

一九九八年十二月十五日會議  
討論事項

## 立法會司法及法律事務委員會

### 內地與香港特別行政區相互執行仲裁裁決

#### 引言

本文告知各位議員內地與香港特別行政區（特區）之間訂立相互執行仲裁裁決的安排一事的進展。

#### 背景

2. 本文件提及的仲裁，是指商業爭議的各方通過獲承認及受規範的程序，自願把爭議提交仲裁機構裁決。這種仲裁提供了一個效率通常較訴訟為高並較廉宜的解決爭議的辦法。一個司法管轄區內必須存在有效率的安排，以執行另一個司法管轄區所作出的仲裁裁決，這一點極為重要。這有助確保商務交易較為公平，並減低商界人士違背合約的可能性。

3. 一九九七年七月一日以前，內地與香港相互執行仲裁裁決受一九五八年六月十日在紐約簽訂的《承認及執行外國仲裁裁決公約》規限（《紐約公約》，見附件 A）。按照《紐約公約》執行裁決（包括內地認可仲裁中心所作出的裁決）的詳細安排載列於《仲裁條例》第 IV 部（《仲裁條例》（第 341 章）的有關撮錄見附件 B）。在回歸之後，《紐約公約》繼續適用於作為中華人民共和國的一部分的香港特區。但由於該公約是國際間的協定，因此並不適用於內地與特區之間仲裁裁決的執行。

4. 由於兩個司法管轄區之間並無相互執行的安排，因此特區的裁決不能在內地執行，而內地的裁決亦不能在特區執行。<sup>註</sup> 為補救這個情況，我們一直與中央人民政府探討如何訂立新的安排。

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註：某些內地的仲裁裁決（例如中國國際經濟貿易仲裁委員會的裁決）仍可根據普通法通過較繁複的程序而得以執行，即在關於到期應付還債項仲裁中獲裁決得直的一方可向特區法院控訴裁決的另一方。

## 建議安排

5. 根據《基本法》第九十五條，香港特區可與全國其他地區的司法機關通過協商依法進行司法方面的聯繫和相互提供協助。中共人民政府已就兩地相互執行仲裁裁決提出一套建議；我們自一九九八年三月以來，已多次與內地專家就此事交換意見。我們的目的，是訂立一套一方面盡可能參照回歸前的處理辦法和《紐約公約》的精神，另一方面也符合香港作為中華人民共和國的一個特別行政區的安排。

6. 我們希望新安排包括以下要點—

- (a) 開列須連同任何執行仲裁裁決申請提交的文件種類；
- (b) 要求有關法院應按照執行地法律及程序處理執行仲裁裁決的申請的條文；
- (c) 不予執行仲裁裁決的理由，這些理由與《紐約公約》所載的相同；  
及
- (d) 開列於 1997 年 7 月 1 日至安排生效日期間所作的申請的處理辦法的條文。

## 立法修訂

7. 我們希望盡快與中央人民政府就最終的安排達成共識，並會在有關安排生效前提交必須的修訂條例草案。

律政司

一九九八年十二月

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**THIRD SCHEDULE**

[s. 2]

**CONVENTION ON THE RECOGNITION AND ENFORCEMENT  
OF FOREIGN ARBITRAL AWARDS. DONE AT  
NEW YORK, ON 10 JUNE 1958**

Article I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.
2. The term "arbitral awards" (仲裁裁決) shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.
3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.
2. The term "agreement in writing" (書面協定) shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.
3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, at the request of one of the parties, refer the parties to arbitration unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply-

- (a) the duly authenticated original award or a duly certified copy thereof;
- (b) the original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

#### Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that-

- (a) the parties to the agreement referred to in article II were, under the law applicable to them, 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
- (b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
- (c) the award deals with a difference 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
- (d) the composition of the arbitral authority 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
- (e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that-

- (a) the subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
- (b) the recognition or enforcement of the award would be contrary to the public policy of that country.

#### Article VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V(1)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

#### Article VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

## Article VIII

1. This Convention shall be open until 31 December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter becomes a party to the Statute of the international Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.
2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

## Article IX

1. This Convention shall be open for accession to all States referred to in article VIII.
2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

## Article X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.
2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.
3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

## Article XI

- In the case of a federal or non-unitary State, the following provisions shall apply—
- (a) with respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;
  - (b) with respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;
  - (c) a federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

## Article XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.
2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

### Article XIII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.
3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

### Article XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

### Article XV

The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following-

- (a) signatures and ratifications in accordance with article VIII;
- (b) accessions in accordance with article IX;
- (c) declarations and notifications under articles I, X and XI;
- (d) the date upon which this Convention enters into force in accordance with article XII;
- (e) denunciations and notifications in accordance with article XIII.

### Article XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article VIII.

*(Third Schedule added 85 of 1975 s. 9)*

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**CHAPTER 341**

**ARBITRATION**

To make provision for arbitration in respect of civil matters.

[5 July 1963]

The operation of this Ordinance is affected by the transitional provisions contained in s. 18 of 75 of 1996, which section is reproduced immediately after s. 48.

**PART I**

**PRELIMINARY**

*(Amended 75 of 1996 s. 2)*

**1. Short title**

This Ordinance may be cited as the Arbitration Ordinance.

**2. Interpretation**

(1) In this Ordinance, unless the context otherwise requires—*(Amended 64 of 1989 s. 2)*

"arbitral tribunal" (仲裁庭) means a sole arbitrator or a panel of arbitrators, and includes an umpire; *(Added 75 of 1996 s.3)*

"arbitration agreement" (仲裁協議) has the same meaning as in article 7(1) of the UNCITRAL Model Law; *(Replaced 64 of 1989 s. 2)*

"claimant" (申索人) includes a person who makes a counter-claim; *(Added 75 of 1996 s. 3)*

"conciliation" (調解) includes mediation; *(Added 75 of 1996 s. 3)*

"Convention award" (公約裁決) means an award to which Part IV applies, namely, an award made in pursuance of an arbitration agreement in a State or territory, other than Hong Kong, which is a party to the New York Convention; *(Added 85 of 1975 s. 2)*

- "Court" (法院) means the High Court; (*Amended 92 of 1975 s. 59*)
- "dispute" (爭議) includes a difference; (*Added 64 of 1989 s. 2*)
- "domestic arbitration agreement" (本地仲裁協議) means an arbitration agreement that is not an international arbitration agreement; (*Added 64 of 1989 s. 2*)
- "foreign award" (外國裁決) means an award to which Part III applies;
- "function" (職能) includes a power and a duty; (*Added 75 of 1996 s. 3*)
- "HKIAC" (香港國際仲裁中心) means Hong Kong International Arbitration Centre, a company incorporated in Hong Kong under the Companies Ordinance (Cap. 32) and limited by guarantee; (*Added 75 of 1996 s. 3*)
- "international arbitration agreement" (國際仲裁協議) means an arbitration agreement pursuant to which an arbitration is, or would if commenced be, international within the meaning of article 1(3) of the UNCITRAL Model Law; (*Added 64 of 1989 s. 2*)
- "the New York Convention" (紐約公約) means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration on 10 June 1958 the text of which is set out in the Third Schedule; (*Added 85 of 1975 s. 2*)
- "the UNCITRAL Model Law" (聯合國國際貿易法委員會示範法) means the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on 21 June 1985, the text of which is set out in the Fifth Schedule. (*Added 64 of 1989 s. 2. Amended 56 of 1991 s. 2*)
- (2) (*Repealed 75 of 1996 s. 3*)
- (3) In interpreting and applying the provisions of the UNCITRAL Model Law, regard shall be had to its international origin and to the need for uniformity in its interpretation, and regard may be had to the documents specified in the Sixth Schedule. (*Added 64 of 1989 s. 2*)
- (4) In the UNCITRAL Model Law a reference to—
- (a) "this State" (本國) shall be treated as being a reference to Hong Kong;
- (b) "any agreement in force between this State and any other State or States" (本國與其他任何一國或多國之間有效力的任何協定) shall be treated as being a reference to any agreement that binds Hong Kong and any other place and that has the force of law in Hong Kong;
- (c) "a State" (一國) shall be treated as including a reference to Hong Kong;
- and

(d) "different States" (不同的國家) shall be treated as including a reference to Hong Kong and any other place. (*Added 64 of 1989 s. 2*)

(5) A note located in the text of this Ordinance is provided for information only and has no legislative effect. (*Added 75 of 1996 s. 3*)

[*cf. 1975 c. 3 s. 7(1) U.K.*]

## **2AA. Objective and principles of 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 that—

(a) subject to the observance of such safeguards as are necessary in the public interest, the parties to a dispute should be free to agree how the dispute should be resolved; and

(b) the Court should interfere in the arbitration of a dispute only as expressly provided by this Ordinance.

(*Added 75 of 1996 s. 4*)

## **2AB. Ordinance to apply to statutory arbitrations**

(1) This Ordinance (other than the provisions specified in subsection (3)) applies to arbitrations under every other Ordinance, whether passed before or after the commencement of this section, as if—

(a) the arbitration were under a domestic arbitration agreement; and

(b) the other enactment were such an agreement.

(2) Subsection (1) has effect only in so far as this Ordinance is consistent with that other enactment and with any rules or procedure authorized or recognized by that other enactment.

(3) The provisions referred to in subsection (1) are sections 2GD, 2GJ(3), 4(1), 5, 7, 26 and 27. (*Amended 80 of 1997 s. 102*)

(*Added 75 of 1996 s. 4*)

## **2AC. Arbitration agreement to be in writing**

(1) An agreement is not an arbitration agreement for the purposes of this Ordinance unless it is in writing.

(2) An agreement is in writing for the purposes of subsection (1) if—

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

(b) the agreement is made by an exchange of written communications; or

- (c) although the agreement is not itself in writing, there is evidence in writing of the agreement; or
  - (d) the parties to the agreement agree otherwise than in writing by referring to terms that are in writing; or
  - (e) 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; or
  - (f) there is an exchange of written submissions in arbitral or legal proceedings in which the existence of an agreement otherwise than in writing is alleged by one party against another party and is not denied by the other party in response to the allegation.
- (3) A reference in an agreement—
- (a) to a written form of arbitration clause; or
  - (b) to a document containing an arbitration clause,
- constitutes an arbitration agreement if the reference is such as to make that clause part of the agreement.
- (4) In this section "writing" (書面) includes any means by which information can be recorded.
- (5) This section applies to all agreements that would, if they were arbitration agreements, be either domestic arbitration agreements or international arbitration agreements and applies to those agreements to the exclusion of article 7(2) of the UNCITRAL Model Law.  
(*Added 75 of 1996 s. 4*)

## PART IA

### PROVISIONS APPLICABLE TO DOMESTIC AND INTERNATIONAL ARBITRATION

*(Amended 64 of 1989 s. 3; 75 of 1996 s. 5)*

#### **Application of Part**

*(Added 75 of 1996 s. 6)*

#### **2AD. Application (Part IA)**

This Part applies to arbitration proceedings conducted under both domestic arbitration agreements and international arbitration agreements.

*(Added 75 of 1996 s. 6)*

#### **2A. Appointment of conciliator**

(1) In any case where an arbitration agreement provides for the appointment of a conciliator by a person who is not one of the parties and that

person refuses to make the appointment or does not make it within the time specified in the agreement or, if no time is so specified, within a reasonable time of being requested by any party to the agreement to make the appointment, the Court or a judge thereof may, on the application of any party to the agreement, appoint a conciliator who shall have the like powers to act in the conciliation proceedings as if he had been appointed in accordance with the terms of the agreement. (*Amended 64 of 1989 s. 4*)

(2) Where an arbitration agreement provides for the appointment of a conciliator and further provides that the person so appointed shall act as an arbitrator in the event of the conciliation proceedings failing to produce a settlement acceptable to the parties—

- (a) no objection shall be taken to the appointment of such person as an arbitrator, or to his conduct of the arbitration proceedings, solely on the ground that he had acted previously as a conciliator in connexion with some or all of the matters referred to arbitration;
- (b) if such person declines to act as an arbitrator any other person appointed as an arbitrator shall not be required first to act as a conciliator unless a contrary intention appears in the arbitration agreement.

(3) Unless a contrary intention appears therein, an arbitration agreement which provides for the appointment of a conciliator shall be deemed to contain a provision that in the event of the conciliation proceedings failing to produce a settlement acceptable to the parties within 3 months, or such longer period as the parties may agree to, of the date of the appointment of the conciliator or, where he is appointed by name in the arbitration agreement, of the receipt by him of written notification of the existence of a dispute the proceedings shall thereupon terminate.

(4) (*Repealed 64 of 1989 s. 4*)

## **2B. Power of arbitrator to act as conciliator**

(1) If all parties to a reference consent in writing, and for so long as no party withdraws in writing his consent, an arbitrator or umpire may act as a conciliator.

(2) An arbitrator or umpire acting as conciliator—

- (a) may communicate with the parties to the reference collectively or separately;
- (b) shall treat information obtained by him from a party to the reference as confidential, unless that party otherwise agrees or unless subsection (3) applies.

(3) Where confidential information is obtained by an arbitrator or umpire from a party to the reference during conciliation proceedings and those proceedings terminate without the parties reaching agreement in settlement of

their dispute, the arbitrator or umpire shall, before resuming the arbitration proceedings, disclose to all other parties to the reference as much of that information as he considers is material to the arbitration proceedings.

(4) No objection shall be taken to the conduct of arbitration proceedings by an arbitrator or umpire solely on the ground that he had acted previously as a conciliator in accordance with this section.

*(Added 64 of 1989 s. 5)*

## **2C. Settlement agreements**

If the parties to an arbitration agreement reach agreement in settlement of their dispute and enter into an agreement in writing containing the terms of settlement (the "settlement agreement") the settlement agreement shall, for the purposes of its enforcement, be treated as an award on an arbitration agreement and may, by leave of the Court or a judge thereof, be enforced in the same manner as a judgment or order to the same effect and, where leave is so given, judgment may be entered in terms of the agreement.

*(Added 64 of 1989 s. 5)*

## **2D. Proceedings to be heard otherwise than in open court**

Proceedings under this Ordinance in the Court or Court of Appeal shall on the application of any party to the proceedings be heard otherwise than in open court.

*(Added 64 of 1989 s. 5)*

## **2E. Restrictions on reporting of proceedings heard otherwise than in open court**

(1) This section applies to proceedings under this Ordinance in the Court or Court of Appeal heard otherwise than in open court.

(2) A court in which proceedings to which this section applies are being heard shall, on the application of any party to the proceedings, give directions as to what information, if any, relating to the proceedings may be published.

(3) A court shall not give a direction under subsection (2) permitting information to be published unless—

- (a) all parties to the proceedings agree that such information may be published; or
- (b) the court is satisfied that the information, if published in accordance with such directions as it may give, would not reveal any matter, including the identity of any party to the proceedings, that any party to the proceedings reasonably wishes to remain confidential.



- (a) 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
  - (b) to use procedures that are appropriate to the particular case avoiding unnecessary delay and expense, so as to provide a fair means for resolving the dispute to which the proceedings relate
- (2) When conducting arbitration proceedings, an arbitral tribunal is not bound by the rules of evidence and can receive any evidence that it considers relevant to the proceedings, but must give such weight to the evidence adduced in the proceedings as it considers appropriate.

*(Added 75 of 1996 s. 7)*

### **2GB. General powers exercisable by arbitral tribunal**

- (1) When conducting arbitration proceedings, an arbitral tribunal may make orders or give directions dealing with any of the following matters—
- (a) requiring a claimant to give security for the costs of the arbitration;
  - (b) requiring money in dispute to be secured;
  - (c) directing the discovery of documents or the delivery of interrogatories;
  - (d) directing evidence to be given by affidavit;
  - (e) in relation to relevant property—
    - (i) directing the inspection, photographing, preservation, custody, detention or sale of the property by the tribunal, a party to the proceedings or an expert; or
    - (ii) directing samples to be taken from, observations to be made of, or experiments to be conducted on the property;
  - (f) granting interim injunctions or directing other interim measures to be taken.
- (2) Property is relevant property for the purposes of subsection (1)(e) if—
- (a) the property is owned by or is in the possession of a party to the proceedings; and
  - (b) the property is subject to the proceedings, or any question relating to the property arises in the proceedings.
- (3) An arbitral tribunal must not make an order requiring a claimant to provide security for costs only on the ground that the claimant—
- (a) is a natural person who is ordinarily resident outside Hong Kong; or
  - (b) is a body corporate that is incorporated, or an association that is formed, under a law of a place outside Hong Kong, or whose central management and control is exercised outside Hong Kong.



- (a) the property is owned by or is in the possession of a party to the arbitration proceedings concerned; and
  - (b) the property is subject to the proceedings, or any question relating to the property has arisen in those proceedings.
- (3) The Court or a judge of the Court may order a person to attend proceedings before an arbitral tribunal to give evidence or to produce documents or other material evidence.
- (4) The Court or a judge of the Court may also order a writ of habeas corpus ad testificandum to be issued requiring a prisoner to be taken for examination before an arbitral tribunal.
- (5) The powers conferred by this section can be exercised irrespective of whether or not similar powers may be exercised under section 2GB in relation to the same dispute.
- (6) The Court or a judge of 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 arbitration proceedings; and
  - (b) the Court or the judge considers it more appropriate for the matter to be dealt with by the relevant arbitral tribunal.

*(Added 75 of 1996 s. 7)*

## **2GD. Power to extend time for arbitration proceedings**

- (1) This section applies to an arbitration agreement to refer future disputes to arbitration that provides for a claim to be barred, or for a claimant's right to be extinguished, unless the claimant, before a time or within a period fixed by the agreement, takes a step—
  - (a) to commence arbitration proceedings; or
  - (b) to commence some other dispute resolution procedure that must be exhausted before arbitration proceedings can be commenced.
- (2) On the application of a party to an arbitration agreement to which this section applies, an arbitral tribunal may, in accordance with this section, make an order extending the period for taking a step of the kind referred to in subsection (1).
- (3) An application may be made only after a claim has arisen and after exhausting any available arbitral procedure for obtaining an extension of time.
- (4) An applicant must give notice of the application to the other parties within 7 days after making it. Those other parties are entitled to be heard when the application is determined.
- (5) An arbitral tribunal may make an order under this section extending a period only if it is satisfied that—



**2GF. Decision of arbitral tribunal**

In deciding a dispute, an arbitral tribunal may 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. This section is subject to section 17.

*(Added 75 of 1996 s. 7)*

**2GG. Enforcement of decisions of arbitral tribunal**

An award, order or direction made or given in or in relation to arbitration proceedings by an arbitral tribunal is enforceable in the same way as a judgment, order or direction of the Court that has the same effect, but only with the leave of the Court or a judge of the Court. If that leave is given, the Court or judge may enter judgment in terms of the award, order or direction.

*(Added 75 of 1996 s. 7)*

**Interest****2GH. Arbitral tribunal may award interest**

(1) An arbitral tribunal may, in arbitration proceedings before it, award simple or compound interest from such dates, at such rates, and with such rests as the tribunal considers appropriate for any period ending not later than the date of payment-

- (a) on money awarded by the tribunal in the proceedings; or
- (b) on money claimed in, and outstanding at the commencement of, the proceedings but paid before the award is made.

(2) Subsection (1) does not affect any other power of an arbitral tribunal to award interest, but is subject to any agreement of the parties to the contrary.

*(Added 75 of 1996 s. 7)*

**2GI. Rate of interest on money awarded in arbitration proceedings**

Interest is payable on the amount of an award from the date of the award at the same rate as for a judgment debt, except when the award otherwise provides.

*(Added 75 of 1996 s. 7)*

## Costs, Fees and Expenses

### 2GJ. Costs of arbitration proceedings

(1) An arbitral tribunal may include in an award directions with respect to the costs of the relevant arbitration proceedings (including the fees and expenses of the tribunal) and in so doing may do all or any of the following—

- (a) direct to whom and by whom and in what manner costs of arbitration proceedings are to be paid;
- (b) tax and settle the amount of costs to be so paid;
- (c) direct costs to be paid on any basis on which the Court can award costs in civil proceedings before the Court.

This subsection is subject to any contrary provision of the relevant arbitration agreement.

(2) Costs awarded in respect of arbitration proceedings (other than the fees or expenses of the arbitral tribunal) are taxable by the Court, unless the award otherwise directs. This subsection does not limit the operation of section 21(1).

(3) A provision of an arbitration agreement to the effect that the parties, or any of the parties, to the agreement must pay their own costs in respect of arbitration proceedings arising under the agreement is void. However, such a provision is not void if it is part of an agreement to submit to arbitration a dispute that had arisen before the agreement was made.

(4) If an award does not provide for payment of the costs of the relevant arbitration proceedings, any party to the proceedings may apply to the arbitral tribunal for an order directing by whom and to whom those costs are to be paid. Such an application must be made within 30 days after the notification of the award or within such further period as the arbitral tribunal allows.

(5) On receiving an application under subsection (4) and after hearing any of the parties who wish to be heard, the arbitral tribunal may amend the award by adding such directions with respect to the payment of the costs of the arbitration proceedings as the tribunal considers appropriate.

(6) Section 70 of the Legal Practitioners Ordinance (Cap. 159) applies to arbitration proceedings under this Ordinance in the same way as it applies to proceedings before the Court.

**Note:** Section 70 of the Legal Practitioners Ordinance (Cap. 159) empowers a court before which proceedings are being heard or are pending to declare a solicitor employed in connection with the proceedings to be entitled to a charge on property recovered or preserved in the proceedings.

*(Added 75 of 1996 s. 7)*

**2GK. Liability to pay fees of arbitral tribunal**

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

(2) Subsection (1) has effect subject to any order of the Court under this Ordinance relating to fees (if any) payable to an arbitrator or umpire who has resigned or has been removed from office or whose authority as an arbitrator or umpire has been revoked.

(3) Nothing in this section affects—

- (a) the liability of the parties to arbitration proceedings as among themselves to pay the costs of the 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 reference to a member of the tribunal who has ceased to act; and
- (b) a reference to an umpire who has not yet replaced members of the tribunal.

*(Added 75 of 1996 s. 7)*

**2GL. Arbitral tribunal may limit amount of recoverable costs**

(1) An arbitral tribunal may direct that the recoverable costs of arbitration proceedings before it are limited to a specified amount, unless the parties have agreed to the contrary.

(2) Such a direction can be varied at any stage of the arbitration proceedings, but only if the variation can be made sufficiently in advance of when the relevant costs are incurred, or the relevant steps in the proceedings are taken, so that the limit can be taken into account.

(3) In this section "arbitration proceedings" (仲裁程序) includes any part of those proceedings.

*(Added 75 of 1996 s. 7)*

**Liability for Certain Acts and Omissions****2GM. Arbitral tribunal to be liable for certain acts and omissions**

(1) An arbitral tribunal is liable in law for an act done or omitted to be done by the tribunal, or by its employees or agents, in relation to the exercise or performance or the purported exercise or performance of the tribunal's arbitral 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 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 only if it is proved that the act was done or omitted to be done dishonestly.

*(Added 75 of 1996 s. 7)*

**2GN. Appointors and administrators to be liable only for certain acts and omissions**

(1) A person—

(a) who appoints an arbitral tribunal; or

(b) who exercises or performs any other function of an administrative nature in connection with arbitration 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. *(Amended 80 of 1997 s. 102)*

(2) Subsection (1) does not apply to an act done or omitted to be done by the parties to the arbitration proceedings or to their legal representatives or advisers 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 only if it is proved—

(a) that the act or omission was committed dishonestly; and

(b) that the employee or agent was a party to the dishonesty.

(4) Neither a person to whom subsection (1) applies nor an employee or agent of the person is liable in law for the consequences of any act or omission of the arbitral tribunal concerned, or by its employees or agents, in the exercise or performance or the purported exercise or performance of the tribunal's arbitral functions merely because the person, employee or agent has exercised or performed a function referred to in that subsection.

(5) In this section "appointing" (委任) includes nominating and designating.

*(Added 75 of 1996 s. 7)*

**2H-2K.** *(Repealed 75 of 1996 s. 8)*

*(Part IA added 10 of 1982 s. 2)*

**PART II****DOMESTIC ARBITRATION***(Amended 64 of 1989 s. 6)***Application****2L. Application to domestic arbitration agreements**

This Part applies to a domestic arbitration agreement and to an arbitration pursuant to a domestic arbitration agreement, except where a dispute has arisen and the parties to the dispute have subsequently agreed in writing—

- (a) that Part IIA is to apply; or
- (b) that the agreement is, or is to be treated as, an international arbitration agreement; or
- (c) that the dispute is to be arbitrated as an international arbitration.

*(Added 64 of 1989 s. 7)***2M. Application to international arbitration agreements**

This Part applies to an international arbitration agreement and to an arbitration pursuant to an international arbitration agreement if, but only if, the agreement provides or the parties to the reference agree in writing—

- (a) that this Part is to apply; or
- (b) that the agreement is, or is to be treated as, a domestic arbitration agreement; or
- (c) that a dispute is to be arbitrated as a domestic arbitration.

*(Added 64 of 1989 s. 7)***Effect of Arbitration Agreements, etc.****3. Authority of arbitrators and umpires to be irrevocable**

The authority of an arbitrator or umpire appointed by or by virtue of an arbitration agreement shall, unless a contrary intention is expressed in the agreement, be irrevocable except by leave of the Court or a judge thereof.

*[cf. 1950 c. 27 s. 1 U.K.]***4. Death of party**

(1) An arbitration agreement shall not be discharged by the death of any party thereto, either as respects the deceased or any other party, but shall in such an event be enforceable by or against the personal representative of the deceased.



delivering any pleadings or taking any other step in the proceedings, to stay the proceedings, the court or a judge of that court may make an order staying the proceedings, if satisfied that—

- (a) there is no sufficient reason why the matter should not be referred in accordance with the agreement; and
- (b) the applicant was ready and willing at the time the proceedings were commenced to do all things necessary for the proper conduct of the arbitration, and remains so.

(3) Subsections (1) and (2) have effect subject to section 15 of the Control of Exemption Clauses Ordinance (Cap. 71).

*(Replaced 75 of 1996 s. 9)*

**6A.** *(Repealed 64 of 1989 s. 9)*

**6B. Consolidation of arbitrations**

(1) Where in relation to two or more arbitration proceedings it appears to the Court—

- (a) that some common question of law or fact arises in both or all of them, or
- (b) that the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions, or
- (c) that for some other reason it is desirable to make an order under this section,

the Court may order those arbitration proceedings to be consolidated on such terms as it thinks just or may order them to be heard at the same time, or one immediately after another, or may order any of them to be stayed until after the determination of any other of them.

(2) Where the Court orders arbitration proceedings to be consolidated under subsection (1) and all parties to the consolidated arbitration proceedings are in agreement as to the choice of arbitrator or umpire for those proceedings the same shall be appointed by the Court but if all parties cannot agree the Court shall have power to appoint an arbitrator or umpire for those proceedings.

(3) Where the Court makes an appointment under subsection (2) of an arbitrator or umpire for consolidated arbitration proceedings, any appointment of any other arbitrator or umpire that has been made for any of the arbitration proceedings forming part of the consolidation shall for all purposes cease to have effect on and from the appointment under subsection (2). *(Added 75 of 1985 s. 2)*

*(Added 10 of 1982 s. 3)*

**7. Reference of interpleader issues to arbitration**

Where relief by way of interpleader is granted and it appears to the Court that the claims in question are matters to which an arbitration agreement, to which the claimants are parties, applies, the Court may direct the issue between the claimants to be determined in accordance with the agreement.

*[cf. 1950 c. 27 s. 5 U.K.]*

**Arbitrators and Umpires**

**8. When reference is to a single arbitrator**

Unless a contrary intention is expressed therein, every arbitration agreement shall, if no other mode of reference is provided, be deemed to include a provision that the reference shall be to a single arbitrator.

*[cf. 1950 c. 27 s. 6 U.K.]*

**9. Power of parties in certain cases to supply vacancy**

Where an arbitration agreement provides that the reference shall be to 2 arbitrators, one to be appointed by each party, then, unless a contrary intention is expressed therein—

- (a) if either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place;
- (b) if, on such a reference, one party fails to appoint an arbitrator, either originally, or by way of substitution as aforesaid, for 7 clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference and his award shall be binding on both parties as if he had been appointed by consent:

Provided that the Court or a judge thereof may set aside any appointment made in pursuance of this section.

*[cf. 1950 c. 27 s. 7 U.K.]*

**10. Umpires**

(1) Unless a contrary intention is expressed therein, every arbitration agreement shall, where the reference is to 2 arbitrators, be deemed to include a provision that the 2 arbitrators may appoint an umpire at any time after they are themselves appointed and shall do so forthwith if they cannot agree. (*Amended 10 of 1982 s. 4*)

(2) Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to include a provision that if the arbitrators have delivered to any party to the arbitration agreement, or to the umpire, a notice in writing stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

(3) At any time after the appointment of an umpire, however appointed the Court may, on the application of any party to the reference and notwithstanding anything to the contrary in the arbitration agreement, order that the umpire shall enter upon the reference in lieu of the arbitrators and as if he were a sole arbitrator.

*[cf. 1950 c. 27 s. 8 U.K.; 1979 c. 42 s. 6(1) U.K.]*

### **11. Majority award of 3 arbitrators**

Unless the contrary intention is expressed in the arbitration agreement, in any case where there is a reference to 3 arbitrators, the award of any 2 of the arbitrators shall be binding and in the event that no 2 of the arbitrators agree the award, the award of the arbitrator appointed by the arbitrators to be chairman shall be binding.

*(Replaced 10 of 1982 s. 5)*  
*[cf. 1979 c. 42 s. 6(2) U.K.]*

### **12. Power of HKIAC in certain cases to appoint an arbitrator or umpire**

- (1) In any of the following cases—
- (a) where an arbitration agreement provides that the reference shall be to a single arbitrator, and all the parties do not, after disputes have arisen, concur in the appointment of an arbitrator; *(Amended 64 of 1989 s. 10)*
  - (b) if an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied and the parties do not supply the vacancy;
  - (c) where a party or an arbitrator is required or is at liberty to appoint, or concur in the appointment of, an umpire or an arbitrator and does not do so; *(Replaced 17 of 1984 s. 2)*
  - (d) where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy,

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint, or, as the case may be, concur in appointing, an arbitrator, umpire or third arbitrator, and if the appointment is not made within 7 clear days after the service of the notice, HKIAC may, on application by the party who gave the notice, appoint an arbitrator, umpire or third arbitrator who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

(2) In any case where—

- (a) an arbitration agreement provides for the appointment of an arbitrator or umpire by a person who is neither one of the parties nor an existing arbitrator (whether the provision applies directly or in default of agreement by the parties or otherwise); and
- (b) that person refuses to make the appointment or does not make it within the time specified in the agreement or, if no time is so specified, within a reasonable time,

any party to the agreement may serve the person in question with a written notice to appoint an arbitrator or umpire and, if the appointment is not made within 7 clear days after the service of the notice, HKIAC may, on the application of the party who gave the notice, appoint an arbitrator or umpire who shall have the like powers to act in the reference and make an award as if he had been appointed in accordance with the terms of the agreement. (*Added 10 of 1982 s. 6*)

(3) HKIAC may make rules to facilitate the performance of its functions under this section. Any such rules take effect only when the Chief Justice has approved them. (*Added 75 of 1996 s. 10*)

*(Amended 75 of 1996 s. 10)*

*[cf. 1950 c. 27 s. 10 U.K.; 1979 c. 42 s. 6(3) & (4) U.K.]*

**13.** (*Repealed 52 of 1987 s. 45*)

### **13A. Power of judges to take arbitrations**

(1) Subject to the following provisions of this section a judge, District Judge, magistrate or public officer, may, if in all the circumstances he thinks fit, accept appointment as a sole or joint arbitrator, or as umpire, by or by virtue of an arbitration agreement.

(2) A judge, District Judge or magistrate shall not accept appointment as an arbitrator or umpire unless the Chief Justice has informed him that, having regard to the state of business in the courts, he can be made available to do so.

(3) A public officer shall not accept appointment as an arbitrator or umpire unless the Attorney General has informed him that he can be made available to do so.

(4) The fees payable for the services of a judge, District Judge, magistrate or public officer as an arbitrator or umpire shall be paid into the general revenue. (*Amended 64 of 1989 s. 11*)

(5) The Fourth Schedule shall have effect for modifying, and in certain cases replacing, provisions of this Ordinance in relation to arbitration by a judge as a sole arbitrator or umpire and, in particular, for substituting the Court of Appeal for the Court in provisions whereby arbitrators and umpires, their proceedings and awards, are subject to control and review by the Court.

(6) Subject to section 23C(3) any jurisdiction which is exercisable by the Court in relation to arbitrators and umpires otherwise than under this Ordinance shall, in relation to a judge appointed as a sole arbitrator or umpire, be exercisable instead by the Court of Appeal.

*(Added 10 of 1982 s. 7)*  
*[cf. 1970 c. 31 s. 4 U.K.]*

### **Jurisdiction of Domestic Arbitral Tribunals**

*(Added 75 of 1996 s. 11)*

#### **13B. Arbitral tribunal may determine own jurisdiction**

Article 16 of the UNCITRAL Model Law applies to an arbitral tribunal that is conducting arbitration proceedings under a domestic arbitration agreement in the same way as it applies to an arbitral tribunal that is conducting arbitration proceedings under an international arbitration agreement.

*(Added 75 of 1996 s. 11)*

### **Conduct of Proceedings, Witnesses, etc.**

**14.** *(Repealed 75 of 1996 s. 12)*

**14A.** *(Repealed 64 of 1989 s. 13)*

### **Provisions as to Awards**

#### **15. Time for making award**

(1) Subject to the provisions of section 24(2) and anything to the contrary in the arbitration agreement, an arbitrator or umpire shall have power to make an award at any time.



**19. Power to correct slips**

Unless a contrary intention is expressed in the arbitration agreement, the arbitrator or umpire shall have power to correct in an award any clerical mistake or error arising from any accidental slip or omission.

*[cf. 1950 c. 27 s. 17 U.K.]*

**Costs, Fees and Interest****20.** *(Repealed 75 of 1996 s. 12)***21. Taxation of arbitrator's or umpire's fees**

(1) If in any case an arbitrator or umpire refuses to deliver his award except on payment of the fees demanded by him, the Court may, on an application for the purpose, order that the arbitrator or umpire shall deliver the award to the applicant on payment into court by the applicant of the fees demanded, and further that the fees demanded shall be taxed by the taxing officer and that out of the money paid into court there shall be paid out to the arbitrator or umpire by way of fees such sum as may be found reasonable on taxation and that the balance of the money, if any, shall be paid out to the applicant.

(2) An application for the purposes of this section may be made by any party to the reference unless the fees demanded have been fixed by a written agreement between him and the arbitrator or umpire.

(3) A taxation of fees under this section may be reviewed in the same manner as a taxation of costs.

(4) The arbitrator or umpire shall be entitled to appear and be heard on any taxation or review of taxation under this section.

*[cf. 1950 c. 27 s. 19 U.K.]*

**22-22A.** *(Repealed 75 of 1996 s. 12)***Judicial Review, Determination of Preliminary Point of Law,  
Exclusion Agreements, Interlocutory Orders,  
Remission and Setting aside of Awards, etc.****23. Judicial review of arbitration awards**

(1) Without prejudice to the right of appeal conferred by subsection (2) the Court shall not have jurisdiction to set aside or remit an award on an arbitration agreement on the ground of errors of fact or law on the face of the award.

(2) Subject to subsection (3) an appeal shall lie to the Court on any question of law arising out of an award made on an arbitration agreement; and on the determination of such an appeal the Court may by order—

- (a) confirm, vary or set aside the award; or
- (b) remit the award to the reconsideration of the arbitrator or umpire together with the Court's opinion on the question of law which was the subject of the appeal;

and where the award is remitted under paragraph (b) the arbitrator or umpire shall, unless the order otherwise directs, make his award within 3 months after the date of the order.

(3) An appeal under this section may be brought by any of the parties to the reference—

- (a) with the consent of all the other parties to the reference; or
- (b) subject to section 23B, with the leave of the Court.

(4) The Court shall not grant leave under subsection (3)(b) unless it considers that, having regard to all the circumstances, the determination of the question of law concerned could substantially affect the rights of one or more of the parties to the arbitration agreement; and the Court may make any leave which it gives conditional upon the applicant complying with such conditions as it considers appropriate.

(5) Subject to subsection (6), if an award is made and, on an application made by any of the parties to the reference—

- (a) with the consent of all the other parties to the reference; or
- (b) subject to section 23B, with the leave of the Court,

it appears to the Court that the award does not or does not sufficiently set out the reasons for the award, the Court may order the arbitrator or umpire concerned to state the reasons for his award in sufficient detail to enable the Court, should an appeal be brought under this section, to consider any question of law arising out of the award.

(6) In any case where an award is made without any reason being given, the Court shall not make an order under subsection (5) unless it is satisfied—

- (a) that before the award was made one of the parties to the reference gave notice to the arbitrator or umpire concerned that a reasoned award would be required; or
- (b) that there is some special reason why such a notice was not given.

(7) No appeal shall lie to the Court of Appeal from a decision of the Court on an appeal under this section unless the Court or the Court of Appeal gives leave.

(8) Where the award of an arbitrator or umpire is varied on appeal, the award as varied shall have effect (except for the purposes of this section) as if it were the award of the arbitrator or umpire.

*(Replaced 10 of 1982 s. 9)  
[cf. 1979 c. 42 s. 1 U.K.]*

**23A. Determination of preliminary point of law by Court**

(1) Subject to subsection (2) and section 23B, on an application to the Court made by any of the parties to a reference—

- (a) with the consent of an arbitrator who has entered on the reference or, if an umpire has entered on the reference, with his consent, or
- (b) with the consent of all the other parties,

the Court shall have jurisdiction to determine any question of law arising in the course of the reference.

(2) The Court shall not entertain an application under subsection (1)(a) with respect to any question of law unless it is satisfied that—

- (a) the determination of the application might produce substantial savings in costs to the parties; and
- (b) the question of law is one in respect of which leave to appeal would be likely to be given under section 23(3)(b).

(3) A decision of the Court under subsection (1) shall be deemed to be a judgment of the Court within the meaning of section 14 of the Supreme Court Ordinance (Cap. 4) (Appeals to the Court of Appeal), but no appeal shall lie from such a decision unless the Court or the Court of Appeal gives leave.

(4) *(Repealed 64 of 1989 s. 15)*

*(Added 10 of 1982 s. 10)*  
*[cf. 1979 c. 42 s. 2 U.K.]*

**23B. Exclusion agreements affecting rights under sections 23 and 23A**

(1) Subject to the following provisions of this section and section 23C-

- (a) the Court shall not, under section 23(3)(b), grant leave to appeal with respect to a question of law arising out of an award; and
- (b) the Court shall not, under section 23(5)(b), grant leave to make an application with respect to an award; and
- (c) no application may be made under section 23A(1)(a) with respect to a question of law,

if the parties to the reference in question have entered into an agreement in writing (in this section referred to as an "exclusion agreement") which excludes the right of appeal under section 23 in relation to that award or, in a case falling within paragraph (c), in relation to an award to which the determination of the question of law is material.

(2) If the parties to an exclusion agreement subsequently enter into an agreement in writing to revoke the exclusion agreement the provisions of subsection (1) shall cease to apply to the reference or references in question until such time as a further exclusion agreement is entered into by the parties.

(3) An exclusion agreement may be expressed so as to relate to a particular award, to awards under a particular reference or to any other

description of awards, whether arising out of the same reference or not; and an agreement may be an exclusion agreement for the purposes of this section whether it is entered into before or after the passing of this Ordinance and whether or not it forms part of an arbitration agreement.

(4) *(Repealed 64 of 1989 s. 16)*

(5) Except as provided by subsection (1), sections 23 and 23A shall have effect notwithstanding anything in any agreement purporting—

(a) to prohibit or restrict access to the Court; or

(b) to restrict the jurisdiction of that Court; or

(c) to prohibit or restrict the making of a reasoned award.

(6) An exclusion agreement shall be of no effect in relation to an award made on, or a question of law arising in the course of a reference under, a statutory arbitration, that is to say, such an arbitration as is referred to in section 2AB. *(Amended 80 of 1997 s. 102)*

(7) An exclusion agreement shall be of no effect in relation to an award made on, or a question of law arising in the course of a reference under, an arbitration agreement unless the exclusion agreement is entered into after the commencement of the arbitration in which the award is made or, as the case may be, in which the question of law arises. *(Amended 64 of 1989 s. 16)*

(8) *(Repealed 64 of 1989 s. 16)*

*(Added 10 of 1982 s. 10)*  
*[cf. 1979 c. 42 s. 3 U.K.]*

### **23C. Interlocutory orders**

(1) If any party to a reference under an arbitration agreement fails within the time specified in the order or, if no time is so specified, within a reasonable time to comply with an order made by the arbitrator or umpire in the course of the reference, then, on the application of the arbitrator or umpire or of any party to the reference, the Court may make an order extending the powers of the arbitrator or umpire as mentioned in subsection (2).

(2) If an order is made by the Court under this section, the arbitrator or umpire shall have power, to the extent and subject to any conditions specified in that order, to continue with the reference in default of appearance or of any other act by one of the parties in like manner as a judge of the Court might continue with proceedings in that court where a party fails to comply with an order of that court or a requirement of rules of court.

(3) Section 13A(6) shall not apply in relation to the power of the Court to make an order under this section, but in the case of a reference to a judge-arbitrator or judge-umpire that power shall be exercisable as in the case of any other reference to arbitration and also by the judge-arbitrator or judge-umpire himself.

(4) Anything done by a judge-arbitrator or judge-umpire in the exercise of the power conferred by subsection (3) shall be done by him in his capacity as judge of the Court and have effect as if done by that court.

(5) The preceding provisions of this section have effect notwithstanding anything in any agreement but do not derogate from any powers conferred on an arbitrator or umpire, whether by an arbitration agreement or otherwise.

(6) In this section "judge-arbitrator" (法官仲裁員) and "judge-umpire" (法官公斷人) have the same meaning as in the Fourth Schedule.

*(Added 10 of 1982 s. 10)*

*[cf. 1979 c. 42 s. 5 U.K.]*

#### **24. Power to remit award**

(1) In all cases of reference to arbitration the Court or a judge thereof may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrator or umpire.

(2) Where an award is remitted, the arbitrator or umpire shall, unless the order otherwise directs, make his award within 3 months after the date of the order.

*[cf. 1950 c. 27 s. 22 U.K.]*

#### **25. Removal of arbitrator and setting aside of award**

(1) Where an arbitrator or umpire has misconducted himself or the proceedings, the Court may remove him.

(2) Where an arbitrator or umpire has misconducted himself or the proceedings, or an arbitration or award has been improperly procured, the Court may set the award aside.

(3) Where an application is made to set aside an award, the Court may order that any money made payable by the award shall be brought into court or otherwise secured pending the determination of the application.

*[cf. 1950 c. 27 s. 23 U.K.]*

#### **26. Power of Court to give relief where arbitrator is not impartial or the dispute involves question of fraud**

(1) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred to an arbitrator named or designated in the agreement, and after a dispute has arisen any party applies, on the ground that the arbitrator so named or designated is not or may not be impartial, for leave to revoke the authority of the arbitrator or for an injunction to restrain any other party or the arbitrator from proceeding with the arbitration, it shall not be a ground for refusing the application that the said party at the time

when he made the agreement knew, or ought to have known, that the arbitrator, by reason of his relation towards any other party to the agreement or of his connexion with the subject referred, might not be capable of impartiality.

(2) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred to arbitration, and a dispute which so arises involves the question whether any such party has been guilty of fraud, the Court shall, so far as may be necessary to enable that question to be determined by the Court, have power to order that the agreement shall cease to have effect and power to give leave to revoke the authority of any arbitrator or umpire appointed by or by virtue of the agreement.

(3) In any case where by virtue of this section the Court has power to order that an arbitration agreement shall cease to have effect or to give leave to revoke the authority of an arbitrator or umpire, the Court may refuse to stay any action brought in breach of the agreement.

*[cf. 1950 c. 27 s. 24 U.K.]*

## **27. Power of Court where arbitrator is removed or authority of arbitrator is revoked**

(1) Where an arbitrator, not being a sole arbitrator, or 2 or more arbitrators, not being all the arbitrators, or an umpire who has not entered on the reference is or are removed by the Court, the Court may, on the application of any party to the arbitration agreement, appoint a person or persons to act as arbitrator or arbitrators or umpire in place of the person or persons so removed.

(2) Where the authority of an arbitrator or arbitrators or umpire is revoked by leave of the Court, or a sole arbitrator or all the arbitrators or an umpire who has entered on the reference is or are removed by the Court, the Court may, on the application of any party to the arbitration agreement, either—

- (a) appoint a person to act as sole arbitrator in place of the person or persons removed; or
- (b) order that the arbitration agreement shall cease to have effect with respect to the dispute referred.

(3) A person appointed under this section by the Court as an arbitrator or umpire shall have the like power to act in the reference and to make an award as if he had been appointed in accordance with the terms of the arbitration agreement.

(4) Where it is provided, whether by means of a provision in the arbitration agreement or otherwise, that an award under an arbitration agreement shall be a condition precedent to the bringing of an action with respect to any matter to which the agreement applies, the Court, if it orders, whether under this section or under any other enactment, that the agreement

shall cease to have effect as regards any particular dispute, may further order that the provision making an award a condition precedent to the bringing of an action shall also cease to have effect as regards that dispute.

*[cf. 1950 c. 27 s. 25 U.K.]*

### Enforcement of Award

**28.** *(Repealed 64 of 1989 s. 17)*

### Miscellaneous

**29-29A.** *(Repealed 75 of 1996 s. 12)*

**30. Terms as to costs, etc.**

Any order made under this Part may be made on such terms as to costs or otherwise (including, in the case of an order under section 6B or 2GE, the remuneration of the arbitrator or umpire in respect of his services) as the authority making the order thinks just.

*(Amended 85 of 1975 s. 5; 10 of 1982 s. 12; 75 of 1985 s. 3; 75 of 1996 s. 13)*

*[cf. 1950 c. 27 s. 28 U.K.]*

**\* 31. Commencement of arbitration**

(1) An arbitration shall be deemed to be commenced when one party to the arbitration agreement serves on the other party or parties a notice requiring him or them to appoint or concur in appointing an arbitrator, or, where the arbitration agreement provides that the reference shall be to a

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\* Note: s. 26 of the Arbitration (Amendment) (No. 2) Ordinance 1989 (64 of 1989) reads as follows:

#### **26. Transitional**

(1) An arbitration commenced. within the meaning of section 31(1) of the principal Ordinance, after the commencement of the principal Ordinance but before the commencement@ of this Ordinance shall be governed by the principal Ordinance as if this Ordinance had not been enacted.

(2) An arbitration commenced. within the meaning of section 31(1) of the principal Ordinance, after the commencement@ of this Ordinance under an agreement made before the commencement@ of this Ordinance shall be subject to sections 2B, 2E and 14(3A) of the principal Ordinance but, subject to that, shall be governed by the principal Ordinance as if this Ordinance had not been enacted.

@ Commencement date: 6 April 1990.

person named or designated in the agreement, requiring him or them to submit the dispute to the person so named or designated.

- (2) Any such notice as is mentioned in subsection (1) may be served either—
- (a) by delivering it to the person on whom it is to be served; or
  - (b) by leaving it at the usual or last known place of abode in Hong Kong of that person; or
  - (c) by sending it by post in a registered letter addressed to that person at his usual or last known place of abode in Hong Kong,

as well as in any other manner provided in the arbitration agreement, and where a notice is sent by post in manner prescribed by paragraph (c). service thereof shall, unless the contrary is proved, be deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of post. (*Amended 64 of 1989 s. 23*)

*[cf. 1950 c. 27 s. 29 U.K.]*

**32.** (*Repealed 64 of 1989 s. 18*)

**33.** (*Repealed 64 of 1989 s. 19*)

**34. Transitional-Part II**

This Part shall not affect any arbitration commenced, within the meaning of section 31(1), before the commencement of this Ordinance, but shall apply to an arbitration so commenced after the commencement of this Ordinance under an agreement made before the commencement of this Ordinance.

*[c.f. 1950 c. 27 s. 33 U.K.]*

**PART IIA**

**INTERNATIONAL ARBITRATION**

**Application**

**34A. Application to international arbitration agreements**

(1) Subject to subsection (2), this Part applies to an international arbitration agreement and to an arbitration pursuant to an international arbitration agreement.

(2) This Part does not apply to an international arbitration agreement, or to an arbitration pursuant to an international arbitration agreement, to which, by virtue of section 2M, Part II applies.



- (b) between persons of whom one is subject to the jurisdiction of some one of such Powers as Her Majesty, being satisfied that reciprocal provisions have been made, may by Order in Council declare to be parties to the convention set out in the Second Schedule, and of whom the other is subject to the jurisdiction of some other of the Powers aforesaid; and
- (c) in one of such territories as Her Majesty, being satisfied that reciprocal provisions have been made, may by Order in Council declare to be territories to which the said convention applies.

*[cf. 1950 c. 27 s. 35 U.K.]*

### **36. Effect of foreign awards**

(1) A foreign award shall, subject to the provisions of this Part, be enforceable in Hong Kong either by action or in the same manner as the award of an arbitrator is enforceable by virtue of section 2GG. (*Amended 64 of 1989 s. 21; 80 of 1997 s. 102*)

(2) Any foreign award which would be enforceable under this Part shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in Hong Kong, and any references in this Part to enforcing a foreign award shall be construed as including references to relying on an award.

*(Amended 64 of 1989 s. 23)*

*[cf. 1950 c. 27 s. 36 U.K.]*

### **37. Conditions for enforcement of foreign awards**

- (1) In order that a foreign award may be enforceable under this Part it must have—
  - (a) been made in pursuance of an agreement for arbitration which was valid under the law by which it was governed;
  - (b) been made by the tribunal provided for in the agreement or constituted in manner agreed upon by the parties;
  - (c) been made in conformity with the law governing the arbitration procedure;
  - (d) become final in the country in which it was made;
  - (e) been in respect of a matter which may lawfully be referred to arbitration under the law of Hong Kong;

and the enforcement thereof must not be contrary to the public policy or the law of Hong Kong. (*Amended 64 of 1989 s. 23*)

(2) Subject to the provisions of this subsection, a foreign award shall not be enforceable under this Part if the court dealing with the case is satisfied that—

- (a) the award has been annulled in the country in which it was made; or
- (b) the party against whom it is sought to enforce the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case, or was under some legal incapacity and was not properly represented; or
- (c) the award does not deal with all the questions referred or contains decisions on matters beyond the scope of the agreement for arbitration:

Provided that, if the award does not deal with all the questions referred, the Court may, if it thinks fit, either postpone the enforcement of the award or order its enforcement subject to the giving of such security by the person seeking to enforce it as the Court may think fit.

(3) If a party seeking to resist the enforcement of a foreign award proves that there is any ground other than the non-existence of the conditions specified in subsection (1)(a), (b) and (c), or the existence of the conditions specified in subsection (2)(b) and (c), entitling him to contest the validity of the award, the Court may, if it thinks fit, either refuse to enforce the award or adjourn the hearing until after the expiration of such period as appears to the Court to be reasonably sufficient to enable that party to take the necessary steps to have the award annulled by the competent tribunal.

*[cf. 1950 c. 27 s. 37 U.K.]*

### **38. Evidence**

- (1) The party seeking to enforce a foreign award must produce—
  - (a) the original award or a copy thereof duly authenticated in manner required by the law of the country in which it was made; and
  - (b) evidence proving that the award has become final; and
  - (c) such evidence as may be necessary to prove that the award is a foreign award and that the conditions mentioned in section 37(1)(a), (b) and (c) are satisfied.

(2) In any case where any document required to be produced under subsection (1) is in a foreign language, it shall be the duty of the party seeking to enforce the award to produce a translation certified as correct by a diplomatic or consular agent of the country to which that party belongs, or certified as correct in such other manner as may be sufficient according to the law of Hong Kong. (*Amended 64 of 1989 s. 23*)

(3) Subject to the provisions of this section, rules of court may be made under the Supreme Court Ordinance (Cap. 4) with respect to the evidence which must be furnished by a party seeking to enforce an award under this Part. (*Amended 92 of 1975 s. 58*)

*[cf. 1950 c. 27 s. 38 U.K.]*

39. Meaning of "final award" (最終裁決)

For the purposes of this Part, an award shall not be deemed final if any proceedings for the purpose of contesting the validity of the award are pending in the country in which it was made.

[cf. 1950 c. 27 s. 39 U.K.]

40. Saving for other rights, etc.

Nothing in this Part shall—

- (a) prejudice any rights which any person would have had of enforcing in Hong Kong any award or of availing himself in Hong Kong of any award if this Part had not been enacted; or
- (b) apply to any award made on an arbitration agreement governed by the law of Hong Kong.

(Amended 64 of 1989 s. 23)

[cf. 1950 c. 27 s. 40 U.K.]

PART IV

ENFORCEMENT OF CONVENTION AWARDS

41. Replacement of former provisions

This Part shall have effect with respect to the enforcement of Convention awards; and where a Convention award would, but for this section, be also a foreign award within the meaning of Part III, that Part shall not apply to it.

[cf. 1975 c. 3 s. 2 U.K.]

42. Effect of Convention awards

(1) A Convention award shall, subject to this Part, be enforceable either by action or in the same manner as the award of an arbitrator is enforceable by virtue of section 2GG. (Amended 64 of 1989 s. 22; 80 of 1997 s. 102)

(2) Any Convention award which would be enforceable under this Part shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in Hong Kong and any reference in this Part to enforcing a Convention award shall be construed as including references to relying on such an award.

[cf. 1975 c. 3 s. 3(1)(a) & (2) U.K.]

**43. Evidence**

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) where the award or agreement is in a foreign language, a translation of it certified by an official or sworn translator or by a diplomatic or consular agent.

*[cf. 1975 c. 3 s. 4 U.K.]*

**44. Refusal of enforcement**

(1) Enforcement of a Convention award shall not be refused except in the cases mentioned in this section.

(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 the law applicable to him) under some incapacity; or
- (b) that the arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- (c) that he was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
- (d) subject to subsection (4), that the award deals with a difference 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; or
- (e) that the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the country where the arbitration took place; or
- (f) that the award has not yet become binding on the parties, or 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 the award is in respect of a matter which is not capable of settlement by arbitration, or if it would be contrary to public policy to enforce the award.

(4) A Convention award which contains decisions on matters not submitted to arbitration may be enforced to the extent that it contains decisions on matters submitted to arbitration which can be separated from those on matters not so submitted.

(5) Where an application for the setting aside or suspension of a Convention award has been made to such a competent authority as is mentioned in subsection (2)(f), the court before which enforcement of the award is sought may, if it thinks fit, adjourn the proceedings and may, on the application of the party seeking to enforce the award, order the other party to give security.

*[cf. 1975 c. 3 s. 5 U.K.]*

**45. Saving**

Nothing in this Part shall prejudice any right to enforce or rely on an award otherwise than under this Part or Part III.

*[cf. 1975 c. 3 s. 6 U.K.]*

**46. Order to be conclusive evidence**

If the Governor by Order declares that any State or territory specified in the Order is a party to the New York Convention the Order shall, while in force, be conclusive evidence that that State or territory is a party to that Convention.

*[cf. 1975 c. 3 s. 7(2) U.K.]*  
*(Part IV added 85 of 1975 s. 8)*

**PART V**

**GENERAL**

**47. Government to be bound**

This Ordinance (other than Parts III and IV) binds the Government.

**48. Governor in Council may amend  
Sixth Schedule**

The Governor in Council may, by order published in the Gazette, amend the Sixth Schedule.

*(Part V added 75 of 1996 s. 16)*

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Note 1—S. 18 of 75 of 1996 reads as follows—

**"18. Transitional provisions**

(1) A provision of this Ordinance applies to and in relation to an agreement entered into before or after the commencement of the provision. However, such a provision does

not apply to or in relation to an arbitration commenced before the commencement of the provision and in that case the provisions of the principal Ordinance that were in force immediately before that commencement continue to apply to and in relation to the arbitration in so far as it has not been completed.

(2) In this section "commenced", in relation to an arbitration, means commenced within the meaning of section 31(1) of the principal Ordinance."

Note 2—75 of 1996 came into operation on 27 June 1997.