

Brief for the Legislative Council

Arbitration Ordinance (Chapter 341)

**ARBITRATION (PARTIES TO NEW YORK CONVENTION)
(AMENDMENT) ORDER 1998**

INTRODUCTION

At the meeting of the Executive Council on 24 November 1998, the Council ADVISED and the Chief Executive ORDERED that the Arbitration (Parties to New York Convention) (Amendment) Order 1998 (copy at the Annex) should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

2. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“the Convention”) provides that arbitral awards rendered in one contracting party shall be recognised and enforced in another contracting party. The Convention was extended to Hong Kong on 21 April 1977 by the United Kingdom. As agreed in the Sino-British Joint Liaison Group, the Convention continues to apply to the Hong Kong Special Administrative Region (HKSAR) after 30 June 1997 and the Central People’s Government will assume responsibility for the international rights and obligations arising from the application of the Convention to the HKSAR.

3. In Hong Kong, the Arbitration Ordinance (Cap. 341) gives effect to the New York Convention. States or territories that are parties to the Convention are set out in the Schedule to the Arbitration (Parties to New York Convention) Order (Cap. 341 sub. leg.).

4. Section 46 of the Ordinance, construed in accordance with section 11 of Schedule 8 to the Interpretation and General Clauses Ordinance (Cap. 1), provides that if the Chief Executive by Order declares that any State or territory is a party to the New York Convention, the Order shall be conclusive evidence that that State or territory is a party to the New York Convention. The Arbitration (Parties to New York Convention) Order

was last amended in March 1997. Since then, information provided by the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the HKSAR indicated that Armenia, Brunei Darussalam, Kyrgyzstan, Mauritania and Paraguay have acceded to the New York Convention. We therefore propose that the names of these States should be added to the Schedule to the Arbitration (Parties to New York Convention) Order.

5. Article 56 of the Basic Law provides that the Chief Executive shall consult the Executive Council before making subordinate legislation. The Chief Executive has accordingly consulted the Executive Council on the making of the Arbitration (Parties to New York Convention) (Amendment) Order 1998.

THE ORDER

6. The Order adds the names "Armenia", "Brunei Darussalam", "Kyrgyzstan", "Mauritania" and "Paraguay" to the Schedule to the Arbitration (Parties to New York Convention) Order.

HUMAN RIGHTS IMPLICATIONS

7. The Department of Justice advises that the Order is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT

8. The amendments to the Order do not affect the binding effect of the Arbitration Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

9. The Order has no financial or staffing implications.

PUBLIC CONSULTATION

10. As it is a routine updating exercise, public consultation on the Order is considered not necessary.

ENQUIRIES

11. For enquiries on the brief, please contact Ms Amy Wong, Assistant Secretary (Administration) at 2810 2783.

Administration Wing
Chief Secretary for Administration's Office
November 1998
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**ARBITRATION (PARTIES TO NEW YORK CONVENTION)
(AMENDMENT) ORDER 1998**

(Made under section 46 of the Arbitration Ordinance (Cap. 341)
after consultation with the Executive Council)

1. Schedule amended

The Schedule to the Arbitration (Parties to New York Convention) Order (Cap. 341 sub. leg.) is amended by adding -

“Armenia
Brunei Darussalam
Kyrgyzstan
Mauritania
Paraguay”.

Chief Executive

1998

Explanatory Note

An Order in force under section 46 of the Arbitration Ordinance (Cap. 341) is conclusive evidence that the States specified in the Order are parties to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations in New York in 1958 (the New York Convention).

This Order amends the Arbitration (Parties to New York Convention) Order (Cap. 341 sub. leg.) by incorporating additional States which have acceded to the New York Convention since that Order was last amended in March 1997.