

ARBITRATION BILL
COMPARISON WITH THE ARBITRATION ORDINANCE (CAP. 341) AND THE UNCITRAL MODEL LAW

Contents

PART 1	Preliminary	1
PART 2	General Provisions	4
PART 3	Arbitration Agreement	8
PART 4	Composition of Arbitral Tribunal	11
PART 5	Jurisdiction of Arbitral Tribunal	16
PART 6	Interim Measures and Preliminary Orders	17
PART 7	Conduct of Arbitral Proceedings	20
PART 8	Making of Award and Termination of Proceedings	27
PART 9	Recourse against Award	34
PART 10	Recognition and Enforcement of Awards	35
PART 11	Provisions that may be Expressly Opted for or Automatically Apply	38
PART 12	Miscellaneous	39
PART 13	Repeal, Savings and Transitional Provisions	41
PART 14	Consequential and Related Amendments	42
SCHEDULE 2	Provisions that may be Expressly Opted for or Automatically Apply	43

PART 1**Preliminary**

Clause in Arbitration Bill	Equivalent Section in Arbitration Ordinance (Cap. 341)	Comparison	Remarks and Application of UNCITRAL Model Law
Clause 1: Short Title			
1	1	No change.	Commencement provision in clause 1(2) of the Bill.
Clause 2: Interpretation			
2(1)	2(1)	21 Definitions in the Bill compared to 16 in Cap. 341. 8 new definitions added whereas 3 definitions removed. New definitions include “arbitration”, “arbitrator”, “interim measure”, “mediation”, “party” and “respondent”.	The definitions for “domestic arbitration agreement” and “international arbitration agreement” are omitted because the aim of the Bill is to unify the two regimes. Article 2 of the Model Law (Definitions and rules of interpretation) is incorporated in so far as it is applicable.
2(2)	N/A	New provision.	Article 2(e) of the Model Law is adopted.
2(3)	N/A	New provision.	Article 2(f) of the Model Law is adopted.
2(4)	2(5)	The provision in Cap. 341 only refers to “a note located in the text” and does not cover the section headings of the provisions of the Bill and the headings of the Model Law; the Bill extends it to cover these headings.	
2(5)	N/A	New provision.	The Bill stipulates that, if the Chinese equivalent of an English expression used in any provision of

			the Bill is different from the Chinese equivalent of the same English expression used in any provision of the Model Law, those Chinese equivalents are to be treated as being identical in effect.
Clause 3: Object and principles of this Ordinance			
3(1)	2AA(1)	No change.	
3(2)	2AA(2)	No change.	Textual changes to the wording of the provision in Cap. 341.
Clause 4: UNCITRAL Model Law to have force of law in Hong Kong			
4	N/A	New provision.	The Model Law is given force of law in Hong Kong subject to the modifications and supplements expressly provided in the Bill.
Clause 5: Arbitrations to which this Ordinance applies			
5(1)	N/A	New provision.	Unlike article 1(1) of the Model Law, the applicability of the Bill is not restricted to “international commercial arbitration”. The Bill is applicable as long as the place of arbitration is in Hong Kong, whether or not the arbitration agreement is entered into in Hong Kong.
5(2)	N/A	New provision.	The clauses of the Bill which are applicable to arbitrations that take place outside Hong Kong are specified.
5(3)	2AB(1), (3)	Cap. 341 applies to statutory arbitrations under other Ordinances as if they were under a domestic arbitration agreement; the Bill also applies the same principle.	As the domestic/international distinction will be abolished under the unitary regime, clause 5(3) allows statutory arbitrations to continue to have access to the procedural arrangements available

			(set out in schedule 2 of the Bill) under the domestic regime. This clause is modelled on section 96(2), (3), 97(c) of UK Arbitration Act 1996 (c. 23)
5(4)	2AB(2)	No change	Textual changes to the wording of the provision in Cap. 341.
Clause 6: Application			
6	47	Cap. 341, other than its provisions in relation to the enforcement of Convention awards (Part IV), binds the Government; whereas clause 6 provides that the Bill applies to the Government and the Offices set up by the Central People's Government in the Hong Kong Special Administration Region	

PART 2**General Provisions**

Clause in Arbitration Bill	Equivalent Section in Arbitration Ordinance (Cap. 341)	Comparison	Remarks and Application of UNCITRAL Model Law
Clause 7: Article 1 of UNCITRAL Model Law (Scope of application)			
7	N/A	New provision.	Clause 5 of the Bill applies in substitution for article 1 of the Model Law.
Clause 8: Article 2 of UNCITRAL Model Law (Definitions and rules of interpretation)			
8(1), (2)	N/A	New provisions.	Clause 2 of the Bill applies in substitution for article 2 of the Model Law.
8(3)	2(4)	five interpretative provisions on the references in the Model Law. There are four such provisions in Cap. 341.	
Clause 9: Article 2A of UNCITRAL Model Law (International origin and general principles)			
9	2(3)	The provision in Cap. 341 is replaced by the original text of article 2A of the Model Law as set out in the Bill.	The additional requirement on interpretation of the Model Law imported by article 2A of the Model Law is the observance of good faith.
Clause 10: Article 3 of UNCITRAL Model Law (Receipt of written communications)			
10(1)	34C(1)	Article 3 of the Model Law is only applicable to international arbitration under Cap. 341; whereas it is applicable to all types of arbitration under the Bill.	The original text of article 3 of the Model Law is adopted with modifications set out in clause 10(2) and (3) of the Bill.
10(2), (3)	N/A	New provisions.	Deeming provisions on the time of the receipt of written communications by the addressee are provided to take into account of electronic communications.

Clause 11: Article 4 of UNCITRAL Model Law (Waiver of right to object)			
11	34C(1)	Article 4 of the Model Law is only applicable to international arbitration under Cap. 341; whereas it is applicable to all types of arbitration under the Bill.	The original text of article 4 of the Model Law is adopted.
Clause 12: Article 5 of UNCITRAL Model Law (Extent of court intervention)			
12	34C(1)	Article 5 of the Model Law is only applicable to international arbitration only under Cap. 341; whereas it is applicable to all types of arbitration under the Bill.	The original text of article 5 of the Model Law is adopted.
Clause 13: Article 6 of UNCITRAL Model Law (Court or other authority for certain functions of arbitration assistance and supervision)			
13(1)	N/A	New provision.	Clauses 13(2) to (6) of the Bill apply in substitution of article 6 of the Model Law.
13(2)-(5)	34C(3), (4)	The provisions in Cap. 341 apply only to international arbitration; whereas the Bill unifies the relevant rules for all types of arbitration.	Wording of the provision in Cap. 341 is adapted.
13(6)	N/A	New provision.	The Court of First Instance is designated to perform the functions of the competent court referred to in clause 55 of the Bill.
Clause 14: Application of Limitation Ordinance and other limitation enactments to arbitrations			
14(1)-(4)	N/A	Incorporating limitation provisions in the Bill. Clause 14(3) is a new provision to enhance the finality of arbitral awards.	The clause provides that the Limitation Ordinance (Cap. 347) and other enactments relating to limitation of actions apply to arbitration. Section 34(1), (2) and (5) of the Limitation Ordinance (Cap. 347) is adapted.
Clause 15: Reference of interpleader issue to arbitration by court			
15(1)	7	Clause 15 describes reference of interpleader issues to arbitration in more details.	The clause is modelled on section 10(1) of UK

			Arbitration Act 1996 (c. 23).
15(2)	N/A	New provision.	The mandatory requirement under clause 15(1) can be dispensed with if the legal proceedings in respect of the issue would not be stayed.
15(3)	N/A	New provision.	The clause is modelled on section 10(2) of UK Arbitration Act 1996 (c. 23).
15(4)	N/A	New provision	A direction of the court under clause 15(1) is not subject to appeal.
15(5)	N/A	New provision	The leave of the court making a decision under clause 15(2) is required for any appeal from that decision.
Clause 16: Proceedings to be heard otherwise than in open court			
16(1), (2)	2D	Under Cap. 341, proceedings shall on the application of any party to the proceedings, be heard otherwise than in open court. In contrast, the proceedings under the Bill are to be heard otherwise than in open court, unless the court exercises its discretion under clause 16(2) to order them to be heard in open court.	The Model Law does not deal with this issue. The court may order the proceedings to be heard in open court either on the application of any party, or if the court is satisfied that they ought to be heard in open court. .
16(3)	N/A	New provision.	The court's order under clause 16(2) is not subject to appeal.
Clause 17: Restrictions on reporting of proceedings heard otherwise than in open court			
17(1)-(5)	2E	Clause 17(1)-(5) adapts section 2E of Cap. 341 to take into account the starting position of "closed court hearing" in clause 16.	
17(6)	N/A	New provision.	The court's order under clause 17 is not subject to appeal.

Clause 18: Disclosure of information relating to arbitral proceedings and awards prohibited			
18(1), (2)	N/A	New provisions.	The clauses are modelled on section 14 of New Zealand Arbitration Act 1996

PART 3 Arbitration Agreement

Clause in Arbitration Bill	Equivalent Section in Arbitration Ordinance (Cap. 341)	Comparison	Remarks and Application of UNCITRAL Model Law
Clause 19: Article 7 of UNCITRAL Model Law (Definition and form of arbitration agreement)			
19(1)	2AC	Section 2AC of Cap. 341 is replaced by the original text of Option I of article 7 of the Model Law as set out in the Bill.	<p>The original text of Option I of article 7 of the Model Law is adopted.</p> <p>The requirement that an arbitration agreement be in writing is extended to include electronic communications, provided that information contained therein is accessible so as to be useable for subsequent reference.</p>
19(2)	2AC(2)(a), (e)	No change.	Textual changes to the wording of the provision in Cap. 341.
19(3)	2AC(3)(a)	No change.	
Clause 20: Article 8 of UNCITRAL Model Law (Arbitration agreement and substantive claim before court)			
20(1)	6(1)	The provision in Cap. 341 is replaced by the original text of article 8 of the Model Law as set out in the Bill.	
20(2)-(3)	6(2)-(3)	No change	Textual changes to the wording of the provision in Cap. 341.
20(4)	N/A	New provision.	If the court refuses to refer the parties to arbitration, the legal proceedings thus brought are not affected by any provision in the arbitration agreement that an award is a condition precedent

			to the bringing of the legal proceedings in respect of any matter. This clause is modelled on section 9(5) of UK Arbitration Act 1996 (c.23)
20(5)	N/A	New provision.	Where the parties in an action are referred to arbitration, the court must order a stay of legal proceedings.
20(6), (7)	N/A	New provisions.	The clauses are modelled on section 11 of UK Arbitration Act 1996 (c. 23).
20(8)	N/A	New provision.	Decision of the court to refer the parties to arbitration under clause 20(1) or (2) of the Bill is not subject to appeal
20(9)	N/A	New provision.	Leave of the court making a decision to refuse to refer the parties to arbitration under clause 20(1) or (2) of the Bill is required for any appeal from that decision.
20(10)	N/A	New provision.	A decision or order of the court under clause 20(6) of the Bill (in relation to security given for stay of Admiralty proceedings) is not subject to appeal.
Clause 21: Article 9 of UNCITRAL Model Law (Arbitration agreement and interim measures by court)			
21	34C(1)	Article 9 of the Model Law is only applicable to international arbitration under Cap. 341; whereas it is applicable to all types of arbitration under the Bill.	The original text of article 9 of the Model Law is adopted.
Clause 22: Whether agreement discharged by death of a party			
22(1),(2)	4(1), (3)	Under Cap. 341, in domestic arbitration, an arbitration agreement is not discharged by the death of a party and remains enforceable; whereas under the Bill, in all types of arbitration, an arbitration agreement is not discharged by the	This clause is modelled on section 8 of UK Arbitration Act 1996(c. 23).

		death of a party and remains enforceable.	
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PART 4

Composition of Arbitral Tribunal

Division 1 – Arbitrators			
Clause in Arbitration Bill	Equivalent Section in Arbitration Ordinance (Cap. 341)	Comparison	Remarks and Application of UNCITRAL Model Law
Clause 23: Article 10 of UNCITRAL Model Law (Number of arbitrators)			
23(1)	8, 34C(5)	Under Cap. 341, in the absence of a contrary intention, the default number of arbitrator shall be one in domestic arbitration, whereas in international arbitration, if the parties fail to agree on the number of arbitrators, it is to be either one or three, as decided by the HKIAC. Under the Bill, the parties are free to determine the number of arbitrators in all types of arbitration.	<p>The original text of article 10(1) of the Model Law (freedom of parties to determine the number of arbitrators) is adopted.</p> <p>Article 10(2) of the Model Law (the number of arbitrators shall be three, failing determination under article 10(1)) does not have effect.</p>
23(2)	N/A	New provision.	Article 2(d) of the Model Law (freedom of parties includes the right to authorise a third party to make that determination) is adopted.
23(3)	N/A	New provision.	<p>The existing statutory position under Cap. 341 may be preserved by the parties by opting for the provisions of schedule 2 to the Bill.</p> <p>In all types of arbitration, where the parties fail to agree on the number of arbitrators and where section 1 of schedule 2 to the Bill does not apply, the number of arbitrators shall be either one or three as decided by the HKIAC.</p>
Clause 24: Article 11 of UNCITRAL Model Law (Appointment of arbitrators)			

24(1)	12, 34C(1)	<p>Article 11 of the Model Law is only applicable to international arbitration under Cap. 341; whereas it is applicable to all types of arbitration under the Bill.</p> <p>The relevant rules (section 12) in domestic arbitration under Cap. 341 are replaced.</p>	The original text of article 11 of the Model Law has effect subject to clauses 13(2) and (3).
24(2)	N/A	New provision.	Appointment procedures for arbitrations with an even number of arbitrators are set out.
24(3)	N/A	New provision.	Appointment procedures for arbitrations with an uneven number of arbitrators greater than three are set out.
24(4)	N/A	New provision.	<p>Appointment procedures of any other cases, in particular, where there are more than two parties to the arbitration are set out.</p> <p>This clause is modelled on section 16(7) of UK Arbitration Act 1996 (c. 23).</p>
24(5)	N/A	New provision.	<p>Any appointment of an arbitrator made by the HKIAC is deemed to have been made with the agreement of all parties and is subject to no appeal.</p> <p>This clause is modelled on section 18(4) of UK Arbitration Act 1996 (c. 23)</p>
Clause 25: Article 12 of UNCITRAL Model Law (Grounds for challenge)			
25	25, 34C(1)	<p>Article 12 of the Model Law is only applicable to international arbitration under Cap. 341; whereas it is applicable to all types of arbitration under the Bill.</p> <p>The relevant rules (section 25) in domestic arbitration under Cap. 341 are replaced.</p>	The original text of article 12 of the Model Law adopted.

Clause 26: Article 13 of UNCITRAL Model Law (Challenge procedure)			
26(1)	34C(1)	Article 13 of the Model Law is only applicable to international arbitration under Cap. 341; whereas it is applicable to all types of arbitration under the Bill.	The original text of article 13 of the Model Law has effect subject to clause 13(4) of the Bill.
26(2)	N/A	New provision.	While the Court of First Instance's decision on a challenge against an arbitrator request is pending, the court may refuse to grant leave for the enforcement of an award made by the arbitral tribunal that includes the challenged arbitrator.
26(3)	N/A	New provision.	A challenged arbitrator may withdraw from his office.
26(4)	N/A	New provision.	The situations under which the mandate of a challenged arbitrator is terminated are listed out.
26(5)	N/A	New provision.	The Court of First Instance is empowered to set aside the arbitral award that includes the challenged arbitrator if the challenge is upheld.
Clause 27: Article 14 of UNCITRAL Model Law (Failure or impossibility to act)			
27	3, 15(3), 34C(1)	Article 14 of the Model Law is only applicable to international arbitration under Cap. 341; whereas it is applicable to all types of arbitration under the Bill. The relevant rules (sections 3 and 15(3)) in domestic arbitration under Cap. 341 are replaced.	The original text of article 14 of the Model Law is has effect subject to clause 13(4) of the Bill.
Clause 28: Article 15 of UNCITRAL Model Law (Appointment of substitute arbitrator)			
28	9, 34C(1)	Article 15 of the Model Law is applicable to international arbitration only under Cap. 341; whereas it is applicable to all types of arbitration under the Bill.	The original text of article 15 of the Model Law is adopted.

		The relevant rules (section 9) in domestic arbitration under Cap. 341 are replaced.	
Clause 29: Death of arbitrator or person appointing arbitrator			
29(1)	N/A	New provision.	The clause is modelled on section 26(1) of UK Arbitration Act 1996 (c. 23).
29(2)	4(2)	Under Cap. 341, the death of the person by whom an arbitrator was appointed shall not revoke the arbitrator's authority; whereas under the Bill, the arbitrator's authority may be so revoked if the parties agree.	The clause is modelled on section 26(2) of UK Arbitration Act 1996 (c. 23).
Clause 30: Appointment of umpire			
30	10(1)	The provision in Cap. 341 applies to domestic arbitration agreements which have a reference to two arbitrators; whereas the Bill extends its application to all types of arbitration involving an even number of arbitrators.	
Clause 31: Functions of umpire in arbitral proceedings			
31(1)-(6)	N/A	New provisions.	The clauses are modelled on sections 21(1) to (4) of UK Arbitration Act 1996 (c. 23).
31(7)	10(2)	No substantive change.	This clause is modelled on section 21(4) of UK Arbitration Act 1996 (c. 23)
31(8)	10(3)	Section 10(3) of Cap. 341 is modified by clause 31(8). The new clause provides for the circumstances under which a party may apply to the Court for replacement of the arbitrators by the umpire.	This clause is modelled on section 21(5) of UK Arbitration Act 1996 (c. 23)
31(9)	N/A	New provision.	Where an umpire has replaced the arbitrators in respect of a matter they cannot agree, the arbitrators may retain jurisdiction on certain other matters.

31(10)	N/A	New provision.	A deeming provision stating when arbitrators are deemed to be unable to agree on a matter for the purpose of clause 31 of the Bill.
31(11)	N/A	New provision.	The clause is modelled on section 21(6) of UK Arbitration Act 1996 (c. 23). A decision of the Court of First Instance under clause 31(8) of the Bill is not subject to appeal.
Division 2 – Mediators			
Clause 32: Appointment of mediator			
32(1)	2A(1)	Section 2A(1) of Cap. 341 stipulates the circumstances under which the Court of First Instance or a judge thereof may appoint a conciliator. Such appointment, however, is to be made by the HKIAC under the Bill.	
32(2)	N/A	New provision.	An appointment by the HKIAC under clause 32(1) is not subject to appeal.
32(3)	2A(2)	No substantive change.	Wording of the provision in Cap. 341 is adapted.
Clause 33: Power of arbitrator to act as mediator			
33(1)	2B(1)	No change	Textual changes to the wording of the provision in Cap. 341. The term “conciliator” is replaced by “mediator”.
33(2)	N/A	New provision.	The arbitral proceedings are to be stayed where an arbitrator acts as a mediator.
33(3)-(5)	2B(2)-(4)	No change	Textual changes to the wordings of the provisions in Cap. 341.

PART 5**Jurisdiction of Arbitral Tribunal**

Clause in Arbitration Bill	Equivalent Section in Arbitration Ordinance (Cap. 341)	Comparison	Remarks and Application of UNCITRAL Model Law
Clause 34: Article 16 of UNCITRAL Model Law (Competence of arbitral tribunal to rule on its jurisdiction)			
34(1)	13B	No substantive change.	The original text of article 16 of the Model Law is adopted, with effect subject to clause 13(5) of the Bill.
34(2)	N/A	New provision.	Matters that an arbitral tribunal may decide pursuant to its power to rule on its own jurisdiction under clause 34(1) of the Bill are listed. This clause is modelled on section 30(1)(b), (c) of UK Arbitration Act 1996 (c. 23).
34(3)	N/A	New provision.	An arbitral tribunal has jurisdiction to decide on a counter-claim or a set-off which falls within the scope of the same arbitration agreement.
34(4)	N/A	New provision.	The ruling of an arbitral tribunal that it has no jurisdiction to decide a dispute is subject to no appeal.
34(5)	N/A	New provision.	If an arbitral tribunal rules that it has no jurisdiction to decide a dispute, the court must, if it has jurisdiction, decide that dispute. This clause is modelled on Article 1052(5) of the Netherlands Arbitration Act 1986.

PART 6

Interim Measures and Preliminary Orders

Clause in Arbitration Bill	Equivalent Section in Arbitration Ordinance (Cap. 341)	Comparison	Remarks and Application of UNCITRAL Model Law
Division 1 – Interim measures			
Clause 35: Article 17 of UNCITRAL Model Law (Power of arbitral tribunal to order interim measures)			
35(1)	34C(1)	Article 17 of the Model Law is only applicable to international arbitration under Cap. 341; whereas it is applicable to all types of arbitration under the Bill.	The original text of article 17 of the Model Law is adopted.
35(2)	N/A	New provision.	The scope of an interim measure referred to in clause 35(1) of the Bill is defined.
35(3)	N/A	New provision.	An arbitral tribunal is empowered to make an award to the same effect as the interim measure granted.
Clause 36: Article 17A of UNCITRAL Model Law (Conditions for granting interim measures)			
36	N/A	New provision.	The original text of article 17A of the Model Law is adopted.
Division 2 – Preliminary orders			
Clause 37: Article 17B of UNCITRAL Model Law (Applications for preliminary orders and conditions for granting preliminary orders)			
37	N/A	New provision.	The original text of article 17B of the Model Law is adopted.
Clause 38: Article 17C of UNCITRAL Model Law (Specific regime for preliminary orders)			
38	N/A	New provision.	The original text of article 17C of the Model Law is adopted.
Division 3 – Provisions applicable to interim measures and preliminary orders			

Clause 39: Article 17D of UNCITRAL Model Law (Modification, suspension, termination)			
39	N/A	New provision.	The original text of article 17D of the Model Law is adopted.
Clause 40: Article 17E of UNCITRAL Model Law (Provision of security)			
40	N/A	New provision.	The original text of article 17E of the Model Law is adopted.
Clause 41: Article 17F of UNCITRAL Model Law (Disclosure)			
41	N/A	New provision.	The original text of article 17F of the Model Law is adopted.
Clause 42: Article 17G of UNCITRAL Model Law (Costs and damages)			
42	N/A	New provision.	The original text of article 17G of the Model Law is adopted.
Division 4 – Recognition and enforcement of interim measures			
Clause 43: Article 17H of UNCITRAL Model Law (Recognition and enforcement)			
43	N/A	New provision.	Clause 61 of the Bill applies in substitution for article 17H of the Model Law.
Clause 44: Article 17I of UNCITRAL Model Law (Grounds for refusing recognition or enforcement)			
44	N/A	New provision.	Article 17I of the Model Law does not have effect.
Division 5 – Court-ordered interim measures			
Clause 45: Article 17J of UNCITRAL Model Law (Court-ordered interim measures)			
45(1)	N/A	New provision.	Article 17J of the Model Law does not have effect.
45(2)	2GC(1)	Clause 45(2) does not refer to the meaning of “interim measures” as the term is already defined in clause 35(1), as adapted by clause 45(9).	
45(3)	N/A	Clause 45(3) in the Bill provides that the court’s powers to grant interim measures may be exercised irrespective of whether or not similar powers may be exercised by an arbitral tribunal under clause 35 of the Bill	
45(4)	2GC(6)	No change	Textual changes to the wording of the provision in

			Cap. 341.
45(5)-(8)	2GC(1A)-(1D)	No substantive change.	Clause 45(5)(a) and (6) to (8) are adapted from the provisions added as section 2GC(1A) to (1D) of Cap. 341 as introduced by section 11 of the Civil Justice (Miscellaneous Amendments) Ordinance 2008 (3 of 2008).
45(9)	N/A	New provision.	The meaning of an interim measure referred to in clause 45(2) of the Bill is provided.
45(10)	N/A	New provision.	A decision, order or direction of the Court of First Instance under clause 45 of the Bill is not subject to appeal.

PART 7**Conduct of Arbitral Proceedings**

Clause in Arbitration Bill	Equivalent Section in Arbitration Ordinance (Cap. 341)	Comparison	Remarks and Application of UNCITRAL Model Law
Clause 46: Article 18 of UNCITRAL Model Law (Equal treatment of parties)			
46(1)	N/A	New provision.	Clause 46(2) and (3) of the Bill applies in substitution for article 18 of the Model Law.
46(2)	34C(1)	Article 18 of the Model Law is applicable only to international arbitration under Cap. 341; whereas clause 46(2) has effect in substitution for Article 18 for all types of arbitration under the Bill.	
46(3)	2GA(1)	There is an extra requirement imposed by the Bill: the arbitral tribunal is required to be independent. Clause 46(3) and section 2GA(1)(a) provides that parties are to be given a “reasonable opportunity” to present their cases whereas Article 18 of the Model Law refers to “full opportunity”.	
Clause 47: Article 19 of UNCITRAL Model Law (Determination of rules of procedure)			
47(1)	34C(1)	Article 19(1) of the Model Law is applicable to international arbitration only under Cap. 341; it is applicable to all types of arbitration under the Bill.	The original text of article 19(1) of the Model Law is adopted.
47(2)	34C(1)	Article 19(2) of the Model Law is applicable to international arbitration under Cap. 341; whereas Article 19(2) is not applicable to any type of arbitration under the Bill.	
47(3)	2GA(2)	No change	Textual changes to the wording of the provision in Cap. 341.

Clause 48: Article 20 of UNCITRAL Model Law (Place of arbitration)			
48	34C(1)	Article 20 of the Model Law is applicable to international arbitration only under Cap. 341; it is applicable to all types of arbitration under the Bill.	The original text of article 20 of the Model Law is adopted.
Clause 49: Article 21 of UNCITRAL Model Law (Commencement of arbitral proceedings)			
49(1)	31, 34C(1)	Article 21 of the Model Law is only applicable to international arbitration under Cap. 341; whereas it is applicable to all types of arbitration under the Bill. The relevant rules (section 31) in domestic arbitration under Cap. 341 (i.e. section 31) are replaced.	The original text of article 21 of the Model Law is adopted.
49(2)	N/A	New provision.	A request for a dispute to be referred to arbitration as mentioned in clause 49(1) of the Bill has to be made by way of a written communication.
Clause 50: Article 22 of UNCITRAL Model Law (Language)			
50	34C(1)	Article 22 of the Model Law is only applicable to international arbitration under Cap. 341; whereas it is applicable to all types of arbitration under the Bill.	The original text of article 22 of the Model Law is adopted.
Clause 51: Article 23 of UNCITRAL Model Law (Statements of claim and defence)			
51	34C(1)	Article 23 of the Model Law is only applicable to international arbitration under Cap. 341; whereas it is applicable to all types of arbitration under the Bill.	The original text of article 23 of the Model Law is adopted.
Clause 52: Article 24 of UNCITRAL Model Law (Hearings and written proceedings)			
52	34C(1)	Article 24 of the Model Law is only applicable to international arbitration under Cap. 341; whereas it is applicable to all types of arbitration under the	The original text of article 24 of the Model Law is adopted.

		Bill.	
Clause 53:	Article 25 of	UNCITRAL Model Law (Default of a party)	
53(1)	23C, 34C(1)	Article 25 of the Model Law is only applicable to international arbitration under Cap. 341; whereas it is applicable to all types of arbitration under the Bill. The relevant rules (section 23C) in domestic arbitration under Cap. 341 are replaced.	The original text of article 25 of the Model Law is adopted.
53(2)	N/A	New provision.	The clause is modelled on section 41(2) of UK Arbitration Act 1996 (c. 23). Clause 53(3) and (4) of the Bill is to apply, unless otherwise agreed by the parties.
53(3)	N/A	New provision.	The clause is modelled on section 41(5) of UK Arbitration Act 1996 (c. 23). If a party fails to comply with any order or direction of the tribunal without showing sufficient cause, this clause empowers the arbitral tribunal to make a peremptory order to the same effect,.
53(4)	N/A	New provision.	The clause is modelled on section 41(7) of UK Arbitration Act 1996 (c. 23). The powers of the arbitral tribunal upon a party's failure to comply with a peremptory order are listed out.
Clause 54:	Article 26 of	UNCITRAL Model Law (Expert appointed by arbitral tribunal)	
54(1)	34C(1)	Article 26 of the Model Law is only applicable to international arbitration under Cap. 341; whereas it is applicable to all types of arbitration under the Bill.	The original text of article 26 of the Model Law is adopted.
54(2)	N/A	New provision.	The clause is modelled on section 37(1) of UK Arbitration Act 1996 (c. 23). The clause concerns the role of experts, legal

			advisers or assessors in assisting the assessment of the amount of the costs of arbitral proceedings.
Clause 55: Article 27 of UNCITRAL Model Law (Court assistance in taking evidence)			
55(1)	34C(1)	Article 27 of the Model Law is applicable to international arbitration only under Cap. 341; this clause is applicable to all types of arbitration under the Bill.	The original text of article 27 of the Model Law is adopted.
55(2)-(4)	2GC(3)-(5)	No change	Textual changes to the wording of the provision in Cap. 341.
55(5)	N/A	New provision.	The decision or order of the Court of First Instance made under clause 55 of the Bill is subject to no appeal.
Clause 56: General powers exercisable by arbitral tribunal			
56(1)	2GB(1)	The power to make an order or give direction (i) requiring money in dispute to be secured (section 2GB(1)(b)); and (ii) granting interim injunctions or directing other interims to be taken (section 2GB(1)(f)) are now covered by the provisions in the Bill dealing with interim measures.	The general powers exercisable by an arbitral tribunal under the Bill are made subject to any other agreement of the parties to the arbitral proceedings.
56(2)-(4)	2GB(3)-(5)	No change	Textual changes to the wording of the provision in Cap. 341.
56(5)	N/A	New provision.	Clauses 39 to 42 of the Bill are to apply to an order under clause 56(1)(d).
56(6)-(9)	2GB(2), (6)-(8)	No change	Textual changes to the wording of the provision in Cap. 341.
Clause 57: Arbitral tribunal may limit amount of recoverable costs			
57(1)	2GL(1)	No substantive change.	Wording of the provision in Cap. 341 is adapted.
57(2)	N/A	New provision.	An arbitral tribunal is empowered to make or vary a direction on its own initiative or upon application by a party.

57(3)	2GL(2)	No substantive change.	The clause is modelled on section 65(2) of UK Arbitration Act 1996 (c. 23).
57(4)	2GL(3)	Clause 57(4) of the Bill additionally provides the meaning of “costs” referred to in clause 57.	
Clause 58: Power to extend time for arbitral proceedings			
58(1)-(7)	2GD(1)-(3), (5)-(8)	No substantive change.	Wording of the provisions in Cap. 341 is adapted.
58(8)	N/A	New provision.	An order of the Court of First Instance made in exercise of its power conferred by clause 58(7) of the Bill is not subject to appeal.
Clause 59: Order to be made in case of delay in pursuing claims in arbitral proceedings			
59(1)	2GE(1)	There is an implied term in an arbitration agreement under Cap. 341 that a party has to prosecute his claim without delay; the clause in the Bill provides that a party must pursue his claim without unreasonable delay only after the arbitral proceedings have commenced, unless otherwise expressed.	The change is to encourage parties to resolve the dispute by settlement without having to go through the arbitral process.
59(2)-(5)	2GE(2)-(5)	No substantive change.	Wording of the provisions in Cap. 341 is adapted.
59(6)	N/A	New provision.	An award or order made by the Court in exercise of its power conferred by clause 59(5) of the Bill is not subject to appeal.
Clause 60: Special powers of Court in relation to arbitral proceedings			
60(1)-(4)	2GC(1)(b), (2)(b), (5), (6)	No substantive change.	Wording of the provisions in Cap. 341 is adapted.
60(5)	N/A	New provision.	The clause is modelled on section 44(7) of UK Arbitration Act 1996 (c. 23). If the Court of First Instance so orders, an order

			made by it under clause 60 of the Bill cease to have effect on the order of the arbitral tribunal.
60(6)-(8)	2GC(1A)-(1C)	No substantive change.	The clause is adapted from the provisions added as section 2GC(1A) to (1C) of Cap. 341 as introduced by section 11 of the Civil Justice (Miscellaneous Amendments) Ordinance 2008 (3 of 2008).
60(9)	N/A	New provision.	An order of the Court of First Instance made under clause 61 of the Bill is subject to appeal with the leave of the Court.
60(10)	N/A	New provision.	Leave of the Court of First Instance is required for any appeal from an order of the Court under clause 60(1) of the Bill for the sale of any relevant property.
Clause 61: Enforcement of orders and directions of arbitral tribunal			
61(1)	2GG(1), (2)	The provision in Cap. 341 applies in relation to the enforcement of awards, orders and directions made or given in relation to arbitral proceedings by an arbitral tribunal; but clause 61 of the Bill only applies to the enforcement of orders and directions.	Provisions relating to the enforcement of awards made by the arbitral tribunal is provided under Clause 84 of the Bill.
61(2)	N/A	New provision.	Leave for enforcement of an order or direction made outside Hong Kong cannot be granted by the Court of First Instance, unless the party seeking to enforce it can demonstrate that the order or direction belongs to a type or description of those that may be similarly made in Hong Kong.
61(3)	2GG(1)	No substantive change.	Wording in the provision in Cap. 341 is adapted.
61(4)	N/A	New provision.	The decision made by the court under clause 61(1) is subject to no appeal.
61(5)	N/A	New provision.	The order or direction referred to in clause 61 of

			the Bill includes an interim measure.
Clause 62: Power of Court to order recovery of arbitrator's fees			
62(1)	15(3)	Under the Bill, if the arbitrator's mandate terminates under clause 26 or 27 and on the application of any party, the Court of First Instance has discretionary power to order that the arbitrator is not entitled to receive his fees or expenses and to order repayment of those already paid to him; under Cap. 341, no such application is required, and it is mandatory that the arbitrator shall not be entitled to receive his remuneration.	.
62(2)	N/A	New provision.	An order of the Court of First Instance made under clause 62(1) of the Bill is subject to no appeal.
Clause 63 Representation and preparation work			
63	2F	No change	Textual changes to the wording of the provision in Cap. 341.

PART 8

Making of Award and Termination of Proceedings

Clause in Arbitration Bill	Equivalent Section in Arbitration Ordinance (Cap. 341)	Comparison	Remarks and Application of the UNCITRAL Model Law
Clause 64: Article 28 of UNCITRAL Model Law (Rules applicable to substance of dispute)			
64	34C(1)	Article 28 of the Model Law is only applicable to international arbitration under Cap. 341; whereas it is applicable to all types of arbitration under the Bill.	The original text of article 28 of the Model Law is adopted.
Clause 65: Article 29 of UNCITRAL Model Law (Decision- making by panel of arbitrators)			
65	11, 34C(1)	Article 29 of the Model Law is only applicable to international arbitration under Cap. 341; whereas it is applicable to all types of arbitration under the Bill.	The original text of article 29 of the Model Law is adopted.
Clause 66: Article 30 of UNCITRAL Model Law (Settlement)			
66(1)	34C(1)	Article 30 of the Model Law is only applicable to international arbitration under Cap. 341; whereas it is applicable to all types of arbitration under the Bill.	The original text of article 30 of the Model Law is adopted.
66(2)	2C	A written settlement agreement entered into by parties is, for the purpose of enforcement, to be treated as an arbitral award.	
Clause 67: Article 31 of UNCITRAL Model Law (Form and contents of award)			
67(1)	34C(1)	Article 31 of the Model Law is only applicable to international arbitration under Cap. 341; whereas	The original text of article 31 of the Model Law is adopted.

		it is applicable to all types of arbitration under the Bill.	
67(2)	N/A	New provision.	Article 31(4) of the Model Law, given effect to by clause 67(1) of the Bill, has effect subject to clause 77 (arbitrators' lien).
Clause 68:	Article 32 of	UNCITRAL Model Law (Termination of proceedings)	
68	34C(1)	Article 32 of the Model Law is only applicable to international arbitration under Cap. 341; whereas it is applicable to all types of arbitration under the Bill.	The original text of article 32 of the Model Law is adopted.
Clause 69:	Article 33 of	UNCITRAL Model Law (Correction and interpretation of award; additional award)	
69(1)	19, 34C(1)	Article 33 of the Model Law is only applicable to international arbitration under Cap. 341; whereas it is applicable to all types of arbitration under the Bill. The relevant rules (section 19) in domestic arbitration under Cap. 341 are replaced.	The original text of article 33 of the Model Law is adopted.
69(2)	N/A	New provision.	The arbitral tribunal is empowered to make other changes to the arbitral award necessitated by or consequential on those correction or interpretation made under clause 69(1) of the Bill.
69(3), (4)	N/A	New provisions.	An arbitral tribunal is empowered to review an arbitral award on costs, if the stipulated condition is satisfied; and on such a review, it may confirm or correct the award of costs.
Clause 70:	Award of remedy or relief		
70(1)	2GF	No substantive change.	Wording of the provision in Cap. 341 is adapted.
70(2)	17	The provision in Cap. 341 is applicable to domestic arbitration only; the Bill extends its	

		applicability to all types of arbitration.	
Clause 71: Awards on different aspects of matters			
71	16	The provision in Cap. 341 is applicable to domestic arbitration only; the Bill extends its applicability to all types of arbitration.	The clause is modelled on section 47(1) of UK Arbitration Act 1996 (c. 23).
Clause 72: Time for making award			
72(1)	15(1)	Under Cap. 341, the arbitrator's power to make an award at any time in domestic arbitration is subject to the time limit specified in section 24(2) in relation to a remitted award ; the Bill extends this arbitrator's power to all types of arbitration and the clause is not subject to a similar time limit.	
72(2)	15(2)	The provision in Cap. 341 is applicable to domestic arbitration only; the Bill extends its applicability to all types of arbitration.	
72(3)	N/A	New provision.	An order of the Court of First Instance made under clause 72(2) of the Bill is not subject to appeal.
Clause 73: Effect of award			
73(1)	18	The provision in Cap. 341 is applicable to domestic arbitration only; the Bill extends its applicability to all types of arbitration.	This clause is modelled on section 58(1) of UK Arbitration Act 1996 (c. 23).
73(2)	N/A	New provision.	This clause is modelled on section 58(2) of UK Arbitration Act 1996 (c. 23). Clause 73(1) of the Bill does not affect the right of a person to challenge the award as provided in the Bill or otherwise by any available arbitral process of appeal or review.
Clause 74: Arbitral tribunal may award costs of arbitral proceedings			
74(1), (2)	2GJ(1)(a)	The clause in the Bill additionally provides that an	

		arbitral tribunal, in making an award on costs, may take into account all relevant circumstances, including the fact that a written offer of settlement of the dispute has been made.	
74(3), (4)	N/A	New provisions.	The arbitral tribunal may exercise its discretion to order costs to be paid by a party in respect of a request made by any of the parties for an order or direction.
74(5)	2GJ(1)(b)	Cap. 341 is followed with minor modifications.	
74(6)	N/A	New provision.	An arbitral tribunal is not obliged to follow the scale and practices adopted by the court on taxation of costs.
74(7)	N/A	New provision.	The costs which an arbitral tribunal may allow are provided.
74(8), (9)	2GJ(3)	No change	Textual changes to the wording of the provision in Cap. 341.
Clause 75: Taxation of costs of arbitral proceedings (other than fees and expenses of arbitral tribunal)			
75(1)	2GJ(1)(c), (2)	Under Cap. 341, an arbitral tribunal, unless otherwise agreed by the parties, may direct that costs of arbitral proceedings be paid on the stipulated basis and any costs award are taxable by the Court of First Instance, unless the award otherwise directs; under the Bill, a court in Hong Kong is obliged, to make such directions where the parties have agreed that the relevant costs are taxable by the court.	
75(2)	N/A	New provision.	The arbitral tribunal must make an additional award of cost reflecting the result of taxation by the court.
75(3)	N/A	New provision.	A decision on taxation by the court under clause 75(1) is subject to no appeal.

75(4)	N/A	New provision.	Clause 75 of the Bill does not apply to costs ordered to be paid under clause 74(3).
Clause 76: Costs in respect of unqualified person			
76	2G	No change	Textual changes to the wording of the provision in Cap. 341.
Clause 77: Determination of arbitral tribunal's fees and expenses in case of dispute			
77(1)	N/A	New provision.	The clause is modelled on section 56(1) of UK Arbitration Act 1996 (c. 23). An arbitral tribunal may refuse to deliver an award to the parties unless full payment of the fees and expenses of the tribunal is made.
77(2)	21(1)	<p>The provision in Cap. 341 is only applicable to domestic arbitration ; whereas the Bill extends its applicability to all types of arbitration.</p> <p>The Court of First Instance is empowered to order an arbitrator or umpire to deliver the award upon the payment into the Court by the applicant of the fees demanded in domestic arbitration under Cap. 341; the Bill additionally provides that the Court can also do the same if the payment is of such lesser amount as the Court of First Instance may specify in all types of arbitration.</p> <p>The fees demanded is to be taxed by the taxing officer in domestic arbitration under Cap. 341; whereas under the Bill, this may be done by such means and upon such terms as the Court of First Instance may direct in all types in arbitration.</p>	The clause is modelled on section 56(2) of UK Arbitration Act 1996 (c. 23).
77(3)	N/A	New provision.	Clause 77(3)(a) of the Bill is modelled on section 56(3) of UK Arbitration Act 1996 (c. 23).

			<p>Clause 77(3)(b) of the Bill is modelled on section 37(2) of UK Arbitration Act 1996 (c. 23).</p> <p>The meaning and scope of “fees and expenses” for the purposes of clause 77(2) of the Bill are provided.</p>
77(4)	21(2)	<p>The provision in Cap. 341 is applicable to domestic arbitration only; the Bill extends its applicability to all types of arbitration.</p> <p>The Bill additionally provides one more situation in which no relevant application may be made under clause 77(2), namely, where there is an available arbitral process for appeal or review of the amount of the fees or expenses demanded.</p>	The clause is partly modelled on section 56(4) of UK Arbitration Act 1996 (c. 23).
77(5)	N/A	New provision.	<p>The clause is modelled on section 56(6) of UK Arbitration Act 1996 (c. 23).</p> <p>Clause 77(1)-(4) of the Bill is applicable to any arbitral or other institution or person vested by the parties with powers to deliver the arbitral tribunal's award</p>
77(6)	N/A	New provision.	The clause is modelled on section 56(6) of UK Arbitration Act 1996 (c. 23).
77(7)	N/A	New provision.	Enforcement of an award in relation to the fees or expenses of the arbitral tribunal is to be stayed if an application is made to the Court of First Instance under clause 77(2) of the Bill.
77(8)	21(4)	The provision in Cap. 341 is applicable to domestic arbitration only; the Bill extends its applicability to all types of arbitration.	
77(9)	N/A	New provision.	An arbitral tribunal is required to amend its award

			of fees and expenses of the tribunal to reflect the result of the determination under Clause 77(2)(b)
77(10)	N/A	New provision.	An order of the Court of First Instance under clause 77 of the Bill is subject to no appeal.
Clause 78: Liability to pay fees and expenses of arbitral tribunal			
78(1)	2GK(1)	No change.	
78(2), (3)	2GK(2), (3)	No substantive change.	Wording of the provisions in Cap. 341 is adapted.
78(4)	2GK(4)	No change.	
Clause 79: Arbitral tribunal may award interest			
79(1), (2)	2GH(1), (2)	An arbitral tribunal is additionally empowered to award interests on costs awarded or ordered by the tribunal in the arbitral proceedings.	
79(3)	N/A	New provision.	This clause is modelled on section 49(5) of UK Arbitration Act 1996 (c. 23). The meaning of the term “money awarded by the tribunal” used in clause 79(1)(a) is provided.
Clause 80: Interest on money or costs awarded or ordered in arbitral proceedings			
80(1)	2GI	No change	Textual changes to the wording of the provision in Cap. 341.
80(2)	N/A	New provision.	The clause stipulates the date from which interest is payable on costs awarded or ordered by an arbitral tribunal, and also provides that such interests are to be paid at the judgment rate.
80(3)	N/A	New provision.	The meaning of “judgment rate” in clause 80 of the Bill is provided.

PART 9**Recourse against Award**

Clause in Arbitration Bill	Equivalent Section in Arbitration Ordinance (Cap. 341)	Comparison	Remarks and Application of UNCITRAL Model Law
Clause 81: Article 34 of UNCITRAL Model Law (Application for setting aside as exclusive recourse against arbitral award)			
81(1)	23, 34C(1)	<p>Article 34 of the Model Law is applicable to international arbitration only under Cap. 341; it is applicable to all types of arbitration under the Bill.</p> <p>The relevant rules (section 23) in domestic arbitration under Cap. 341 are replaced, but some of them are retained in schedule 2 in the Bill as an opt-in provision.</p>	The original text of article 34 of the Model Law has effect subject to clause 13(5) of the Bill.
81(2)	N/A	New provision.	The clause does not affect three other situations under which an award may be challenged.
81(3)	23(1)	No substantive change.	Wording of the provision in Cap. 341 is adapted.
81(4)	N/A	New provision.	Leave of the Court of First Instance is required for any appeal from its decisions under Article 34 of the Model Law.

PART 10

Recognition and Enforcement of Awards

Clause in Arbitration Bill	Equivalent Section in Arbitration Ordinance (Cap. 341)	Comparison	Remarks and Application of UNCITRAL Model Law
Division 1 – Enforcement of arbitral awards			
Clause 82: Article 35 of UNCITRAL Model Law (Recognition and enforcement)			
82	34C(1)	No substantive change.	Article 35 of the Model Law does not have effect.
Clause 83: Article 36 of UNCITRAL Model Law (Grounds for refusing recognition or enforcement)			
83	34C(1)	No substantive change.	Article 36 of the Model Law does not have effect.
Clause 84: Enforcement of arbitral awards			
84(1)	2GG(1), (2)	This clause applies to the enforcement of arbitral awards.	Provisions relating to the enforcement of orders and directions made or given by the arbitral tribunal are stipulated under Clause 61 of the Bill.
84(2)	2GG(1)	No substantive change.	Wording of the provision in Cap. 341 is adapted.
84(3)	N/A	New provision.	Leave of the Court of First Instance is required for any appeal from its decisions to grant or refuse leave to enforce an award under clause 84(1) of the Bill.
Clause 85: Evidence to be produced for enforcement of arbitral awards			
85	N/A	New provision.	This clause is adapted from section 43 of Cap. 341 and is similar to clauses 88 and 94 of the Bill. This clause stipulates the evidence required to be produced for an application to enforce an arbitral award, whether made in or outside Hong Kong, and which is neither a Convention nor a Mainland

			award.
Clause 86:	Refusal of enforcement of arbitral awards		
86(1)-(4)	N/A	New provision.	The grounds upon which an application to enforce an arbitral award referred to in Clause 85 of the Bill may be refused are provided.
86(5)	N/A	New provision.	A decision or order of the court under Clause 86(4) of the Bill (to stay proceedings or to order a party to give security) is not subject to appeal.
		Division 2 – Enforcement of Convention awards	
Clause 87:	Enforcement of Convention awards		
87(1)-(3)	42(1), (2)	No substantive change.	Wording of the provisions in Cap. 341 is adapted.
Clause 88:	Evidence to be produced for enforcement of Convention awards		
88	43	No change.	Textual changes to the wording of the provision in Cap. 341.
Clause 89:	Refusal of enforcement of Convention awards		
89(1)	44(1)	No change.	
89(2), (3)	44(2), (3)	No change.	Textual changes to the wording of the provision in Cap. 341.
89(4)	44(4)	No change.	
89(5)	44(5)	No change.	Textual changes to the wording of the provision in Cap. 341.
89(6)	N/A	New provision.	A decision or order of the court under clause 89(5) of the Bill is not subject to appeal.
Clause 90:	Order for declaring party to New York Convention		
90(1), (2)	46	No change.	Textual changes to the wording of the provision in Cap. 341.
90(3)	N/A	New provision.	Proof by a method other than that provided under clauses 90(1) and (2) of the Bill is not affected.
Clause 91:	Saving of rights to enforce Convention awards		
91	45	No change.	Textual changes to the wording of the provision in

			Cap. 341.
		Division 3 – Enforcement of Mainland awards	
Clause 92:	Enforcement of Mainland awards		
92(1)-(3)	40B(1)-(3)	No change.	Textual changes to the wording of the provision in Cap. 341.
Clause 93:	Restrictions on enforcement of Mainland awards		
93(1), (2)	40C(1), (2)	No change.	Textual changes to the wording of the provision in Cap. 341.
Clause 94:	Evidence to be produced for enforcement of Mainland awards		
94	40D	No change.	Textual changes to the wording of the provision in Cap. 341.
Clause 95:	Refusal of enforcement of Mainland awards		
95(1)	40E(1)	No change.	
95(2)	40E(2)	No change.	Textual changes to the wording of the provision in Cap. 341.
95(3),(4)	40E(3),(4)	No change.	
Clause 96:	Mainland awards to which certain provisions of this Division do no apply		
96(1), (2)	40A(1), (2)	No change.	Textual changes to the wording of the provision in Cap. 341.
Clause 97:	Publication of list of recognized Mainland arbitral authorities		
97(1)	40F(1)	No substantive change.	Wording of the provision in Cap. 341 is adapted.
97(2)	40F(2)	No change.	
Clause 98:	Saving of certain Mainland awards		
98	40G	No change.	Textual changes to the wording of the provision in Cap. 341.

PART 11**Provisions that may be Expressly Opted for or Automatically Apply**

Clause in Arbitration Bill	Equivalent Section in Arbitration Ordinance (Cap. 341)	Comparison	Remarks and Application of UNCITRAL Model Law
Clause 99: Arbitration agreements may provide expressly for opt-in provisions			
99	N/A	New provision.	Parties to an arbitration agreement are allowed to expressly provide in the agreement as to whether any or all of the provisions in schedule 2 of the Bill are to apply as opt-in provisions.
Clause 100: Opt-in provisions automatically apply in certain cases			
100	N/A	New provision.	The two situations under which opt-in provisions in schedule 2 of the Bill automatically apply are stated.
Clause 101: Circumstances under which opt-in provisions not automatically apply			
101	N/A	New provision.	Certain cases under which clause 100 does not apply are stated.
Clause 102: Application of provisions under this Part			
102	N/A	New provision.	Opt-in provisions that are applicable under Part 11 will prevail over other clauses in the Bill to the extent of their conflict or inconsistency.

PART 12

Miscellaneous

Clause in Arbitration Bill	Equivalent Section in Arbitration Ordinance (Cap. 341)	Comparison	Remarks and Application of UNCITRAL Model Law
Clause 103: Arbitral tribunal or mediator to be liable for certain acts or omissions			
103(1), (2)	2GM(1), (2)	The provisions in Cap. 341 apply to arbitral tribunals only; the Bill extends their applicability to mediators.	
Clause 104: Appointors and administrators to be liable only for certain acts and omissions			
104(1), (2)	2GN(1), (2)	The provisions in Cap. 341 apply to arbitral tribunals and arbitral proceedings only; the Bill extends their applicability to mediators and mediation proceedings	
104(3)	2GN(3)	No change.	
104(4)	2GN(4)	The provision in Cap. 341 applies to arbitral tribunals only; the Bill extends their applicability to mediators.	
104(5)	2GN(5)	No substantive change.	Wording of the provision in Cap. 341 is adapted.
Clause 105: Rules of court			
105(1), (2)	49(1), (2)	No substantive change.	Wording of the provision in Cap. 341 is adapted. The clause is adapted from section 49 of Cap. 341 as introduced by section 12 of the Civil Justice (Miscellaneous Amendments) Ordinance 2008 (3 of 2008).
Clause 106: Making an application etc. under this Ordinance			
106	N/A	New provision.	An application, request or appeal to the Court of First Instance under the Bill is to be made in

			accordance with the Rules of the High Court (Cap. 4 sub. leg. A) ("RHC"). - i.e. to apply Order 73 of the RHC.
Clause 107: Decision, etc. of Court under this Ordinance			
107	23A(3)	Section 23A(3) of Cap. 341 covers a decision of the court only; whereas the clause under the Bill extends to determinations, directions or awards of the Court under the Bill.	

PART 13**Repeal, Savings and Transitional Provisions**

Clause in Arbitration Bill	Equivalent Section in Arbitration Ordinance (Cap. 341)	Comparison	Remarks and Application of UNCITRAL Model Law
Clause 108: Repeal			
108	N/A	New provision.	To repeal Cap. 341.
Clause 109: Effect of repeal on subsidiary legislation			
109	N/A	New provision.	Subsidiary legislation made under Cap. 341 and in force at the commencement of this Bill is preserved so far as it is not inconsistent with the Bill.
Clause 110: Savings and transitional provisions			
110	N/A	New provision.	To provide that savings and transitional provisions are set out in Schedule 3 to the Bill.

PART 14**Consequential and Related Amendments**

Clause in Arbitration Bill	Equivalent Section in Arbitration Ordinance (Cap. 341)	Comparison	Remarks and Application of UNCITRAL Model Law
Clause 111: Consequential and related amendments			
111	N/A	New provision.	To provide that the consequential and related amendments to other Ordinances due to the enactment of the Bill are set out in Schedule 4 to the Bill.

SCHEDULE 2

Provisions that may be Expressly Opted for or Automatically Apply

Clause in Arbitration Bill	Equivalent Section in Arbitration Ordinance (Cap. 341)	Comparison	Remarks
Section 1: Sole arbitrator			
1	N/A	New provision.	Parties to an arbitration agreement are allowed to refer the dispute to a sole arbitrator.
Section 2: Consolidation of arbitrations			
2(1)	6B(1)	The provision in Cap. 341 provides that the Court of First Instance is empowered to order arbitral proceedings to be consolidated or to be heard at the same time or one immediately after another under certain specified circumstances. Section 2(1) of the Bill additionally provides that such orders may only be made upon application of any party to the proceedings.	
2(2)	6B(2)	Section 2(2) of the Bill gives the Court of First Instance an additional power to make consequential directions as to payment of costs in those arbitral proceedings which have been ordered to be consolidated or heard at the same time or one immediately after another under section 2(1)(d).	
2(3)	6B(3)	No substantive change.	Wording of the provision in Cap. 341 is adapted.
2(4)	N/A	New provision.	The arbitral tribunal hearing the arbitral proceedings consolidated under section 2(1)(d)(i)

			of Schedule 2 to the Bill is empowered to make orders or give directions under clauses 74 and 75 of the Bill in relation to the costs of those arbitral proceedings.
2(5)	N/A	New provision.	The powers of an arbitral tribunal to make orders or give directions in relation to costs of those arbitral proceedings which are to be heard by it at the same time or one immediately after another under section 2(1)(d)(ii) of Schedule 2 to the Bill and the scope of these powers are set out.
2(6)	N/A	New provision.	An order, direction or decision of the Court of First Instance made under section 2 is subject to no appeal.
Section 3: Decision of preliminary question of law by Court			
3(1)	23A(1)	No substantive change.	Wording of the provision in Cap. 341 is adapted. This clause is modelled on section 45(1) of UK Arbitration Act 1996 (c.23).
3(2)	23A(1)	The Bill specifies that the agreement of all the parties or the permission of the arbitral tribunal to make an application under section 3(1) must be in writing, but there is no such requirement under the Cap. 341.	This clause is modelled on section 45(2) of UK Arbitration Act 1996 (c.23).
3(3)	N/A	New provision.	The clause is modelled on section 45(3) of UK Arbitration Act 1996 (c. 23). The clause lists out the procedural requirements that has to be satisfied in making the application under section 3(1)
3(4)	23A(2)(a)	The clause in the Bill additionally provides that the	This clause is modelled on section 45(2) of UK

		Court of First Instance cannot entertain an application made with the agreement of all the other parties to the arbitral proceedings unless the stipulated condition is satisfied.	Arbitration Act 1996 (c.23).
3(5)	23A(3)	No substantive change. The reference in Cap. 341 to a decision of the Court being deemed to be a judgment is now found in clause 107.	
Section 4: Challenging arbitral award on ground of serious irregularity			
4(1)-(3)	N/A	New provisions.	The clauses are modelled on sections 68(1)-(3) of UK Arbitration Act 1996 (c. 23). This section empowers a party to arbitral proceedings to apply to the Court of First Instance to challenge an award on the ground of serious irregularity, and the three types of Court order which may be made upon a successful challenge are listed out. The definition of “serious irregularity” is stipulated.
4(4)	24(2)	No substantive change.	The clause is modelled on sections 71(3) of UK Arbitration Act 1996 (c. 23). This section concerns the making of a fresh award by the tribunal if the award is remitted to the tribunal under section 4(3).
4(5)	N/A	New provision.	The clause is modelled on section 68(3) of UK Arbitration Act 1996 (c. 23) The clause limits the Court’s exercise of power to set aside an award or to declare an award to be of no effect under section 4(4).
4(6)	N/A	New provision.	The clause is modelled on section 68(4) of UK Arbitration Act 1996 (c. 23).

			The clause stipulates that leave of the Court of First Instance or Court of Appeal is required for any appeal from a decision, order or direction of the Court of First Instance under section 4.
4(7)	N/A	New provision.	The provisions in section 7 of Schedule 2 to the Bill also applies to an application or appeal under section 4.
Section 5: Appeal against arbitral award on question of law			
5(1)- (2)	23	Section 23 of Cap. 341 is adapted, having regard to section 69 of the UK Arbitration Act 1996.	The clauses are modelled on section 69(1) of UK Arbitration Act 1996 (c. 23). A party to the arbitral proceedings has the right to appeal to the Court of First Instance on the question of law arising out of an arbitral award. The parties' agreement to dispense with the reasons for an arbitral tribunal's award is deemed to be an agreement to exclude the Court of First Instance's jurisdiction under this section.
5(3)	N/A	New provision.	The Court of First Instance is to determine the question of law on the basis of the findings of facts in the award.
5(4)	N/A	New provision.	The Court of First Instance must not consider any of the criteria set out in section 6(4)(c)(i) or (ii) of Schedule 2 to the Bill when it determines the question of law under section 5(3) of Schedule 2.
5(5)	23(2)	No substantive change.	Wording of the provision in Cap. 341 is adapted. The clause is modelled on section 69(7) of UK Arbitration Act 1996 (c. 23).
5(6)	23(2)	No substantive change.	Wording of the provision in Cap. 341 is adapted.

			The clause is modelled on section 71(3) of UK Arbitration Act 1996 (c. 23).
5(7)	N/A	New provision.	The clause is modelled on sections 69(7) of UK Arbitration Act 1996 (c. 23). The clause provides that the Court of First Instance must not exercise its power to set aside an award under section 5(5)(d) unless it is satisfied that it would be inappropriate to remit the matters in question to the arbitral tribunal for reconsideration.
5(8)	23(7)	No substantive change.	Wording of the provision in Cap. 341 is adapted. This clause provides that leave of the Court of First Instance or Court of Appeal is required for any further appeal from the order of the Court under section 5(5).
5(9)	N/A	New provision.	The clause is modelled on section 69(8) of UK Arbitration Act 1996 (c. 23). This section outlines the criteria for a leave to be granted under section 5(8) of Schedule 2 to the Bill.
5(10)	N/A	New provision.	The provisions in sections 6 and 7 of Schedule 2 to the Bill also apply to an application or appeal under section 5.
Section 6: Application for leave to appeal against arbitral award on question of law			
6(1)	23(3)	Clause 23(3) of Cap. 341 is adapted.	The clause is modelled on section 69(2) of UK Arbitration Act 1996 (c. 23).

			This section stipulates the condition upon which an appeal under section 5 on a question of law may be brought.
6(2), (3)	N/A	New provisions.	The clauses are modelled on sections 69(4) and (5) of UK Arbitration Act 1996 (c. 23). These sections list out the procedural requirements for an application for leave to appeal, and for the determination of such application.
6(4)	N/A	New provision.	The clause is modelled on section 69(3) of UK Arbitration Act 1996 (c. 23). This section sets out the criteria for granting leave to appeal.
6(5)	23(7)	No substantive change.	Wording of the provision in Cap. 342 is adapted. The clause is modelled on section 69(6) of UK Arbitration Act 1996 (c. 23). Leave is required for an appeal from a decision of the Court of First Instance to grant or refuse leave to appeal.
6(6)	N/A	New provision.	The circumstances under which leave to appeal from the Court of First Instance's decision to grant or refuse leave to appeal are stipulated.
Section 7: Supplementary provisions on challenge to or appeal against arbitral award			
7(1)	N/A	New provision.	The clause is modelled on section 70(2) of UK Arbitration Act 1996 (c. 23). This section qualifies the right of the applicant or appellant to bring an application or appeal under sections 4, 5 or 6 of Schedule 2 to the Bill.

7(2)	23(5)-(6)	The section in the Bill is adapted from the second half of section 23(5) in Cap. 341.	The clause is modelled on section 70(4) of UK Arbitration Act 1996 (c. 23). This section sets out the Court of First Instance's power to order an arbitral tribunal to state the reasons for the award when the arbitral award does not or does not sufficiently set out the reasons for the award.
7(3)-(8)	N/A	New provisions.	The clauses are modelled on section 70(5)-(8) of UK Arbitration Act 1996 (c. 23).
7(9)	N/A	New provision.	An order or decision of made by the Court of First Instance or the Court of Appeal under section 7 of Schedule 2 to the Bill is subject to no appeal.

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