七章．不服裁決的追訴權

第 34 條．申請撤銷，作為不服仲裁裁決的唯一追訴

(1) 不服仲裁裁決而向法院提出追訴的唯一途徑是依照本條第 (2) 和 (3) 款的規定申請撤銷。

(2) 有下列情形之一的，仲裁裁決才可以被第 6 條規定的法院撤銷：

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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.

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- (a) 提出申請的當事人提出證據，證明有下列任何情況：
- (i) 第 7 條所指仲裁協議的當事人有某種無行為能力情形；或者根據各方當事人所同意遵守的法律或在未指明法律的情況下根據本國法律，該協議是無效的；或
 - (ii) 未向提出申請的當事人發出指定仲裁員的適當通知或仲裁程序的適當通知，或因他故致使其不能陳述案情；或
 - (iii) 裁決處理的爭議不是提交仲裁意圖裁定的事項或不在提交仲裁的範圍之列，或者裁決書中內含對提交仲裁的範圍以外事項的決定；如果對提交仲裁的事項所作的決定可以與對未提交仲裁的事項所作的決定互為劃分，僅可以撤銷含有對未提交仲裁的事項所作的決定的那部分裁決；或
 - (iv) 仲裁庭的組成或仲裁程序與當事人的約定不一致，除非此種約定與當事人不得背離的本法規定相抵觸；無此種約定時，與本法不符；或
- (b) 法院認定有下列任何情形：
- (i) 根據本國的法律，爭議事項不能通過仲裁解決；或
 - (ii) 該裁決與本國的公共政策相抵觸。

(3) 當事人在收到裁決書之日起三個月後不得申請撤銷裁決；已根據第 33 條提出請求的，從該請求被仲裁庭處理完畢之日起三個月後不得申請撤銷。

(4) 向法院申請撤銷裁決時，如果適當而且一方當事人也提出請求，法院可以在其確定的一段時間內暫時停止進行撤銷程序，以便仲裁庭有機會重新進行仲裁程序或採取仲裁庭認為能夠消除撤銷裁決理由的其他行動。

[註：參看本條例第 81 條。]

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(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.

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第八章． 裁決的承認和執行

第 35 條． 承認和執行

(1) 仲裁裁決不論在何國境內作出，均應當承認具有約束力，而且經向管轄法院提出書面申請，即應依照本條和第 36 條的規定予以執行。

(2) 援用裁決或申請對其予以執行的一方當事人，應當提供裁決書正本或其副本。裁決書如不是以本國一種正式語文做成的，法院可以要求該方當事人出具該文件譯成這種文字的譯本。****

(第 35(2) 條經由委員會 2006 年第三十九屆會議修訂)

[註：本示範法第 35 條不具效力——參看本條例第 82 條。]

(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.]

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第 36 條. 拒絕承認或執行的理由

(1) 仲裁裁決不論在何國境內作出，僅在下列任何情形下才可拒絕予以承認或執行：

(a) 援用的裁決所針對的當事人提出如此請求，並向被請求承認或執行的管轄法院提出證據，證明有下列任何情況：

- (i) 第 7 條所指仲裁協議的當事人有某種無行為能力情形；或者根據各方當事人所同意遵守的法律或在未指明何種法律的情況下根據裁決地所在國法律，該協議是無效的；或
- (ii) 未向援用的裁決所針對的當事人發出指定仲裁員的適當通知或仲裁程序的適當通知，或因他故致使其不能陳述案情；或
- (iii) 裁決處理的爭議不是提交仲裁意圖裁定的事項或不在提交仲裁的範圍之列，或者裁決書中內含對提交仲裁的範圍以外事項的決定；如果對提交仲裁的事項所作的決定可以與對未提交仲裁的事項所作的決定互為劃分，內含對提交仲裁的事項所作的決定的那部分裁決得予承認和執行；或
- (iv) 仲裁庭的組成或仲裁程序與當事人的約定不一致；無此種約定時，與仲裁地所在國法律不符；或
- (v) 裁決對當事人尚無約束力，或者已經由裁決地所在國或裁決依據的法律的所屬國的法院所撤銷或中止執行；或

(b) 法院認定有下列任何情形：

- (i) 根據本國的法律，爭議事項不能通過仲裁解決；或
- (ii) 承認或執行該裁決與本國的公共政策相抵觸。

(2) 在已向本條第 (1)(a)(v) 款所指的法院申請撤銷或中止執行裁決的情況下，被請求承認或執行的法院如認為適當，可以延緩作出決定，

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

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而且經主張承認或執行裁決的一方當事人申請，還可以裁定對方當事人提供妥適的擔保。

[註：本示範法第 36 條不具效力——參看本條例第 83 條。]

* 條文標題僅供索引，不作解釋條文之用。

** 對“商事”一詞應作廣義解釋，使其包括不論是契約性或非契約性的一切商事性質的關係所引起的事項。商事性質的關係包括但不限於下列交易：供應或交換貨物或服務的任何貿易交易；銷售協議；商事代表或代理；保理；租賃；建造工廠；諮詢；工程；使用許可；投資；籌資；銀行；保險；開發協議或特許；合營和其他形式的工業或商業合作；空中、海上、鐵路或公路的客貨載運。

*** 第 17I 條所載條件的目的是為了限制法院可拒絕執行臨時措施的情形。如果一國將採用的可拒絕執行的情形少些，與這些示範條文力求達到的統一程度無相悖之處。

**** 本款所列的條件是意圖訂出一個最高標準。因一國如果保留了即使是更為簡單的條件，也不至於與示範法所要取得的協調一致相抵觸。

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(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.]

* 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.

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註：本附表載錄《貿法委示範法》全文，只供備知。根據本條例不適用的條文，已劃上底線。每條條文之後加有附註，以指明直接提述該條文的本條例的條文。但是，使《貿法委示範法》受規限的替代條文及其他增補條文，則沒有在本附表內顯示。因此，須參閱本條例以知悉它所決定的《貿法委示範法》的適用範圍。

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*** 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.

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第 609 章附表 2
第 1 條Schedule 2
Section 1S2-2
Cap. 609**附表 2**[第 2、5、23、73、81、
99、100、101 及 102 條]**可以明文選擇或自動適用的條文**

(格式變更 —— 2015 年第 3 號編輯修訂紀錄)

1. 獨任仲裁員

如仲裁協議的各方沒有就仲裁員人數，達成協議，則在各方之間產生的任何爭議，須提交一名獨任仲裁員以作仲裁。

(由 2015 年第 11 號第 6 條修訂)

2. 仲裁的合併處理

(1) 如就 2 項或多於 2 項的仲裁程序而言，原訟法庭覺得 ——

- (a) 在該等仲裁程序中，均有產生共同的法律或事實問題；
- (b) 在該等仲裁程序中申索的濟助的權利，均是關於同一宗或同一系列的交易，或均是在同一宗或同一系列的交易中產生的；或
- (c) 由於任何其他原因，適宜根據本條作出命令，則原訟法庭可應該等仲裁程序任何一方的申請 ——
- (d) 命令 ——
 - (i) 將該等仲裁程序按它認為公正的條款，合併處理；或

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

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第 2 條

- (ii) 該等仲裁程序同時聆訊，或以一項緊接另一項的方式聆訊；或
- (e) 命令擱置任何該等仲裁程序，直至任何其餘仲裁程序獲裁定為止。
- (2) 如原訟法庭根據第 (1)(d)(i) 款命令將仲裁程序合併處理，或根據第 (1)(d)(ii) 款命令該等仲裁程序同時聆訊，或以一項緊接另一項的方式聆訊，則原訟法庭有權——
 - (a) 就支付該等仲裁程序的費用，作出相應指示；及
 - (b) 作出以下委任——
 - (i) (如該等仲裁程序的所有各方，就該等仲裁程序的仲裁員人選達成協議) 委任該仲裁員；或
 - (ii) (如各方不能夠就該等仲裁程序的仲裁員人選達成協議) 就該等仲裁程序委任仲裁員，而如仲裁程序同時聆訊，或以一項緊接另一項的方式聆訊，則就該等仲裁程序委任同一仲裁員。
- (3) 如原訟法庭根據第 (2) 款，就合併處理、同時聆訊或以一項緊接另一項的方式聆訊的仲裁程序委任仲裁員，則已就任何該等仲裁程序作出的任何其他仲裁員的委任，就一切目的而言，在第 (2) 款所指的委任作出時停止有效。
- (4) 凡仲裁程序根據第 (1)(d)(i) 款合併處理，則聆訊該等仲裁程序的仲裁庭，就該等仲裁程序的費用而言，具有第 74 及 75 條所指的權力。
- (5) 如根據第 (1)(d)(ii) 款，2 項或多於 2 項的仲裁程序同時聆訊，或以一項緊接另一項的方式聆訊，則仲裁庭——
 - (a) 只就它聆訊的該等仲裁程序的費用，具有第 74 及 75 條所指的權力；及
 - (b) 據此，就同時聆訊或以一項緊接另一項的方式聆訊的該等仲裁程序而言，並無權力命令該等仲裁程序中任何仲裁程序的一方，支付該等仲裁程序中任何其他仲裁程序的一方的費用，除非該仲裁庭是聆訊所有該等仲裁程序的同一仲裁庭，則屬例外。

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- (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.

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第 3 條

- (6) 任何人不得針對本條所指的原訟法庭命令、指示或決定提出上訴。

3. 原訟法庭對初步法律問題的決定

- (1) 原訟法庭可應仲裁程序的任何一方的申請，對在該仲裁程序的過程中產生的任何法律問題，作出決定。
- (2) 除非得到 ——
 - (a) 有關仲裁程序的所有其他各方的書面同意；或
 - (b) 仲裁庭的書面准許，
 否則不得提出第 (1) 款所指的申請。
- (3) 有關申請須 ——
 - (a) 指出須予決定的法律問題；及
 - (b) 述明基於甚麼理由，而指出該問題應由原訟法庭決定。
- (4) 原訟法庭除非信納對有關法律問題作出決定，可大量節省各方的費用，否則不得受理第 (1) 款所指的申請。
- (5) 凡原訟法庭根據第 (1) 款作出決定，則須獲原訟法庭或上訴法庭許可，方可針對該決定提出上訴。

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- (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.

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第 4 條

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4. 以嚴重不當事件為理由而質疑仲裁裁決

- (1) 仲裁程序的一方有權以有嚴重不當事件影響仲裁庭、該仲裁程序或在該仲裁程序中作出的裁決為理由，向原訟法庭提出申請，質疑該裁決。
- (2) 嚴重不當事件指原訟法庭認為已對或將會對申請人造成嚴重不公平的屬以下一類或多於一類的的不當事件——
 - (a) 仲裁庭沒有遵守第 46 條；
 - (b) 仲裁庭以超越其管轄權以外的方式，超越權力；
 - (c) 仲裁庭沒有按照各方議定的程序進行仲裁程序；
 - (d) 仲裁庭沒有處理向它提出的所有爭論點；
 - (e) 獲各方就仲裁程序或裁決而賦予權力的任何仲裁或其他機構或人士，超越其權力；
 - (f) 仲裁庭沒有根據第 69 條，就效力不能確定或含糊的裁決作出解釋；
 - (g) 該裁決是以詐騙手段獲得的，或該裁決或獲取該裁決的方法違反公共政策；
 - (h) 作出裁決的形式，不符合規定；或
 - (i) 仲裁庭或獲各方就仲裁程序或裁決而賦予權力的任何仲裁或其他機構或人士，承認在進行該仲裁程序中或在該裁決中有任何不當事件。
- (3) 如證明有嚴重不當事件影響仲裁庭、有關仲裁程序或裁決，原訟法庭可藉命令——
 - (a) 將整項裁決或裁決的某部分，發還給仲裁庭重新考慮；
 - (b) 撤銷整項裁決或裁決的某部分；或
 - (c) 宣布整項裁決或裁決的某部分無效。

- (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

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第 5 條

- (4) 如整項裁決或裁決的某部分發還給仲裁庭重新考慮，該仲裁庭須在 ——
- (a) 自發還命令的日期起計 3 個月內；或
- (b) 原訟法庭指示的較長或較短的限期內，就該等被發還的事宜作出新的裁決。
- (5) 除非原訟法庭信納，將有關的事宜發還給仲裁庭重新考慮屬不適當，否則原訟法庭不得行使其權力撤銷整項裁決或裁決的某部分，或宣布整項裁決或裁決的某部分無效。
- (6) 凡原訟法庭根據本條作出決定、命令或指示，則須獲原訟法庭或上訴法庭許可，方可針對該決定、命令或指示提出上訴。
- (7) 本附表第 7 條亦適用於本條所指的申請或上訴。

5. 就法律問題而針對仲裁裁決提出上訴

- (1) 在本附表第 6 條的規限下，仲裁程序的一方可就在該仲

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- (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

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- 裁程序中作出的裁決所產生的法律問題，向原訟法庭提出上訴。
- (2) 議定無需就仲裁庭作出的裁決給予原因的協議，須視為排除本條所指的原訟法庭的司法管轄權的協議。
 - (3) 原訟法庭須基於裁決中對事實的裁斷，對屬上訴的標的之法律問題，作出決定。
 - (4) 原訟法庭在根據第 (3) 款對法律問題作出決定時，不得考慮本附表第 6(4)(c)(i) 或 (ii) 條所列的任何準則。
 - (5) 原訟法庭在聆訊本條所指的上訴時，可藉命令——
 - (a) 維持裁決；
 - (b) 更改裁決；
 - (c) 將整項裁決或裁決的某部分，發還給仲裁庭，以供仲裁庭因應原訟法庭的決定重新考慮；或
 - (d) 撤銷整項裁決或裁決的某部分。
 - (6) 如整項裁決或裁決的某部分發還給仲裁庭重新考慮，該仲裁庭須在——
 - (a) 自發還命令的日期起計 3 個月內；或
 - (b) 原訟法庭指示的較長或較短的限期內，
 就該等被發還的事宜作出新的裁決。
 - (7) 除非原訟法庭信納，將有關的事宜發還給仲裁庭重新考慮屬不適當，否則原訟法庭不得行使其權力撤銷整項裁決或裁決的某部分。
 - (8) 凡原訟法庭根據第 (5) 款作出命令，則須獲原訟法庭或上訴法庭許可，方可針對該命令提出再上訴。
 - (9) 除非有關問題——
 - (a) 有廣泛的重要性；或
 - (b) 由於其他特殊原因，應由上訴法庭考慮，
 否則不得批予再上訴的許可。

- 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.

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(10) 本附表第 6 及 7 條亦適用於本條所指的上訴或再上訴。

6. 就法律問題而針對仲裁裁決提出上訴的許可的申請

- (1) 仲裁程序的一方除非得到 ——
 - (a) 仲裁程序的所有其他各方同意；或
 - (b) 原訟法庭許可，
 否則不得就法律問題而提出本附表第 5 條所指的上訴。
- (2) 上訴許可的申請須 ——
 - (a) 指出須予決定的法律問題；及
 - (b) 述明基於甚麼理由，而指出應批予上訴許可。
- (3) 除非原訟法庭覺得有需要作出聆訊，否則原訟法庭須在沒有聆訊的情況下，裁定上訴許可的申請。
- (4) 原訟法庭在信納以下各項情況下，方可批予上訴許可 ——
 - (a) 有關問題的決定，會對一方或多於一方的權利，造成重大影響；
 - (b) 有關問題是仲裁庭被要求決定的問題；及
 - (c) 基於裁決中對事實的裁斷 ——
 - (i) 仲裁庭對該問題的決定，是明顯地錯誤的；或

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- (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;

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- (ii) 該問題有廣泛的重要性，而仲裁庭的決定最起碼令人有重大疑問。
- (5) 凡原訟法庭決定批予或拒絕批予上訴許可，則須獲原訟法庭或上訴法庭許可，方可針對該決定提出上訴。
- (6) 除非有關問題——
 - (a) 有廣泛的重要性；或
 - (b) 由於其他特殊原因，應由原訟法庭考慮，否則不得批予針對原訟法庭的上述決定而提出上訴的許可。

7. 有關對仲裁裁決提出質疑或針對仲裁裁決提出上訴的增補條文

- (1) 如擬提出本附表第 4、5 或 6 條所指的申請或上訴的申請人或上訴人，並未首先窮竭——
 - (a) 第 69 條所指的任何可用的追訴；及
 - (b) 任何可用的上訴或覆核的仲裁程序，則該申請人或上訴人不可提出該申請或上訴。
- (2) 如有任何申請或上訴提出，而原訟法庭覺得有關裁決——
 - (a) 並沒有包含仲裁庭作出該裁決的原因；或
 - (b) 並沒有充分詳細地列出仲裁庭作出該裁決的原因，使原訟法庭能恰當地考慮該申請或上訴，

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- (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

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- 則原訟法庭可命令仲裁庭為該目的而充分詳細地述明作出該裁決的原因。
- (3) 如原訟法庭根據第 (2) 款作出命令，它可對任何由其命令而引致的額外仲裁費用，作出它認為合適的進一步命令。
- (4) 原訟法庭 ——
- (a) 可命令申請人或上訴人，就申請或上訴的費用提供保證；及
- (b) 在該命令不獲遵從的情況下，可指示撤銷該申請或上訴。
- (5) 原訟法庭不得僅基於以下理由，而行使權力命令就費用提供保證 ——
- (a) 申請人或上訴人是通常居於香港以外地方的自然人；
- (b) 申請人或上訴人 ——
- (i) 是根據香港以外地方的法律成立的法人團體；或
- (ii) 是一個法人團體，而其中央管理及控制是在香港以外地方行使的；或
- (c) 申請人或上訴人 ——
- (i) 是根據香港以外地方的法律組成的組織；或
- (ii) 是一個組織，而其中央管理及控制是在香港以外地方行使的。
- (6) 原訟法庭 ——
- (a) 可命令在申請或上訴仍有待裁定時，任何根據裁決須支付的款項，須繳存原訟法庭，或以其他方法保障；及
- (b) 在該命令不獲遵從的情況下，可指示撤銷該申請或上訴。

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- (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—

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- (7) 原訟法庭或上訴法庭在批予本附表第 4、5 或 6 條所指的上訴許可時，可施加與第 (4) 或 (6) 款所指的命令具同等或類似效力的條件。
 - (8) 第 (7) 款並不影響原訟法庭或上訴法庭批予附帶條件的許可的一般酌情決定權。
 - (9) 任何人不得針對本條所指的原訟法庭或上訴法庭命令、指示或決定提出上訴。
-

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- (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.
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附表 3

[第 111 條]

保留及過渡性條文

(格式變更 —— 2015 年第 3 號編輯修訂紀錄)

第 1 部**關乎本條例生效的保留及過渡性條文**

(由 2015 年第 11 號第 7 條增補)

1. 仲裁程序及相關程序的進行**(1) 如仲裁 ——**

- (a) 在本條例生效前，已根據《舊有條例》第 2(1) 條所界定的聯合國國際貿易法委員會示範法第 21 條展開；或
- (b) 在本條例生效前，已根據《舊有條例》第 31(1) 條當作展開，

則該仲裁及所有相關程序，包括 (凡在該仲裁中作出的裁決被撤銷) 在該裁決被撤銷後恢復進行的仲裁程序，須受《舊有條例》所管限，猶如本條例未曾制定一樣。

- (2) 如仲裁在本條例生效前，已根據任何經本條例修訂的其他條例展開，則該仲裁及所有相關程序，包括 (凡在該仲裁中作出的裁決被撤銷) 在該裁決被撤銷後恢復進行的仲裁程序，須受在緊接本條例生效前有效的該其他條例所管限，猶如本條例未曾制定一樣。

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

2. 仲裁員的委任

- (1) 在第 (2) 款的規限下，在本條例生效前已作出的仲裁員的委任，須在本條例生效後，繼續有效，猶如本條例未曾制定一樣。
- (2) 如任何仲裁員的任命，已在本條例生效前終止，則本條例的制定，並不會令該仲裁員的委任獲得恢復。

3. 和解協議

如仲裁協議各方在本條例生效前，已根據《舊有條例》第 2C 條訂立和解協議，則該和解協議可按照該條強制執行，猶如本條例未曾制定一樣。

4. 委任諮詢委員會成員的委任

在本條例生效前作出的根據《仲裁 (仲裁員及公斷人的委任) 規則》(第 341 章，附屬法例 B)* 第 3 條而設立的委任諮詢委員會的成員的委任，須在本條例生效後，繼續有效，直至該項委任的任期屆滿為止，猶如本條例未曾制定一樣。

* 現為第 609 章，附屬法例 B。

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.

* Now Cap. 609 sub. leg. B.

第 2 部**Part 2**

關乎《2015 年仲裁 (修訂) 條例》生效的保留及過渡性條文

(第 2 部由 2015 年第 11 號第 7 條增補)

1. 仲裁程序及相關程序的進行

- (1) 如仲裁在生效日期前，已根據《貿法委示範法》第 21 條展開，則該仲裁及所有相關程序，須受《原本條例》所管限，猶如《2015 年仲裁 (修訂) 條例》(2015 年第 11 號) 未曾制定一樣。

- (2) 在第 (1) 款中 ——

* **生效日期** (commencement date) 指《2015 年仲裁 (修訂) 條例》(2015 年第 11 號) 開始實施的日期；

所有相關程序 (all related proceedings) 包括在有關仲裁中作出的裁決被撤銷後恢復進行的仲裁程序；

《原本條例》 (pre-amended Ordinance) 指在緊接生效日期前有效的本條例；

《貿法委示範法》第 21 條 (article 21 of the UNCITRAL Model Law) 指藉第 49(1) 條而具有效力的《貿法委示範法》第 21 條。

* 生效日期：2015 年 7 月 17 日。

第 3 部

關乎《2017 年仲裁 (修訂) 條例》的保留及過渡條文

(第 3 部由 2017 年第 5 號第 7 條增補)

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. 仲裁程序及相關程序的進行

- (1) 本條適用於在本條的生效日期*之前展開的仲裁，不論該仲裁的地點是否在香港。
- (2) 《原有條例》繼續適用於有關仲裁及其所有相關程序。
- (3) 然而，如有關仲裁或其任何相關程序的各方同意，第 11A 部適用於該仲裁或該等相關程序（視何者屬適當而定）。
- (4) 在本條中——

相關程序 (related proceedings) 就某仲裁而言，包括在該仲裁中的裁決遭撤銷後恢復進行的仲裁程序；

《原有條例》 (pre-amended Ordinance) 指在緊接本條的生效日期之前有效的本條例。

* 生效日期：2018 年 1 月 1 日。

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.

* Commencement date: 1 January 2018.

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附表 4

Schedule 4

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附表 4

(已失時效而略去——2015 年第 3 號編輯修訂紀錄)

Schedule 4

(Omitted as spent—E.R. 3 of 2015)