

LEGISLATIVE COUNCIL BRIEF

ARBITRATION BILL

INTRODUCTION

At the meeting of the Executive Council on 16 June 2009, the Council ADVISED and the Chief Executive ORDERED that the Arbitration Bill, at Annex A, should be introduced into the Legislative Council.

JUSTIFICATIONS

2. The Arbitration Ordinance (Cap. 341) has created two different regimes for “domestic” and “international” arbitrations. The proposed reform on the law of arbitration in Hong Kong is to create a unitary regime of arbitration on the basis of the UNCITRAL Model Law on International Commercial Arbitration (“Model Law”) adopted by the United Nations Commission on International Trade Law (“UNCITRAL”) for all types of arbitration, thereby abolishing the distinction between domestic and international arbitrations under the current Ordinance.

3. The purpose of the Bill is to implement the proposed reform which will make the law of arbitration more user-friendly to arbitration users both in and outside Hong Kong. It will enable the Hong Kong business community and arbitration practitioners to operate an arbitration regime which accords with widely accepted international arbitration practices and development. The Bill, when

enacted, may attract more business parties to choose Hong Kong as the place to conduct arbitral proceedings. It will also help promote Hong Kong as a regional centre for dispute resolution.

THE BILL

4. The Bill is divided into 14 Parts.

5. Part 1 sets out the object and principles of the Bill. The object of the Bill is to facilitate the fair and speedy resolution of disputes by arbitration without unnecessary expense. The Bill is based on the principles that the parties to a dispute should be free to agree on how the dispute should be resolved and that the court should intervene in the arbitration of a dispute only as expressly provided for in the Bill.

6. Part 2 sets out the principles for the interpretation of the Model Law, the procedural rules in respect of the delivery of written communications and the application of the limitation provisions. It also specifies that, as a starting point, court proceedings relating to arbitration are to be heard otherwise than in open court (Clause 16). This follows the view of the majority of the submissions received in response to the Consultation Paper referred to in paragraph 22 below. Clause 16 further provides for the circumstances under which such proceedings may be heard in open court and as to when information relating to such proceedings may be published.

7. Part 3 contains provisions relating to an arbitration agreement including the definition and the form of an arbitration agreement, and the circumstances under which a court action, the dispute of which is the subject of an arbitration agreement, should be referred to arbitration.

8. Part 4 contains provisions relating to the composition of an arbitral tribunal. It provides for the appointment of arbitrators and

sets out the grounds and procedures for challenging such appointment.

9. Part 5 empowers an arbitral tribunal to rule on its own jurisdiction, namely, whether it has jurisdiction to decide a dispute under an arbitration agreement.

10. Part 6 deals with the power of an arbitral tribunal to grant interim measures and preliminary orders.

11. Part 7 specifies the procedures for the conduct of arbitral proceedings and sets out the general powers exercisable by an arbitral tribunal when conducting arbitral proceedings.

12. Part 8 prescribes the procedures for the making of arbitral awards including the award on costs and interest on award of costs of the arbitral proceedings. It further provides for the circumstances under which arbitral proceedings are to be terminated and the mechanism for doing so.

13. Part 9 provides that recourse to the court against an arbitral award may be made by a party by an application for setting aside the award on specified grounds.

14. Part 10 retains the statutory scheme under the current Arbitration Ordinance (Cap. 341) for the enforcement of arbitral awards made, whether in or outside Hong Kong, in arbitral proceedings by an arbitral tribunal.

15. Part 11 provides that parties to an arbitration agreement may expressly provide in the arbitration agreement as to whether any of the “opt-in” provisions in Schedule 2 to the Bill shall apply. An “opting-in” system has been adopted under Part 11 of the Bill to enable users of arbitration to continue to use certain provisions that only apply to domestic arbitrations under the current Ordinance. All the opt-in provisions under Schedule 2 will automatically apply to an

arbitration agreement (subject to any express agreement to the contrary between the parties) entered into before, or at any time within a period of 6 years after, the commencement of the Bill where that arbitration agreement stipulates that an arbitration under that arbitration agreement is a “domestic arbitration”.

16. Part 12 contains miscellaneous provisions relating to the liability of an arbitral tribunal and a mediator and other relevant bodies. It also provides for the power to make relevant rules of court and prescribes the procedures for making an application under the Bill.

17. Part 13 contains provisions relating to the repeal of the current Arbitration Ordinance (Cap. 341) and the relevant savings and transitional arrangements.

18. Part 14 provides that the consequential and related amendments are set out in Schedule 4.

LEGISLATIVE TIMETABLE

19. The legislative timetable will be as follows –

| | |
|---|----------------|
| Publication in the Gazette | 26 June 2009 |
| First Reading and commencement of Second Reading debate | 8 July 2009 |
| Resumption of Second Reading debate, Committee Stage and Third Reading | To be notified |

IMPLICATIONS OF THE PROPOSAL

20. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. On economic implications,

the proposal should help promote Hong Kong as a regional arbitration centre, with consequential positive impact on business activities in the local economy. It has no financial, productivity, environmental or sustainability implications. Any additional workload on the courts as a consequence of the implementation of the Bill will be absorbed by the existing resources of the Judiciary.

21. Clause 6 of the Bill provides that the Bill applies to the Government and the Offices set up by the Central People's Government in the Hong Kong Special Administrative Region.¹

PUBLIC CONSULTATION

22. The Department of Justice published a Consultation Paper on Reform of the Law of Arbitration in Hong Kong and draft Arbitration Bill and invited comments on the proposals for reform and on the consultation draft of the Arbitration Bill on 31 December 2007. The initial consultation period of four months was extended by a further two months to 30 June 2008.

23. The consultation documents have been sent to arbitration institutes, representatives of the legal profession, including the Law Society of Hong Kong and the Hong Kong Bar Association, academics, relevant government bureaux and departments, various public authorities and private organizations concerned to seek their views on the proposals. The English and the Chinese versions of the consultation documents were also available on the websites of the Government of the Hong Kong Special Administrative Region and the Department of Justice.

¹ Offices set up by the Central People's Government in the Hong Kong Special Administrative Region (中央人民政府在香港特別行政區設立的機構) means –

- (a) the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region;
- (b) the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the Hong Kong Special Administrative Region; and
- (c) the Hong Kong Garrison of the Chinese People's Liberation Army.

24. There is general support in the responses received for the Bill and its adoption of a unitary regime of arbitration on the basis of the Model Law.

25. The Legislative Council's Panel on Administration of Justice and Legal Services ("AJLS Panel") has been consulted on the proposed reform and has been briefed on the progress of the Bill at its meetings on 27 June 2005, 28 May 2007, 28 January 2008 and 23 February 2009 respectively. The AJLS Panel has indicated support for the Bill.

PUBLICITY

26. A press release is to be issued on 24 June 2009. A spokesman will be available to answer enquiries.

ENQUIRY

27. Any enquiry on this brief can be addressed to Miss Amy Chan, Senior Government Counsel, Legal Policy Division, Department of Justice, at Tel. No. 28672157.

Department of Justice
24 June 2009

#348576-v2

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A BILL

To

Reform the law relating to arbitration, and to provide for related and consequential matters.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title and commencement

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

(2) This Ordinance comes into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette.

2. Interpretation

(1) In this Ordinance -

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

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

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

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

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

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

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

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

"dispute" (爭議) includes a difference;

"function" (職能) includes a power and a duty;

"HKIAC" (香港國際仲裁中心) means the Hong Kong International Arbitration Centre, a company incorporated in Hong Kong under the Companies Ordinance (Cap. 32) and limited by guarantee;

"interim measure" (臨時措施) -

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

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

and "interim measure of protection" (臨時保護措施) is to be construed accordingly;

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

"Mainland award" (內地裁決) means an arbitral award made in the Mainland by a recognized Mainland arbitral authority in accordance with the Arbitration Law of the People's Republic of China;

"mediation" (調解) includes conciliation;

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

"party" (一方、方) -

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

(b) in relation to any arbitral or court proceedings,

means a party to the proceedings;

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

"repealed Ordinance" (《舊有條例》) means the Arbitration Ordinance (Cap. 341) repealed by section 108;

"respondent" (應訴人) means a person against whom a claim or a counter-claim is made in an arbitration;

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

(2) If -

- (a) a provision of this Ordinance refers to the fact that the parties have agreed, or in any other way refers to an agreement of the parties, the agreement includes any arbitration rules referred to in that agreement; or
- (b) a provision of this Ordinance provides that the parties may agree, the agreement, if any, may include any arbitration rules by referring to those rules in that agreement.

(3) If -

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

applies to a defence to a counter-claim.

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

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

3. Object and principles of this Ordinance

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

(2) This Ordinance is based on the principles -

- (a) that, subject to the observance of the safeguards that are necessary in the public interest, the parties to a dispute should be free to agree on how the dispute should be resolved; and
- (b) that the court should interfere in the arbitration of a dispute only as expressly provided for in this Ordinance.

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

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

5. Arbitrations to which this Ordinance applies

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

(2) If the place of arbitration is outside Hong Kong, only sections 20, 21, 45, 60 and 61 and Part 10 apply to the arbitration.

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

- (a) a reference in article 16(1) of the UNCITRAL Model Law, given effect to by section 34, to any objections with respect to the existence or validity of the arbitration agreement is to be construed as any objections with respect to the application of that other Ordinance to the dispute in question;
- (b) that other Ordinance is deemed to have expressly provided that, subject to paragraph (c), all the provisions in Schedule 2 apply; and
- (c) section 2 of Schedule 2 (if applicable) only applies so as to authorize 2 or more arbitral proceedings under the same Ordinance to be consolidated or to be heard at the same time or one immediately after another.

(4) Subsection (3) has effect, in relation to an arbitration

under any other Ordinance, only in so far as this Ordinance is consistent with -

- (a) that other Ordinance; and
- (b) any rules or procedures authorized or recognized by that other Ordinance.

6. Application

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

PART 2

GENERAL PROVISIONS

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

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

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

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

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

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

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

- (c) a reference to different States is to be construed as including Hong Kong and any other place;
- (d) a reference to an article is to be construed as an article of the UNCITRAL Model Law; and
- (e) (other than in article 2A of the UNCITRAL Model Law, given effect to by section 9) a reference to this Law is to be construed as this Ordinance.

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

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

"Article 2A. International origin and general principles

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

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

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

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

"Article 3. Receipt of written communications

(1) Unless otherwise agreed by the parties:

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

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

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

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

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

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

Article 4 of the UNCITRAL Model Law, the text of which is set

out below, has effect -

"Article 4. Waiver of right to object

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

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

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

"Article 5. Extent of court intervention

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

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

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

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

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

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

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

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

are to be performed by the Court.

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

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

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

are to be performed by the Court.

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

14. Application of Limitation Ordinance and other limitation enactments to arbitrations

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

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

(3) Despite any term in an arbitration agreement to the

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

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

- (a) the commencement of the arbitral proceedings; and
- (b) the date of the order of the court setting aside the award,

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

15. Reference of interpleader issue to arbitration by court

(1) If -

- (a) relief by way of interpleader is granted by a court; and
- (b) there is an arbitration agreement between the claimants in the interpleader proceedings in respect of any issue between those claimants,

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

(2) The court may refuse to make a direction under subsection (1) if the circumstances are such that legal proceedings brought by a claimant in respect of the issue would

not be stayed.

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

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

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

16. Proceedings to be heard otherwise than in open court

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

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

- (a) on the application of any party; or
- (b) if, in any particular case, the court is satisfied that those proceedings ought to be heard in open court.

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

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

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

(2) A court in which closed court proceedings are being

heard must, on the application of any party, make a direction as to what information, if any, relating to the proceedings may be published.

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

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

(4) Despite subsection (3), if -

- (a) a court gives a judgment in respect of closed court proceedings; and
- (b) the court considers that judgment to be of major legal interest,

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

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

- (a) make a direction as to the action to be taken to conceal that matter in those reports; and
- (b) if the court considers that a report published in accordance with the direction made under paragraph (a) would still be likely to reveal that matter, direct that the report may not be published until after the end of a period, not exceeding 10 years,

that the court may direct.

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

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

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

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

(b) an award made in those arbitral proceedings.

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

(a) if the publication, disclosure or communication is contemplated by this Ordinance;

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

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

PART 3

ARBITRATION AGREEMENT

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

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

"Option I

*Article 7. Definition and form of arbitration
agreement*

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

(2) The arbitration agreement shall be in writing.

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

(4) The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference;
"electronic communication" means any communication that the parties make by means of data messages;
"data message" means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to,

electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.

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

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

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

- (a) the agreement is in a document, whether or not the document is signed by the parties to the agreement; or
- (b) the agreement, although made otherwise than in writing, is recorded by one of the parties to the agreement, or by a third party, with the authority of each of the parties to the agreement.

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

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

court)

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

"Article 8. Arbitration agreement and substantive claim before court

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

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

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

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

with the arbitration agreement; and

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

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

(4) If the court refuses to refer the parties to arbitration, any provision of the arbitration agreement that an award is a condition precedent to the bringing of legal proceedings in respect of any matter is of no effect in relation to those proceedings.

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

(6) In the case of Admiralty proceedings -

- (a) the reference of the parties to arbitration and an order for the stay of those proceedings may, despite subsections (1) and (5), be made conditional on the giving of security for the satisfaction of any award made in the arbitration; or
- (b) if the court makes an order under subsection (5) staying those proceedings, the court may (where property has been arrested, or bail or other security has been given to prevent or obtain release from arrest, in those proceedings) order that the property arrested, or the bail or security given, be retained as security for the satisfaction of any award made in the arbitration.

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

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

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

(b) subsection (2),

is not subject to appeal.

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

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

(b) subsection (2),

is required for any appeal from that decision.

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

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

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

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

It is not incompatible with an arbitration
agreement for a party to request, before or during

arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure."

22. Whether agreement discharged by death of a party

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

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

PART 4

COMPOSITION OF ARBITRAL TRIBUNAL

Division 1 - Arbitrators

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

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

"Article 10. Number of arbitrators

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

(2) [*Not applicable.*]"

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

institution, to make that determination.

(3) Subject to section 1 of Schedule 2 (if applicable), if the parties fail to agree on the number of arbitrators, the number of arbitrators is to be either 1 or 3 as decided by the HKIAC in the particular case.

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

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

"Article 11. Appointment of arbitrators

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

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

(3) Failing such agreement,

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

the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;

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

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

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

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

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

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

(5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no appeal. The court or other authority, in

appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties."

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

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

(b) if -

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

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

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

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

(a) if the parties have not agreed on a procedure for

appointing the arbitrators under article 11(2) of the UNCITRAL Model Law, given effect to by subsection (1) -

- (i) each party is to appoint the same number of arbitrators; and
- (ii) unless otherwise agreed by the parties, the HKIAC must appoint the remaining arbitrator or arbitrators; or

(b) if -

- (i) a party fails to act as required under an appointment procedure agreed upon by the parties; or
- (ii) in the case of paragraph (a), a party fails to appoint the appropriate number of arbitrators under that paragraph within 30 days of receipt of a request to do so from the other party,

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

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

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

- (a) has effect as if it were made with the agreement of all parties; and
- (b) is subject to article 11(5) of the UNCITRAL Model Law, given effect to by subsection (1).

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

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

"Article 12. Grounds for challenge

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

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

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

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

"Article 13. Challenge procedure

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

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

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

(2) During the period that a request for the Court to decide

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

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

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

- (a) the arbitrator withdraws from office;
- (b) the parties agree to the challenge;
- (c) the arbitral tribunal upholds the challenge and no request is made for the Court to decide on the challenge; or
- (d) the Court, upon request to decide on the challenge, upholds the challenge.

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

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

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

"Article 14. Failure or impossibility to act

- (1) If an arbitrator becomes *de jure* or *de facto*

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

(2) If, under this article or article 13(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12(2).".

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

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

"Article 15. Appointment of substitute arbitrator

Where the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed

according to the rules that were applicable to the appointment of the arbitrator being replaced.".

29. Death of arbitrator or person appointing arbitrator

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

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

30. Appointment of umpire

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

31. Functions of umpire in arbitral proceedings

(1) The parties are free to agree what the functions of an umpire are to be and, in particular -

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

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

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

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

arbitral proceedings.

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

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

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

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

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

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

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

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

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

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

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

Division 2 - Mediators

32. Appointment of mediator

(1) If -

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

(b) that person -

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

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

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

(3) If any written agreement provides for the appointment of a mediator and further provides that the person so appointed is to

act as an arbitrator in the event that no settlement acceptable to the parties can be reached in the mediation proceedings -

- (a) no objection may be made against the person's acting as an arbitrator, or against the person's conduct of the arbitral proceedings, solely on the ground that the person had acted previously as a mediator in connection with some or all of the matters relating to the dispute submitted to arbitration; or
- (b) if the person declines to act as an arbitrator, any other person appointed as an arbitrator is not required first to act as a mediator unless it is otherwise expressed in the written agreement.

33. Power of arbitrator to act as mediator

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

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

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

- (a) may communicate with the parties collectively or separately; and
- (b) must treat the information obtained by the arbitrator from a party as confidential, unless otherwise agreed by that party or unless subsection (4) applies.

(4) If -

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

(b) those mediation proceedings terminate without reaching a settlement acceptable to the parties, the arbitrator must, before resuming the arbitral proceedings, disclose to all other parties as much of that information as the arbitrator considers is material to the arbitral proceedings.

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

PART 5

JURISDICTION OF ARBITRAL TRIBUNAL

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

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

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

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as

an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

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

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

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

- (a) whether the tribunal is properly constituted; or
- (b) what matters have been submitted to arbitration in accordance with the arbitration agreement.

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

- (a) makes a counter-claim arising out of the same dispute; or
- (b) relies on a claim arising out of that dispute for the purposes of a set-off,

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

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

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

PART 6

INTERIM MEASURES AND PRELIMINARY ORDERS

Division 1 - Interim measures

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) With regard to a request for an interim measure under article 17(2)(d), the requirements in paragraphs (1)(a) and (b) of this article shall apply only to the extent the arbitral tribunal considers appropriate."

Division 2 - Preliminary orders

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

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

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

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

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

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

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

Article 17C of the UNCITRAL Model Law, the text of which is

set out below, has effect -

"Article 17C. Specific regime for preliminary orders

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

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

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

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

notice and an opportunity to present its case.

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

Division 3 - Provisions applicable to interim measures and preliminary orders

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

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

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

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

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

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

"Article 17E. Provision of security

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

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

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

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

"Article 17F. Disclosure

(1) The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the measure was requested or granted.

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

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

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

"Article 17G. Costs and damages

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

Division 4 - Recognition and enforcement of interim measures

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

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

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

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

Division 5 - Court-ordered interim measures

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

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

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

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

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

- (a) the interim measure sought is currently the subject of arbitral proceedings; and
- (b) the Court considers it more appropriate for the interim measure sought to be dealt with by the arbitral tribunal.

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

- (a) the arbitral proceedings are capable of giving rise to an arbitral award (whether interim or final) that may be enforced in Hong Kong under this Ordinance or any other Ordinance; and
- (b) the interim measure sought belongs to a type or description of interim measure that may be granted in Hong Kong in relation to arbitral proceedings by the Court.

(6) Subsection (5) applies even if -

- (a) the subject matter of the arbitral proceedings would not, apart from that subsection, give rise to

a cause of action over which the Court would have jurisdiction; or

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

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

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

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

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

- (a) a reference to the arbitral tribunal in that article were the court; and
- (b) a reference to arbitral proceedings in that article were court proceedings,

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

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

PART 7

CONDUCT OF ARBITRAL PROCEEDINGS

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

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

(2) The parties must be treated with equality.

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

- (a) to be independent;
- (b) to act fairly and impartially as between the parties, giving them a reasonable opportunity to present their cases and to deal with the cases of their opponents; and
- (c) to use procedures that are appropriate to the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for resolving the dispute to which the arbitral proceedings relate.

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

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

"Article 19. Determination of rules of procedure

(1) Subject to the provisions of this Law, the

parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

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

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

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

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

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

"Article 20. Place of arbitration

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

(2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless

otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents."

**49. Article 21 of UNCITRAL Model Law
(Commencement of arbitral
proceedings)**

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

"Article 21. Commencement of arbitral proceedings

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

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

**50. Article 22 of UNCITRAL Model Law
(Language)**

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

"Article 22. Language

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall

determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

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

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

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

"Article 23. Statements of claim and defence

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

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

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

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

"Article 24. Hearings and written proceedings

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

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

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

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

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

"Article 25. Default of a party

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

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

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

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

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

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

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

- (a) direct that the party is not entitled to rely on any allegation or material which was the subject matter of the peremptory order;
- (b) draw any adverse inferences that the circumstances may justify from the non-compliance;
- (c) make an award on the basis of any materials which have been properly provided to the arbitral tribunal; or
- (d) make any order that the arbitral tribunal thinks fit as to the payment of the costs of the arbitration incurred in consequence of the non-compliance.

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

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

"Article 26. Expert appointed by arbitral tribunal

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

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

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

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

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

(a) the arbitral tribunal may -

(i) appoint experts or legal advisers to report to it and the parties; or

(ii) appoint assessors to assist it on technical matters,

and may allow any of those experts, legal advisers or assessors to attend the proceedings; and

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

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

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

"Article 27. Court assistance in taking evidence

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

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

(3) The Court may also order a writ of habeas corpus ad testificandum to be issued requiring a prisoner to be taken before an arbitral tribunal for examination.

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

(5) A decision or order of the Court made in the exercise of

its power under this section is not subject to appeal.

**56. General powers exercisable by
arbitral tribunal**

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

- (a) requiring a claimant to give security for the costs of the arbitration;
- (b) directing the discovery of documents or the delivery of interrogatories;
- (c) directing evidence to be given by affidavit; or
- (d) in relation to any relevant property -
 - (i) directing the inspection, photographing, preservation, custody, detention or sale of the relevant property by the arbitral tribunal, a party to the arbitral proceedings or an expert; or
 - (ii) directing samples to be taken from, observations to be made of, or experiments to be conducted on the relevant property.

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

- (a) a natural person who is ordinarily resident outside Hong Kong;
- (b) a body corporate -
 - (i) incorporated under the law of a place outside Hong Kong; or
 - (ii) the central management and control of which is exercised outside Hong Kong; or

(c) an association -

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

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

(3) An arbitral tribunal -

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

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

(4) An arbitral tribunal may make an award dismissing a claim or stay a claim if it has made an order under subsection (1)(a) but the order has not been complied with within the period specified under subsection (3)(a) or extended under subsection (3)(b).

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

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

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

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

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

proceedings.

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

- (a) administer oaths to, or take the affirmations of, witnesses and parties;
- (b) examine witnesses and parties on oath or affirmation; or
- (c) direct the attendance before the arbitral tribunal of witnesses in order to give evidence or to produce documents or other evidence.

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

**57. Arbitral tribunal may limit
amount of recoverable
costs**

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

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

- (a) on its own initiative; or
- (b) on the application of any party.

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

- (a) the incurring of the costs to which the direction or the variation relates; or
- (b) the taking of the steps in the arbitral proceedings

which may be affected by the direction or the variation.

(4) In this section -

- (a) a reference to costs is to be construed as the parties' own costs; and
- (b) a reference to arbitral proceedings includes any part of those arbitral proceedings.

58. Power to extend time for arbitral proceedings

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

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

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

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

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

- (a) that -
 - (i) the circumstances were such as to be outside the reasonable contemplation of the parties when they entered into the

arbitration agreement; and

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) on its own initiative; or
- (b) on the application of any other party.

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

- (a) it gives rise, or is likely to give rise, to a substantial risk that the issues in the claim will not be resolved fairly; or
- (b) it has caused, or is likely to cause, serious prejudice to any other party.

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

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

60. Special powers of Court in relation to arbitral proceedings

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

- (a) directing the inspection, photographing, preservation, custody, detention or sale of any relevant property by the arbitral tribunal, a party

- to the arbitral proceedings or an expert; or
- (b) directing samples to be taken from, observations to be made of, or experiments to be conducted on any relevant property.

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

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

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

- (a) the matter is currently the subject of arbitral proceedings; and
- (b) the Court considers it more appropriate for the matter to be dealt with by the arbitral tribunal.

(5) If the Court so orders, an order made by it under this section ceases to have effect, in whole or in part, on the order of the arbitral tribunal.

(6) In relation to arbitral proceedings which have been or are to be commenced outside Hong Kong, the Court may make an order under subsection (1) only if the arbitral proceedings are capable of giving rise to an arbitral award (whether interim or final) that may be enforced in Hong Kong under this Ordinance or any other Ordinance.

(7) Subsection (6) applies even if -

- (a) the subject matter of the arbitral proceedings

would not, apart from that subsection, give rise to a cause of action over which the Court would have jurisdiction; or

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

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

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

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

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

61. Enforcement of orders and directions of arbitral tribunal

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

(2) Leave to enforce an order or direction made outside Hong Kong is not to be granted, unless the party seeking to enforce it can demonstrate that it belongs to a type or description of order

or direction that may be made in Hong Kong in relation to arbitral proceedings by an arbitral tribunal.

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

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

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

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

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

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

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

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

63. Representation and preparation work

Section 44 (Penalty for unlawfully practising as a barrister or notary public), section 45 (Unqualified person not to act as solicitor) and section 47 (Unqualified person not to prepare

certain instruments, etc.) of the Legal Practitioners Ordinance (Cap. 159) do not apply to -

- (a) arbitral proceedings;
- (b) the giving of advice and the preparation of documents for the purposes of arbitral proceedings;
or
- (c) any other thing done in relation to arbitral proceedings, except where it is done in connection with court proceedings -
 - (i) arising out of an arbitration agreement;
or
 - (ii) arising in the course of, or resulting from, arbitral proceedings.

PART 8

MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

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

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

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

- (1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the

substantive law of that State and not to its conflict of laws rules.

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

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

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

**65. Article 29 of UNCITRAL Model Law
(Decision making by panel of
arbitrators)**

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

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

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

parties or all members of the arbitral tribunal.".

**66. Article 30 of UNCITRAL Model
Law (Settlement)**

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

"Article 30. Settlement

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

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

(2) If, in a case other than that referred to in article 30 of the UNCITRAL Model Law, given effect to by subsection (1), the parties to an arbitration agreement settle their dispute and enter into an agreement in writing containing the terms of settlement ("settlement agreement"), the settlement agreement is, for the purposes of its enforcement, to be treated as an arbitral award.

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

(1) Article 31 of the UNCITRAL Model Law, the text of which

is set out below, has effect -

"Article 31. Form and contents of award

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

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

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

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

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

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

Article 32 of the UNCITRAL Model Law, the text of which is

set out below, has effect -

"Article 32. Termination of proceedings

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but

omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

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

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

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

- (a) the correction of any error in the award; or
- (b) the interpretation of any point or part of the award,

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

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

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

70. Award of remedy or relief

(1) Subject to subsection (2), an arbitral tribunal may, in deciding a dispute, award any remedy or relief that could have been ordered by the Court if the dispute had been the subject of civil proceedings in the Court.

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

71. Awards on different aspects of matters

Unless otherwise agreed by the parties, an arbitral tribunal may make more than one award at different times on different aspects of the matters to be determined.

72. Time for making award

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

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

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

73. Effect of award

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

(a) the parties; and

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

parties.

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

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

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

74. Arbitral tribunal may award costs of arbitral proceedings

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

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

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

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

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

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

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

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

(7) The arbitral tribunal -

- (a) must only allow costs that are reasonable having regard to all the circumstances; and
- (b) unless otherwise agreed by the parties, may allow costs incurred in the preparation of the arbitral proceedings prior to the commencement of the arbitration.

(8) A provision of an arbitration agreement to the effect that the parties, or any of the parties, must pay their own costs in respect of arbitral proceedings arising under the agreement is void.

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

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

(1) Without affecting section 74(1) and (2), if the parties have agreed that the costs of arbitral proceedings are taxable by the court, the arbitral tribunal must direct in an award that the costs (other than the fees and expenses of the arbitral tribunal) -

- (a) are taxable by the court; and

(b) are to be paid on any basis on which the court can award costs in civil proceedings before the court.

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

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

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

76. Costs in respect of unqualified person

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

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

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

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

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

- (i) the fees and expenses demanded; or
- (ii) a lesser amount that the Court may specify;

(b) may order that the amount of the fees and expenses payable to the tribunal is to be determined by the

means and on the terms that the Court may direct;
and

(c) may order that -

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

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

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

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

(i) under section 78; or

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

(b) the fees and expenses of -

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

(ii) an expert, legal adviser or assessor appointed under section 54(2),

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

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

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

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

party and the arbitrators.

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

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

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

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

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

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

78. Liability to pay fees and expenses of arbitral tribunal

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

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

this Ordinance.

(3) This section does not affect -

- (a) the liability of the parties as among themselves to pay the costs of the arbitral proceedings; or
- (b) any contractual right or obligation relating to payment of the fees and expenses of the arbitral tribunal.

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

- (a) a member of the tribunal who has ceased to act; and
- (b) an umpire who has not yet replaced members of the tribunal.

79. Arbitral tribunal may award interest

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

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

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

(3) A reference in subsection (1)(a) to money awarded by the

tribunal includes an amount payable in consequence of a declaratory award by the tribunal.

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

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

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

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

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

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

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

PART 9

RECOURSE AGAINST AWARD

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

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

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

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

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

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

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

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the

decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

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

(b) the court finds that:

- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or
- (ii) the award is in conflict with the public policy of this State.

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

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

(2) Subsection (1) does not affect -

- (a) the power of the Court to set aside an arbitral award under section 26(5);
- (b) the right to challenge an arbitral award under section 4 of Schedule 2 (if applicable); or
- (c) the right to appeal against an arbitral award on a question of law under section 5 of Schedule 2 (if applicable).

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

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

PART 10

RECOGNITION AND ENFORCEMENT OF AWARDS

Division 1 - Enforcement of arbitral awards

82. Article 35 of UNCITRAL Model Law

(Recognition and enforcement)

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

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

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

84. Enforcement of arbitral awards

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

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

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

**85. Evidence to be produced for enforcement
of arbitral awards**

The party seeking to enforce an arbitral award, whether made in or outside Hong Kong, which is neither a Convention award nor a Mainland award, must produce -

- (a) the duly authenticated original award or a duly certified copy of it;
- (b) the original arbitration agreement or a duly certified copy of it; and
- (c) if the award or agreement is in a language or languages other than either or both of the official languages, a translation of it in either of the official languages certified by an official or

sworn translator or by a diplomatic or consular agent.

86. Refusal of enforcement of arbitral awards

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

- (a) that a party to the arbitration agreement was
(under the law applicable to that party) under some incapacity;
- (b) that the arbitration agreement was not valid -
 - (i) under the law to which the parties subjected it; or
 - (ii) (if there was no indication of the law to which the arbitration agreement was subjected) under the law of the country where the award was made;
- (c) that the person -
 - (i) was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings; or
 - (ii) was otherwise unable to present the person's case;
- (d) subject to subsection (3), that the award -
 - (i) deals with a difference not contemplated by or not falling within the terms of the submission to arbitration; or
 - (ii) contains decisions on matters beyond the scope of the submission to arbitration;
- (e) that the composition of the arbitral authority or

the arbitral procedure was not in accordance with -

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

(f) that the award -

- (i) has not yet become binding on the parties; or
- (ii) has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made.

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

- (a) the award is in respect of a matter which is not capable of settlement by arbitration;
- (b) it would be contrary to public policy to enforce the award; or
- (c) for any other reason the court considers it just to do so.

(3) An award referred to in section 85 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.

(4) If an application for the setting aside or suspension of an award referred to in section 85 has been made to a competent authority as mentioned in subsection (1)(f), the court before which enforcement of the award is sought -

- (a) may, if it thinks fit, adjourn the proceedings for

the enforcement of the award; and

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

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

Division 2 - Enforcement of Convention awards

87. Enforcement of Convention awards

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

- (a) by action in the Court; or
- (b) in the same manner as an arbitral award, and section 84 applies accordingly as if a reference in that section to an award were a Convention award.

(2) Any Convention award which is enforceable as mentioned in subsection (1) is to be treated as binding for all purposes on the persons 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.

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

88. Evidence to be produced for enforcement of Convention awards

The party seeking to enforce a Convention award must produce -

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

- (b) the original arbitration agreement or a duly certified copy of it; and
- (c) if the award or agreement is in a language or languages other than either or both of the official languages, a translation of it in either of the official languages certified by an official or sworn translator or by a diplomatic or consular agent.

89. Refusal of enforcement of Convention awards

(1) Enforcement of a Convention award may 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 that party) under some incapacity;
- (b) that the arbitration agreement was not valid -
 - (i) under the law to which the parties subjected it; or
 - (ii) (if there was no indication of the law to which the arbitration agreement was subjected) under the law of the country where the award was made;
- (c) that the person -
 - (i) was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings; or
 - (ii) was otherwise unable to present the

person's case;

- (d) subject to subsection (4), that the award -
 - (i) deals with a difference not contemplated by or not falling within the terms of the submission to arbitration; or
 - (ii) contains decisions on matters beyond the scope of the submission to arbitration;
- (e) that the composition of the arbitral authority or the arbitral procedure was not in accordance with -
 - (i) the agreement of the parties; or
 - (ii) (if there was no agreement) the law of the country where the arbitration took place; or
- (f) that the award -
 - (i) has not yet become binding on the parties; or
 - (ii) has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made.

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

- (a) the award is in respect of a matter which is not capable of settlement by arbitration under the law of Hong Kong; or
- (b) it would be contrary to public policy to enforce the award.

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

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

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

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

90. Order for declaring party to New York Convention

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

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

(b) is specified in the order,

is a party to that Convention.

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

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

91. Saving of rights to enforce Convention awards

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

Division 3 - Enforcement of Mainland awards

92. Enforcement of Mainland awards

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

- (a) by action in the Court; or
- (b) in the same manner as an arbitral award, and section 84 applies accordingly as if a reference in that section to an award were a Mainland award.

(2) Any Mainland award which is enforceable as mentioned in subsection (1) is to be treated as binding for all purposes on the persons 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.

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

93. Restrictions on enforcement of Mainland awards

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

(2) If -

- (a) an application has been made on the Mainland for enforcement of a Mainland award; and
- (b) the award has not been fully satisfied by way of that enforcement,

then, to the extent that the award has not been so satisfied, the award is enforceable under this Division.

94. Evidence to be produced for enforcement of Mainland awards

The party seeking to enforce a Mainland award must produce -

- (a) the duly authenticated original award or a duly certified copy of it;
- (b) the original arbitration agreement or a duly certified copy of it; and
- (c) if the award or agreement is in a language or languages other than either or both of the official languages, a translation of it in either of the official languages certified by an official or sworn translator or by a diplomatic or consular agent.

95. Refusal of enforcement of Mainland awards

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

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

- (a) that a party to the arbitration agreement was (under the law applicable to that party) under some incapacity;
- (b) that the arbitration agreement was not valid -
 - (i) under the law to which the parties subjected it; or
 - (ii) (if there was no indication of the law to which the arbitration agreement was subjected) under the law of the Mainland;
- (c) that the person -

- (i) was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings; or
 - (ii) was otherwise unable to present the person's case;
- (d) subject to subsection (4), that the award -
 - (i) deals with a difference not contemplated by or not falling within the terms of the submission to arbitration; or
 - (ii) contains decisions on matters beyond the scope of the submission to arbitration;
- (e) that the composition of the arbitral authority or the arbitral procedure was not in accordance with -
 - (i) the agreement of the parties; or
 - (ii) (if there was no agreement) the law of the Mainland; or
- (f) that the award -
 - (i) has not yet become binding on the parties; or
 - (ii) has been set aside or suspended by a competent authority of the Mainland or under the law of the Mainland.
- (3) Enforcement of a Mainland award may also be refused if -
 - (a) the award is in respect of a matter which is not capable of settlement by arbitration under the law of Hong Kong; or
 - (b) it would be contrary to public policy to enforce the award.
- (4) A Mainland 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.

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

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

(2) If -

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

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

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

97. Publication of list of recognized Mainland arbitral authorities

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

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

98. Saving of certain Mainland awards

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

PART 11

PROVISIONS THAT MAY BE EXPRESSLY OPTED FOR OR AUTOMATICALLY APPLY

99. Arbitration agreements may provide expressly for opt-in provisions

An arbitration agreement may provide expressly that any or all of the following provisions are to apply -

- (a) section 1 of Schedule 2;
- (b) section 2 of Schedule 2;
- (c) section 3 of Schedule 2;
- (d) sections 4 and 7 of Schedule 2;
- (e) sections 5, 6 and 7 of Schedule 2.

100. Opt-in provisions automatically apply in certain cases

All the provisions in Schedule 2 apply, subject to section 101, to -

- (a) an arbitration agreement entered into before the commencement of this Ordinance which has provided that arbitration under the agreement is a domestic arbitration; or
- (b) an arbitration agreement entered into at any time within a period of 6 years after the commencement of this Ordinance which provides that arbitration

under the agreement is a domestic arbitration.

101. Circumstances under which opt-in provisions not automatically apply

Section 100 does not apply if -

- (a) the parties to the arbitration agreement concerned so agree in writing; or
- (b) the arbitration agreement concerned has provided expressly that -
 - (i) section 100 does not apply; or
 - (ii) any of the provisions in Schedule 2 applies or does not apply.

102. Application of provisions under this Part

If there is any conflict or inconsistency between any provision that applies under this Part and any other provision of this Ordinance, the first-mentioned provision prevails, to the extent of the conflict or inconsistency, over that other provision.

PART 12

MISCELLANEOUS

103. Arbitral tribunal or mediator to be liable for certain acts and omissions

(1) An arbitral tribunal or mediator is liable in law for an act done or omitted to be done by -

- (a) the tribunal or mediator; or
- (b) an employee or agent of the tribunal or mediator, in relation to the exercise or performance, or the purported exercise or performance, of the tribunal's arbitral functions or

the mediator's functions only if it is proved that the act was done or omitted to be done dishonestly.

(2) An employee or agent of an arbitral tribunal or mediator is liable in law for an act done or omitted to be done by the employee or agent in relation to the exercise or performance, or the purported exercise or performance, of the tribunal's arbitral functions or the mediator's functions only if it is proved that the act was done or omitted to be done dishonestly.

104. Appointors and administrators to be liable only for certain acts and omissions

(1) A person -

(a) who appoints an arbitral tribunal or mediator; or

(b) who exercises or performs any other function of an administrative nature in connection with arbitral or mediation proceedings,

is liable in law for the consequences of doing or omitting to do an act in the exercise or performance, or the purported exercise or performance, of the function only if it is proved that the act was done or omitted to be done dishonestly.

(2) Subsection (1) does not apply to an act done or omitted to be done by -

(a) a party to the arbitral or mediation proceedings;
or

(b) a legal representative or adviser of the party, in the exercise or performance, or the purported exercise or performance, of a function of an administrative nature in connection with those proceedings.

(3) An employee or agent of a person who has done or omitted to do an act referred to in subsection (1) is liable in law for

the consequence of the act done or omission made only if it is proved that -

- (a) the act was done or omission was made dishonestly;
and

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

(4) Neither a person referred to in subsection (1) nor an employee or agent of the person is liable in law for the consequences of any act done or omission made by -

- (a) the arbitral tribunal or mediator concerned; or

- (b) an employee or agent of the tribunal or mediator, in the exercise or performance, or the purported exercise or performance, of the tribunal's arbitral functions or the mediator's functions merely because the person, employee or agent has exercised or performed a function referred to in that subsection.

(5) In this section, "appoint" (委任) includes nominate and designate.

105. Rules of court

(1) The power to make rules of court under section 54 (Rules of court) of the High Court Ordinance (Cap. 4) includes power to make rules of court for -

- (a) the making of an application for an interim measure under section 45(2) or an order under section 60(1);
or

- (b) the service out of the jurisdiction of an application for the interim measure or order.

(2) Any rules made by virtue of this section may include the incidental, supplementary and consequential provisions that the authority making the rules considers necessary or expedient.

106. Making an application, etc. under this Ordinance

An application, request or appeal to the court under this Ordinance is, unless otherwise expressed, to be made in accordance with the Rules of the High Court (Cap. 4 sub. leg. A).

107. Decision, etc. of Court under this Ordinance

A decision, determination, direction or award of the Court under this Ordinance is to be treated as a judgment of the Court for the purposes of section 14 (Appeals in civil matters) of the High Court Ordinance (Cap. 4).

PART 13

REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS

108. Repeal

The Arbitration Ordinance (Cap. 341) is repealed.

109. Effect of repeal on subsidiary legislation

Any subsidiary legislation made under the repealed Ordinance and in force at the commencement of this Ordinance, so far as it is not inconsistent with this Ordinance, continues in force and has the like effect for all purposes as if made under this Ordinance.

110. Savings and transitional provisions

Schedule 3 provides for the savings and transitional arrangements that apply on, or relate to, the commencement of this Ordinance.

PART 14

CONSEQUENTIAL AND RELATED AMENDMENTS

111. Consequential and related amendments

The enactments specified in Schedule 4 are amended as set out in that Schedule.

SCHEDULE 1

[s. 2]

UNCITRAL MODEL LAW ON INTERNATIONAL
COMMERCIAL ARBITRATION

(As adopted by the United Nations Commission on
International Trade Law on 21 June 1985, and
as amended by the United Nations
Commission on International
Trade Law on 7 July 2006)

CHAPTER I. GENERAL PROVISIONS

Article 1. Scope of application*

(1) This Law applies to international commercial** arbitration, subject to any agreement in force between this State and any other State or States.

(2) The provisions of this Law, except articles 8, 9, 17H, 17I, 17J, 35 and 36, apply only if the place of arbitration is in the territory of this State.

(Article 1(2) has been amended by the Commission at its thirty-ninth session, in 2006)

(3) An arbitration is international if:

(a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or

(b) one of the following places is situated outside the State in which the parties have their places of business:

(i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;

(ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or

(c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.

(4) For the purposes of paragraph (3) of this article:

(a) if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;

(b) if a party does not have a place of business, reference is to be made to his habitual residence.

(5) This Law shall not affect any other law of this State by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Law.

[Note : Section 5 has effect in substitution for article 1 - see section 7.]

Article 2. Definitions and rules of interpretation

For the purposes of this Law:

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

(b) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

(c) "court" means a body or organ of the judicial system of a State;

(d) where a provision of this Law, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;

(e) where a provision of this Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;

(f) where a provision of this Law, other than in articles 25(a) and 32(2)(a), refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim.

[Note : Section 2 has effect in substitution for article 2 - see section 8.]

Article 2A. International origin and general principles

(As adopted by the Commission at its thirty-ninth session, in 2006)

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

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

[Note : See section 9.]

Article 3. Receipt of written communications

(1) Unless otherwise agreed by the parties:

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

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

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

[Note : See section 10.]

Article 4. Waiver of right to object

A party who knows that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the

arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.

[Note : See section 11.]

Article 5. Extent of court intervention

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

[Note : See section 12.]

Article 6. Court or other authority for certain functions of arbitration assistance and supervision

The functions referred to in articles 11(3), 11(4), 13(3), 14, 16(3) and 34(2) shall be performed by ...[Each State enacting this model law specifies the court, courts or, where referred to therein, other authority competent to perform these functions.]

[Note : Section 13(2) to (6) has effect in substitution for article 6 - see section 13.]

CHAPTER II. ARBITRATION AGREEMENT

Option I

Article 7. Definition and form of arbitration agreement

(As adopted by the Commission at its thirty-ninth session, in 2006)

(1) "Arbitration agreement" is an agreement by the parties to

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

(2) The arbitration agreement shall be in writing.

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

(4) The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference; "electronic communication" means any communication that the parties make by means of data messages; "data message" means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.

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

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

the contract.

Option II

Article 7. Definition of arbitration agreement

(As adopted by the Commission at its thirty-ninth session, in 2006)

"Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

[Note : See section 19. Option I of this article is adopted.]

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

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

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

[Note : See section 20.]

Article 9. Arbitration agreement and interim measures by court

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

[Note : See section 21.]

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

Article 10. Number of arbitrators

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

(2) Failing such determination, the number of arbitrators shall be three.

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

Article 11. Appointment of arbitrators

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

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

(3) Failing such agreement,

(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus

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

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

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

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

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

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

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

(5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the

parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

[Note : See section 24.]

Article 12. Grounds for challenge

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

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

[Note : See section 25.]

Article 13. Challenge procedure

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

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

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

[Note : See section 26.]

Article 14. Failure or impossibility to act

(1) If an arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in article 6 to decide on the termination of the mandate, which decision shall be

subject to no appeal.

(2) If, under this article or article 13(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12(2).

[Note : See section 27.]

Article 15. Appointment of substitute arbitrator

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

[Note : See section 28.]

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

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

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A

decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

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

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

[Note : See section 34.]

CHAPTER IVA. INTERIM MEASURES AND PRELIMINARY ORDERS

(As adopted by the Commission at its thirty-ninth session, in 2006)

Section 1. Interim measures

Article 17. Power of arbitral tribunal to order interim measures

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

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

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

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

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

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

[Note : See section 35.]

Article 17A. Conditions for granting interim measures

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

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

(b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination

on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

(2) With regard to a request for an interim measure under article 17(2)(d), the requirements in paragraphs (1)(a) and (b) of this article shall apply only to the extent the arbitral tribunal considers appropriate.

[Note : See section 36.]

Section 2. Preliminary orders

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

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

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

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

[Note : See section 37.]

Article 17C. Specific regime for preliminary orders

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

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

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

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

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

[Note : See section 38.]

Section 3. Provisions applicable to interim measures and preliminary orders

Article 17D. Modification, suspension, termination

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

[Note : See section 39.]

Article 17E. Provision of security

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

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

[Note : See section 40.]

Article 17F. Disclosure

(1) The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the measure was requested or granted.

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

[Note : See section 41.]

Article 17G. Costs and damages

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

[Note : See section 42.]

Section 4. Recognition and enforcement of interim measures

Article 17H. Recognition and enforcement

(1) An interim measure issued by an arbitral tribunal shall be recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application to the competent court, irrespective of the country in which it was issued, subject to the provisions of article 17I.

(2) The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the court of any termination, suspension or modification of that interim measure.

(3) The court of the State where recognition or enforcement is sought may, if it considers it proper, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or where such a decision is necessary to protect the rights of third parties.

[Note : Section 61 has effect in substitution for article 17H -
see section 43.]

Article 17I. Grounds for refusing recognition or enforcement***

(1) Recognition or enforcement of an interim measure may be refused only:

(a) At the request of the party against whom it is invoked if the court is satisfied that:

- (i) Such refusal is warranted on the grounds set forth in article 36(1)(a)(i), (ii), (iii) or (iv); or
- (ii) The arbitral tribunal's decision with respect to the provision of security in connection with the interim measure issued by the arbitral tribunal has not been complied with; or
- (iii) The interim measure has been terminated or suspended by the arbitral tribunal or, where so empowered, by the court of the State in which the arbitration takes place or under the law of which

that interim measure was granted; or

(b) If the court finds that:

(i) The interim measure is incompatible with the powers conferred upon the court unless the court decides to reformulate the interim measure to the extent necessary to adapt it to its own powers and procedures for the purposes of enforcing that interim measure and without modifying its substance; or

(ii) Any of the grounds set forth in article 36(1)(b)(i) or (ii), apply to the recognition and enforcement of the interim measure.

(2) Any determination made by the court on any ground in paragraph (1) of this article shall be effective only for the purposes of the application to recognize and enforce the interim measure. The court where recognition or enforcement is sought shall not, in making that determination, undertake a review of the substance of the interim measure.

[Note : Article 17I does not have effect - see section 44.]

Section 5. Court-ordered interim measures

Article 17J. Court-ordered interim measures

A court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their place is in the territory of this State, as it has in relation to proceedings in courts. The court shall exercise such power in accordance with its own procedures in consideration

of the specific features of international arbitration.

[Note : Article 17J does not have effect - see section 45.]

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

Article 18. Equal treatment of parties

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

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

Article 19. Determination of rules of procedure

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

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

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

Article 20. Place of arbitration

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

circumstances of the case, including the convenience of the parties.

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

[Note : See section 48.]

Article 21. Commencement of arbitral proceedings

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

[Note : See section 49.]

Article 22. Language

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

(2) The arbitral tribunal may order that any documentary evidence

shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

[Note : See section 50.]

Article 23. Statements of claim and defence

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

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

[Note : See section 51.]

Article 24. Hearings and written proceedings

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

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

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

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

[Note : See section 52.]

Article 25. Default of a party

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

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

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

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

[Note : See section 53.]

Article 26. Expert appointed by arbitral tribunal

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

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

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

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

[Note : See section 54.]

Article 27. Court assistance in taking evidence

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

[Note : See section 55.]

CHAPTER VI. MAKING OF AWARD AND TERMINATION
OF PROCEEDINGS

Article 28. Rules applicable to substance of dispute

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

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

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

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

[Note : See section 64.]

Article 29. Decision making by panel of arbitrators

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

tribunal.

[Note : See section 65.]

Article 30. Settlement

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

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

[Note : See section 66.]

Article 31. Form and contents of award

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

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

(3) The award shall state its date and the place of arbitration as

determined in accordance with article 20(1). The award shall be deemed to have been made at that place.

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

[Note : See section 67.]

Article 32. Termination of proceedings

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

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

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

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

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

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

[Note : See section 68.]

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

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

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

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

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

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

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

(4) The arbitral tribunal may extend, if necessary, the period of

time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.

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

[Note : See section 69.]

CHAPTER VII. RECOURSE AGAINST AWARD

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

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

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

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

- (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or
- (ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
- (iii) the award deals with a dispute not contemplated by

or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

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

(b) the court finds that:

- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or
- (ii) the award is in conflict with the public policy of this State.

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

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside

proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

[Note : See section 81.]

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

Article 35. Recognition and enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the original award or a copy thereof. If the award is not made in an official language of this State, the court may request the party to supply a translation thereof into such language.****

(Article 35(2) has been amended by the Commission at its thirty-ninth session, in 2006)

[Note : Article 35 does not have effect - see section 82.]

Article 36. Grounds for refusing recognition or enforcement

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition

or enforcement is sought proof that:

- (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- (ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
- (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
- (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
- (v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) if the court finds that:

- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or
- (ii) the recognition or enforcement of the award would be contrary to the public policy of this State.

(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)(a)(v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

[Note : Article 36 does not have effect - see section 83.]

* Article headings are for reference purposes only and are not to be used for purposes of interpretation.

** The term "commercial" should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

*** The conditions set forth in article 17I are intended to limit the number of circumstances in which the court may refuse to enforce an interim measure. It would not be contrary to the level of harmonization sought to be achieved by these model provisions if a State were to adopt fewer circumstances in which enforcement may be refused.

**** The conditions set forth in this paragraph are intended to set maximum standards. It would, thus, not be contrary to the harmonization to be achieved by the model law if a State retained even less onerous conditions.

Note: The full text of the UNCITRAL Model Law is reproduced in this Schedule for information only. Provisions which are not applicable under this Ordinance are underlined. A note is added after each article to indicate the provision in this Ordinance which makes direct reference to that article. However, substituting provisions and other supplemental provisions to which the UNCITRAL Model Law are subject have not been shown in this Schedule. Reference has to be made therefore to this Ordinance which determines the extent to which the UNCITRAL Model Law applies.

SCHEDULE 2 [ss. 2, 5, 23, 73, 81,
99, 100 & 101]

PROVISIONS THAT MAY BE EXPRESSLY OPTED FOR OR
AUTOMATICALLY APPLY

1. **Sole arbitrator**

Despite section 23, any dispute arising between the parties to an arbitration agreement is to be submitted to a sole

arbitrator for arbitration.

2. Consolidation of arbitrations

(1) If, in relation to 2 or more arbitral proceedings, it appears to the Court -

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

the Court may, on the application of any party to those arbitral proceedings -

- (d) order those arbitral proceedings -
 - (i) to be consolidated on such terms as it thinks just; or
 - (ii) to be heard at the same time or one immediately after another; or
- (e) order any of those arbitral proceedings to be stayed until after the determination of any other of them.

(2) If the Court orders arbitral proceedings to be consolidated under subsection (1)(d)(i) or to be heard at the same time or one immediately after another under subsection (1)(d)(ii), the Court has the power -

- (a) to make consequential directions as to the payment of costs in those arbitral proceedings; and
- (b) if -
 - (i) all parties to those arbitral proceedings

are in agreement as to the choice of arbitrator for those arbitral proceedings, to appoint that arbitrator; or

- (ii) the parties cannot agree as to the choice of arbitrator for those arbitral proceedings, to appoint an arbitrator for those arbitral proceedings (and, in the case of arbitral proceedings to be heard at the same time or one immediately after another, to appoint the same arbitrator for those arbitral proceedings).

(3) If the Court makes an appointment of an arbitrator under subsection (2) for the arbitral proceedings to be consolidated or to be heard at the same time or one immediately after another, any appointment of any other arbitrator that has been made for any of those arbitral proceedings ceases to have effect for all purposes on and from the appointment under subsection (2).

(4) The arbitral tribunal hearing the arbitral proceedings that are consolidated under subsection (1)(d)(i) has the power under sections 74 and 75 in relation to the costs of those arbitral proceedings.

(5) If 2 or more arbitral proceedings are heard at the same time or one immediately after another under subsection (1)(d)(ii), the arbitral tribunal -

- (a) has the power under sections 74 and 75 only in relation to the costs of those arbitral proceedings that are heard by it; and
- (b) accordingly, does not have the power to order a party to any of those arbitral proceedings that are heard at the same time or one immediately after

another to pay the costs of a party to any other of those proceedings unless the arbitral tribunal is the same tribunal hearing all of those arbitral proceedings.

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

3. Decision of preliminary question of law by Court

(1) The Court may, on the application of any party to arbitral proceedings, decide any question of law arising in the course of the arbitral proceedings.

(2) An application under subsection (1) may not be made except -

- (a) with the agreement in writing of all the other parties to the arbitral proceedings; or
- (b) with the permission in writing of the arbitral tribunal.

(3) The application must -

- (a) identify the question of law to be decided; and
- (b) state the grounds on which it is said that the question should be decided by the Court.

(4) The Court must not entertain an application under subsection (1) unless it is satisfied that the decision of the question of law might produce substantial savings in costs to the parties.

(5) The leave of the Court or the Court of Appeal is required for any appeal from a decision of the Court under subsection (1).

4. Challenging arbitral award on

**ground of serious
irregularity**

(1) A party to arbitral proceedings may apply to the Court challenging an award in the arbitral proceedings on the ground of serious irregularity affecting the tribunal, the arbitral proceedings or the award.

(2) Serious irregularity means an irregularity of one or more of the following kinds which the Court considers has caused or will cause substantial injustice to the applicant -

- (a) failure by the arbitral tribunal to comply with section 46;
- (b) the arbitral tribunal exceeding its powers (otherwise than by exceeding its jurisdiction);
- (c) failure by the arbitral tribunal to conduct the arbitral proceedings in accordance with the procedure agreed by the parties;
- (d) failure by the arbitral tribunal to deal with all the issues that were put to it;
- (e) any arbitral or other institution or person vested by the parties with powers in relation to the arbitral proceedings or the award exceeding its powers;
- (f) failure by the arbitral tribunal to give, under section 69, an interpretation of the award the effect of which is uncertain or ambiguous;
- (g) the award being obtained by fraud, or the award or the way in which it was procured being contrary to public policy;
- (h) failure to comply with the requirements as to the form of the award; or

- (i) any irregularity in the conduct of the arbitral proceedings, or in the award which is admitted by the arbitral tribunal or by any arbitral or other institution or person vested by the parties with powers in relation to the arbitral proceedings or the award.

(3) If there is shown to be serious irregularity affecting the arbitral tribunal, the arbitral proceedings or the award, the Court may by order -

- (a) remit the award to the arbitral tribunal, in whole or in part, for reconsideration;
- (b) set aside the award, in whole or in part; or
- (c) declare the award to be of no effect, in whole or in part.

(4) If the award is remitted to the arbitral tribunal, in whole or in part, for reconsideration, the tribunal must make a fresh award in respect of the matters remitted -

- (a) within 3 months of the date of the order for remission; or
- (b) within a longer or shorter period that the Court may direct.

(5) The Court must not exercise its power to set aside an award or to declare an award to be of no effect, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the arbitral tribunal for reconsideration.

(6) The leave of the Court or the Court of Appeal is required for any appeal from a decision, order or direction of the Court under this section.

(7) Section 7 of this Schedule also applies to an

application or appeal under this section.

**5. Appeal against arbitral award
on question of law**

(1) Subject to section 6 of this Schedule, a party to arbitral proceedings may appeal to the Court on a question of law arising out of an award made in the arbitral proceedings.

(2) An agreement to dispense with the reasons for an arbitral tribunal's award is to be treated as an agreement to exclude the Court's jurisdiction under this section.

(3) The Court must decide the question of law which is the subject of the appeal on the basis of the findings of fact in the award.

(4) The Court must not consider any of the criteria set out in section 6(4)(c)(i) or (ii) of this Schedule when it decides the question of law under subsection (3).

(5) On hearing an appeal under this section, the Court may by order -

- (a) confirm the award;
- (b) vary the award;
- (c) remit the award to the arbitral tribunal, in whole or in part, for reconsideration in the light of the Court's decision; or
- (d) set aside the award, in whole or in part.

(6) If the award is remitted to the arbitral tribunal, in whole or in part, for reconsideration, the tribunal must make a fresh award in respect of the matters remitted -

- (a) within 3 months of the date of the order for remission; or
- (b) within a longer or shorter period that the Court

may direct.

(7) The Court must not exercise its power to set aside an award, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the arbitral tribunal for reconsideration.

(8) The leave of the Court or the Court of Appeal is required for any further appeal from an order of the Court under subsection (5).

(9) Leave to further appeal must not be granted unless -

- (a) the question is one of general importance; or
- (b) the question is one which, for some other special reason, should be considered by the Court of Appeal.

(10) Sections 6 and 7 of this Schedule also apply to an appeal or further appeal under this section.

**6. Application for leave to appeal
against arbitral award on
question of law**

(1) An appeal under section 5 of this Schedule on a question of law may not be brought by a party to arbitral proceedings except -

- (a) with the agreement of all the other parties to the arbitral proceedings; or
- (b) with the leave of the Court.

(2) An application for leave to appeal must -

- (a) identify the question of law to be decided; and
- (b) state the grounds on which it is said that leave to appeal should be granted.

(3) The Court must determine an application for leave to appeal without a hearing unless it appears to the Court that a hearing is required.

(4) Leave to appeal is to be granted only if the Court is satisfied -

- (a) that the decision of the question will substantially affect the rights of one or more of the parties;
- (b) that the question is one which the arbitral tribunal was asked to decide; and
- (c) that, on the basis of the findings of fact in the award -
 - (i) the decision of the arbitral tribunal on the question is obviously wrong; or
 - (ii) the question is one of general importance and the decision of the arbitral tribunal is at least open to serious doubt.

(5) The leave of the Court or the Court of Appeal is required for any appeal from a decision of the Court to grant or refuse leave to appeal.

(6) Leave to appeal from such a decision of the Court must not be granted unless -

- (a) the question is one of general importance; or
- (b) the question is one which, for some other special reason, should be considered by the Court.

7. Supplementary provisions on challenge to or appeal against arbitral award

(1) An application or appeal under section 4, 5 or 6 of this Schedule may not be brought if the applicant or appellant has not first exhausted -

- (a) any available recourse under section 69; and
- (b) any available arbitral process of appeal or review.

(2) If, on an application or appeal, it appears to the Court that the award -

- (a) does not contain the arbitral tribunal's reasons for the award; or
- (b) does not set out the arbitral tribunal's reasons for the award in sufficient detail to enable the Court properly to consider the application or appeal,

the Court may order the tribunal to state the reasons for the award in sufficient detail for that purpose.

(3) If the Court makes an order under subsection (2), it may make a further order that it thinks fit with respect to any additional costs of the arbitration resulting from its order.

(4) The Court -

- (a) may order the applicant or appellant to give security for the costs of the application or appeal; and
- (b) may, if the order is not complied with, direct that the application or appeal is to be dismissed.

(5) The power to order security for costs must not be exercised only on the ground that the applicant or appellant is -

- (a) a natural person who is ordinarily resident outside Hong Kong;
- (b) a body corporate -
 - (i) incorporated under the law of a place outside Hong Kong; or
 - (ii) the central management and control of which is exercised outside Hong Kong; or
- (c) an association -
 - (i) formed under the law of a place outside

Hong Kong; or

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

(6) The Court -

- (a) may order that any money payable under the award is
to be paid into the Court or otherwise secured
pending the determination of the application or
appeal; and
- (b) may, if the order is not complied with, direct that
the application or appeal is to be dismissed.

(7) The Court or the Court of Appeal may impose conditions
to the same or similar effect as an order under subsection (4) or
(6) on granting leave to appeal under section 4, 5 or 6 of this
Schedule.

(8) Subsection (7) does not affect the general discretion of
the Court or the Court of Appeal to grant leave subject to
conditions.

(9) An order or decision of the Court or the Court of Appeal
under this section is not subject to appeal.

SCHEDULE 3

[s. 110]

SAVINGS AND TRANSITIONAL PROVISIONS

1. **Conduct of arbitral and related proceedings**

(1) If an arbitration -

- (a) has commenced under article 21 of the UNCITRAL
Model Law as defined in section 2(1) of the
repealed Ordinance before the commencement of this
Ordinance; or

(b) has been deemed to be commenced under section 31(1) of the repealed Ordinance before the commencement of this Ordinance,

that arbitration and all related proceedings, including (where the award made in that arbitration has been set aside) arbitral proceedings resumed after the setting aside of the award, are to be governed by the repealed Ordinance as if this Ordinance had not been enacted.

(2) If an arbitration has commenced under any other Ordinance amended by this Ordinance before the commencement of this Ordinance, that arbitration and all related proceedings, including (where the award made in that arbitration has been set aside) arbitral proceedings resumed after the setting aside of the award, are to be governed by that other Ordinance in force immediately before the commencement of this Ordinance as if this Ordinance had not been enacted.

2. Appointment of arbitrators

(1) Subject to subsection (2), the appointment of an arbitrator made before the commencement of this Ordinance is, after the commencement of this Ordinance, to continue to have effect as if this Ordinance had not been enacted.

(2) The enactment of this Ordinance does not revive the appointment of any arbitrator whose mandate has terminated before the commencement of this Ordinance.

3. Settlement agreements

If the parties to an arbitration agreement have entered into a settlement agreement under section 2C of the repealed Ordinance before the commencement of this Ordinance, that settlement

agreement may be enforced in accordance with that section as if this Ordinance had not been enacted.

**4. Appointment of members of the
Appointment Advisory Board**

The appointment of a member of the Appointment Advisory Board established under rule 3 of the Arbitration (Appointment of Arbitrators and Umpires) Rules (Cap. 341 sub. leg. B) made before the commencement of this Ordinance is, after the commencement of this Ordinance, to continue to have effect until the expiry of the term of that appointment as if this Ordinance had not been enacted.

SCHEDULE 4

[s. 111]

CONSEQUENTIAL AND RELATED AMENDMENTS

High Court Ordinance

**1. Mode of exercise of Admiralty
jurisdiction**

Section 12B of the High Court Ordinance (Cap. 4) is amended by adding -

"(6A) The Court of First Instance may order a stay of Admiralty proceedings under section 20 of the Arbitration Ordinance (of 2009), subject to any conditions that it may impose, including the making of an order for the property arrested or the bail or security given in those proceedings to be retained as security for the satisfaction of any award made in the arbitration.".

2. Appeals in civil matters

(1) Section 14(3)(ea) is amended by repealing "Arbitration

Ordinance (Cap. 341), from any decision" and substituting "Arbitration Ordinance (of 2009), from any judgment or order".

(2) Section 14(3)(ea)(i) and (ii) is repealed and the following substituted -

- "(i) under section 15(2) of that Ordinance refusing to direct an issue to be determined in accordance with an arbitration agreement;
- (ii) under section 20(1) or (2) of that Ordinance refusing to refer the parties to arbitration;
- (iii) under section 60(1) of that Ordinance directing the sale of property;
- (iv) under section 81 of that Ordinance to set aside an arbitral award;
- (v) under section 84, 87 or 92 of that Ordinance to grant or refuse leave to enforce an arbitral award;
- (vi) under section 3 of Schedule 2 to that Ordinance on a question of law arising in the course of arbitral proceedings;
- (vii) under section 4 of Schedule 2 to that Ordinance on a challenge against an arbitral award on the ground of serious irregularity;
- (viii) under section 5 or 6 of Schedule 2 to that Ordinance on a question of law arising out of an arbitral award;
- (ix) under section 7(2) and (3) of Schedule 2 to that Ordinance for an arbitral tribunal to state the reasons for its award and on related costs;
- (x) under section 7(4) and (6) of Schedule 2 to that Ordinance on the giving of security for the costs of

an application to challenge an arbitral tribunal or an appeal on a question of law arising out of an arbitral award, and for the money payable under the award pending the determination of the application or appeal; or

- (xi) under section 7(7) of Schedule 2 to that Ordinance to impose conditions on granting leave to appeal on a question of law arising out of an arbitral award;".

3. Power of Court of First Instance to impose charging order

Section 20(4) is amended by adding "or umpire" after "arbitrator" where it twice appears.

4. Rules of court

Section 54(2)(j) is amended by repealing everything after "procedure for the payment of money into" and substituting "the Court of First Instance by any party to arbitral proceedings;".

5. Rules concerning deposit, etc. of moneys, etc. in High Court

Section 57(3) is amended by repealing "arbitration proceedings who makes payment of money into the High Court" and substituting "arbitral proceedings who makes payment of money into the Court of First Instance".

Rules of the High Court

6. Applications to the Court of Appeal

Order 59, rule 14(5), (6) and (6A) of the Rules of the High

Court (Cap. 4 sub. leg. A) is repealed.

**7. Judgments and orders to which
section 14AA(1) of the
Ordinance not apply**

Order 59, rule 21(1)(i) is amended by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

8. Interpretation

Order 62, rule 1(1) is amended, in the definition of "contentious business", by repealing "appointed under the Arbitration Ordinance (Cap. 341)" and substituting ", umpire or arbitral tribunal under the Arbitration Ordinance (of 2009)".

9. Powers of taxing masters to tax costs

Order 62, rule 12(1)(b) is amended by repealing "on a reference to arbitration" and substituting "in an arbitration".

10. Arbitration proceedings

Order 73 is amended, in the heading, by repealing "ARBITRATION" and substituting "ARBITRAL".

11. Rule added

Order 73 is amended by adding -

**"1. Applications under Arbitration
Ordinance (O. 73, r. 1)**

Subject to the following rules of this Order, an application, request or appeal to the Court under the

Arbitration Ordinance (of 2009) must be made by originating summons in Form No. 10 in Appendix A to a single judge in court."

12. Rules substituted

Order 73, rules 2 to 9 are repealed and the following substituted -

"2. Applications in pending actions

(O. 73, r. 2)

An application, request or appeal to which rule 1 applies must, if an action is pending, be made by summons in the action.

3. Applications in relation to proceedings under Arbitration Ordinance

(O. 73, r. 3)

An application in relation to proceedings referred to in section 16 of the Arbitration Ordinance (of 2009) must be made to a judge in chambers.

4. Applications for interim measures or other orders in relation to arbitral proceedings outside Hong Kong

(O. 73, r. 4)

If an application for an interim measure under section 45(2) of the Arbitration Ordinance (of 2009) or for an order under section 60(1) of that Ordinance is in relation to any arbitral proceedings outside Hong Kong, rules 1, 2, 3, 4, 7(1), 7A and 8 of Order 29 apply with any necessary modifications to the application as they apply to an application for interlocutory relief in an action or

proceeding in the High Court.

5. Time limits and other special provisions for certain applications under Arbitration Ordinance

(O. 73, r. 5)

(1) An application to challenge an arbitral award on the ground of serious irregularity under section 4 of Schedule 2 to the Arbitration Ordinance (of 2009) must be made, and the originating summons or summons must be served, within 30 days after the award is delivered.

(2) An application for leave to appeal on a question of law arising out of an arbitral award under section 6 of Schedule 2 to the Arbitration Ordinance (of 2009) must be made, and the originating summons or summons must be served, within 30 days after the award is delivered and, if there is a correction or interpretation of the award under section 69 of that Ordinance, the period of 30 days runs from the date on which the award with the correction made or interpretation given is delivered.

(3) An application to decide any question of law arising in the course of the arbitral proceedings under section 3 of Schedule 2 to the Arbitration Ordinance (of 2009) must be made, and the originating summons or summons must be served, within 30 days after the arbitral tribunal has given permission in writing for the making of the application or all the other parties to the arbitral proceedings have agreed in writing to the making of the application.

(4) In relation to an application to which paragraph (1), (2) or (3) applies or an application to set aside an arbitral award under section 81 of the Arbitration Ordinance (of 2009) -

(a) the originating summons or summons must state the grounds of application; and

(b) if the application -

- (i) is founded on evidence by affidavit, a copy of every affidavit intended to be used must be served with the originating summons or summons; or
- (ii) is made with the permission of the arbitral tribunal or agreement of all the other parties to the arbitral proceedings, a copy of every permission or agreement in writing must be served with the originating summons or summons.

(5) In relation to -

(a) an application to which paragraph (1) applies;

(b) a request for the Court to decide on a challenge to an arbitrator or umpire under section 26(1) of the Arbitration Ordinance (of 2009) or to decide on the termination of the mandate of an arbitrator or umpire under section 27 of that Ordinance;

(c) an application for the Court to decide that the umpire is to replace the arbitrators as the arbitral tribunal under section 31(8) of that Ordinance or that the arbitrator or

umpire is not entitled to or must repay fees or expenses under section 62 of that Ordinance;

(d) an application to extend the time limit for making an award under section 72(2) of that Ordinance;

(e) an application to set aside an arbitral award under section 81 of that Ordinance; or

(f) an appeal on a question of law arising out of an arbitral award or application for leave to appeal under section 5, 6 or 7 of Schedule 2 to that Ordinance,

the originating summons or summons must be served on the arbitrator or umpire, the arbitral tribunal and on all the other parties to the arbitral proceedings.

(6) An appeal on a question of law arising out of an arbitral award under section 5 of Schedule 2 to the Arbitration Ordinance (of 2009) may be included in the application for leave to appeal, if leave is required.

6. Applications, requests and appeals to be heard in Construction and Arbitration List (O. 73, r. 6)

(1) An application, request or appeal which is required by rule 1 or 3 to be made to a judge must be entered in the Construction and Arbitration List unless the judge in charge of the list otherwise directs.

(2) Nothing in paragraph (1) is to be construed as preventing the powers of the judge in charge of the Construction and Arbitration List from being exercised by any judge of the Court of First Instance.

**7. Service out of jurisdiction of
originating summons, summons
or order (O. 73, r. 7)**

(1) Subject to paragraphs (2) and (3), service out of the jurisdiction of -

(a) any originating summons or summons under this Order; or

(b) any order made on such originating summons or summons,

is permissible with the leave of the Court if the arbitration to which the originating summons, summons or order relates is governed by Hong Kong law or has been, is being, or is to be held within the jurisdiction.

(2) Service out of the jurisdiction of an originating summons or summons by which an application for leave to enforce an award is made is permissible with the leave of the Court, whether or not the arbitration is governed by Hong Kong law.

(3) Service out of the jurisdiction of an originating summons or summons by which an application for an interim measure under section 45(2) of the Arbitration Ordinance (of 2009) or for an order under section 60(1) of that Ordinance is made is permissible with the leave of the Court.

(4) An application for the grant of leave under this rule must be supported by an affidavit stating -

(a) the grounds on which the application is made;
and

(b) in what place the person to be served is, or probably may be found.

(5) No leave may be granted under this rule unless it is made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this rule.

(6) Order 11, rules 5, 5A, 6, 7, 7A, 8 and 8A apply in relation to any originating summons, summons or order referred to in paragraph (1) as they apply in relation to a writ."

13. **Enforcement of settlement agreement under section 2C of the Arbitration Ordinance or of award under section 2GG of that Ordinance**

(1) Order 73, rule 10 is amended, in the heading, by repealing "**under section 2C of the Arbitration Ordinance or of award under section 2GG of that Ordinance**" and substituting "**, award, order or direction under Arbitration Ordinance**".

(2) Order 73, rule 10(1)(a) is amended by repealing "to enforce a settlement agreement, or" and substituting "("the repealed Ordinance") repealed by the Arbitration Ordinance (of 2009) ("the Arbitration Ordinance") to enforce a settlement agreement entered into before the commencement of the Arbitration Ordinance;".

(3) Order 73, rule 10(1)(b) is amended by repealing everything after "section 2GG of" and substituting "the repealed Ordinance to enforce an award, order or direction made or given by an arbitral tribunal before the commencement of the Arbitration Ordinance;".

(4) Order 73, rule 10(1) is amended by adding -

"(c) under section 61(1) of the Arbitration Ordinance to

enforce an order or direction (including an interim measure) of an arbitral tribunal; or

- (d) under section 84(1), 87(1) or 92(1) of the Arbitration Ordinance to enforce an award made by an arbitral tribunal (including a Convention award and a Mainland award within the meaning of the Arbitration Ordinance),".

(5) Order 73, rule 10(3)(a)(i) is repealed and the following substituted -

- "(i) if the application is under section 2C of the repealed Ordinance, the arbitration agreement (or a copy of it) and the original settlement agreement (or a copy of it);".

(6) Order 73, rule 10(3)(a)(ii) is repealed and the following substituted -

- "(ii) if the application is under section 2GG of the repealed Ordinance, the arbitration agreement (or a copy of it) and the original award, order or direction (or a copy of it);".

(7) Order 73, rule 10(3)(a) is amended by adding -

- "(iia) if the application is under section 61(1) of the Arbitration Ordinance, the arbitration agreement (or a copy of it) and the original order or direction (or a copy of it);".

(8) Order 73, rule 10(3)(a)(iii) is repealed and the following substituted -

- "(iii) subject to sub-subparagraphs (iv) and (v), if the application is under section 84(1) of the Arbitration Ordinance, the documents required to be produced under section 85 of that Ordinance;

- (iv) if the application is under section 87(1)(a) of the Arbitration Ordinance, or in accordance with section 84 of the Arbitration Ordinance as provided by section 87(1)(b) of that Ordinance, the documents required to be produced under section 88 of that Ordinance;
- (v) if the application is under section 92(1)(a) of the Arbitration Ordinance, or in accordance with section 84 of the Arbitration Ordinance as provided by section 92(1)(b) of that Ordinance, the documents required to be produced under section 94 of that Ordinance;".

(9) Order 73, rule 10(3)(b) is amended by repealing "or award" and substituting ", award, order or direction".

(10) Order 73, rule 10(3)(c) is amended by repealing "or award" and substituting ", award, order or direction".

(11) Order 73, rule 10(5) is amended -

- (a) by adding "made under paragraph (4)" after "Service of the order";
- (b) by repealing "rules 5, 6 and 8," and substituting "rules 5, 5A, 6, 7, 7A, 8 and 8A".

(12) Order 73, rule 10(6) is amended -

- (a) by repealing "or, if the order" and substituting "made under paragraph (4) or, if the order made under paragraph (4)";
- (b) by repealing "the order and the settlement agreement or award" and substituting "that order, and the settlement agreement, award, order or direction";
- (c) by adding "made under paragraph (4)" after "period

to set aside the order".

(13) Order 73, rule 10(6A) is amended by adding "made under paragraph (4)" after "to set aside the order".

(14) Order 73, rule 10(7) is amended by adding "made under paragraph (4)" after "copy of the order".

14. Other provisions as to applications to set aside an order made under rule 10

(1) Order 73, rule 10A is amended, in the heading, by repealing "**rule 10**" and substituting "**rule 10(4)**".

(2) Order 73, rule 10A is amended by repealing "to set aside an order made under rule 10" and substituting "under rule 10(6) to set aside an order made under rule 10(4)".

15. Rules repealed

Order 73, rules 11 to 18 are repealed.

16. Rule added

Order 73 is amended by adding -

"19. Transitional provision relating to Arbitration Ordinance

(O. 73, r. 19)

If, immediately before the commencement of the Arbitration Ordinance (of 2009), an application, request or appeal by originating motion, summons or notice made under this Order as in force immediately before the commencement of that Ordinance is pending, then the application, request or appeal is to be determined as if that Ordinance had not been enacted."

Labour Relations Ordinance

17. Arbitration Ordinance not to apply

Section 21 of the Labour Relations Ordinance (Cap. 55) is amended by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

Control of Exemption Clauses Ordinance

18. Arbitration agreements

Section 15(2)(a) of the Control of Exemption Clauses Ordinance (Cap. 71) is repealed.

Ferry Services Ordinance

19. Arbitration

Section 27(1) of the Ferry Services Ordinance (Cap. 104) is amended by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

Telecommunications Ordinance

20. Power to place and maintain telecommunications lines, etc., on land, etc.

Section 14(5)(b)(i) of the Telecommunications Ordinance (Cap. 106) is amended by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

Telecommunications Regulations

21. Form of licences

Schedule 3 to the Telecommunications Regulations (Cap. 106 sub. leg. A) is amended, in the form for the Fixed Telecommunications Network Services Licence, in the General Conditions, in General Condition 41(2), by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

Tramway Ordinance

22. Attachment

Section 6(3) of the Tramway Ordinance (Cap. 107) is amended by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

23. Payment for works

Section 16(4) is amended by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

Buildings Ordinance

24. Projections on or over streets

Section 31(4) of the Buildings Ordinance (Cap. 123) is amended by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

Eastern Harbour Crossing Ordinance

25. Interpretation

Section 2(4) of the Eastern Harbour Crossing Ordinance (Cap. 215) is amended by repealing "Arbitration Ordinance (Cap. 341)" where it twice appears and substituting "Arbitration Ordinance (of 2009)".

**26. Operation of road tunnel area
by Government**

Section 49(2) is amended by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

**27. Road Company to charge approved
tolls for use of road tunnel**

Section 55(3)(b) is amended by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

**28. Liability of companies and amount
payable by the Government on the
vesting in it of their assets**

Section 71(2) is amended by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

**29. Appeal by the Road Company or
the Rail Company**

(1) Section 75(2)(a) is amended by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

(2) Section 75(2)(b) is amended by repealing "Arbitration

Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

Public Bus Services Ordinance

30. Grant of franchises

Section 5(8) of the Public Bus Services Ordinance (Cap. 230) is amended -

- (a) by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)";
- (b) by repealing "a reference by an arbitration agreement, as defined for the purposes of that Ordinance, to" and substituting "arbitration under that Ordinance with".

31. Determination of compensation by arbitrator

Section 25D(2) is amended by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

Mining Ordinance

32. Compensation where action is taken under section 11

Section 12(3) of the Mining Ordinance (Cap. 285) is amended by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

33. Resumption of land required for public purposes

Section 65(5) is amended by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

Hong Kong Airport (Control of Obstructions) Ordinance

34. Closure orders in relation to buildings to be demolished or reduced in height

Section 15(9) of the Hong Kong Airport (Control of Obstructions) Ordinance (Cap. 301) is amended by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

Arbitration (Appointment of Arbitrators and Umpires) Rules

35. Application

Rule 2 of the Arbitration (Appointment of Arbitrators and Umpires) Rules (Cap. 341 sub. leg. B) is amended by repealing "sections 12 and 34C" and substituting "section 13, 23 or 24".

36. Constitution of Appointment Advisory Board

(1) Rule 3(2)(j) is amended by repealing the full stop and substituting a semicolon.

(2) Rule 3(2) is amended by adding -

"(k) the President of the Hong Kong Construction Association.".

**37. Procedure for applying for
appointment of arbitrator
or umpire**

Rule 6(1) is amended by repealing "section 12 of the Ordinance or under article 11 of the UNCITRAL Model Law" and substituting "section 23 or 24 of the Ordinance".

**38. Procedure for applying to HKIAC
for decision as to number
of arbitrators**

Rule 8(1) is amended by repealing "section 34C(5)" and substituting "section 23(3)".

39. Schedule amended

(1) The Schedule is amended, in Form 1, by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

(2) The Schedule is amended, in Form 2, by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

Limitation Ordinance

40. Long title amended

The long title to the Limitation Ordinance (Cap. 347) is amended by repealing "and arbitrations".

**41. Application of Ordinance and other
limitation enactments to arbitrations**

Section 34 is repealed.

Kowloon-Canton Railway Corporation Ordinance**42. Second Schedule amended**

The Second Schedule to the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) is amended, in paragraph 20, by repealing "Arbitration Ordinance (Cap. 341) by reference to" and substituting "Arbitration Ordinance (of 2009) by arbitration with".

43. Fifth Schedule amended

The Fifth Schedule is amended, in paragraph 18(1)(a), by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

Tate's Cairn Tunnel Ordinance**44. Interpretation**

Section 2(4) of the Tate's Cairn Tunnel Ordinance (Cap. 393) is amended by repealing "Arbitration Ordinance (Cap. 341)" where it twice appears and substituting "Arbitration Ordinance (of 2009)".

**45. Operation of tunnel area
by Government**

Section 30(2) is amended by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

**46. Company to charge approved tolls
for use of tunnel**

Section 36(3)(b) is amended by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

47. Liability of the Company and amount payable by the Government on the vesting in it of its assets

Section 49(2) is amended by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

48. Appeal by the Company

Section 53(2) is amended -

- (a) in paragraph (a), by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)";
- (b) in paragraph (b), by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

Western Harbour Crossing Ordinance

49. Interpretation

Section 2(4) of the Western Harbour Crossing Ordinance (Cap. 436) is amended by repealing "in this Ordinance to arbitration under the Arbitration Ordinance (Cap. 341) shall be regarded as a reference to domestic arbitration for the purposes of Part II of that Ordinance and any reference to such arbitration" and substituting "to arbitration under the Arbitration Ordinance (of 2009) as mentioned in this Ordinance".

50. Operation of tunnel area by Government

Section 27(2) is amended by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

51. Liability of the Company and amount payable by the Government on the vesting in the Government of its assets

Section 61(2) is amended by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

Air Transport (Licensing of Air Services) Regulations

52. Issue of licences

Regulation 5(3)(b) of the Air Transport (Licensing of Air Services) Regulations (Cap. 448 sub. leg. A) is amended, in the proviso, by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

Tai Lam Tunnel and Yuen Long Approach Road Ordinance

53. Interpretation

Section 2(4) of the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474) is amended by repealing "domestic arbitration under Part II of the Arbitration Ordinance (Cap. 341)" and substituting "arbitration under the Arbitration Ordinance (of 2009)".

Merchant Shipping (Liner Conferences) Ordinance

54. Restrictions on legal proceedings

Section 8(6) of the Merchant Shipping (Liner Conferences) Ordinance (Cap. 482) is amended by repealing "section 6(1) of, and Article 8(1) of the Fifth Schedule to, the Arbitration Ordinance (Cap. 341) (which provide respectively for the staying of legal proceedings and for the parties to an action to be referred to arbitration)" and substituting "section 20 of the Arbitration Ordinance (of 2009)".

Copyright Ordinance

55. General power to make rules

Section 174(2) of the Copyright Ordinance (Cap. 528) is amended by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

Copyright Tribunal Rules

56. Application of Arbitration Ordinance

Rule 22 of the Copyright Tribunal Rules (Cap. 528 sub. leg. C) is amended -

- (a) by repealing "Sections 2H, 14, 16 and 19 of the Arbitration Ordinance (Cap. 341) shall apply in the case of" and substituting "Sections 45(2), (4), (9) and (10), 47(3), 55(2) and (3), 56(1)(a), (b) and (c), (2), (3), (4), (8) and (9), 60(1), (2), (9) and (10), 61(1), (3), (4) and (5), 69(1) and (2)

556) is amended by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

(2) Section 23(3) is amended by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

Broadcasting Ordinance

60. Domestic free television programme service supplementary provisions

Schedule 4 to the Broadcasting Ordinance (Cap. 562) is amended, in Part 2, in section 9(4), by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

Securities and Futures (Leveraged Foreign Exchange Trading)(Arbitration) Rules

61. Applicable law

Section 38(3) of the Securities and Futures (Leveraged Foreign Exchange Trading)(Arbitration) Rules (Cap. 571 sub. leg. F) is amended by repealing "section 2AB of the Arbitration Ordinance (Cap. 341)" and substituting "section 5 of the Arbitration Ordinance (of 2009)".

Tung Chung Cable Car Ordinance

62. Interpretation

Section 2(1) of the Tung Chung Cable Car Ordinance (Cap. 577) is amended, in the definition of "arbitration", by repealing

"domestic arbitration under Part II of the Arbitration Ordinance (Cap. 341)" and substituting "arbitration under the Arbitration Ordinance (of 2009)".

Prevention and Control of Disease Ordinance

63. Compensation

(1) Section 12(4) of the Prevention and Control of Disease Ordinance (14 of 2008) is amended by repealing "Arbitration Ordinance (Cap. 341)" where it twice appears and substituting "Arbitration Ordinance (of 2009)".

(2) Section 12(5) is amended by repealing "Arbitration Ordinance (Cap. 341)" and substituting "Arbitration Ordinance (of 2009)".

Explanatory Memorandum

The object of this Bill is to implement, with modifications, the recommendations in the Report of Committee on Hong Kong Arbitration Law issued by the Hong Kong Institute of Arbitrators in 2003 on the reform of arbitration law in Hong Kong. Basically, the Bill seeks to establish a unitary regime for arbitration in Hong Kong, abolishing the distinction between the existing two regimes (i.e. domestic arbitrations and international arbitrations) under the current Arbitration Ordinance (Cap. 341)("current Ordinance").

2. The proposed unitary regime will be based on the UNCITRAL Model Law on International Commercial Arbitration as adopted by the United Nations Commission on the International Trade Law on 21 June 1985 and as amended by that Commission on 7 July 2006 ("Model Law"). The full text of the Model Law is set out in Schedule 1 for

reference.

3. The Bill therefore, as stated in clause 4, gives legal effect to those provisions of the Model Law that are to apply in Hong Kong. Some of those provisions are applied with modifications or supplemented by other provisions.

4. The Bill is divided into 14 Parts. Parts 2 to 9 of the Bill follow the structure of the Model Law and apply the Model Law with modifications.

Part 1 of the Bill

5. Part 1 of the Bill deals with preliminary matters.

6. In particular, clause 2 contains definitions and provides for the interpretation of other references in the Bill. Definitions in article 2 of the Model Law have also been incorporated into this clause. It should be noted in particular that references to an arbitrator in the Bill, except in certain specified provisions, include references to an umpire.

7. Clause 3 sets out the underlying object and principles of the Bill, which seek to facilitate resolution of disputes by arbitration.

8. Under clause 5, the Bill applies to arbitrations in Hong Kong, whether or not the arbitration agreements are entered into in Hong Kong. However, only certain provisions of the Bill apply if the place of arbitration is outside Hong Kong. The Bill also applies to arbitrations under other Ordinances, and all the provisions set out in Schedule 2 are deemed to apply to those statutory arbitrations.

9. Clause 6 specifies that the Bill applies to the Government and the Offices set up by the Central People's Government in the Hong Kong Special Administrative Region.

Part 2 of the Bill

10. Part 2 corresponds to Chapter I of the Model Law and contains general provisions. In particular, clauses 7 to 13 deal with the application of articles 1 to 6 of the Model Law respectively.

11. Clause 7 corresponds to article 1 of the Model Law (Scope of application). It provides that article 1 is not to apply and clause 5 is to have effect instead, as the Bill applies not just to international commercial arbitrations as stated in article 1 but to all those arbitrations referred to in clause 5.

12. Clause 8 corresponds to article 2 of the Model Law (Definitions and rules of interpretation). It provides that clause 2 is to be substituted for article 2, as the definitions in article 2 have been incorporated into that clause.

13. Clause 9 gives effect to article 2A of the Model Law (International origin and general principles) which provides that regard is to be had to the international origin of the Model Law, the need for uniformity and the observance of good faith while interpreting that Law.

14. Clause 10 applies and supplements article 3 of the Model Law (Receipt of written communication) which stipulates the time when a written communication is deemed to have been received.

15. Clause 11 gives effect to article 4 of the Model Law (Waiver of right to object) which provides that the right to object to any derogation from the Bill or non-compliance with an arbitration agreement will be deemed to have been waived in case of delay in raising the objection.

16. Clause 12 gives effect to article 5 of the Model Law (Extent of court intervention) which provides that no court may intervene in matters governed by the Bill except where it so provides.

17. Clause 13 corresponds to article 6 of the Model Law (Court or

other authority for certain functions of arbitration assistance and supervision). It replaces article 6 by specifying that the function of appointing an arbitrator (referred to in article 11(3) and (4) of the Model Law) is to be performed by the Hong Kong International Arbitration Centre ("HKIAC"), while the functions of deciding on a challenge to an arbitrator (referred to in article 13(3) of the Model Law), deciding on the termination of the mandate of an arbitrator (referred to in article 14(1) of the Model Law), deciding on the jurisdiction of an arbitral tribunal (referred to in article 16(3) of the Model Law), setting aside an arbitral award (referred to in article 34(2) of the Model Law) and assisting in taking evidence (referred to in article 27 of the Model Law) are to be performed by the Court of First Instance. The HKIAC may also make rules, subject to the approval of the Chief Justice, to facilitate the performance of its functions referred to in clause 24 or 32(1).

18. Clauses 14 to 18 are supplementary provisions for Part 2. In particular -

- (a) clause 14 is modelled on section 34 (Application of Ordinance and other limitation enactments to arbitrations) of the Limitation Ordinance (Cap. 347) and provides that the Limitation Ordinance and any other Ordinance relating to the limitation of actions apply to arbitrations as they apply to actions in the court;
- (b) clause 15 deals with the reference of interpleader issues to arbitration by the court;
- (c) clause 16 provides that court proceedings under the Bill are to be heard otherwise than in open court;
- (d) clause 17 imposes restrictions on the reporting of

court proceedings that are heard otherwise than in open court; and

- (e) clause 18 prohibits the disclosure of information relating to arbitral proceedings and awards made in those arbitral proceedings.

Part 3 of the Bill

19. Part 3 corresponds to Chapter II of the Model Law and relates to the arbitration agreement. In particular, clauses 19 to 21 deal with the application of articles 7 to 9 of the Model Law respectively.

20. Clause 19 provides that Option I of article 7 of the Model Law (Definition and form of arbitration agreement) has effect. It requires an arbitration agreement to be in writing and explains how this writing requirement is to be satisfied.

21. Clause 20 gives effect to article 8 of the Model Law (Arbitration agreement and substantive claim before court) so that the court is obliged to refer to arbitration any claim before it that is the subject of an arbitration agreement, unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed. The court however has a discretionary power to refer to arbitration a claim that is within the jurisdiction of the Labour Tribunal established by section 3 (Establishment of tribunal) of the Labour Tribunal Ordinance (Cap. 25). This is similar to an existing provision in the current Ordinance. If a claim is referred to arbitration, it is mandatory for the court to stay legal proceedings on the claim. However, the reference of Admiralty proceedings to arbitration and an order for the stay of those proceedings may be made conditional on the giving of security for the satisfaction of any award made in the

arbitration. The court may, alternatively, order any property arrested or any bail or security given in Admiralty proceedings to be retained as security for the satisfaction of any award made in the arbitration when the court orders a stay of those proceedings.

22. Clause 21 gives effect to article 9 of the Model Law (Arbitration agreement and interim measures by court) which provides that it is compatible with an arbitration agreement for any interim measure to be obtained from the court.

23. Clause 22 is a supplementary provision for Part 3 which explains whether an arbitration agreement is discharged by the death of a party. There is a similar provision in the current Ordinance. Basically, it provides that an arbitration agreement is not discharged by the death of a party, but the operation of any law which provides for the extinguishment of any right or obligation by death is not affected.

Part 4 of the Bill

24. Part 4 corresponds to Chapter III of the Model Law and relates to the composition of the arbitral tribunal. In particular -

(a) Division 1 of Part 4 is about arbitrators; and

(b) Division 2 of Part 4 is about mediators.

25. Clauses 23 to 28 in Division 1 of Part 4 deal with the application of articles 10 to 15 of the Model Law respectively.

26. In particular, clause 23 gives effect to paragraph (1) of article 10 of the Model Law (Number of arbitrators), which enables the parties to determine the number of arbitrators. Paragraph (2) of article 10 is not to apply. This clause then provides that, in case of failure to agree on the number of arbitrators, that number (either 1 or 3) is to be decided by the HKIAC instead.

27. Clause 24 gives effect to article 11 of the Model Law (Appointment of arbitrators). It provides that the parties are free to determine the procedures for the appointment of an arbitrator. If the parties fail to reach an agreement or any of them fails to follow the appointment procedures specified in that clause, an appointment is to be made by the HKIAC by virtue of clause 13.

28. Clause 25 gives effect to article 12 of the Model Law (Grounds for challenge), which provides that an arbitrator may be challenged if there are justifiable doubts as to the arbitrator's impartiality or independence or if the arbitrator does not possess the agreed qualifications.

29. Clause 26 gives effect to article 13 of the Model Law (Challenge procedure) which provides that the parties are free to agree on the procedures for challenging an arbitrator. If a challenge under any of the procedures agreed by the parties or specified in article 13 is not successful, the Court of First Instance may, by virtue of clause 13, decide on the challenge if so requested by the challenging party. An award made by the arbitral tribunal while the Court's decision on the challenge is pending may not be enforced. If the Court upholds the challenge, the award may be set aside by the Court. This clause also allows a challenged arbitrator to withdraw from office.

30. Clause 27 gives effect to article 14 of the Model Law (Failure or impossibility to act) which deals with the termination of the mandate of an arbitrator if the arbitrator is unable to perform any functions or fails to act without undue delay. The Court of First Instance may, by virtue of clause 13, decide on the termination of the mandate in case of controversy.

31. Clause 28 gives effect to article 15 of the Model Law

(Appointment of substitute arbitrator) which deals with the appointment of a substitute arbitrator to replace an arbitrator whose mandate is terminated.

32. Clauses 29 to 31 are supplementary provisions for Division 1 of Part 4. In particular -

- (a) clause 29 provides that the mandate of an arbitrator terminates on the arbitrator's death but not on the death of the person who appoints the arbitrator;
- (b) clause 30 provides for the appointment of an umpire in an arbitration with an even number of arbitrators; and
- (c) clause 31 deals with the functions of an umpire in arbitral proceedings.

33. Division 2 of Part 4 consists of the following supplementary provisions -

- (a) clause 32 which deals with the appointment of a mediator; and
- (b) clause 33 which provides that an arbitrator may act as a mediator.

Part 5 of the Bill

34. Part 5 corresponds to Chapter IV of the Model Law and relates to the jurisdiction of the arbitral tribunal. Clause 34 in this Part deals with the application of article 16 of the Model Law (Competence of arbitral tribunal to rule on its jurisdiction). It gives effect to article 16 which enables an arbitral tribunal to rule on its own jurisdiction. The Court of First Instance may, by virtue of clause 13, decide on the matter, upon request, if the arbitral tribunal rules as a preliminary issue that it has

jurisdiction. Clause 34 further provides that if the arbitral tribunal rules that it does not have jurisdiction to decide a dispute, the court must decide that dispute if it has jurisdiction.

Part 6 of the Bill

35. Part 6 corresponds to Chapter IVA of the Model Law and relates to interim measures and preliminary orders, as follows -

- (a) Division 1 of Part 6 corresponds to section 1 of Chapter IVA which is about interim measures that may be ordered by an arbitral tribunal, and clauses 35 and 36 in this Division deal with the application of articles 17 and 17A of the Model Law respectively;
- (b) Division 2 of Part 6 corresponds to section 2 of Chapter IVA which is about preliminary orders, and clauses 37 and 38 in this Division deal with the application of articles 17B and 17C of the Model Law respectively;
- (c) Division 3 of Part 6 corresponds to section 3 of Chapter IVA which contains provisions applicable to interim measures and preliminary orders, and clauses 39 to 42 in this Division deal with the application of articles 17D to 17G of the Model Law respectively;
- (d) Division 4 of Part 6 corresponds to section 4 of Chapter IVA which is about recognition and enforcement of interim measures, and clauses 43 and 44 in this Division deal with the application of articles 17H and 17I of the Model Law respectively; and

- (e) Division 5 of Part 6 corresponds to section 5 of Chapter IVA which is about court-ordered interim measures, and clause 45 in this Division deals with the application of article 17J of the Model Law.

36. In particular, clause 35 gives effect to article 17 of the Model Law (Power of arbitral tribunal to order interim measures) which empowers an arbitral tribunal to grant interim measures. This clause further provides that, where the arbitral tribunal has granted an interim measure, it may make an award to the same effect as such interim measure to facilitate its enforcement.

37. Clause 36 gives effect to article 17A of the Model Law (Conditions for granting interim measures).

38. Clause 37 gives effect to article 17B of the Model Law (Applications for preliminary orders and conditions for granting preliminary orders) which provides for the granting of a preliminary order by an arbitral tribunal, on application, to prevent frustration of the purpose of any requested interim measure.

39. Clause 38 gives effect to article 17C of the Model Law (Specific regime for preliminary orders) which requires an arbitral tribunal to give notice after determining an application for a preliminary order and to hear any objection to the preliminary order promptly. The preliminary order is binding on the parties, but it is not enforceable by the court.

40. Clause 39 gives effect to article 17D of the Model Law (Modification, suspension, termination) which provides that an arbitral tribunal may modify, suspend or terminate an interim measure or a preliminary order granted by it.

41. Clause 40 gives effect to article 17E of the Model Law

(Provision of security) which provides that an arbitral tribunal may require security to be provided in connection with an interim measure, and has to require security to be provided in connection with a preliminary order unless it is inappropriate or unnecessary to do so.

42. Clause 41 gives effect to article 17F of the Model Law (Disclosure) which requires all circumstances relevant to the granting of a preliminary order to be disclosed to the arbitral tribunal. The arbitral tribunal may also require the party requesting an interim measure to disclose any material change in those circumstances.

43. Clause 42 gives effect to article 17G of the Model Law (Costs and damages) which provides that the party requesting an interim measure or applying for a preliminary order is liable for any costs or damages caused by the measure or order if that measure or order should not have been granted.

44. Clause 43 provides that article 17H of the Model Law (Recognition and enforcement) does not have effect and clause 61 on enforcement of orders and directions (including interim measures) by an arbitral tribunal applies instead.

45. Clause 44 provides that article 17I of the Model Law (Grounds for refusing recognition or enforcement) does not have effect.

46. Clause 45 provides that article 17J of the Model Law (Court-ordered interim measures) does not have effect. Nevertheless, it empowers the Court of First Instance to grant an interim measure in relation to arbitral proceedings which have been or are to be commenced in or outside Hong Kong, whether or not a similar power may be exercised by an arbitral tribunal. For arbitral proceedings which have been or are to be commenced outside Hong Kong, the Court may grant the interim measure only if the arbitral

proceedings are capable of giving rise to an arbitral award that may be enforced in Hong Kong and the interim measure sought is of a type or description that may be granted in Hong Kong.

Part 7 of the Bill

47. Part 7 corresponds to Chapter V of the Model Law and relates to the conduct of arbitral proceedings. In particular, clauses 46 to 55 deal with the application of articles 18 to 27 of the Model Law respectively.

48. Clause 46 replaces article 18 of the Model Law (Equal treatment of parties). It contains a provision requiring the parties to an arbitration to be treated with equality, which is similar to the requirement in article 18. This clause also adopts an existing provision in the current Ordinance which requires an arbitral tribunal to act fairly and impartially, to give a reasonable opportunity for the parties to present their cases and to avoid unnecessary delay or expenses. This clause then provides further that an arbitral tribunal has to be independent.

49. Clause 47 gives effect to paragraph (1) of article 19 of the Model Law (Determination of rules of procedure) which allows the parties to agree on the procedures to be followed in conducting arbitral proceedings. Paragraph (2) of article 19 is not to apply. Yet this clause provides that if there is no agreement, the arbitral tribunal may conduct the arbitration as it considers appropriate, which is similar to the provision in paragraph (2) of article 19. This clause then further provides, based on an existing provision in the current Ordinance, that an arbitral tribunal is not bound by the rules of evidence and may receive any evidence which it considers appropriate.

50. Clause 48 gives effect to article 20 of the Model Law (Place

of arbitration) which provides for the place of arbitration to be agreed by the parties or, if there is no such agreement, to be determined by the arbitral tribunal.

51. Clause 49 gives effect to article 21 of the Model Law (Commencement of arbitral proceedings) which specifies that arbitral proceedings commence on the date the request for reference to arbitration is received by the respondent.

52. Clause 50 gives effect to article 22 of the Model Law (Language) which allows the language to be used in the arbitral proceedings to be agreed by the parties or, if there is no such agreement, to be determined by the arbitral tribunal.

53. Clause 51 gives effect to article 23 of the Model Law (Statements of claim and defence) which requires any statement of claim or defence to be filed within the period agreed by the parties or determined by the arbitral tribunal. The claim or defence may be amended during the course of arbitral proceedings.

54. Clause 52 gives effect to article 24 of the Model Law (Hearings and written proceedings) which requires an arbitral tribunal to hold oral hearings, if so requested by a party, unless the parties have agreed that no hearings are to be held.

55. Clause 53 gives effect to article 25 of the Model Law (Default of a party) which allows the arbitral tribunal to continue the arbitral proceedings if there is a failure to submit the statement of defence, but empowers the arbitral tribunal to terminate the arbitral proceedings if there is a failure to submit the statement of claim. This clause further provides that if a party fails to comply with any order or direction of the arbitral tribunal, the tribunal may make a peremptory order requiring compliance within the time that the tribunal considers appropriate.

56. Clause 54 gives effect to article 26 of the Model Law (Expert

appointed by arbitral tribunal) which empowers an arbitral tribunal to appoint experts to report on specific issues and allows those experts to participate in a hearing. This clause further provides that the arbitral tribunal may appoint experts, legal advisers or assessors to assist in assessing the costs of arbitral proceedings.

57. Clause 55 gives effect to article 27 of the Model law (Court assistance in taking evidence) which provides that an arbitral tribunal, or a party with the approval of the arbitral tribunal, may request a competent court to assist in taking evidence. The Court of First Instance may, by virtue of clause 13, give the assistance. This clause also adopts an existing provision in the current Ordinance empowering the Court of First Instance to order a person to attend proceedings before an arbitral tribunal to give evidence.

58. Clauses 56 to 63 are supplementary provisions for Part 7. In particular -

- (a) clause 56 deals with the general powers exercisable by an arbitral tribunal, including ordering security for costs to be given, directing the discovery of document, directing evidence to be given by affidavit, directing the inspection of relevant property etc.;
- (b) clause 57 empowers an arbitral tribunal to limit the amount of costs recoverable in arbitral proceedings;
- (c) clause 58 provides for the power of an arbitral tribunal to extend the time limit for commencing arbitral proceedings;
- (d) clause 59 provides that a party has to pursue a

claim in arbitral proceedings without unreasonable delay, otherwise the arbitral tribunal may make an award dismissing the claim;

- (e) clause 60 deals with the special powers of the Court of First Instance to order the inspection of relevant property etc. in relation to arbitral proceedings and provides that, if the arbitral proceedings have been or are to be commenced outside Hong Kong, those powers may be exercised only if the arbitral proceedings are capable of giving rise to an arbitral award that may be enforced in Hong Kong;
- (f) clause 61 provides that an order or direction (including an interim measure) made in relation to arbitral proceedings by an arbitral tribunal is enforceable with the leave of the Court of First Instance and, if the order or direction is made outside Hong Kong, leave may be granted only if that order or direction belongs to a type or description of order or direction that may be made in Hong Kong by an arbitral tribunal;
- (g) clause 62 deals with the power of the Court of First Instance to order recovery of an arbitrator's fees if the arbitrator's mandate has terminated upon challenge or failure to act; and
- (h) clause 63 provides that section 44 (Penalty for unlawfully practising as a barrister or notary public), section 45 (Unqualified person not to act as solicitor) and section 47 (Unqualified person not to prepare certain instruments, etc.) of the

Legal Practitioners Ordinance (Cap. 159) do not apply in relation to arbitral proceedings, other than things done in connection with court proceedings.

Part 8 of the Bill

59. Part 8 corresponds to Chapter VI of the Model Law and relates to the making of awards and termination of proceedings. In particular, clauses 64 to 69 deal with the application of articles 28 to 33 of the Model Law respectively.

60. Clause 64 gives effect to article 28 of the Model Law (Rules applicable to substance of dispute) which provides that an arbitral tribunal has to decide a dispute according to the rules of law that are chosen by the parties and, if no rules of law are chosen, the arbitral tribunal has to apply the law determined by the conflict of laws rules which it considers applicable.

61. Clause 65 gives effect to article 29 of the Model Law (Decision making by panel of arbitrators) which provides that any decisions of an arbitral tribunal with more than one arbitrator have to be made by a majority of all its members, but those on questions of procedure may be decided by a presiding arbitrator.

62. Clause 66 gives effect to article 30 of the Model Law (Settlement) which requires an arbitral tribunal to terminate the arbitral proceedings if the parties settle the dispute and to make an award on agreed terms. This clause also includes an existing provision of the current Ordinance which provides that the parties' settlement agreement otherwise reached is to be treated as an arbitral award for the purposes of enforcement.

63. Clause 67 gives effect to article 31 of the Model Law (Form and contents of award) which requires an award to be made in

writing, signed and dated. The award also has to state the place of arbitration and the reasons upon which the award is based. A copy of the award has to be delivered to each party after it is made but an arbitral tribunal may, under clause 77, refuse to deliver an award to the parties unless full payment of its fees and expenses is made.

64. Clause 68 gives effect to article 32 of the Model Law (Termination of proceedings) which provides that arbitral proceedings are terminated if a final award is made or if the arbitral tribunal issues an order for the termination of those arbitral proceedings.

65. Clause 69 gives effect to article 33 of the Model Law (Correction and interpretation of award; additional award) which allows the correction of clerical errors etc. in an award, the interpretation of a specific point or part of the award, and the making of an additional award to deal with claims that are presented in the arbitral proceedings but omitted from the award. This clause further provides that an arbitral tribunal may review an award of costs.

66. Clauses 70 to 80 are supplementary provisions for Part 8. In particular -

- (a) clause 70 provides that an arbitral tribunal may, in deciding a dispute, award a remedy or relief and may order specific performance of any contract which is not related to land;
- (b) clause 71 allows an arbitral tribunal to make more than one award at different times on different issues;
- (c) clause 72 provides that an arbitral award may be made at any time, and that the time limit for

making an arbitral award, if any, may be extended by the Court of First Instance;

- (d) clause 73 provides that an award made by an arbitral tribunal is final and binding, but the right to challenge the award according to the procedures in other provisions of the Bill or any available arbitral process of appeal or review is not affected;
- (e) clause 74 empowers an arbitral tribunal to award costs of arbitral proceedings;
- (f) clause 75 provides for the taxation of costs of arbitral proceedings by the court if so agreed by the parties;
- (g) clause 76 provides that section 50 (No costs for unqualified person) of the Legal Practitioners Ordinance (Cap. 159) does not apply to the recovery of costs in an arbitration;
- (h) clause 77 deals with the determination of the fees and expenses of an arbitral tribunal in case of dispute;
- (i) clause 78 provides for the liability of the parties to pay the fees and expenses of the arbitral tribunal;
- (j) clause 79 deals with the power of an arbitral tribunal to award interest; and
- (k) clause 80 provides for the rate of interest on money awarded in arbitral proceedings.

Part 9 of the Bill

67. Part 9 corresponds to Chapter VII of the Model Law and

relates to recourse against an award. Clause 81 in this Part gives effect to article 34 of the Model Law (Application for setting aside as exclusive recourse against arbitral award) which provides that an arbitral award may be set aside by the Court of First Instance, by virtue of clause 13, on the ground that a party is under incapacity or the arbitration agreement is not valid, proper notice of appointment of an arbitrator or of the arbitral proceedings has not been given or the party concerned is unable to present the party's case, the award deals with a dispute not covered by the terms of submission to arbitration, the composition of the arbitral tribunal or the conduct of arbitral proceedings is contrary to the effective agreement of the parties or (if there is no agreement) to the Model Law, the subject matter of the dispute is not capable of settlement by arbitration, or the award is in conflict with the public policy. This clause also includes an existing provision of the current Ordinance which provides that, without affecting any right to challenge or appeal to the Court of First Instance, an award may not be set aside or remitted on the ground of errors of fact or law on the face of the award.

Part 10 of the Bill

68. Part 10 corresponds to Chapter VIII of the Model Law and relates to recognition and enforcement of awards.

69. In particular, Division 1 of Part 10 deals with enforcement of arbitral awards in general. In this Division, clause 82 provides that article 35 of the Model Law (Recognition and enforcement) does not apply, while clause 83 provides that article 36 of the Model Law (Grounds for refusing recognition or enforcement) does not apply. Clauses 84 to 86, which are supplementary provisions for this Division, have effect instead.

70. In particular -

- (a) clause 84, which is modelled on an existing provision of the current Ordinance, provides that an arbitral award made in or outside Hong Kong is enforceable with the leave of the Court of First Instance;
- (b) clause 85 deals with the evidence to be produced for enforcement of such award; and
- (c) clause 86 deals with the grounds for refusing enforcement of such award.

71. Division 2 of Part 10 retains the existing provisions in Part IV of the current Ordinance and relates to the enforcement of Convention awards, in particular -

- (a) the enforceability of Convention awards (clause 87);
- (b) the evidence to be produced for enforcing Convention awards (clause 88);
- (c) the grounds for refusing enforcement of Convention awards (clause 89);
- (d) the making of an order by the Chief Executive to declare any party to the New York Convention to be such a party (clause 90); and
- (e) the saving of other rights to enforce or rely on Convention awards (clause 91).

72. Division 3 of Part 10 retains the existing provisions in Part IIIA of the current Ordinance and relates to the enforcement of Mainland awards, in particular -

- (a) the enforceability of Mainland awards (clause 92) and certain restrictions on enforcement (clauses 93 and 96);
- (b) the evidence to be produced for enforcing Mainland

- awards (clause 94);
- (c) the grounds for refusing enforcement of Mainland awards (clause 95);
- (d) the publication of a list of recognized Mainland arbitral authorities by the Secretary for Justice (clause 97); and
- (e) the saving of certain Mainland awards (clause 98).

Part 11 of the Bill

73. The Bill also allows provisions set out in Schedule 2 ("opt-in provisions") to be opted for inclusion in arbitration agreements and provides for the circumstances under which those provisions will automatically apply. This is dealt with in Part 11.

74. In particular, clause 99 provides that an arbitration agreement may expressly opt for any of the following provisions -

- (a) section 1 of Schedule 2 which requires a dispute to be referred to a sole arbitrator for arbitration;
- (b) section 2 of Schedule 2 which allows 2 or more arbitral proceedings to be consolidated or to be heard at the same time or one immediately after another;
- (c) section 3 of Schedule 2 which empowers the Court of First Instance to decide any question of law arising in the course of arbitral proceedings;
- (d) sections 4 and 7 of Schedule 2 which allow an arbitral award to be challenged on the ground of serious irregularity affecting the arbitral tribunal, the arbitral proceedings or the award;
- (e) sections 5, 6 and 7 of Schedule 2 which provide for an appeal against an arbitral award on a question

of law.

75. On the other hand, clause 100 provides that all the opt-in provisions in Schedule 2 will automatically apply to an arbitration agreement (entered into before, or within 6 years after, the Bill comes into effect after it is passed) which refers to domestic arbitration.

76. According to clause 101, the automatic opt-in mechanism will not have effect if the parties so agree in writing, or if they have expressly provided that the automatic opt-in provisions do not apply or have expressly opted for or ousted any of those opt-in provisions in their arbitration agreement.

77. Clause 102 further provides that in the case of inconsistency, provisions that apply under Part 11 prevail over other provisions of the Bill.

Part 12 of the Bill

78. Part 12 contains miscellaneous provisions. In particular -

- (a) clause 103, which is based on an existing provision of the current Ordinance, provides that an arbitral tribunal or mediator is liable for certain acts done or omitted to be done dishonestly by the tribunal or mediator, its employees or its agents;
- (b) clause 104, also based on an existing provision of the current Ordinance, provides that a person who appoints an arbitral tribunal or mediator or performs any administrative function in connection with arbitral or mediation proceedings is liable for acts done or omitted to be done only if the acts are done or omissions are made dishonestly;
- (c) clause 105 relates to the making of rules of court

for the making, or service outside jurisdiction, of an application for an interim measure or an order for the inspection of relevant property etc.;

- (d) clause 106 specifies that an application, request or appeal to the court is, unless otherwise expressly provided, be made in accordance with the Rules of the High Court (Cap. 4 sub. leg. A); and
- (e) clause 107 provides that a decision, determination, direction, etc. of the Court of First Instance is to be treated as a judgment of that Court for the purposes of section 14 (Appeals in civil matters) of the High Court Ordinance (Cap. 4).

Part 13 of the Bill

79. Part 13 deals with repeal, savings and transitional provisions. In particular -

- (a) clause 108 repeals the current Ordinance;
- (b) clause 109 provides that the subsidiary legislation made under the current Ordinance is to continue in force; and
- (c) clause 110 provides that the savings and transitional arrangements set out in Schedule 3 are to apply.

Part 14 of the Bill

80. Part 14 deals with consequential and related amendments. Clause 111 in this Part specifies that the consequential and related amendments are set out in Schedule 4.

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| Section: | 12B | Mode of exercise of Admiralty jurisdiction | 25 of 1998 | 01/07/1997 |
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

(1) Subject to section 12C an action in personam may be brought in the Court of First Instance in all cases within the Admiralty jurisdiction of that court.

(2) In the case of any such claim as is mentioned in section 12A(2)(a), (c) or (r) or any such question as is mentioned in section 12A(2)(b), an action in rem may be brought in the Court of First Instance against the ship or property in connection with which the claim or question arises and such action shall be deemed to be brought by and upon the issue of the writ in rem.

(3) In any case in which there is a maritime lien or other charge on any ship, aircraft or other property for the amount claimed, an action in rem may be brought in the Court of First Instance against that ship, aircraft or property.

(4) In the case of any such claim as is mentioned in section 12A(2)(e) to (q), where-

(a) the claim arises in connection with a ship; and

(b) the person who would be liable on the claim in an action in personam ("the relevant person") was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship,

an action in rem may (whether or not the claim gives rise to a maritime lien on that ship) be brought in the Court of First Instance against-

(i) that ship, if at the time when the action is brought the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise; or

(ii) any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner as respects all the shares in it.

(5) In the case of a claim in the nature of towage or pilotage in respect of an aircraft, an action in rem may be brought in the Court of First Instance against that aircraft if, at the time when the action is brought, it is beneficially owned by the person who would be liable on the claim in an action in personam.

(6) Where, in the exercise of its Admiralty jurisdiction, the Court of First Instance orders any ship, aircraft or other property to be sold, the court shall have jurisdiction to hear and determine any question arising as to the title to the proceeds of sale.

(7) In determining for the purposes of subsections (4) and (5) whether a person would be liable on a claim in an action in personam it shall be assumed that he has his habitual residence or a place of business within Hong Kong.

(8) where, as regards any such claim as is mentioned in section 12A(2)(e) to (q), a ship has been served with a writ or arrested in an action in rem brought to enforce that claim, no other ship may be served with a writ or arrested in that or any other action in rem brought to enforce that claim; but this subsection does not prevent the issue, in respect of any one such claim, of a writ naming more than 1 ship or of 2 or more writs each naming a different ship.

(Added 3 of 1989 s. 2. Amended 25 of 1998 s. 2)

[cf. 1981 c. 54 s. 21 U.K.]

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| Section: | 14 | Appeals in civil matters | L.N. 18 of 2009 | 02/04/2009 |
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(1) Subject to subsection (3) and section 14AA, an appeal shall lie as of right to the Court of Appeal from every judgment or order of the Court of First Instance in any civil cause or matter. (Amended 25 of 1998 s. 2; 3 of 2008 s. 24)

(2) (Repealed 52 of 1987 s. 10)

(3) No appeal shall lie-

(a) from an order of the Court of First Instance allowing an extension of time for appealing from a judgment or order; (Amended 25 of 1998 s. 2) [cf. 1925 c. 49 s. 31 U.K.]

(b) (Repealed 52 of 1987 s. 10)

(c) from a judgment or order of the Court of First Instance, where it is provided by any Ordinance or by rules of court that the same is to be final; (Amended 25 of 1998 s. 2)

(d) from an order absolute for the dissolution or nullity of marriage in favour of any party who, having had time and opportunity to appeal from the decree nisi on which the order was founded, has not appealed from that decree;

(e) without the leave of the court or tribunal in question or of the Court of Appeal, from an order of the Court of First Instance or any other court or tribunal made with the consent of the parties or relating only to costs which are by law left to the discretion of the court or tribunal; (Replaced 52 of 1987 s. 10. Amended 25 of 1998 s. 2) [cf. 1981 c. 54 s. 18 U.K.]

(ea) except as provided by the Arbitration Ordinance (Cap 341), from any decision of the Court of First Instance- (Amended 25 of 1998 s. 2)

(i) on an appeal under section 23 of that Ordinance on a question of law arising out of an arbitration award; or

(ii) under section 23A of that Ordinance on a question of law arising in the course of a reference; (Added 52 of 1987 s. 10)

(eb) from a decision of the Court of First Instance in respect of which a certificate is granted under section 27C of the Hong Kong Court of Final Appeal Ordinance (Cap 484) and leave to appeal is granted under section 27D of that Ordinance in any proceedings; (Added 11 of 2002 s. 6)

(f) without the leave of the Court of First Instance or the Court of Appeal, from a judgment or order of the Court of First Instance given or made in summarily determining under rules of court any question at issue in interpleader proceedings: (Amended 25 of 1998 s. 2)

Provided that this paragraph shall have no effect in relation to any interpleader issue which is tried by a judge whether with or without a jury; (Amended 21 of 2001 s. 48)

(g) from a determination, judgment or order of the Court of First Instance referred to in section 22(1)(c) of the Hong Kong Court of Final Appeal Ordinance (Cap 484). (Added 21 of 2001 s. 48)

(4) Rules of court made under section 54 may provide for orders or judgments of any prescribed description to be treated for any prescribed purpose connected with appeals to the Court of Appeal as final or as interlocutory. (Added 52 of 1987 s. 10) [cf. 1981 c. 54 s. 60 U.K.]

(5) No appeal shall lie from a decision of the Court of Appeal as to whether a judgment or order is, for any purpose connected with an appeal to that court, final or interlocutory. (Added 52 of 1987 s. 10)

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| Section: | 20 | Power of Court of First Instance to impose charging order | 25 of 1998 | 01/07/1997 |
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

(1) Where, under a judgment or order of the Court of First Instance, a person (in this section and in sections 20A and 20B referred to as the "debtor") is required to pay a sum of money to another person (in this section and in section 20A referred to as the "creditor") then, for the purpose of enforcing that judgment or order, the Court of First Instance may make an order imposing on any such property of the debtor as may be specified in the order a charge for securing the payment of any money due or to become due under the judgment or order. (Replaced 52 of 1987 s. 13)

(2) An order under subsection (1) is referred to in this Ordinance as a "charging order". (Replaced 52 of 1987 s. 13)

(3) In deciding whether to make a charging order the Court of First Instance shall consider all the circumstances of the case and, in particular, any evidence before it as to-

- (a) the personal circumstances of the debtor; and
- (b) whether any other creditor of the debtor would be likely to be unduly prejudiced by the making of the order. (Replaced 52 of 1987 s. 13)

(4) This section shall apply to a judgment, order, decree or award however called of any court or arbitrator, including any foreign court or foreign arbitrator, which is or has become enforceable, whether wholly or to a limited extent, as it applies to a judgment or order of the Court of First Instance.

(Amended 25 of 1998 s. 2)

[cf. 1979 c. 53 s. 1 U.K.]

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| Section: | 54 | Rules of court | L.N. 18 of 2009 | 02/04/2009 |
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Rules

(1) The Rules Committee constituted under section 55 may make rules of court regulating and prescribing the procedure (including the method of pleading) and the practice to be followed in the High Court in all causes and matters whatsoever in or with respect to which the High Court has jurisdiction (including the procedure and practice to be followed in the Registries of the High Court) and any matters incidental to or relating to that procedure or practice. (Amended 25 of 1998 s. 2)

(2) Without prejudice to the generality of subsection (1), rules of court may be made for the following purposes-

- (a) prescribing the procedure in connection with the transfer of proceedings between the Court of First Instance and the District Court, and between the Court of First Instance and the Lands Tribunal; (Amended 25 of 1998 s. 2; 3 of 2008 s. 44)
- (b) prescribing the jurisdiction of the High Court which may be exercised by the Registrar or a Master (including provision for appeal against decisions in the exercise of such jurisdiction); (Amended 52 of 1987 s. 40; 25 of 1998 s. 2)
- (c) regulating matters relating to the fees and costs of proceedings (including proceedings in connection with the administration of estates and trusts) in the

Court of Appeal in its civil jurisdiction and in the Court of First Instance; (Replaced 52 of 1987 s. 40. Amended 25 of 1998 s. 2)

- (d) (Repealed 52 of 1987 s. 40)
- (e) prescribing in what cases persons absent, but having an interest in a cause or matter, shall be bound by any order made therein;
- (f) prescribing in what cases and in what manner there may be submissions and references to special referees, how parties shall be bound thereby, and to what extent and with what consequences, and for the appointment, powers and duties of special referees and for proceedings before such special referees;
- (g) regulating the appointment and duties of commissioners for oaths, the revocation of such appointments, and matters incidental thereto;
- (h) regulating the execution of the process of the High Court, including- (Amended 25 of 1998 s. 2)
 - (i) the prohibition of judgment debtors and persons against whom civil claims are made from leaving Hong Kong and ordering the payment of compensation to them in prescribed circumstances;
 - (ii) ordering the appearance of judgment debtors or officers of corporate judgment debtors for examination and their examination; and
 - (iii) the arrest and imprisonment of judgment debtors; (Amended 1 of 1984 s. 3)
- (i) regulating matters which could heretofore be or which have heretofore been provided for or regulated by rules of court;
- (j) prescribing the procedure for the payment of money into the High Court by parties to arbitration proceedings; and without prejudice to the generality of this paragraph prescribing also- (Amended 25 of 1998 s. 2)
 - (i) the effect upon such arbitration proceedings of the acceptance by any party to the arbitration proceedings of such money paid into the High Court; (Amended 25 of 1998 s. 2)
 - (ii) the circumstances in which, following payment into the High Court of money by any party to arbitration proceedings, an arbitrator may amend that part of his award which relates to the payment of the costs of the reference; and (Amended 25 of 1998 s. 2)
 - (iii) such incidental, supplementary and consequential provisions in relation to payment of money into the High Court by parties to arbitration proceedings as the Rules Committee may consider necessary or expedient; (Added 43 of 1982 s. 2. Amended 25 of 1998 s. 2)
- (k) providing that, in any case where a document filed in, or in the custody of, any Registry is required to be produced to any court or tribunal (including an umpire or arbitrator) sitting elsewhere than at the High Court- (Amended 25 of 1998 s. 2)
 - (i) it shall not be necessary for any officer, whether served with a subpoena in that behalf or not, to attend for the purpose of producing the document; but
 - (ii) the document may be produced to the court or tribunal by sending it to the court or tribunal, in the manner prescribed in the rules, together with a certificate, in the form so prescribed, to the effect that the document has been filed in, or is in the custody of, the Registry,and any such certificate shall be prima facie evidence of the facts stated in it; and (Added 52 of 1987 s. 40) [cf. 1981 c. 54 s. 136 U.K.]
- (l) prescribing the procedure in cases where an order of mandamus, prohibition or certiorari is sought, or proceedings are taken for an injunction under section 21J including a requirement that-
 - (i) except in such cases as may be specified in the rules, leave shall be obtained before an application is made for any such order or before any such proceedings are commenced; and
 - (ii) where leave is so obtained, no other relief shall be granted and no ground relied upon, except with the leave of the Court, other than the relief and grounds specified when the application for leave was made. (Added 52 of

1987 s. 40)

(2A) Rules providing for the matters referred to in subsection (2)(k) may contain-

- (a) provisions for securing the safe custody and return to the Registry of any document sent to a court or tribunal in pursuance of the rules; and
- (b) such incidental and supplementary provisions as appear to the Rules Committee to be necessary or expedient. (Added 52 of 1987 s. 40) [cf. 1981 c. 54 s. 136 U.K.]

(3) (Repealed 3 of 1989 s. 3)

(4) The power to make rules of court under this section shall include power to make rules as to proceedings by or against the Crown.

(5) Rules of court made under this section shall apply to all proceedings by or against the Crown insofar as they expressly purport so to do.

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| Section: | 57 | Rules concerning deposit, etc. of moneys, etc. in High Court | 10 of 2005 | 08/07/2005 |

(1) The Chief Judge of the High Court may make rules for regulating- (Amended 10 of 2005 s. 11)

- (a) the deposit, payment, delivery, and transfer in, into, and out of the High Court of money, securities, and movable property of suitors; (Amended 25 of 1998 s. 2)
- (b) the evidence of such deposit, payment, delivery, or transfer, and the investment of and other dealings with money, securities, and movable property in court;
- (c) the execution of the orders of the High Court; and (Amended 25 of 1998 s. 2)
- (d) the powers and duties of the Registrar with reference to such money, securities, and property.

(2) Without prejudice to the generality of the foregoing, rules made under this section may provide for-

- (a) regulating the placing on and withdrawal from deposit of money in court, and the payment or crediting of interest on money placed on deposit;
- (b) determining the smallest amount of money on deposit on which interest is to be credited to an account to which money placed on deposit belongs;
- (c) determining the time at which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;
- (d) determining the cases in which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;
- (e) determining the cases in which interest on money placed on deposit and the dividends on any securities standing in the name of the Registrar is or are to be placed on deposit; and
- (f) disposing of money, other than the balance of an intestate estate, remaining unclaimed in court or money remaining unclaimed in the Bankruptcy Estates Account established under section 128 of the Bankruptcy Ordinance (Cap 6).

(3) For the purposes of this section "suitors" (訴訟人) includes any party to arbitration proceedings who makes payment of money into the High Court in accordance with rules of court. (Added 43 of 1982 s. 3. Amended 25 of 1998 s. 2)

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| Chapter: | 4A | THE RULES OF THE HIGH COURT | Gazette Number | Version Date |
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| Order: | 59 | APPEALS TO THE COURT OF APPEAL | L.N. 152 of 2008; L.N. 18 of 2009 | 02/04/2009 |
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1. Application of Order to appeals (O. 59, r. 1)

(1) This Order applies, subject to the provisions of these rules with respect to particular appeals, to every appeal to the Court of Appeal (including so far as it is applicable thereto, any appeal to that Court from a master or other officer of the High Court or from any tribunal from which an appeal lies to that Court under or by virtue of any enactment) not being an appeal for which other provision is made by these rules and references to "the court below" apply to any Court, tribunal or person from which such appeal lies. (25 of 1998 s. 2; L.N. 152 of 2008)

(2) For the avoidance of doubt and without prejudice to the generality of paragraph (1), this Order, unless the context otherwise requires, applies in relation to an appeal to the Court of Appeal from the District Court. (L.N. 152 of 2008)

2. Application of Order to applications for new trial (O. 59, r. 2)

This Order (except so much of rule 3(1) as provides that an appeal shall be by way of rehearing and except rule 11 (1)) applies to an application to the Court of Appeal for a new trial or to set aside a verdict, finding or judgment after trial with or without a jury, as it applies to an appeal to that Court, and references in this Order to an appeal and to an appellant shall be construed accordingly.

GENERAL PROVISIONS AS TO APPEALS

2A. Application to Court of Appeal for leave to appeal (O. 59, r. 2A)

(1) An application to the Court of Appeal for leave to appeal must be made by a summons supported by a statement setting out-

- (a) the reasons why leave should be granted; and
- (b) if the time for appealing has expired, the reasons why the application was not made within that time.

(2) An application under paragraph (1) must be made inter partes if the proceedings in the court below are inter partes.

(3) An application under paragraph (1) must include, where necessary, an application to extend the time for appealing.

(4) A party who intends to resist an application under paragraph (1) made inter partes shall, within 14 days after the application is served on him, file in the Court of Appeal and serve on the applicant a statement as to why the application should not be granted.

(5) The Court of Appeal may-

- (a) determine the application without a hearing on the basis of written submissions only; or
- (b) direct that the application be heard at an oral hearing,

and in both cases, the Court of Appeal may give such directions as it thinks fit in relation to the application.

(6) Where the Court of Appeal grants the application, it may impose such terms as it thinks

fit.

(7) Subject to paragraph (8), if the application is determined on the basis of written submissions only, a party aggrieved by the determination may, within 7 days after he has been given notice of the determination, request the Court of Appeal to reconsider the determination at an oral hearing inter partes.

(8) Where the Court of Appeal determines the application on the basis of written submissions only, it may, if it considers that the application is totally without merit, make an order that no party may under paragraph (7) request the determination to be reconsidered at an oral hearing inter partes.

(9) An oral hearing held pursuant to a request under paragraph (7) may be before the Court of Appeal consisting of-

- (a) the Justice of Appeal; or
- (b) one or more of the Justices of Appeal,

who have determined the application on the basis of written submissions only.

(L.N. 152 of 2008)

**2B. Application for leave to appeal
against interlocutory and other
judgments or orders of Court
(O. 59, r. 2B)**

(1) Subject to paragraph (4) and any other enactment, an application for leave to appeal against-

- (a) an interlocutory judgment or order of the Court;
- (b) a judgment or order of the Court specified in section 14(3)(e) or (f) of the Ordinance; or
- (c) any other judgment or order of the Court against which an appeal may be made with leave of the Court or the Court of Appeal,

may only be made to the Court in the first instance within 14 days from the date of the judgment or order.

(2) So far as is practicable, the application must be made to the judge or master against whose judgment or order leave to appeal is sought.

(3) Where the Court refuses the application, a further application for leave to appeal may be made to the Court of Appeal within 14 days from the date of the refusal.

(4) If the Court of Appeal allows, the application may be made direct to the Court of Appeal within 14 days from the date of the judgment or order.

(5) An application under this rule must be made inter partes if the proceedings to which the judgment or order relates are inter partes.

(L.N. 152 of 2008)

**2C. Refusal by single judge of application
for leave to appeal (O. 59, r. 2C)**

(1) Notwithstanding rule 2A(8), where an application for leave to appeal made under rule 2A(1) or 2B(3) is determined (with or without a hearing) by a single Justice of Appeal, a party aggrieved by the determination may, within 7 days from the date of the refusal, make a fresh application to the Court of Appeal.

(2) The party is entitled to have the fresh application determined by the Court of Appeal consisting of 2 Justices of Appeal.

(3) The Justice of Appeal who has previously determined the application may sit in the Court of Appeal determining the fresh application.

(L.N. 152 of 2008)

3. Notice of appeal (O. 59, r. 3)

(1) An appeal to the Court of Appeal shall be by way of rehearing and must be brought by motion, and the notice of the motion is referred to in this Order as "notice of appeal".

(2) Notice of appeal may be given either in respect of the whole or in respect of any specified part of the judgment or order of the court below; and every such notice must specify the grounds of the appeal and the precise form of the order which the appellant proposes to ask the Court of Appeal to make.

(3) Except with the leave of the Court of Appeal or a single judge, the appellant shall not be entitled on the hearing of an appeal to rely on any grounds of appeal, or to apply for any relief, not specified in the notice of appeal. (L.N. 404 of 1991)

(5) A notice of appeal must be served on all parties to the proceedings in the court below who are directly affected by the appeal; and, subject to rule 8, it shall not be necessary to serve the notice on parties not so affected.

(6) No notice of appeal shall be given by a respondent in a case to which rule 6(1) relates.

4. Time for appealing (O. 59, r. 4)

(1) Except as otherwise provided by these rules, a notice of appeal must be served under rule 3(5) within-

- (a) in the case where leave to appeal to the Court of Appeal is required under section 14AA (not being a case to which sub-paragraph (b) applies) or section 14(3)(e) or (f) of the Ordinance, 7 days after the date on which leave to appeal is granted;
- (b) in the case of an appeal from a judgment, order or decision given or made in the matter of the winding up of a company, or in the matter of any bankruptcy, 28 days from the date of the judgment, order or decision; and
- (c) in any other case, 28 days from the date of the judgment, order or decision concerned. (L.N. 152 of 2008)

(2) In the case where an appeal may lie from a judgment of the Court of First Instance under Division 3 of Part II of the Hong Kong Court of Final Appeal Ordinance (Cap 484), the following period of time shall be disregarded in determining the period referred to in paragraph (1)-

- (a) where an application has been made under section 27C of that Ordinance, the period from the date on which the judgment is given to the date on which the application is determined; or
- (b) where an application has been made under section 27D of that Ordinance, the period from the date on which the judgment is given to the date on which the application is determined. (11 of 2002 s. 7)

(3) (Repealed L.N. 152 of 2008)

(4) In relation to an appeal from the District Court, a notice of appeal must be served under rule 3(5) within-

- (a) in the case where leave to appeal to the Court of Appeal is required under section 63(1) or (1B) of the District Court Ordinance (Cap 336), 7 days after the date on which leave to appeal is granted; and
- (b) in the case of an appeal from an order specified in section 63(3) of the District Court Ordinance (Cap 336) or an order for imprisonment given or made under Order 49B of the Rules of the District Court (Cap 336 sub. leg. H), 28 days after the date on which the order is made. (L.N. 152 of 2008)

5. Setting down appeal (O. 59, r. 5)

(1) Within 7 days after the date on which service of the notice of appeal was effected, the appellant must lodge with the Registrar- (L.N. 152 of 2008)

- (a) a copy of the sealed judgment or order and a copy of the reasoned decision (if any); and
- (b) two copies of the notice of appeal, one of which shall be indorsed with the amount of the fee paid, and the other indorsed with a certificate of the date of service of the

notice.

(2) Upon the said documents being left, the Registrar shall file one copy of the notice of appeal and cause the appeal to be set down in the list of appeals; and the appeal shall come on to be heard according to its order in that list unless the Court of Appeal or a judge of that Court otherwise orders.

(3) Within 4 days after an appeal has been set down, the appellant must give notice to that effect to all parties on whom the notice of appeal was served.

(L.N. 152 of 2008)

6. Respondent's notice (O. 59, r. 6)

- (1) A respondent who, having been served with a notice of appeal, desires-
- (a) to contend on the appeal that the decision of the court below should be varied, either in any event or in the event of the appeal being allowed in whole or in part, or
 - (b) to contend that the decision of the court below should be affirmed on grounds other than those relied upon by that court, or
 - (c) to contend by way of cross-appeal that the decision of the court below was wrong in whole or in part,

must give notice to that effect, specifying the grounds of his contention and, in a case to which sub-paragraph (a) or (c) relates, the precise form of the order which he proposes to ask the Court to make.

(2) Except with the leave of the Court of Appeal or a single judge, a respondent shall not be entitled on the hearing of the appeal to apply for any relief not specified in a notice under paragraph (1) or to rely, in support of any contention, upon any ground which has not been specified in such a notice or relied upon by the court below. (L.N. 404 of 1991)

(HK)(3) Any notice given by a respondent under this rule (in this Order referred to as a "respondent's notice") must be served on the appellant, and on all parties to the proceedings in the court below who are directly affected by the contentions of the respondent, and must be served-

- (a) where the notice of appeal related to an interlocutory order, within 14 days, and
- (b) in any other case, within 21 days,

after the service of the notice of appeal on the respondent.

(4) A party by whom a respondent's notice is given must, within 2 days after service of the notice, furnish 2 copies of the notice to the Registrar.

7. Amendment of notice of appeal and respondent's notice (O. 59, r. 7)

- (1) A notice of appeal or respondent's notice may be amended-
- (a) by or with the leave of the Court of Appeal or a single judge at any time; (L.N. 404 of 1991)
 - (b) without such leave, by supplementary notice served not less than three weeks before the date fixed for the hearing of the appeal.

(2) A party by whom a supplementary notice is served under this rule must, within 2 days after service of the notice, furnish two copies of the notice to the Registrar.

8. Directions of the Court as to service (O. 59, r. 8)

(1) The Court of Appeal or a single judge may in any case direct that a notice of appeal or respondent's notice be served on any party to the proceedings in the court below on whom it has not been served, or on any person not party to those proceedings. (L.N. 404 of 1991)

(2) Where a direction is given under paragraph (1) the hearing of the appeal may be postponed or adjourned for such period and on such terms as may be just and such judgment may be given and such order made on the appeal as might have been given or made if the persons served in pursuance of the direction had originally been parties.

9. Documents to be lodged by appellant (O. 59, r. 9)

(1) Not less than 14 days before the date on which the appeal is listed for hearing the appellant must cause to be lodged with the Registrar the number of copies for which paragraph (2) provides of each of the following documents, namely- (L.N. 152 of 2008)

- (a) the notice of appeal;
- (b) the respondent's notice;
- (c) any supplementary notice served under rule 7;
- (d) the judgment or order of the court below;
- (e) the originating process by which the proceedings in the court below were begun, any interlocutory or other related process which is the subject of the appeal, the pleadings (including particulars), if any, and, in the case of an appeal in an Admiralty cause or matter, the preliminary acts, if any;
- (f) the transcript of the official shorthand note, if any, of the judgment or order of the court below or, in the absence of such a note, the judge's note of his reasons for giving the judgment or making the order;
- (g) such parts of the transcript of the official shorthand note, if any, of the evidence given in the court below as are relevant to any question at issue on the appeal or, in the absence of such a note, such parts of the judge's note of the evidence as are relevant to any such question;
- (h) any list of exhibits made under Order 35, rule 11, or the schedule of evidence, as the case may be;

(HK)(i) such documents, affidavits, exhibits, or parts of exhibits, as were in evidence in the court below and as are relevant to any question at issue on the appeal.

(2) Unless otherwise directed the number of copies to be lodged in accordance with paragraph (1) is three copies except-

- (a) where the appeal is to be heard by two judges in which case it is two copies; or
- (b) in the case of an appeal in an Admiralty cause or matter, in which case it is four copies or, if the Court of Appeal is to hear the appeal with assessors, six copies.

(2A) When the transcripts, if any, referred to in items (f) and (g) of paragraph (1) have been bespoken by the appellant and paid for, the number of such transcripts required in accordance with paragraph (2) shall be sent by the appellant direct to the Registrar. (L.N. 152 of 2008)

(3) At any time after an appeal has been set down in accordance with rule 5 the Registrar may give such directions in relation to the documents to be produced at the appeal, and the manner in which they are to be presented, and as to other matters incidental to the conduct of the appeal, as appear best adapted to secure the just, expeditious and economical disposal of the appeal.

(4) The directions referred to in paragraph (3) may be given without a hearing provided always that the Registrar may at any time issue a summons requiring the parties to an appeal to attend before him and any party to an appeal may apply at any time for an appointment before the Registrar.

10. General powers of the Court (O. 59, r. 10)

(1) In relation to an appeal the Court of Appeal shall have all the powers and duties as to amendment and otherwise of the Court of First Instance. (25 of 1998 s. 2)

(2) The Court of Appeal shall have power to receive further evidence on questions of fact, either by oral examination in court, by affidavit, or by deposition taken before an examiner, but no such further evidence (other than evidence as to matters which have occurred after the date of the trial or hearing) shall be admitted except on special grounds. (L.N. 152 of 2008)

(3) The Court of Appeal shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been given or made, and to make such further or other order as the case may require.

(4) The powers of the Court of Appeal under the foregoing provisions of this rule may be exercised notwithstanding that no notice of appeal or respondent's notice has been given in respect

of any particular part of the decision of the court below or by any particular party to the proceedings in that court, or that any ground for allowing the appeal or for affirming or varying the decision of that court is not specified in such a notice; and the Court of Appeal may make any order, on such terms as the Court thinks just, to ensure the determination on the merits of the real question in controversy between the parties.

(5) The Court of Appeal may, in special circumstances, order that such security shall be given for the costs of an appeal as may be just.

(6) The powers of the Court of Appeal in respect of an appeal shall not be restricted by reason of any interlocutory order from which there has been no appeal.

(7) Documents impounded by order of the Court of Appeal shall not be delivered out of the custody of that Court except in compliance with an order of that Court:

Provided that where a Law Officer or the Director of Public Prosecutions makes a written request in that behalf, documents so impounded shall be delivered into his custody. (L.N. 362 of 1997)

(8) Documents impounded by order of the Court of Appeal, while in the custody of that Court, shall not be inspected except by a person authorized to do so by an order of that Court.

(9) In any proceedings incidental to any cause or matter pending before the Court of Appeal, the powers conferred by this rule on the Court may be exercised by a single judge: (L.N. 404 of 1991)

Provided that the said powers of the Court of Appeal shall be exercisable only by that Court or a single judge in relation to-

- (a) the grant, variation, discharge or enforcement of an injunction, or an undertaking given in lieu of an injunction; and
- (b) the grant or lifting of a stay of execution or proceedings.

11. Powers of the Court as to new trials (O. 59, r. 11)

(1) On the hearing of any appeal the Court of Appeal may, if it thinks fit, make any such order as could be made in pursuance of an application for a new trial or to set aside a verdict, finding or judgment of the court below.

(2) The Court of Appeal shall not be bound to order a new trial on the ground of misdirection, or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the judge at the trial was not asked to leave to them, unless in the opinion of the Court of Appeal some substantial wrong or miscarriage has been thereby occasioned.

(3) A new trial may be ordered on any question without interfering with the finding or decision on any other question; and if it appears to the Court of Appeal that any such wrong or miscarriage as is mentioned in paragraph (2) affects part only of the matter in controversy, or one or some only of the parties, the Court may order a new trial as to that part only, or as to that party or those parties only, and give final judgment as to the remainder.

(4) In any case where the Court of Appeal has power to order a new trial on the ground that damages awarded by a jury are excessive or inadequate, the Court may, in lieu of ordering a new trial-

- (a) with the consent of all parties concerned, substitute for the sum awarded by the jury such sum as appears to the Court to be proper;
- (b) with the consent of the party entitled to receive or liable to pay the damages, as the case may be, reduce or increase the sum awarded by the jury by such amount as appears to the Court to be proper in respect of any distinct head of damages erroneously included in or excluded from the sum so awarded;

but except as aforesaid the Court of Appeal shall not have power to reduce or increase the damages awarded by a jury.

(5) A new trial shall not be ordered by reason of the ruling of any judge that a document is sufficiently stamped or does not require to be stamped.

12. Evidence on appeal (O. 59, r. 12)

Where any question of fact is involved in an appeal, the evidence taken in the court below bearing on the question shall, subject to any direction of the Court of Appeal or a single judge, be brought before that Court as follows-

- (a) in the case of evidence taken by affidavit, by the production of a true copy of such affidavit;
- (b) in the case of evidence given orally, by a copy of so much of the transcript of the official shorthand note as is relevant or by a copy of the judge's note, where he has intimated that in the event of an appeal his note will be sufficient, or by such other means as the Court of Appeal or a single judge, may direct.

(L.N. 404 of 1991)

12A. Non-disclosure of payment into court (O. 59, r. 12A)

(1) Where-

- (a) any question on an appeal in an action for a debt, damages or salvage relates to liability for the debt, damages or salvage or to the amount thereof, and
- (b) money was paid into court under Order 22, in the proceedings in the court below before judgment, (L.N. 152 of 2008)

neither the fact of the payment nor the amount thereof nor the terms of any relevant offer made in accordance with Order 22 shall be stated in the notice of appeal or the respondent's notice or in any supplementary notice or be communicated to the Court of Appeal until all such questions have been decided. This rule shall not apply in the case of an appeal as to costs only or an appeal in an action to which a defence of tender before action was pleaded. (L.N. 152 of 2008)

(2) For the purpose of complying with this rule the appellant must cause to be omitted from the copies of the documents lodged by him under rule 9(d) and (f) every part thereof which states that money was paid into court in the proceedings in that court before judgment.

13. Stay of execution, etc. (O. 59, r. 13)

(1) Except so far as the court below or the Court of Appeal or a single judge may otherwise direct-

- (a) an appeal shall not operate as a stay of execution or of proceedings under the decision of the court below;
- (b) no intermediate act or proceeding shall be invalidated by an appeal.

(2) On an appeal from the court below, interest for such time as execution has been delayed by the appeal shall be allowed unless the court below otherwise orders. (L.N. 152 of 2008)

(25 of 1998 s. 2)

14. Applications to the Court of Appeal (O. 59, r. 14)

(1) Unless otherwise directed, every application to the Court of Appeal or a single judge which is not made ex parte must be made by summons and such summons must be served on the party or parties affected at least 2 clear days before the day on which it is heard or, in the case of an application which is made after the expiration of the time for appealing, at least 7 days before the day on which the summons is heard. (L.N. 404 of 1991)

(1A) In support of any application (whether made ex parte or inter partes) the applicant shall lodge with the Registrar such documents as the Court of Appeal or a single judge may direct, and rule 9(3) and (4) shall apply, with any necessary modifications, to applications as they apply to appeals. (L.N. 404 of 1991)

(2) (Repealed L.N. 152 of 2008)

(2A)-(2B) (Repealed L.N. 152 of 2008)

(3) Where an ex parte application has been refused by the court below, an application for a similar purpose may be made to the Court of Appeal ex parte within 7 days after the date of the refusal.

(3A) Where an application made to the Court of Appeal ex parte under paragraph (3) is granted, notice of the order granting the application must be served on the party or parties affected. (L.N. 152 of 2008)

(3B) A party on whom a notice has been served is entitled, within 7 days after service of the notice, to apply to the Court of Appeal to have the order granting the application reconsidered inter partes in open court. (L.N. 152 of 2008)

(4) Wherever under these rules an application may be made either to the court below or to the Court of Appeal, it shall not be made in the first instance to the Court of Appeal, except where there are special circumstances which make it impossible or impracticable to apply to the court below.

(5) Where an application is made to the Court of Appeal with regard to arbitration proceedings before a judge-arbitrator or judge-umpire which would, in the case of an ordinary arbitrator or umpire, be made to the Court of First Instance, the provisions of Order 73, rule 5, shall apply as if, for the words "the Court", wherever they appear in that rule, there were substituted the words "the Court of Appeal" and as if, for the words "arbitrator" and "umpire", there were substituted the words "judge-arbitrator" and "Judge-umpire" respectively. (25 of 1998 s. 2)

(6) Where an application is made to the Court of Appeal under section 23(5) of the Arbitration Ordinance (Cap 341) (including any application for leave), notice thereof must be served on the judge-arbitrator or judge-umpire and on any other party to the reference.

(HK)(6A) In this rule "judge-arbitrator" (法官仲裁員) and "Judge-umpire" (法官公斷人) mean a judge appointed as sole arbitrator or, as the case may be, as umpire by or by virtue of an arbitration agreement.

(7) An application which may be heard by a single judge, shall, unless otherwise directed, be heard in chambers. (L.N. 152 of 2008)

(8)-(9) (Repealed L.N. 404 of 1991)

(10) A single judge may refer to the Court of Appeal any matter which he thinks should properly be decided by that Court, and, following such reference, that Court may either dispose of the matter or refer it back to a single judge or the Registrar, with such directions as that Court thinks fit.

(11) (Repealed L.N. 404 of 1991)

(12) An appeal shall lie to the Court of Appeal from any determination by a single judge and shall be brought by way of fresh application made within 10 days of the determination appealed against. (L.N. 152 of 2008)

(13) This rule does not apply in relation to an application for leave to appeal. (L.N. 152 of 2008)

14A. Determination of interlocutory application (O. 59, r. 14A)

(1) The Court of Appeal (including a single judge thereof) may, in relation to a cause or matter pending before the Court of Appeal, determine an interlocutory application without a hearing on the basis of written submissions only.

(2) Where it considers it necessary or expedient, the Court of Appeal (including a single judge thereof) may direct that the interlocutory application shall be heard before the Court of Appeal consisting of 2 or 3 Justices of Appeal.

(3) For the avoidance of doubt, nothing in this rule precludes a judge of the Court of First Instance from sitting as an additional judge of the Court of Appeal in accordance with section 5(2) of the Ordinance.

(L.N. 152 of 2008)

15. Extension of time (O. 59, r. 15)

Without prejudice to the power of the Court of Appeal or a single judge under Order 3, rule

5, to extend or abridge the time prescribed by any provision of this Order, the period for serving notice of appeal under rule 4 or making application ex parte under rule 14(3) may be extended or abridged by the court below on application made before the expiration of that period.

(L.N. 404 of 1991)

SPECIAL PROVISIONS AS TO PARTICULAR APPEALS

16. Appeal against decree nisi (O. 59, r. 16)

(1) The following provisions of this rule shall apply to any appeal to the Court of Appeal in a matrimonial cause against a decree nisi of divorce or nullity of marriage.

(1A) An appeal lies as of right to the Court of Appeal from a decree nisi granted by the Court. (L.N. 152 of 2008)

(2) The period of 28 days specified in rule 4 shall be calculated from the date on which the decree was pronounced and rule 15 shall not apply in relation to that period. (10 of 2008 s. 30)

(3) The appellant must, within the period mentioned in paragraph (2) produce to the Registrar a sealed copy of the decree appealed against and leave with him a copy of that decree and two copies of the notice of appeal (one of which shall be indorsed with the amount of the fee paid and the other indorsed with a certificate of the date of service of the notice); and the appeal shall not be competent unless this paragraph has been complied with. (L.N. 404 of 1991)

(4) For the purposes of rule 5 the leaving of the said copies shall be sufficient for the setting down of the appeal and rule 5(1) shall not apply.

(5) A party who intends to apply ex parte to the Court of Appeal to extend the period referred to in paragraphs (2) and (3) must give notice of his intention to the appropriate Registrar before the application is made; and where any order is made by the Court of Appeal extending the said period, it shall be the duty of the Registrar forthwith to give notice of the making of the order and of the terms thereof to the appropriate Registrar.

(6) In this rule "the appropriate Registrar" (適當的司法常務官) means- (28 of 2000 s. 47)

(a) in relation to a cause pending in a district court, the registrar of that court.

19. Appeal from District Court (O. 59, r. 19)

(1) The following provisions of this rule shall apply to any appeal to the Court of Appeal from a District Court other than an appeal against a decree nisi of divorce or nullity of marriage.

(2) The notice of appeal must be served on the registrar of the District Court as well as on the party or parties required to be served under rule 3.

(3) (Repealed L.N. 152 of 2008)

(4) Except where the Court of Appeal or a single judge otherwise directs, an affidavit or note by a person present in the District Court shall not be used in evidence before the Court of Appeal unless it was previously submitted to the judge for his comments. (L.N. 404 of 1991; L.N. 152 of 2008)

(4A) Rule 12A shall apply in any case where money was paid into court by the defendant before judgment in district court proceedings in satisfaction of the plaintiff's cause of action or of one or more causes joined in one action or on account of a sum admitted by the defendant to be due to the plaintiff.

(4B) Rule 12A(1) applies as if a reference to Order 22 were a reference to Order 22 of the Rules of the District Court (Cap 336 sub. leg. H). (L.N. 152 of 2008)

(5) Rule 13(1)(a) shall apply subject to the provisions of section 66 of the District Court Ordinance (Cap 336).

20. Appeals in cases of contempt of court (O. 59, r. 20)

(1) In the case of an appeal to the Court of Appeal against an order of committal or other

punishment for contempt of Court made by a judge of the Court of First Instance, the notice of appeal must be served on the Registrar as well as on the party or parties required to be served under rule 3. (See App. A, Form 99)

This paragraph shall not apply in relation to an appeal to which rule 19 applies. (25 of 1998 s. 2)

(2) Where, in the case of such an appeal as is mentioned in paragraph (1), the appellant is in custody, the Court of Appeal may order his release on his giving security (whether by recognizance, with or without sureties, or otherwise and for such reasonable sum as that Court may fix) for his appearance within 10 days after the judgment of the Court of Appeal on the appeal shall have been given, before the court from whose order or decision the appeal is brought unless the order or decision is reversed by that judgment.

(3) An application for the release of a person under paragraph (2) pending an appeal to the Court of Appeal must be made by motion, and the notice of the motion must, at least 24 hours before the day named therein for the hearing, be served on the Registrar and on all parties to the proceedings who are directly affected by the appeal.

CASES WHERE LEAVE TO APPEAL IS NOT REQUIRED FOR INTERLOCUTORY APPEALS

(L.N. 152 of 2008)

21. Judgments and orders to which section 14AA(1) of the Ordinance not apply (O. 59, r. 21)

(1) Judgments and orders to which section 14AA(1) of the Ordinance (leave to appeal required for interlocutory appeals) does not apply and accordingly an appeal lies as of right from them are the following-

- (a) a judgment or order determining in a summary way the substantive rights of a party to an action;
- (b) an order made under section 52A(4) of the Ordinance;
- (c) an order prohibiting a debtor from leaving Hong Kong under Order 44A, rule 3(1);
- (d) an order for the imprisonment of a judgment debtor under Order 49B;
- (e) an order of committal for contempt of court under Order 52, rule 1;
- (f) an order granting any relief made at the hearing of an application for judicial review;
- (g) an order under Order 53, rule 3 refusing to grant leave to apply for judicial review;
- (h) an order granting an application for a writ of habeas corpus ad subjiciendum;
- (i) an order under Order 73 (other than an order against which leave to appeal is required under the Arbitration Ordinance (Cap 341));
- (j) a judgment given inter partes under Order 83A, rule 4, or Order 84A, rule 3 or in a mortgage action within the meaning of Order 88, rule 1;
- (k) an order under Order 121; and
- (l) a decree nisi of divorce or nullity of marriage.

(2) Without affecting the generality of paragraph (1)(a), the following are judgments and orders determining in a summary way the substantive rights of a party-

- (a) a summary judgment under Order 14 or Order 86;
- (b) an order striking out an action or other proceedings or a pleading or any part of a pleading under Order 18, rule 19 or under the inherent jurisdiction of the Court;
- (c) a judgment or order determining any question of law or the construction of any document under Order 14A, rule 1(1);
- (d) a judgment or order made under Order 14A, rule 1(2) dismissing any cause or matter upon determination of a question of law or construction of any document;
- (e) a judgment on any question or issue tried pursuant to an order under Order 33, rule 3;
- (f) an order dismissing or striking out an action or other proceedings for want of prosecution;

- (g) a judgment obtained pursuant to an "unless" order;
- (h) an order refusing to set aside a judgment in default;
- (i) an order refusing to allow an amendment of a pleading to introduce a new claim or defence or any other new issue; and
- (j) a judgment or order on admissions under Order 27, rule 3.

(3) A direction as to whether a judgment or order is one that is referred to in paragraph (1)(a) may be sought from the judge who made or will make the judgment or order.

(4) A reference to an order specified in paragraph (1)(b), (c), (d), (e), (f), (h), (i), (k) and (l) includes an order refusing, varying or discharging the order.

(L.N. 152 of 2008)

(Enacted 1988)

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| Order: | 62 | COSTS | L.N. 152 of 2008; L.N. 18 of 2009 | 02/04/2009 |
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COSTS

PRELIMINARY

1. Interpretation (O. 62, r. 1)

(1) In this Order-

"certificate" (證明書) includes allocatur;

(HK) "contentious business" (爭議事務) means business done, whether as a barrister, solicitor or advocate, in or for the purpose of proceedings begun before the Court or before an arbitrator appointed under the Arbitration Ordinance (Cap 341) not being common form probate business; (10 of 2005 s. 166)

"costs" (訟費) include fees, charges, disbursements, expenses and remuneration;

"the Court" (法院、法庭) means the High Court or any one or more judges thereof, whether sitting in Court or in chambers, the Registrar or assistant registrar or master; (25 of 1998 s. 2)

(HK) "District Court" (區域法院) means the District Court established under the provisions of the District Court Ordinance (Cap 336), and any judge of that court; (L.N. 152 of 2008)

"legal representative" (法律代表), in relation to a party to proceedings, means a counsel or solicitor conducting litigation on behalf of the party; (L.N. 152 of 2008)

(HK) "mentally disordered person" (精神紊亂的人) means a person who is so far disabled in mind or who is so mentally ill or subnormal due to arrested or incomplete development of mind as to render it either necessary or expedient that he, either for his own sake or in the public interest, should be placed and kept under control;

(HK) "non-contentious business" (非爭議事務) means any business done by and as a solicitor which is not contentious business;

"party entitled to be heard on taxation" (有權在訟費評定中獲聆聽的一方) means-

- (a) a party entitled to payment of costs;
- (b) a party who has acknowledged service or taken any part in the proceedings which

gave rise to the taxation proceedings, and who is directly liable under a costs order made against him;

- (c) a person who has given the party entitled to payment of costs and the Registrar written notice that he has a financial interest in the outcome of the taxation; or
- (d) a person in respect of whom a direction has been given under rule 21(3); (L.N. 152 of 2008)

"taxed costs" (經評定的訟費) means costs taxed in accordance with this Order;

(HK) "taxing master" (訟費評定官) means the Registrar as taxing master; (L.N. 152 of 2008)

"wasted costs order" (虛耗訟費命令) means an order made under section 52A(4) of the Ordinance. (L.N. 152 of 2008)

(2) In this Order, references to a fund, being a fund out of which costs are to be paid or which is held by a trustee or personal representative, include references to any estate or property whether immovable or personal held for the benefit of any person or class of persons; and references to a fund held by a trustee or personal representative include references to any fund to which he is entitled (whether alone or together with any other person) in that capacity, whether the fund is for the time being in his possession or not.

2. Application (O. 62, r. 2)

(HK)(1) This Order shall apply to all proceedings in the Court, except non-contentious or common form probate proceedings and proceedings in matters of prize.

(2) Where by virtue of any Ordinance the costs of or incidental to any proceedings before an arbitrator or umpire or before a tribunal or other body constituted by or under any Ordinance, not being proceedings in the High Court, are taxable in the Court of First Instance, the following provisions of this Order, that is to say, rule 7(4), rule 8D (except paragraph (4)), rule 8E, rule 9D(1) and (4), rules 13 and 13A, rules 14 to 16, rule 17(1), rules 17A and 17B, rule 18, rules 21 (except paragraph (4)), 21A, 21B, 21C and 21D, rules 22 to 26, rule 28A (except paragraphs (4) and (7)), rules 32A and 32B and rules 33 to 35, shall have effect in relation to proceedings for taxation of those costs as they have effect in relation to proceedings for taxation of the costs of or arising out of proceedings in the High Court. (L.N. 152 of 2008)

(2A) Where rule 22 has effect under paragraph (2), a reference to the Court of First Instance in rule 22(9)(a) is to be construed as a reference to the arbitrator, umpire, tribunal or other body, as the case may be. (L.N. 152 of 2008)

(3) This Order shall have effect subject to the provisions of the District Court Ordinance (Cap 336) and to any rules made thereunder and to any other enactment.

(4) The powers and discretion of the Court as to costs under sections 52A and 52B of the Ordinance and under the enactments relating to the costs of criminal proceedings to which this Order applies shall be exercised subject to and in accordance with this Order. (L.N. 152 of 2008)
(25 of 1998 s. 2)

ENTITLEMENT TO COSTS

3. Order as to entitlement to costs (O. 62, r. 3)

(L.N. 152 of 2008)

(1) Subject to the provisions of this Order, no party shall be entitled to recover any costs of or incidental to any proceedings from any other party to the proceedings except under an order of the Court.

(2) If the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any proceedings (other than interlocutory proceedings), the Court shall, subject to this Order, order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs. (L.N. 152 of 2008)

(2A) If the Court in the exercise of its discretion sees fit to make any order as to the costs of

or incidental to any interlocutory proceedings, it may, subject to this Order, order the costs to follow the event or make such other order as it sees fit. (L.N. 152 of 2008)

(3) The costs of and occasioned by any amendment made without leave in the writ of summons or any pleading shall be borne by the party making the amendment, unless the Court otherwise orders.

(4) The costs of and occasioned by any application to extend the time fixed by these rules, or any direction or order thereunder, for serving or filing any document or the doing of any other act (including the costs of any order made on the application) shall be borne by the party making the application, unless the Court otherwise orders.

(5) If a party on whom a notice to admit facts is served under Order 27, rule 2, refuses or neglects to admit the facts within 7 days after the service on him of the notice or such longer time as may be allowed by the Court, the costs of proving the facts shall be paid by him, unless the Court otherwise orders.

(6) If a party-

(a) on whom a list of documents is served in pursuance of any provision of Order 24, or

(b) on whom a notice to admit documents is served under Order 27, rule 5,

gives notice of non-admission of any of the documents in accordance with Order 27, rule 4(2) or 5(2) as the case may be, the costs of proving that document shall be paid by him, unless the Court otherwise orders.

(7) Where a defendant by notice in writing and without leave discontinues his counterclaim against any party or withdraws any particular claim made by him therein against any party, that party shall, unless the Court otherwise directs, be entitled to his costs of the counterclaim or his costs occasioned by the claim withdrawn, as the case may be, incurred to the time of receipt of the notice of discontinuance or withdrawal.

(8) (Repealed L.N. 152 of 2008)

(9) Where any person claiming to be a creditor-

(a) seeks to establish his claim to a debt under any judgment or order in accordance with Order 44, or

(b) comes in to prove his title, debt or claim in relation to a company in pursuance of any such notice as is mentioned in Order 102, rule 13,

he shall, if his claim succeeds, be entitled to his costs incurred in establishing it, unless the Court otherwise directs, and, if his claim or any part of it fails, may be ordered to pay the costs of any person incurred in opposing it.

(10) Where a claimant is entitled to costs under paragraph (9), the amount of the costs shall be fixed by the Court unless it thinks fit to direct taxation, and the amount fixed or allowed shall be added to the claimant's debt.

(11) Where a claimant (other than a person claiming to be a creditor) having established a claim to be entitled under a judgment or order in accordance with Order 44 has been served with notice of the judgment or order pursuant to rule 3 or 15 of that Order, he shall, if he acknowledges service of the notice be entitled as part of his costs of action (if allowed) to costs incurred in establishing his claim, unless the Court otherwise directs; and where such a claimant fails to establish his claim or any part of it he may be ordered to pay the costs of any person incurred in opposing it.

(12) Where an application is made in accordance with Order 24, rule 7A or Order 29, rule 7A, for an order under section 41, 42 or 44 of the Ordinance, the person against whom the order is sought shall be entitled, unless the Court otherwise directs, to his costs of and incidental to the application and of complying with any order made thereon and he may, after giving the applicant 7 days' notice of his intention to do so, tax such costs and, if they are not paid within 4 days after taxation, sign judgment for them.

4. Stage of proceedings at which costs to be dealt with (O. 62, r. 4)

(1) Costs may be dealt with by the Court at any stage of the proceedings or after the

conclusion of the proceedings; and any order of the Court for the payment of any costs may, if the Court thinks fit, and the person against whom the order is made is not an assisted person, require the costs to be paid forthwith notwithstanding that the proceedings have not been concluded.

(2) In the case of an appeal the costs of the proceedings giving rise to the appeal, as well as the costs of the appeal and of the proceedings connected with it, may be dealt with by the Court hearing the appeal; and in the case of any proceedings transferred or removed to the Court of First Instance from any other court or tribunal, the costs of the whole proceedings, both before and after the transfer or removal, may (subject to any order of the court or tribunal ordering the transfer or removal) be dealt with by the Court to which the proceedings are transferred or removed. (25 of 1998 s. 2)

(3) Where under paragraph (2) the Court makes an order as to the costs of any proceedings before another court or tribunal, rules 28, 31 and 32 shall not apply in relation to those costs, but, except in relation to costs of proceedings transferred or removed from the District Court or the Lands Tribunal, the order- (L.N. 152 of 2008)

- (a) shall specify the amount of the costs to be allowed, or
- (b) shall direct that the costs shall be assessed by the court or tribunal before which the proceedings took place or taxed by an officer of that court or tribunal, or
- (c) if the order is made on appeal from the District Court or the Lands Tribunal in relation to proceedings in that court or tribunal, may direct that the costs shall be taxed by the taxing master.

(L.N. 152 of 2008)

5. Special matters to be taken into account in exercising discretion (O. 62, r. 5)

(1) The Court in exercising its discretion as to costs shall, to such extent, if any, as may be appropriate in the circumstances, take into account- (L.N. 152 of 2008)

- (aa) the underlying objectives set out in Order 1A, rule 1; (L.N. 152 of 2008)
 - (a) any such offer of contribution as is mentioned in Order 16, rule 10, which is brought to its attention in pursuance of a reserved right to do so;
 - (b) any payment of money into court and the amount of such payment;
 - (c) any written offer made under Order 33, rule 4A(2); (L.N. 152 of 2008)
 - (d) any written offer which is expressed to be "without prejudice save as to costs" and which relates to any issue in the proceedings, but the Court may not take the offer into account if, at the time it is made, the party making it could have protected his position as to costs by means of a sanctioned payment or a sanctioned offer under Order 22; (L.N. 152 of 2008)
 - (e) the conduct of all the parties; (L.N. 152 of 2008)
 - (f) whether a party has succeeded on part of his case, even if he has not been wholly successful; and (L.N. 152 of 2008)
 - (g) any admissible offer to settle made by a party, which is drawn to the Court's attention. (L.N. 152 of 2008)
- (2) For the purpose of paragraph (1)(e), the conduct of the parties includes-
- (a) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
 - (b) the manner in which a party has pursued or defended his case or a particular allegation or issue;
 - (c) whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his claim; and
 - (d) conduct before, as well as during, the proceedings. (L.N. 152 of 2008)

6. Restriction of discretion to order costs (O. 62, r. 6)

- (1) Notwithstanding anything in this Order or in section 52A of the Ordinance-
- (c) unless the Court is of opinion that there was no reasonable ground for opposing the

will, no order shall be made for the costs of the other side to be paid by the party opposing a will in a probate action who has given notice with his defence to the party setting up the will that he merely insists upon the will being proved in solemn form of law and only intends to cross-examine the witnesses produced in support of the will.

(2) Where a person is or has been a party to any proceedings in the capacity of trustee, personal representative or mortgagee, he shall, unless the Court otherwise orders, be entitled to the costs of those proceedings, in so far as they are not recovered from or paid by any other person, out of the fund held by the trustee or personal representative or the mortgaged property, as the case may be; and the Court may otherwise order only on the ground that the trustee, personal representative or mortgagee has acted unreasonably or, in the case of a trustee or personal representative, has in substance acted for his own benefit rather than for the benefit of the fund.

**6A. Costs orders in favour of
or against non-parties**
(O. 62, r. 6A)

(1) Where the Court is considering whether to exercise its power under section 52A or 52B of the Ordinance to make a costs order in favour of or against a person who is not a party to the relevant proceedings-

- (a) that person must be joined as a party to the proceedings for the purposes of costs only; and
- (b) that person must be given a reasonable opportunity to attend a hearing at which the Court shall consider the matter further.

(2) This rule does not apply where the Court is considering whether to make-

- (a) a wasted costs order; or
- (b) an order under section 41 or 42 of the Ordinance.

(L.N. 152 of 2008)

7. Costs arising from misconduct or neglect (O. 62, r. 7)

(1) Where in any cause or matter any thing is done or omission is made improperly or unnecessarily by or on behalf of a party, the Court may direct that any costs to that party in respect of it shall not be allowed to him and that any costs occasioned by it to other parties shall be paid by him to them.

(2) Without prejudice to the generality of paragraph (1), the Court shall for the purpose of that paragraph have regard in particular to the following matters, that is to say-

- (aa) the underlying objectives set out in Order 1A, rule 1; (L.N. 152 of 2008)
- (a) the omission to do any thing the doing of which would have been calculated to save costs;
- (b) the doing of any thing calculated to occasion, or in a manner or at a time calculated to occasion, unnecessary costs;
- (c) any unnecessary delay in the proceedings.

(3) The Court may, instead of giving a direction under paragraph (1) in relation to any thing done or omission made, direct the taxing master to inquire into it and, if it appears to him that such a direction as aforesaid should have been given in relation to it, to act as if the appropriate direction had been given.

(4) The taxing master shall, in relation to any thing done or omission made in the course of taxation, have the same power to disallow or to award costs as the Court has under paragraph (1) to direct that costs shall be disallowed to or paid by any party. (L.N. 152 of 2008)

(5) (Repealed L.N. 152 of 2008)

**8. Personal liability of legal representative
for costs-wasted costs order**
(O. 62, r. 8)

- (1) The Court may make a wasted costs order against a legal representative, only if-
 - (a) the legal representative, whether personally or through his employee or agent, has caused a party to incur wasted costs as defined in section 52A(6) of the Ordinance; and
 - (b) it is just in all the circumstances to order the legal representative to compensate the party for the whole or part of those costs.
- (2) A wasted costs order may-
 - (a) disallow the costs as between the legal representative and his client; and
 - (b) direct the legal representative to-
 - (i) repay to his client costs which the client has been ordered to pay to other parties to the proceedings; or
 - (ii) indemnify other parties against costs incurred by them.
- (3) The Court shall give the legal representative a reasonable opportunity to attend a hearing to give reasons why it should not make the order.
- (4) When the Court makes a wasted costs order, it shall-
 - (a) specify the amount to be disallowed or paid; or
 - (b) direct a master to decide the amount of costs to be disallowed or paid.
- (5) The Court may give directions about the procedure that should be followed in each case in order to ensure that the issues are dealt with in a way that is fair and is as simple and summary as the circumstances permit.
- (6) The Court may direct that notice must be given to the legal representative's client, in such manner as the Court may direct-
 - (a) of any proceedings under this rule; or
 - (b) of any order made under this rule against his legal representative.
- (7) Before making a wasted costs order, the Court may direct a master to inquire into the matter and report to the Court.
- (8) The Court may refer the question of wasted costs to a master, instead of making a wasted costs order.
- (9) The Court may, if it thinks fit, direct or authorize the Official Solicitor to attend and take part in any proceedings or inquiry under this rule, and may make such order as it thinks fit as to the payment of his costs.

(L.N. 152 of 2008)

8A. Court may make wasted costs order on its own motion or on application (O. 62, r. 8A)

- (1) The Court may make a wasted costs order against a legal representative on its own motion.
- (2) A party may apply for a wasted costs order-
 - (a) orally in the course of a hearing; or
 - (b) by making an interlocutory application by summons.
- (3) Where a party applies for a wasted costs order by making an interlocutory application by summons, the party shall serve the summons on-
 - (a) the legal representative concerned;
 - (b) any party represented by that legal representative; and
 - (c) any other person as may be directed by the Court,
 not less than 2 clear days before the day specified in the summons for its hearing.
- (4) An application for a wasted costs order shall not be made or dealt with until the conclusion of the proceedings to which the order relates, unless the Court is satisfied that there is reasonable cause for the application to be made or dealt with before the conclusion of the proceedings.
- (5) Unless there are exceptional circumstances making it inappropriate to do so, an application for a wasted costs order shall be heard by the judge or master who conducted the

proceedings to which the order relates.

(L.N. 152 of 2008)

8B. Stages of considering whether to make a wasted costs order

(O. 62, r. 8B)

- (1) The Court shall consider whether to make a wasted costs order in 2 stages-
 - (a) in the first stage, the Court must be satisfied that-
 - (i) it has before it evidence or other material which, if unanswered, would be likely to lead to a wasted costs order being made; and
 - (ii) the wasted costs proceedings are justified notwithstanding the likely costs involved; and
 - (b) in the second stage (even if the Court is satisfied under sub-paragraph (a)), the Court shall consider, after giving the legal representative an opportunity to give reasons why the Court should not make a wasted costs order, whether it is appropriate to make the order in accordance with rule 8.
- (2) On an application for a wasted costs order, the Court may proceed to the second stage described in paragraph (1)(b) without first adjourning the hearing if it is satisfied that the legal representative has already had a reasonable opportunity to give reasons why the Court should not make a wasted costs order. In other cases the Court shall adjourn the hearing before proceeding to the second stage.
- (3) On an application for a wasted costs order, any evidence in support must identify-
 - (a) what the legal representative is alleged to have done or failed to do; and
 - (b) the costs that he may be ordered to pay or which are sought against him.

(L.N. 152 of 2008)

8C. Application for wasted costs order not to be used as means of intimidation

(O. 62, r. 8C)

- (1) A party shall not by himself or by another person on his behalf threaten another party or any of that party's legal representatives with an application for a wasted costs order with a view to coercing or intimidating either of them to do or refrain from doing anything.
- (2) A party shall not indicate to another party or any of that party's legal representatives that he intends to apply for a wasted costs order unless he is satisfied that he is able to-
 - (a) particularize the behaviour of the legal representative from which the wasted costs concerned are alleged to result; and
 - (b) identify the evidence or other materials on which he relies in support of the allegation.

(L.N. 152 of 2008)

8D. Personal liability of legal representative for costs-supplementary provisions

(O. 62, r. 8D)

- (1) Where in any proceedings before a taxing master, the legal representative representing any party is guilty of neglect or delay or puts any other party to any unnecessary expense in relation to those proceedings, the taxing master may direct the legal representative personally to pay costs to any of the parties to those proceedings.
- (2) Where any legal representative fails to file a bill of costs (with the documents required by this Order) for taxation within the time fixed by or under this Order or otherwise delays or impedes the taxation, then, unless the taxing master otherwise directs, the legal representative shall not be allowed the fees to which he would otherwise be entitled for drawing the bill of costs

and for attending the taxation.

(3) If, on the taxation of costs to be paid out of a fund other than funds provided by the Legislative Council pursuant to section 27 of the Legal Aid Ordinance (Cap 91), one-sixth or more of the amount of the bill for those costs is taxed off, the legal representative whose bill it is shall not be allowed the fees to which he would otherwise be entitled for drawing the bill and for attending the taxation.

(4) In any proceedings in which the party by whom the fees prescribed by any enactment relating to court fees are payable is represented by a legal representative, if the fees or any part of the fees payable under that enactment are not paid as prescribed, the Court may, on the application of the Official Solicitor by summons, order the legal representative personally to-

- (a) pay that amount in the manner so prescribed; and
- (b) pay the costs of the Official Solicitor of the application.

(5) A legal representative shall not be directed or ordered under this rule to pay any costs or fees, nor shall he be disallowed under this rule any fees, unless he has been given a reasonable opportunity to give reasons why-

- (a) the direction or order should not be made; or
- (b) he should not be disallowed the fees.

(6) When a taxing master makes a direction under paragraph (1), he-

- (a) shall specify the amount to be paid; and
- (b) may give directions about the procedure that should be followed in each case in order to ensure that the issues are dealt with in a way that is fair and is as simple and summary as the circumstances permit.

(7) The Court or a taxing master may direct that notice must be given to the legal representative's client, in such manner as the Court or the taxing master may direct, of any direction or order made under this rule against his legal representative.

(L.N. 152 of 2008)

**8E. Stages of considering whether
to make direction under rule
8D(1) (O. 62, r. 8E)**

(1) The taxing master shall consider whether to make a direction under rule 8D(1) in 2 stages-

- (a) in the first stage, the taxing master must be satisfied that-
 - (i) he has before him evidence or other material which, if unanswered, would be likely to lead to a direction under rule 8D(1) being made; and
 - (ii) the direction is justified notwithstanding the likely costs involved; and
- (b) in the second stage (even if the taxing master is satisfied under sub-paragraph (a)), the taxing master shall consider, after giving the legal representative an opportunity to give reasons why the taxing master should not make the direction, whether it is appropriate to make the direction.

(2) On an application for a direction under rule 8D(1), the taxing master may proceed to the second stage described in paragraph (1)(b) without first adjourning the hearing if he is satisfied that the legal representative has already had a reasonable opportunity to give reasons why the taxing master should not make the direction. In other cases the taxing master shall adjourn the hearing before proceeding to the second stage.

(3) On an application for a direction under rule 8D(1), any evidence in support must identify-

- (a) what the legal representative is alleged to have done or failed to do; and
- (b) the costs that he may be directed to pay or which are sought against him.

(L.N. 152 of 2008)

**9. Taxed costs, fractional taxed costs or costs
summarily assessed for non-interlocutory
applications (O. 62, r. 9)**

(1) Subject to this order, where by or under these rules or any order or direction of the Court costs are to be paid to any person, that person shall be entitled to his taxed costs.

(2) Paragraph (1) shall not apply to costs which by or under any order or direction of the Court-

(a) are to be paid to a receiver appointed by the Court of First Instance under section 21L of the Ordinance in respect of his remuneration, disbursements or expenses; or (25 of 1998 s. 2)

(b) are to be assessed or settled by a taxing master,

but rules 28, 28A, 31 and 32 shall apply in relation to the assessment or settlement by a taxing master of costs which are to be assessed or settled as aforesaid as they apply in relation to the taxation of costs by a taxing master.

(3) Where a writ in an action is endorsed in accordance with Order 6, rule 2(1)(b), and judgment is entered on failure to give notice of intention to defend or in default of defence for the amount claimed for costs (whether alone or together with any other amount claimed), paragraph (1) of this rule shall not apply to those costs, but if the amount claimed for costs as aforesaid is paid in accordance with the indorsement (or is accepted by the plaintiff as if so paid) the defendant shall nevertheless be entitled to have those costs taxed.

(4) The Court in awarding costs to any person may direct that, instead of taxed costs, that person shall be entitled-

(a) to a proportion specified in the direction of the taxed costs or to the taxed costs from or up to a stage of the proceedings so specified; or

(b) to a sum of money summarily assessed in lieu of taxed costs. (L.N. 152 of 2008)

(5) This rule does not apply to costs of an interlocutory application. (L.N. 152 of 2008)

9A. Summary assessment of costs of interlocutory application

(O. 62, r. 9A)

(1) Where the Court has determined an interlocutory application at any stage of proceedings and orders a party to pay costs in respect of the interlocutory application to any other party, it may, if it considers it appropriate to do so but subject to rule 9C-

(a) make a summary assessment of the costs by ordering payment of a sum of money to that other party in lieu of taxed costs;

(b) make a summary assessment of the costs by ordering payment of a sum of money to that other party in lieu of taxed costs but subject to the right of either party to have the costs taxed pursuant to paragraph (2); or

(c) order that the costs be taxed in accordance with this Order.

(2) Where the Court has made an order under paragraph (1)(b), either party to the interlocutory application is entitled to have the costs in respect of the interlocutory application taxed in accordance with this Order.

(3) Upon taxation pursuant to paragraph (2)-

(a) if the amount of the taxed costs in respect of the interlocutory application equals the amount paid pursuant to an order made under paragraph (1)(b), the taxing master shall direct that no further amount is payable in respect of the taxed costs;

(b) if the amount of the taxed costs in respect of the interlocutory application exceeds the amount paid pursuant to an order made under paragraph (1)(b), the taxing master may-

(i) direct the party against whom the order was made to pay the shortfall; or

(ii) set off the shortfall against any other costs to which the party against whom the order was made is entitled and direct payment of any balance; and

(c) if the amount paid pursuant to an order made under paragraph (1)(b) exceeds the amount of the taxed costs in respect of the interlocutory application, the taxing master may-

- (i) direct the party in whose favour the order was made to pay the difference; or
 - (ii) set off the difference against any other costs to which the party in whose favour the order was made is entitled and direct payment of any balance.
 - (4) Where-
 - (a) the amount paid pursuant to an order made under paragraph (1)(b) equals or exceeds the amount of the taxed costs in respect of the interlocutory application; or
 - (b) the taxed costs in respect of the interlocutory application do not materially exceed the amount paid pursuant to an order made under paragraph (1)(b),
 the taxing master may make such order as to the costs of the taxation or such other order as he considers appropriate.
 - (5) In determining whether the taxed costs materially exceed the amount paid pursuant to an order made under paragraph (1)(b), the taxing master shall, in addition to any other matter that he may consider relevant, have regard to-
 - (a) the amount by which the taxed costs exceed the amount paid pursuant to the order made under paragraph (1)(b); and
 - (b) whether the exceeded amount is disproportionate to the costs of the taxation.
- (L.N. 152 of 2008)

9B. Time for complying with direction or order for summary assessment

(O. 62, r. 9B)

- (1) A party shall comply with a direction or order under rule 9(4)(b) or 9A(1)(a) or (b) for payment of a sum of money-
 - (a) within 14 days of the date of the direction or order; or
 - (b) by such date as the Court may specify.
 - (2) Paragraph (1) does not apply if the party is an aided person.
- (L.N. 152 of 2008)

9C. When summary assessment not allowed

(O. 62, r. 9C)

- (1) No direction or order may be made under rule 9(4)(b) or 9A(1)(a) or (b) for the payment of a sum of money if-
 - (a) the paying party shows substantial grounds for disputing the sum claimed for costs that cannot be dealt with summarily;
 - (b) the receiving party is an aided person, and the legal representative acting for the receiving party has not waived the right to any further sum of money in respect of the costs of the interlocutory application; or
 - (c) the receiving party is a person under disability as defined in Order 80, rule 1, and the legal representative (or the next friend or guardian ad litem) acting for the person under disability has not waived the right to any further sum of money in respect of the costs of the interlocutory application.
 - (2) In this rule-
 - "paying party" (支付方) means the party against whom a direction or order under rule 9(4)(b) or 9A(1)(a) or (b) is made;
 - "receiving party" (收取方) means the party in whose favour a direction or order under rule 9(4)(b) or 9A(1)(a) or (b) is made.
- (L.N. 152 of 2008)

9D. When to tax costs

(O. 62, r. 9D)

- (1) Subject to paragraphs (2) and (4), the costs of any proceedings shall not be taxed until

the conclusion of the action.

(2) If it appears to the Court when making a costs order that all or any part of the costs ought to be taxed at an earlier stage it may order accordingly.

(3) No order may be made under paragraph (2) in a case where the person against whom the costs order is made is an aided person.

(4) Where it appears to a taxing master that there is no likelihood of any further order being made in a cause or matter, he may order the person entitled to payment of the costs of any interlocutory proceedings which have taken place to commence taxation proceedings in accordance with rule 21.

(L.N. 152 of 2008)

10. When a party may sign judgment for costs without an order (O. 62, r. 10)

(1) Where a plaintiff by notice in writing and without leave either wholly discontinues his action against any defendant or withdraws any particular claim made or question raised by him therein as against any defendant, the defendant may tax his costs of the action or his costs occasioned by the matter withdrawn, as the case may be, and, if the taxed costs are not paid within 4 days after taxation, may sign judgment for them. (See App. A, Form 50)

(2)-(4) (Repealed L.N. 152 of 2008)

(5) In the circumstances mentioned in this rule, Order 22, rules 20 and 21 and Order 25, rule 1C(6) an order for costs shall be deemed to have been made to the effect described and, for the purposes of section 49 of the Ordinance, the order shall be deemed to have been entered up on the date on which the event which gave rise to the entitlement to costs occurred. (L.N. 403 of 1992; L.N. 152 of 2008)

11. When order for taxation of costs not required (O. 62, r. 11)

(1) Where an action, petition or summons is dismissed with costs, or a motion is refused with costs, or an order of the Court directs the payment of any costs, or any party is entitled under rule 10 to tax his costs, no order directing the taxation of those costs need be made.

(2) Where a summons is taken out to set aside with costs any proceeding on the ground of irregularity and the summons is dismissed but no direction is given as to costs, the summons is to be taken as having been dismissed with costs.

11A. Commencement of costs-only proceedings (O. 62, r. 11A)

(1) Proceedings under section 52B(2) of the Ordinance may be commenced by originating summons in Form No. 10 in Appendix A.

(2) The originating summons must be accompanied by-

(a) an affidavit exhibiting the agreement referred to in section 52B(1) of the Ordinance; and

(b) the plaintiff's bill of costs or statement of costs.

(3) An acknowledgment of service of the originating summons must be in Form No. 15A in Appendix A.

(4) A master may make a summary assessment of or an order for taxation of the costs that are the subject matter of the proceedings commenced in accordance with paragraph (1).

(5) Orders 13A, 22 and 27 and Order 28, rules 1A, 4(3) to (5) and 7 to 9 do not apply in relation to the proceedings commenced in accordance with paragraph (1) unless otherwise directed by the Court.

(L.N. 152 of 2008)

POWERS OF TAXING OFFICERS

12. Powers of taxing masters to tax costs (O. 62, r. 12)

- (1) A taxing master shall have power to tax-
 - (a) the costs of or incidental to any proceedings in the High Court; (25 of 1998 s. 2; L.N. 152 of 2008)
 - (aa) the costs that are the subject matter of the proceedings commenced in accordance with rule 11A(1); (L.N. 152 of 2008)
 - (b) the costs directed by an award made on a reference to arbitration under any enactment or pursuant to an arbitration agreement to be paid; and
 - (c) any other costs the taxation of which is directed by an order of the Court.

13. Powers of certain judicial clerks to tax costs (O. 62, r. 13)

(HK)(1) A Chief Judicial Clerk shall have power to transact all such business and exercise all such authority as under rule 21B of this Order may be transacted and exercised by the taxing master and to issue a certificate for any costs taxed by him.

(1A) Paragraph (1) only applies if the amount of the bill of costs does not exceed the sum of \$200000. (L.N. 152 of 2008)

(2) Paragraph (1) shall not be taken as empowering a Chief Judicial Clerk to tax any costs the taxation of which is set down for hearing under rule 21B(4) or 21C(1).

(3) In exercising the powers conferred on him by this Order, a Chief Judicial Clerk shall comply with any directions given to him by a taxing master.

(L.N. 343 of 1989; L.N. 152 of 2008)

13A. Taxing master may give directions (O. 62, r. 13A)

- (1) A taxing master may give directions-
 - (a) for the just and expeditious disposal of the taxation of a bill of costs; and
 - (b) for saving the costs of taxation.
- (2) Without limiting the generality of paragraph (1), a taxing master may give directions as to-
 - (a) the form and contents of a bill of costs;
 - (b) the filing of papers and vouchers;
 - (c) the manner in which-
 - (i) any objections to a bill of costs may be raised; and
 - (ii) any reply to those objections may be made; and
 - (d) the steps to be taken or things to be done at any stage of the taxation proceedings.

(L.N. 152 of 2008)

14. Supplementary powers of taxing masters (O. 62, r. 14)

A taxing master may, in the discharge of his functions with respect to the taxation of costs-

- (a) take an account of any dealing in money made in connection with the payment of the costs being taxed, if the Court so directs;
- (b) require any party represented jointly with any other party in any proceedings before him to be separately represented;
- (c) examine any witness in those proceedings;
- (d) direct the production of any document which may be relevant in connection with those proceedings;
- (e) correct any clerical mistake in any certificate or order, or any error arising therein from any accidental slip or omission.

15. Disposal of business by one taxing master for another (O. 62, r. 15)

(1) If, apart from this paragraph, a taxing master has power to tax any costs, the taxation of which has been assigned to some other taxing master, he may tax those costs and if, apart from this paragraph, he has power to issue a certificate for the taxed costs he shall issue a certificate for them.

(2) Any taxing master may assist any other taxing master in the taxation of any costs the taxation of which has been assigned to that other officer.

(3) On an application in that behalf made by a party to any cause or matter, a taxing master may, and if the circumstances require it shall, hear and dispose of any application in the cause or matter on behalf of the taxing master by whom the application would otherwise be heard.

16. Extension etc., of time (O. 62, r. 16)

(1) A taxing master may-

- (a) extend the period within which a party is required by or under this Order to begin proceedings for taxation or to do anything in or in connection with proceedings before that master;
- (b) extend the period provided by rule 33(2) beyond the signing of the taxing officer's certificate by setting the certificate aside;
- (c) where no period is specified by or under this Order or by the Court for the doing of anything in or in connection with such proceedings, specify the period within which the thing is to be done.

(2) Where an order of the Court specifies a period within which anything is to be done by or before a taxing master, then unless the Court otherwise directs, the taxing master may from time to time extend the period so specified on such terms (if any) as he thinks just.

(3) A taxing master may extend any such period as is referred to in the foregoing provisions of this rule although the application for extension is not made until after the expiration of that period.

17. Interim certificates (O. 62, r. 17)

(1) A taxing master may from time to time in the course of the taxation of any costs by him issue an interim certificate for any part of those costs which has been taxed.

(2) If, in the course of the taxation of a solicitor's bill to his own client, it appears to the taxing master that in any event the solicitor will be liable in connection with that bill to pay money to the client, he may from time to time issue an interim certificate specifying an amount which in his opinion is payable by the solicitor to his client.

(3) On the filing of a certificate issued under paragraph (2), the Court may order the amount specified therein to be paid forthwith to the client or into court.

17A. Final certificate (O. 62, r. 17A)

(1) A taxing master shall, after the conclusion of taxation proceedings before him, issue a final certificate specifying the amount of taxed costs and the amount of money payable under rule 32B.

(2) A taxing master shall not issue a final certificate unless the period within which an application for review of his decision may be made under rule 33(2) has expired.

(3) A taxing master may set aside a final certificate for good reasons and on such terms as he thinks fit.

(L.N. 152 of 2008)

17B. Taxing master may set aside his own decision (O. 62, r. 17B)

If a party entitled to be heard on taxation fails to raise any objection to a bill of costs or to appear at a hearing set down under rule 21B(4) or 21C(1), a decision of a taxing master made against that party may be set aside or varied by the taxing master for good reasons and on such terms as he thinks fit.

(L.N. 152 of 2008)

18. Power of taxing master where party liable to be paid and to pay costs (O. 62, r. 18)

Where a party entitled to be paid costs is also liable to pay costs, the taxing master may-

- (a) tax the costs which that party is liable to pay and set off the amount allowed against the amount he is entitled to be paid and direct payment of any balance, or
- (b) delay the issue of a certificate for the costs he is entitled to be paid until he has paid or tendered the amount he is liable to pay.

19. Taxation of bill of costs comprised in account (O. 62, r. 19)

(1) Where the Court directs an account to be taken and the account consists in part of a bill of costs, the Court may direct a taxing master to tax those costs and the taxing master shall tax the costs in accordance with the direction and shall return the bill of costs, after taxation thereof, together with his report thereon to the Court.

(2) A taxing master taxing a bill of costs in accordance with a direction under this rule shall have the same powers, and the same fees shall be payable in connection with the taxation, as if an order for taxation of the costs had been made by the Court.

PROCEDURE ON TAXATION

21. Mode of commencing proceedings for taxation (O. 62, r. 21)

(1) A party entitled to payment of the costs of any action to be taxed may commence proceedings for the taxation of those costs by filing in the Court-

- (a) a notice of commencement of taxation; and
- (b) his bill of costs.

(2) The party shall serve a copy of the notice of commencement of taxation and of the bill of costs on every other party entitled to be heard on taxation within 7 days after the notice and the bill of costs were filed in the Court.

(3) The Court may give directions as to the service of a copy of the notice of commencement of taxation and of the bill of costs on any other person who may have a financial interest in the outcome of the taxation.

(4) It is not necessary for a copy of the notice of commencement of taxation or of the bill of costs to be served on any party who has not acknowledged service in the proceedings which gave rise to the taxation, except where-

- (a) an order for the taxation of the bill of costs of a solicitor is made under section 67 of the Legal Practitioners Ordinance (Cap 159) at the instance of the solicitor; or
- (b) the Court otherwise orders.

(5) A party shall, when he files a notice of commencement of taxation, pay to the Court a prescribed taxing fee.

(6) A person who has been served with a copy of the notice of commencement of taxation and of the bill of costs pursuant to paragraph (3) shall, within 7 days of the service, give notice in writing to the taxing master and all other parties entitled to be heard on taxation, stating-

- (a) his financial interest in the outcome of the taxation; and
- (b) whether he intends to take part in the taxation proceedings.

- (7) A person who fails to comply with paragraph (6) is not entitled to-
 - (a) receive from the Registrar or from any other party entitled to be heard on taxation any notice, application or other document relating to the taxation; and
 - (b) take part in the taxation proceedings.

(L.N. 152 of 2008)

21A. Application for taxation to be set down (O. 62, r. 21A)

(1) Upon compliance with the directions given by a taxing master under rule 13A relating to the steps to be taken or things to be done before the taxation is set down, the party who has commenced taxation proceedings under rule 21 may apply to the taxing master for setting down the taxation.

(2) The party shall, within 7 days after making an application under paragraph (1), serve a copy of the application on every other party entitled to be heard on taxation.

(3) A taxing master may refuse to proceed with taxation if he is of the opinion that any direction referred to in paragraph (1) has not been complied with.

(L.N. 152 of 2008)

21B. Provisional taxation (O. 62, r. 21B)

- (1) Unless the taxation is set down for hearing under rule 21C(1), the taxing master may-
 - (a) tax the bill of costs without a hearing; and
 - (b) make an order nisi as to-
 - (i) the amount which he allows in respect of the whole or part of the bill of costs; and
 - (ii) the costs of the taxation.

(2) Where the taxing master has taxed the bill of costs without a hearing and made an order nisi under paragraph (1), the party who has applied for setting down the taxation under rule 21A(1) shall serve a copy of the order nisi on every other party entitled to be heard on taxation.

(3) The order nisi becomes absolute 14 days after it is made unless a party entitled to be heard on taxation applies to the taxing master within the 14-day period for a hearing.

(4) The taxing master shall set down the taxation for hearing upon application made by a party under paragraph (3) and that party shall serve a notice of the hearing on every other party entitled to be heard on taxation.

(5) The taxing master may order that party to pay any costs of the hearing if the taxed costs do not materially exceed the amount allowed under paragraph (1)(b)(i).

(6) In determining whether the taxed costs materially exceed the amount allowed under paragraph (1)(b)(i), the taxing master shall, in addition to any other matter that he may consider relevant, have regard to-

- (a) the amount by which the costs taxed at the hearing exceed the amount allowed under paragraph (1)(b)(i); and
- (b) whether the exceeded amount is disproportionate to the costs of the hearing.

(L.N. 152 of 2008)

21C. Taxation with a hearing
(O. 62, r. 21C)

(1) Where the taxing master is satisfied that there is a good reason to do so, he may, either of his own motion or on application by a party entitled to be heard on taxation, set down for hearing the taxation of the whole or part of the bill of costs.

(2) Upon notification by the taxing master of the date of hearing, the party who applied for setting down shall serve a notice of the hearing on every other party entitled to be heard on taxation within 7 days after the notification.

(L.N. 152 of 2008)

21D. Withdrawal of bill of costs

(O. 62, r. 21D)

(1) A party who has filed a bill of costs shall pay the prescribed fee to the Court if he withdraws the bill of costs within 7 days after his application to the taxing master for setting down the taxation under rule 21A(1) is made.

(2) The Court shall deduct the fee payable under paragraph (1) from the amount paid under rule 21(5) and refund the balance to the party.

(3) The party is not entitled to any refund of the balance of the amount paid under rule 21(5) except-

- (a) under paragraph (2); or
- (b) where the Court otherwise directs.

(L.N. 152 of 2008)

22. Delay in service of notice of commencement of taxation or in proceeding with taxation (O. 62, r. 22)

(1) If, within 3 months after the completion date, the person entitled to payment of costs has neither-

- (a) agreed the amount of those costs with the person liable to pay them; nor
- (b) served upon such person a copy of a notice of commencement of taxation in accordance with rule 21(2),

the taxing master, on the application of the person liable to pay such costs and on not less than 7 days' notice to the person entitled to payment of those costs, may make an order under paragraph (3).

(2) If, after the proceedings for the taxation of a bill of costs have commenced in accordance with rule 21(1), the person entitled to payment of costs has neither-

- (a) agreed the amount of those costs with the person liable to pay them; nor
- (b) proceeded with the taxation,

the taxing master, on the application of the person liable to pay such costs and on not less than 7 days' notice to the person entitled to payment of those costs, may make an order under paragraph (3).

(3) The taxing master-

- (a) may order that the person entitled to payment of the costs must commence taxation proceedings in accordance with rule 21 or proceed with the taxation, within such period as may be specified in the order; and
- (b) may further order that that person shall not be entitled to commence those taxation proceedings or proceed with the taxation unless the person does commence those taxation proceedings or proceed with the taxation within the specified period or such extended period as may be allowed by the taxing master.

(4) The taxing master may make an order under paragraph (3) subject to such conditions as he thinks fit, including a condition that the person liable to pay the costs to be taxed shall pay a sum of money into court.

(5) On the taxation of a bill of costs, whether or not an order has been made under paragraph (3), the taxing master, if he is satisfied that there has been undue delay in commencing taxation proceedings or in proceeding with the taxation-

- (a) may make such order as he thinks fit as to the costs of any application or as to the costs of the taxation;
- (b) may disallow any part of the costs to be taxed pursuant to the costs order; and
- (c) may, in relation to the taxed costs or any part of those costs, disallow interest or reduce the period for which interest is payable or the rate at which interest is payable.

(6) Where a party entitled to payment of costs fails to proceed with taxation after filing the notice of commencement of taxation under rule 21(1), the taxing master in order to prevent any other parties being prejudiced by that failure, may-

- (a) allow the party so entitled a nominal or other sum for costs; or
- (b) certify the failure and the costs of the other parties.

(7) A party is not entitled to commence taxation proceedings under rule 21-

- (a) after the expiry of 2 years from the completion date; or
- (b) where the Court has extended the period specified in sub-paragraph (a), after the expiry of the period as extended,

whichever is the later.

(8) Where the completion date is before the commencement of this rule, paragraph (7)(a) has effect as if for the words "completion date", there were substituted the words "commencement of this rule".

(9) In this rule, "completion date" (完結日期) means-

(a) in relation to a costs order made by the Court of First Instance-

- (i) the date of the judgment or order of the Court of First Instance which disposes of the action;
- (ii) the date on which the Court of First Instance makes the costs order, or if the order is an order nisi, the date on which the order is made absolute or varied (as the case may be);
- (iii) the date on which the taxing master orders under rule 9D(4) the person entitled to payment of the costs of any interlocutory proceedings in the Court of First Instance to commence taxation proceedings; or
- (iv) where the person entitled to payment of costs is entitled to tax those costs without an order of the Court of First Instance directing the taxation of them, the date on which he becomes entitled to tax those costs,

whichever is the later; and

(b) in relation to a costs order made by the Court of Appeal-

- (i) the date of the judgment or order of the Court of Appeal which disposes of the appeal;
- (ii) the date on which the Court of Appeal makes the costs order, or if the order is an order nisi, the date on which the order is made absolute or varied (as the case may be);
- (iii) the date on which the taxing master orders under rule 9D(4) the person entitled to payment of the costs of any interlocutory proceedings in the Court of Appeal to commence taxation proceedings; or
- (iv) where the person entitled to payment of costs is entitled to tax those costs without an order of the Court of Appeal directing the taxation of them, the date on which he becomes entitled to tax those costs,

whichever is the later.

(L.N. 152 of 2008)

23. (Repealed L.N. 152 of 2008)

24. Taxation (O. 62, r. 24)

(1) The taxing master may proceed to taxation of a bill of costs under rule 21B(1) notwithstanding that a party entitled to be heard on taxation has failed to comply with any direction given by him relating to the steps to be taken or things to be done before the taxation proceeds under rule 21B, if the taxing master is satisfied that a copy of the notice of commencement of taxation and of the bill of costs were duly served in accordance with rule 21(2) on the party.

(2) If, at the date and time of a hearing under rule 21B(4) or 21C(2), a party entitled to be heard on taxation does not appear before the taxing master in person or by his representative, the

taxing master may proceed to taxation of the bill of costs in the absence of the party or of his representative, if the taxing master is satisfied that the party has been served with a notice of the hearing in accordance with rule 21B(4) or 21C(2), or has been otherwise informed of the hearing.

- (3) If the taxing master is not so satisfied, he-
 - (a) must adjourn the hearing for such period as he may consider necessary to enable service of the notice of the adjourned hearing or of the bill of costs or both to be effected on the party; and
 - (b) may make such order as he may consider appropriate in relation to costs thrown away by the adjournment.

(L.N. 152 of 2008)

25. (Repealed L.N. 152 of 2008)

26. Power to adjourn (O. 62, r. 26)

(1) The taxing master by whom any taxation proceedings are being conducted may, if he thinks it necessary to do so, adjourn those proceedings from time to time. (L.N. 152 of 2008)

(2) If the taxation proceedings are adjourned because a party has failed to comply with any directions given under rule 13A, the taxing master may make such order as he may consider appropriate in relation to costs thrown away by the adjournment. (L.N. 152 of 2008)

27. Powers of taxing master taxing costs payable out of fund (O. 62, r. 27)

(1) Where any costs are to be paid out of a fund the taxing master may give directions as to the parties who are entitled to attend on the taxation of those costs and may disallow the costs of attendance of any party not entitled to attend by virtue of the directions and whose attendance he considers unnecessary.

(2) Where the Court has directed that a bill of costs be taxed for the purpose of being paid out of a fund the taxing master by whom the bill is being taxed may, if he thinks fit, adjourn the taxation for a reasonable period and direct the party whose bill it is to send to any person having an interest in the fund a copy of the bill, or of any part thereof, free of charge together with a letter containing the following information, that is to say- (L.N. 126 of 1995)

- (a) that the bill of costs, a copy of which or of part of which is sent with the letter, has been referred to a taxing master for taxation;
- (b) the name of the taxing master and the address of the office at which the taxation is proceeding;
- (c) the time appointed by the taxing master at which the taxation will be continued; and
- (d) such other information, if any, as the taxing master may direct.

BASES AND SCALES FOR TAXATION AND ASSESSMENT OF COSTS

(L.N. 152 of 2008)

28. Costs payable to one party by another or out of a fund (O. 62, r. 28)

(1) This rule applies to costs which by or under these rules or any order or direction of the Court are to be paid to a party to any proceedings either by another party to those proceedings or out of any fund (other than a fund which the party to whom the costs are to be paid holds as trustee or personal representative).

(2) Subject to the following provisions of this rule, costs to which this rule applies shall be taxed on the party and party basis, and on a taxation on that basis there shall be allowed all such costs as were necessary or proper for the attainment of justice or for enforcing or defending the

rights of the party whose costs are being taxed.

(3) The Court in awarding costs to which this rule applies may in any case in which it thinks fit to do so order or direct that the costs shall be taxed on the common fund basis or on the indemnity basis. (L.N. 125 of 1991)

(4) On a taxation on the common fund basis, being a more generous basis than that provided for by paragraph (2), there shall be allowed a reasonable amount in respect of all costs reasonably incurred, and paragraph (2) shall not apply; and accordingly in all cases where costs are to be taxed on the common fund basis the ordinary rules applicable on a taxation as between solicitor and client where the costs are to be paid out of a common fund in which the client and others are interested shall be applied, whether or not the costs are in fact to be so paid.

(4A) On a taxation on the indemnity basis all costs shall be allowed except insofar as they are of an unreasonable amount or have been unreasonably incurred and any doubts which the taxing master may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party; and in these rules the term "the indemnity basis" (彌償基準) in relation to the taxation of costs shall be construed accordingly. (L.N. 125 of 1991)

(5) The Court in awarding costs to which this rule applies to any person may if it thinks fit and if-

- (a) the costs are to be paid out of a fund, or
- (b) the person to whom the costs are to be paid is or was a party to the proceedings in the capacity of trustee or personal representative,

order or direct that the costs shall be taxed as if that person were a trustee of the fund or as if the costs were to be paid out of a fund held by that person, as the case may be, and where the Court so orders or directs rule 31(2) shall have effect in relation to the taxation in substitution for paragraph (2) of this rule.

(6) The foregoing provisions of this rule shall be without prejudice to the powers of the Court under section 44A of the District Court Ordinance (Cap 336). (L.N. 152 of 2008)

28A. Costs of a litigant in person (O. 62, r. 28A)

(1) On a taxation of the costs of a litigant in person there may, subject to the provisions of this rule, be allowed such costs as would have been allowed if the work and disbursements to which the costs relate had been done or made by a solicitor on the litigant's behalf.

(2) The amount allowed in respect of any item shall be such sum as the taxing master thinks fit not exceeding, except in the case of a disbursement, two-thirds of the sum which in the opinion of the taxing master would have been allowed in respect of that item if the litigant had been represented by a solicitor.

(3) Where in the opinion of the taxing master the litigant has not suffered any pecuniary loss in doing any work to which the costs relate, he shall not be allowed in respect of the time reasonably spent by him on the work more than \$200 an hour.

(4) A litigant who is allowed costs in respect of attending court to conduct his own case shall not be entitled to a witness allowance in addition.

(5) Nothing in Order 6, rule 2(1)(b), or rule 32(4) of this Order or the Second Schedule to this Order shall, unless otherwise specified therein, apply to the costs of a litigant in person. (L.N. 152 of 2008)

(6) For the purposes of this rule a litigant in person does not include a litigant who is a practising solicitor but includes a company or other corporation which is acting without a legal representative. (L.N. 152 of 2008)

(7) This rule applies, with the necessary modifications, to a summary assessment under rules 9(4)(b), 9A(1)(a) and (b) and 11A(4), as it applies to the taxation of the costs of a litigant in person, if the party entitled to the sum is a litigant in person. (L.N. 152 of 2008)

29. Costs payable to a solicitor by his own client (O. 62, r. 29)

(1) On the taxation of a solicitor's bill to his own client (except a bill to be paid out of funds provided by the Legislative Council pursuant to section 27 of the Legal Aid Ordinance (Cap 91), or a bill with respect to non-contentious business) all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred.

(2) For the purposes of paragraph (1), all costs incurred with the express or implied approval of the client shall, subject to paragraph (3), be conclusively presumed to have been reasonably incurred and, where the amount thereof has been expressly or impliedly approved by the client, to have been reasonable in amount.

(3) For the purposes of paragraph (1), any costs which in the circumstances of the case are of an unusual nature and such that they would not be allowed on a taxation of costs in a case to which rule 28(2) applies, shall, unless the solicitor expressly informed his client before they were incurred that they might not be so allowed, be presumed, until the contrary is shown, to have been unreasonably incurred.

(4) In paragraphs (2) and (3), the references to the client shall be construed-

- (a) if the client was at the material time a mentally disordered person within the meaning of the Mental Health Ordinance (Cap 136) and represented by a person acting as guardian ad litem or next friend, as references to that person acting, where necessary, with the authority of the Court;
- (b) if the client was at the material time a minor and represented by a person acting as guardian ad litem or next friend, as references to that person.

30. Costs payable to solicitor where money recovered by or on behalf of infant, etc. (O. 62, r. 30)

(1) This rule applies to-

- (a) any proceedings in which money is claimed or recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person who is a minor or a mentally disordered person within the meaning of the Mental Health Ordinance (Cap 136) or in which money paid into court is accepted by or on behalf of such a person; and
- (b) any proceedings under the Fatal Accidents Ordinance (Cap 22), in which money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, the widow of the person whose death gave rise to the proceedings in satisfaction of a claim under the said Ordinance or in which money paid into court is accepted by her or on her behalf in satisfaction of such a claim, if the proceedings were for the benefit also of a person who, when the money is recovered, or adjudged or ordered or agreed to be paid, or accepted, is a minor; and
- (c) any proceedings in the Court of Appeal on an application or appeal made in connection with any such proceedings to which this rule applies by virtue of the foregoing provisions of this paragraph.

(2) Unless the Court otherwise directs the costs payable to his solicitor by any plaintiff in any proceedings to which this rule applies by virtue of paragraph (1)(a) or (b), being the costs of those proceedings or incident to the claim therein or consequent thereon, shall be taxed under rule 29; and no costs shall be payable to the solicitor of any plaintiff in respect of those proceedings, except such amount of costs as may be certified in accordance with this rule on the taxation under rule 29 of the solicitor's bill to that plaintiff.

(3) On the taxation under rule 29 of a solicitor's bill to any plaintiff in any proceedings to which this rule applies by virtue of paragraph (1)(a) or (b) who is his own client, the taxing master shall also tax any costs payable to that plaintiff in those proceedings and shall certify-

- (a) the amount allowed on the taxation under rule 29, the amount allowed on that taxation of any costs payable to the plaintiff in those proceedings and the amount (if any), by which the first-mentioned amount exceeds the other, and
- (b) where necessary, the proportion of the amount of the excess payable respectively by, or out of money belonging to, any party to the proceedings who is a minor or a

mentally disordered person within the meaning of the Mental Health Ordinance (Cap 136) or the widow of the man whose death gave rise to the proceedings and any other party.

(4) Paragraphs (2) and (3) shall apply in relation to any proceedings to which this rule applies by virtue of paragraph (1)(c) as if for references to a plaintiff there were substituted references to the party, whether appellant or respondent, who was the plaintiff in the proceedings which gave rise to the first-mentioned proceedings.

(5) Nothing in the foregoing provisions of this rule shall prejudice a solicitor's lien for costs.

(6) Where in any proceedings to which this rule applies directions given by the Court under Order 80, rule 12 provide for the transfer or payment of money to or into a District Court and for the payment to the solicitor of any plaintiff in the proceedings of an amount in respect of costs out of the money so transferred or paid, the taxing master by whom those costs are taxed shall send a copy of his certificate to the registrar of the District Court.

(7) The foregoing provisions of this rule shall apply in relation to-

- (a) a counterclaim by or on behalf of a person who is a minor or a mentally disordered person within the meaning of the Mental Health Ordinance (Cap 136) and a counterclaim consisting of or including a claim under the Fatal Accidents Ordinance (Cap 22) by or on behalf of the widow of the man whose death gave rise to the claim; and
- (b) a claim made by or on behalf of a person who is a minor or a mentally disordered person as aforesaid in an action by any other person for relief under section 504 of the Merchant Shipping Act, 1894 (1894 c. 60 U.K.)[#], and a claim consisting of or including a claim under the Fatal Accidents Ordinance (Cap 22) made by or on behalf of that widow in such an action,

as if for references to a plaintiff there were substituted references to a defendant.

31. Costs payable to a trustee out of the trust funds, etc. (O. 62, r. 31)

- (1) This rule applies to every taxation of the costs which a person who is or has been a party to any proceedings in the capacity of trustee or personal representative is entitled to be paid out of any fund which he holds in that capacity.
- (2) On any taxation to which this rule applies, no costs shall be disallowed except in so far as those costs or any part of their amount should not, in accordance with the duty of the trustee or personal representative as such, have been incurred or paid, and should for that reason be borne by him personally.

32. Scales of costs (O. 62, r. 32)

(1) Subject to the foregoing rules and the following provisions of this rule, the scale of costs contained in the First Schedule of this Order, together with the notes and general provisions contained in that Schedule, shall apply to the taxation of all costs incurred in relation to contentious business done after the commencement of these rules.

(2) On a taxation in relation to which rule 29 or rule 31(2) has effect and in other special cases costs may at the discretion of the taxing master be allowed-

- (a) in relation to items not mentioned in the said scale; or
- (b) of an amount higher than that prescribed by the said scale.

(3) Where the amount of a solicitor's remuneration in respect of non-contentious business connected with sales, purchases, leases, mortgages and other matters of conveyancing or in respect of any other non-contentious business is regulated (in the absence of agreement to the contrary) by any rules for the time being in force under the Legal Practitioners Ordinance (Cap 159), the amount of the costs to be allowed on taxation in respect of the like contentious business shall be the same, notwithstanding anything in the scale contained in the First Schedule. (L.N. 152 of 2008)

(4) Notwithstanding paragraph (1), costs shall, unless the Court otherwise orders, be allowed in the cases to which the Second Schedule to this Order applies in accordance with the provisions of that Schedule.

32A. Liability for costs of taxation

(O. 62, r. 32A)

(1) A party entitled to payment of any costs to be taxed is also entitled to his costs of the taxation except where-

- (a) any Ordinance, any of these rules or any relevant practice direction provides otherwise; or
- (b) the Court makes some other order in relation to all or part of the costs of the taxation.

(2) In deciding whether to make some other order, the Court shall have regard to the underlying objectives set out in Order 1A, rule 1 and all the circumstances, including-

- (a) the conduct of all the parties in relation to the taxation;
- (b) the amount, if any, by which the bill of costs has been reduced; and
- (c) whether it was reasonable for a party to claim the costs of a particular item or to dispute that item.

(L.N. 152 of 2008)

32B. Reimbursement for taxing fees

(O. 62, r. 32B)

Upon the issue of a final certificate under rule 17A, the party liable to pay costs shall pay to the party entitled to payment of the costs an amount of money equivalent to the prescribed taxing fee calculated on the basis of the amount of costs allowed.

(L.N. 152 of 2008)

32C. Court's powers in relation to misconduct

(O. 62, r. 32C)

(1) The Court may make an order under this rule where-

- (a) a party or his legal representative, in connection with a summary assessment or taxation of costs, fails to comply with a rule, practice direction or an order of the Court; or
- (b) it appears to the Court that the conduct of a party or his legal representative, before or during the proceedings which gave rise to the summary assessment or taxation, was unreasonable or improper.

(2) For the purpose of paragraph (1), the conduct of a party or his legal representative does not include any conduct before the commencement of the action.

(3) Where paragraph (1) applies, the Court may-

- (a) by order disallow all or part of the costs being summarily assessed or taxed; or
- (b) order the party at fault or his legal representative, to pay costs that he has caused any other party to incur.

(4) Where-

- (a) the Court makes an order under paragraph (3) against a legally represented party; and
- (b) the party is not present when the order is made,

the party's solicitor shall notify his client in writing of the order not later than 7 days after the solicitor receives notice of the order and shall inform the Court in writing that he has done so.

(5) In this rule, "client" (當事人) includes a person on whose behalf the solicitor acts and any other person who has instructed the solicitor to act or who is liable to pay the solicitor's costs.

(L.N. 152 of 2008)

REVIEW

33. Application to taxing master for review (O. 62, r. 33)

(1) Any party to any taxation proceedings who is dissatisfied with the allowance or disallowance in whole or in part of any item by a taxing master, or with the amount allowed by a taxing master in respect of any item- (L.N. 152 of 2008)

- (a) may apply to the taxing master to review his decision in respect of that item; and
- (b) may not apply to a judge for an order to review the decision until after its review by the taxing master. (L.N. 152 of 2008)

(2) An application under this rule for review of a taxing master's decision may be made at any time within 14 days after the conclusion of the taxation in which that decision was made or such shorter period as may be fixed by the taxing master:

Provided that no application under this rule for review of a decision in respect of any item may be made after the signing of the taxing master's final certificate dealing with that item. (L.N. 152 of 2008)

(3A) If an applicant fails to comply with paragraph (3), the taxing master may dismiss the application. (L.N. 152 of 2008)

(3) Every applicant for review under this rule must at the time of making his application deliver to the taxing master objections in writing specifying by a list the items or parts of items the allowance or disallowance of which or the amount allowed in respect of which, is objected to and stating concisely the nature and grounds of the objection in each case, and must deliver a copy of the objections to each other party (if any) who attended on the taxation of those items or to whom the taxing master directs that a copy of the objections shall be delivered.

(4) Any party to whom a copy of the objections is delivered under this rule may, within 14 days after delivery of the copy to him or such shorter period as may be fixed by the taxing master, deliver to the taxing master answers in writing to the objections stating concisely the grounds on which he will oppose the objections, and shall at the same time deliver a copy of the answers to the party applying for review and to each other party (if any) to whom a copy of the objections has been delivered or to whom the taxing master directs that a copy of the answers shall be delivered.

(5) An application under this rule for review of the taxing master's decision in respect of any item shall not prejudice the power of the taxing master under rule 17 to issue an interim certificate in respect of items his decision as to which is not objected to.

34. Review by taxing master (O. 62, r. 34)

(HK)(1) A review under rule 33 shall be carried out by the taxing master to whom the taxation was originally assigned.

(2) On reviewing any decision in respect of any item, a taxing master may receive further evidence and may exercise all the powers which he might exercise on an original taxation in respect of that item, including the power to award costs of and incidental to the proceedings before him; and any costs awarded by him to any party may be taxed by him and may be added to or deducted from any other sum payable to or by that party in respect of costs.

(3) On a hearing of a review under rule 33 a party to whom a copy of objections was delivered under paragraph (4) of that rule shall be entitled to be heard in respect of any item to which the objections relate notwithstanding that he did not deliver written answers to the objections under that paragraph.

(4) A taxing master who has reviewed a decision in respect of any item shall issue his certificate accordingly and, if requested to do so by any party to the proceedings before him, shall state in his certificate or otherwise in writing by reference to the objections to that decision the reasons for his decision on the review, and any special facts or circumstances relevant to it. A request under this paragraph must be made within 14 days after the review or such shorter period as may be fixed by the taxing master.

**35. Review of taxing master's certificate
by a judge (O. 62, r. 35)**

(1) Any party who is dissatisfied with the decision of a taxing master to allow or to disallow any item in whole or in part on review under rule 34, or with the amount allowed in respect of any item by a taxing master on any such review, may apply to a judge for an order to review the taxation as to that item or part of an item if, but only if, one of the parties to the proceedings before the taxing master requested that officer in accordance with rule 34(4) to state the reasons for his decision in respect of that item or part on the review. (L.N. 152 of 2008)

(2) An application under this rule for review of a taxing master's decision in respect of any item may be made at any time within 14 days after the taxing master's certificate in respect of that item is signed, or such longer time as the taxing master at the time when he signs the certificate, or the Court at any time, may allow.

(3) An application under this rule shall be made by summons and shall, except where the judge thinks fit to adjourn into court, be heard in chambers.

(4) Unless the judge otherwise directs, no further evidence shall be received on the hearing of an application under this rule, and no ground of objection shall be raised which was not raised on the review by the taxing master but, save as aforesaid, on the hearing of any such application the judge may exercise all such powers and discretion as are vested in the taxing master in relation to the subject-matter of the application.

(5) If the judge thinks fit to exercise in relation to an application under this rule the power of the Court to appoint assessors under section 53 of the Ordinance, the judge shall appoint not less than 2 assessors, of whom one shall be a taxing master.

(6) On an application under this rule the judge may make such order as the circumstances require, and in particular may order the taxing master's certificate to be amended or, except where the dispute as to the item under review is as to amount only, order the item to be remitted to the same or another taxing master for taxation.

(7) In this rule "Judge" (法官) means a judge in person.

TRANSITIONAL

(L.N. 152 of 2008)

**36. Transitional provision relating
to Part 16 of Amendment
Rules 2008 (O. 62, r. 36)**

Rules 8, 8A, 8B, 8C, 8D and 8E do not apply in relation to any costs incurred before the commencement of the Amendment Rules 2008, and rule 8 as in force immediately before the commencement continues to apply in relation to those costs as if Part 16 had not been made.

(L.N. 152 of 2008)

**37. Transitional provisions relating to
Part 23 of Amendment Rules
2008 (O. 62, r. 37)**

(1) Where a party entitled to require any costs to be taxed has filed his bill of costs before the commencement of the Amendment Rules 2008, nothing in Part 23 of the Amendment Rules 2008 applies in relation to the taxation, and Order 62 as in force immediately before the commencement applies in relation to the taxation as if it had not been amended by that Part.

(2) Where-

- (a) a party entitled to require any costs to be taxed files his bill of costs after the commencement of the Amendment Rules 2008; but
- (b) any item of work to which the costs or charges specified in the First Schedule or Part III of the Second Schedule of this Order relate was undertaken before the

commencement,
then the First Schedule or Part III of the Second Schedule of this Order as in force immediately before the commencement applies in relation to that item of work as if it had not been amended by Part 23 of the Amendment Rules 2008.

(3) Where-

(a) a party entitled to require any costs to be taxed files his bill of costs after the commencement of the Amendment Rules 2008; but

(b) the writ of summons was issued before the commencement,
then Part I and Part II of the Second Schedule of this Order as in force immediately before the commencement applies in relation to the writ of summons issued before the commencement as if they had not been amended by Part 23 of the Amendment Rules 2008.

(4) No costs for work undertaken before the commencement of the Amendment Rules 2008 are to be disallowed if those costs would have been allowed under this Order as in force immediately before the commencement.

(L.N. 152 of 2008)

FIRST SCHEDULE

[rule 32]

PART I

SCALE OF COSTS

| Item | Particulars | Charges |
|------|---|--|
| 1. | Preparation of a bundle of copies of documents, including the costs of copying and collating the documents and compiling (including indexing and pagination) the bundle, per page of whatever size | \$4 per page in respect of the first bundle, and \$1 per page in respect of each subsequent bundle |
| 1A. | Copying of documents, per page of whatever size | \$1 (L.N. 152 of 2008) |
| 2. | Attendance suitable for unqualified staff, such as for filing of documents, delivery or collection of pages and to make appointments, whether such attendance are made by qualified or unqualified persons, for each attendance | \$110 |
| 3. | Attendance for necessary search and inquires-such fee as the Registrar thinks proper but not less than \$50 for each attendance. | |
| 4. | Service of any documents-such fee as the Registrar thinks proper but not less than \$50 in each case. | |
| 5. | The Registrar may allow such fee as he thinks proper in respect of every other matter or thing not hereinbefore specially mentioned. Note to item 5: This item is intended to cover- | |
| | (a) the doing of any work not otherwise provided for and which was properly done in preparing for a trial, hearing or appeal, or before a settlement of the matters in dispute, including- | |
| | (i) The client: taking instructions to sue, defend, counter-claim, appeal or oppose etc.; attending upon and corresponding with client; | |

- (ii) Witnesses: interviewing and corresponding with witnesses and potential witnesses, taking and preparing proofs of evidence and, where appropriate, arranging attendance at Court, including issue of subpoena;
 - (iii) Expert evidence: obtaining and considering reports or advice from experts and plans, photographs and models; where appropriate arranging their attendance at Court, including issue of subpoena;
 - (iv) Inspections: inspecting any property or place material to the proceedings;
 - (v) Searches and Inquiries: making searches in Government Registries and elsewhere for relevant documents;
 - (vi) Special damages: obtaining details of special damages and making or obtaining any relevant calculations;
 - (vii) Other parties: attending upon and corresponding with other parties or their solicitors;
 - (viii) Discovery: perusing, considering or collating documents for affidavit or list of documents; attending to inspect or produce for inspection any documents required to be produced or inspected by order of the Court or by virtue of Order 24;
 - (ix) Documents: drafting, perusing, considering and collating any relevant documents (including pleadings, affidavits, cases and instructions to and advice from counsel, orders and judgments) and any law involved;
 - (x) Negotiations: work done in connection with negotiations with a view to settlement;
 - (xi) Attendances: attendances at Court (whether in Court or chambers) for the hearing of any summons or other application, on examination of any witness, on the trial or hearing of a cause or matter, on any appeal and on delivery of any judgment; attendances on counsel in conference, and any other necessary attendances;
 - (xii) Interest: where relevant the calculation of interest on damages; and
 - (xiii) Notices: preparation and service of miscellaneous notices, including notices to witnesses to attend court; and
- (b) the general care and conduct of the proceedings.

(L.N. 152 of 2008)

PART II

GENERAL

Discretionary costs

1. (1) (Repealed L.N. 152 of 2008)
- (2) In exercising his discretion under this paragraph or under rule 32(2) in relation to any item, the taxing master shall have regard to all relevant circumstances, and in particular to-
 - (a) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;
 - (b) the skill, specialized knowledge and responsibility required of, and the time and labour expended by, the solicitor or counsel;
 - (c) the number and importance of the documents (however brief) prepared or perused;

- (d) the place and circumstances in which the business involved is transacted;
- (e) the importance of the cause or matter to the client;
- (f) where money or property is involved, its amount or value;
- (g) any other fees and allowances payable to the solicitor or counsel in respect of other items in the same cause or matter, but only where work done in relation to those items has reduced the work which would otherwise have been necessary in relation to the item in question.

Fees to counsel

2. (1) Except in the case of taxation under the Legal Aid Ordinance (Cap 91) and taxations of fees payable by the Crown, no fee to counsel shall be allowed unless-

- (a) before taxation its amount has been agreed by the solicitor instructing counsel; and
- (b) before the taxing master issues his certificate a receipt for the fees signed by counsel is produced to him.

(2) No retaining fee to counsel shall be allowed on any taxation of costs in relation to which rule 28(2) has effect.

(3) No costs shall be allowed in respect of counsel appearing before a master in chambers, or of more counsel than one appearing before a master in open court or a judge or the Court of Appeal, unless the master or judge or the Court of Appeal, as the case may be, has certified the attendance as being proper in the circumstances of the case. (L.N. 152 of 2008)

(4) A refresher fee, the amount of which shall be in the discretion of the taxing master, shall be allowed to counsel, either for each period of five hours (or part thereof), after the first, during which a trial or hearing is proceeding or, at the discretion of the taxing master, in respect of any day, after the first day, on which the attendance of counsel at the place of trial is necessary.

(5) The amount of fees to be allowed to counsel is in the discretion of the taxing master who shall, in exercising his discretion, have regard to all relevant circumstances and in particular to the matters set out in paragraph 1(2). (L.N. 152 of 2008)

Items to be authorized, certified etc.

4. (1) In an action arising out of an accident on land due to a collision or apprehended collision, the costs of preparing a plan (other than a sketch plan) of the place where the accident happened shall not be allowed unless-

- (a) before the trial the Court authorized the preparation of the plan, or
- (b) notwithstanding the absence of an authorization under sub-paragraph (a) the taxing officer is satisfied that it was reasonable to prepare the plan for use at the trial.

(2) The costs of calling an expert witness with regard to any question as to which a court expert is appointed under Order 40 (or a scientific adviser is appointed under Order 103 rule 27) shall not be allowed on a taxation of costs in relation to which rule 28(2) or (3) has effect unless the Court at the trial has certified that the calling of the witness was reasonable.

(3) If any action or claim for a declaration under section 8(1) of the Registration of Patents Ordinance (Cap 42) proceeds to trial, no costs shall be allowed to the parties delivering any particulars of breaches or particulars of objection in respect of any issues raised in those particulars and relating to that patent except in so far as those issues or particulars have been certified by the Court to have been proven or to have been reasonable and proper.

Attendances in Chambers-equity jurisdiction

5. (1) The following provisions of this paragraph apply in relation to every hearing in chambers in the equity jurisdiction of the Court.

(3) Where on any such hearing as aforesaid the Court certifies that the speedy and satisfactory disposal of the proceedings required and received from the solicitor engaged in them exceptional skill and labour in the preparation for the hearing, the taxing master in taxing the costs to be allowed for instructions in relation to the summons or application shall take the certificate

into account.

Copies of documents

7. (1) There shall be allowed for printing copies of any document the amount properly paid to the printer; and where any part of a document is properly printed in a foreign language or as a facsimile or in any unusual or special manner, or where any alteration becomes necessary after the first proof of the document, there shall be allowed such an amount as the taxing master thinks reasonable, such amount to include any attendances on the printer.

(2) The solicitor for a party entitled to take printed copies of any documents shall be allowed the amount he pays for such number of copies as he necessarily or properly takes.

(3) The allowance for printed copies of documents under item 1 of Part I of this Schedule shall be made in addition to the allowances under the foregoing provisions of this paragraph and shall, subject to sub-paragraph (4), be made for such printed copies as may be necessary or proper-

- (a) of any pleading, for service on the opposite party;
- (b) of any special case, for filing;
- (c) of any pleading or special case, for the use of the Court;
- (d) of any affidavit, for attestation in print;
- (e) of any pleading, special case or evidence for the use of counsel in court; or
- (f) of any other document necessarily and properly copied and not otherwise provided for.

(4) The allowance under item 1 of Part I shall not be made in relation to printed copies of documents for the use of the Court or of counsel where written copies have been made before printing, and shall not be made more than once in the same cause or matter.

SECOND SCHEDULE

[rule 32]

PART I

COSTS ON JUDGMENT WITHOUT TRIAL FOR A LIQUIDATED SUM OR UNDER ORDER 13A

(L.N. 152 of 2008)

1. The scale of costs set out in Part II of this Schedule (which includes the scale prescribed pursuant to section 72 of the District Court Ordinance (Cap 336) shall apply in relation to the following cases if the writ of summons therein was issued after the commencement of the Amendment Rules 2008, and was indorsed with a claim for a debt or liquidated demand only, that is to say- (L.N. 152 of 2008)

- (a) cases in which the defendant pays the amount claimed within the time and in the manner required by the indorsement of the writ;
- (b) cases in which the plaintiff obtains judgment on failure to give notice of intention to defend under Order 13, rule 1, or judgment in default of defence under Order 19, rule 2. (L.N. 152 of 2008)
- (c) (Repealed L.N. 152 of 2008)

1A. The scale of costs set out in Part II of this Schedule applies in relation to cases in which the plaintiff obtains judgment under Order 13A without a hearing. (L.N. 152 of 2008)

2. Notwithstanding anything in paragraph 1 or 1A of this Schedule or in the said scale, no costs shall be allowed in any case to which the said paragraph 1 or 1A applies unless- (L.N. 152 of 2008)

- (a) the Court orders costs to be allowed; or
- (b) in a case to which sub-paragraph (b) of paragraph 1 applies, judgment or an order for judgment, as the case may be, is obtained within 28 days after the service of the

writ or within such further time as the Court may allow.

3. In every case to which the said scale applies there shall be added to the basic costs set out in the said scale the fee which would have been payable on the issue of a writ for the amount recovered.

(L.N. 152 of 2008)

PART II

SCALE OF COSTS

| | Item | Scale \$ |
|----------------------------------|--|---|
| Basic Costs | | |
| To be allowed in cases under- | | |
| sub-paragraph (a) of paragraph 1 | | 9000 if the plaintiff is legally represented and 500 if the plaintiff is not legally represented |
| sub-paragraph (b) of paragraph 1 | | 10000 if the plaintiff is legally represented and 600 if the plaintiff is not legally represented |
| paragraph 1A | | 10000 if the plaintiff is legally represented and 600 if the plaintiff is not legally represented |
| Additional Costs | | |
| 1. | For each additional defendant after the first | 500 |
| 2. | Where substituted service is ordered and effected, for each defendant served | 1000 |
| 3-7. | (Repealed L.N. 152 of 2008) | |

(L.N. 152 of 2008)

PART III

MISCELLANEOUS

| | Item | Scale \$ |
|----|--|-------------|
| 1. | Where a plaintiff or defendant signs judgment for costs under rule 10, there shall be allowed- (L.N. 152 of 2008) cost of the judgment | 1000 |
| 2. | Where upon the application of any person who has obtained a judgment or order against a debtor for the recovery or payment of money a garnishee order is made under Order 49 against a garnishee attaching debts owing or accruing from him to the debtor, the following costs shall be allowed- (a) to the garnishee, to be deducted by him from any debt owing by him as aforesaid before payments to | |

| | | |
|----|--|--------------------------------------|
| | the applicant- | 100 |
| | (i) if no affidavit used | 300 |
| | (ii) if affidavit used | |
| 3. | (b) (Repealed L.N. 152 of 2008) | |
| 4. | Where a writ of execution within the meaning of Order 46, rule 1 is issued against any party, there shall be allowed- cost of issuing execution | 600 |
| | | (L.N. 152 of 2008) (Enacted 1988) |

Note:

Please also see following-

- (a) in relation to the Merchant Shipping Act 1894, Part 3 of Schedule 5 to Cap 415 and s. 1 of Schedule 2 to Cap 508;
- (b) in relation to the Merchant Shipping Acts 1894 to 1979, s. 117 of Cap 281, s. 103 of Cap 415 and s. 142 of Cap 478.

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|----------|----|-----------------------------|-----------------------------------|--------------|
| Chapter: | 4A | THE RULES OF THE HIGH COURT | Gazette Number | Version Date |
| Order: | 73 | ARBITRATION PROCEEDINGS | L.N. 152 of 2008; L.N. 18 of 2009 | 02/04/2009 |

2. Matters for a judge in court (O. 73, r. 2)

(1) Subject to section 2D of the Arbitration Ordinance (Cap 341), every application or request to the Court-

- (a) to remit an award under section 24 of that Ordinance, or
- (b) to remove an arbitrator or umpire under section 25(1) of that Ordinance, or
- (c) to set aside an award under section 25(2) of that Ordinance, or
- (HK)(d) for leave to appeal under section 23(2) of that Ordinance, or
- (e) to determine, under section 23A(1) of that Ordinance, any question of law arising in the course of a reference, or
- (HK)(f) to make an order under section 2GE of that Ordinance, or
- (HK)(g) to decide, under article 13(3) of the Fifth Schedule to that Ordinance, on a challenge to an arbitrator, or (L.N. 363 of 1990)
- (HK)(h) to decide, under article 14(1) of the Fifth Schedule to that Ordinance, on the termination of an arbitrator's mandate, or (L.N. 363 of 1990)
- (HK)(i) to set aside an arbitral award under article 34 of the Fifth Schedule to that Ordinance, (L.N. 363 of 1990)

may be made by originating summons in Form No. 10 in Appendix A to a single judge in court. (L.N. 363 of 1990)

(2) Any appeal to the Court of First Instance under section 23(2) of the Arbitration Ordinance (Cap 341) may be made by originating summons in Form No. 10 in Appendix A to a single judge in court which may be included in the originating summons for leave to appeal, where leave is required. (25 of 1998 s. 2)

(3) An application for a declaration that an award made by an arbitrator or umpire is not

binding on a party to the award on the ground that it was made without jurisdiction may be made by originating summons in Form No. 10 in Appendix A to a single judge in court.

(L.N. 152 of 2008)

3. Matters for judge in chambers or master (O. 73, r. 3)

(1) Subject to the foregoing provisions of this Order and the provisions of this rule, the jurisdiction of the Court of First Instance or a judge thereof under the Arbitration Ordinance (Cap 341), may be exercised by a judge in chambers or a master. (25 of 1998 s. 2)

(2) Any application under section 23(5) or (7) of the Arbitration Ordinance (Cap 341) (including any application for leave) must be made to a judge in chambers. (L.N. 152 of 2008)

(3) Any application to which this rule applies may, where an action is pending, be made by summons in the action, and in any other case may be made by an originating summons in Form No. 10 in Appendix A. (L.N. 152 of 2008)

(4) Where an application is made under section 23(5) of the Arbitration Ordinance (Cap 341) (including any application for leave) the summons must be served on the arbitrator or umpire and on any other party to the reference.

4. Application for interim injunction under section 2GC(1) of Arbitration Ordinance (O. 73, r. 4)

(1) An application for an interim injunction or any other interim measure under section 2GC(1) of the Arbitration Ordinance (Cap 341) in relation to an arbitration proceeding (whether in Hong Kong or in a place outside Hong Kong) must be made by originating summons in Form No. 10 in Appendix A.

(2) Where the application is in relation to an arbitration proceeding outside Hong Kong, rules 1, 2, 3, 4, 7(1), 7A and 8 of Order 29 apply with any necessary modifications to the application as they apply to an application for interlocutory relief in an action or proceeding in the High Court.

(3) Upon hearing of the originating summons, the Court may direct that all or any part of the hearing be conducted in open court.

(L.N. 152 of 2008)

5. Time limits and other special provisions as to appeals and applications under the Arbitration Ordinance (O. 73, r. 5)

(1) An application to the Court-

- (a) to remit an award under section 24 of the Arbitration Ordinance (Cap 341), or
- (b) to set aside an award under section 25(2) of that Ordinance or otherwise, or
- (c) to direct an arbitrator or umpire to state the reasons for an award under section 23(5) of that Ordinance,

must be made, and the summons must be served, within 30 days after the award has been made and published to the parties.

(2) In the case of an appeal to the Court under section 23(2) of the Arbitration Ordinance (Cap 341), the summons must be served, and the appeal entered, within 30 days after the award has been made and published to the parties:

Provided that, where reasons material to the appeal are given on a date subsequent to the publication of the award, the period of 30 days shall run from the date on which the reasons are given.

(3) An application, under section 23A(1) of the Arbitration Ordinance (Cap 341), to determine any question of law arising in the course of a reference, must be made within 30 days after the arbitrator or umpire has consented to the application being made, or the other parties have so consented.

(4) For the purpose of paragraph (3) the consent must be given in writing.

(5) In the case of every appeal or application to which this rule applies, the summons must state the grounds of appeal or application and, where the appeal or application is founded on evidence by affidavit, or is made with the consent of the arbitrator or umpire or of the other parties, a copy of every affidavit intended to be used, or as the case may be, of every consent given in writing, must be served with that summons.

(L.N. 152 of 2008)

**6. Applications and appeals to be heard
in a particular list (O. 73, r. 6)**

(1) Any matter which is required, by rule 2 or 3, to be heard by a judge, shall be entered in a particular list unless the Judge in charge of such list otherwise directs.

(2) Nothing in the foregoing paragraph shall be construed as preventing the powers of the Judge in charge of a particular list from being exercised by any judge of the Court of First Instance. (25 of 1998 s. 2)

**6A. Originating summons to be heard
in chambers (O. 73, r. 6A)**

An originating summons referred to in rules 2, 3 and 5 may be heard in chambers if the judge, whether of his own motion or at the request of one or more of the parties, so decides.

(L.N. 152 of 2008)

**7. Service out of the jurisdiction of summons
and order (O. 73, r. 7)**

(L.N. 152 of 2008)

(HK)(1) Subject to paragraphs (1A) and (1B), service out of the jurisdiction of- (L.N. 152 of 2008)

- (a) any originating summons under the Arbitration Ordinance (Cap 341), or
- (b) any order made on such a summons,

is permissible with leave of the Court provided that the arbitration to which the summons or order relates is granted by Hong Kong law or has been, is being, or is to be held within the jurisdiction. (L.N. 152 of 2008)

(1A) Service out of the jurisdiction of an originating summons for leave to enforce an award is permissible with the leave of the Court whether or not the arbitration is governed by Hong Kong law.

(1B) Service out of the jurisdiction of an originating summons by which an application for an interim injunction or any other interim measure under section 2GC(1) of the Arbitration Ordinance (Cap 341) is made is permissible with the leave of the Court. (L.N. 152 of 2008)

(2) An application for the grant of leave under this rule must be supported by an affidavit stating the grounds on which the application is made and showing in what place or country the person to be served is, or probably may be found; and no such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this rule.

(3) Order 11, rules 5, 6 and 8, shall apply in relation to any such summons or order as is referred to in paragraph (1) or (1B) as they apply in relation to a writ. (L.N. 152 of 2008)

**8. Registration in High Court of
foreign awards (O. 73, r. 8)**

Where an award is made in proceedings on an arbitration in any territory to which sections 3 to 9 of the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap 319) extend, being a part to which the said Ordinance has been applied, then, if the award has, in pursuance of the law in

force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place, Order 71 shall apply in relation to the award as it applies in relation to a judgment given by that court, subject, however, to the following modifications-

- (a) for references to the country of the original court there shall be substituted references to the place where the award was made; and
- (b) the affidavit required by rule 3 of the said Order must state (in addition to the other matters required by that rule) that to the best of the information or belief of the deponent the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place.

**9. Registration of awards under Arbitration
(International Investment Disputes)
Act 1966 (O. 73, r. 9)**

(1) In this rule and in any provision of these rules as applied by this rule-
"the Act of 1966" (1966年法令) means the Arbitration (International Investment Disputes) Act 1966 (1966 c. 41 U.K.);

"award" (裁決) means an award rendered pursuant to the Convention;

"judgment creditor" (判定債權人) and "judgment debtor" (判定債務人) mean respectively the person seeking recognition or enforcement of an award and the other party to the award.

(2) Subject to the provisions of this rule, the following provisions of Order 71, namely rules 3(1) (except subparagraphs (c)(iv) and (d) thereof), 7 (except paragraph (3)(c) and (d) thereof) and 10(3) shall apply with the necessary modifications in relation to an award as they apply in relation to a judgment to which the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap 319) applies.

(3) An application to have an award registered in the Court of First Instance under section 1 of the Act of 1966 may be made by originating summons which shall be in Form 10 in Appendix A. (25 of 1998 s. 2; L.N. 152 of 2008)

(4) The affidavit required by Order 71, rule 3, in support of an application for registration shall-

- (a) in lieu of exhibiting the judgment or a copy thereof, exhibit a copy of the award certified pursuant to the Convention; and
- (b) in addition to stating the matters mentioned in paragraph (1)(c)(i) and (ii) of the said rule 3, state whether at the date of the application the enforcement of the award has been stayed (provisionally or otherwise) pursuant to the Convention and whether any, and if so what, application has been made pursuant to the Convention, which, if granted, might result in a stay of the award.

(5) There shall be kept in the Registry under the direction of the Registrar a register of the awards ordered to be registered under the Act of 1966 and particulars shall be entered in the register of any execution issued on such an award.

(6) Where it appears to the Court on granting leave to register an award or on an application made by the judgment debtor after an award has been registered-

- (a) that the enforcement of the award has been stayed (whether provisionally or otherwise) pursuant to the Convention; or
- (b) that an application has been made pursuant to the Convention, which, if granted, might result in a stay of the enforcement of the award,

the Court shall, or, in the case referred to in subparagraph (b) may, stay execution of the award for such time as it considers appropriate in the circumstances.

(7) An application by the judgment debtor under paragraph (6) shall be made by summons and supported by affidavit.

(L.N. 363 of 1990)

10. Enforcement of settlement agreement under section 2C

**of the Arbitration Ordinance or of award under
section 2GG of that Ordinance (O. 73, r. 10)**

- (1) An application for leave-
- (HK)(a) under section 2C of the Arbitration Ordinance (Cap 341) to enforce a settlement agreement, or (L.N. 363 of 1990)
- (b) under section 2GG of that Ordinance to enforce an award on an arbitration agreement, (L.N. 363 of 1990; 2 of 2000 s. 15)
- in the same manner as a judgment or order may be made ex parte but the Court hearing the application may direct a summons to be issued.
- (2) If the Court directs a summons to be issued, the summons may be an originating summons which shall be in Form No. 10 in Appendix A. (L.N. 152 of 2008)
- (3) An application for leave must be supported by affidavit-
- (a) exhibiting-
- (HK)(i) where the application is under section 2C of the Arbitration Ordinance (Cap 341), the arbitration agreement and the original settlement agreement or, in either case, a copy thereof; (L.N. 363 of 1990)
- (ii) where the application is under section 2GG of the Arbitration Ordinance (Cap 341), the arbitration agreement and the original award or, in either case, a copy thereof; (L.N. 363 of 1990; 2 of 2000 s. 15)
- (iii) where the application is under section 40B(1) or 42(1) of the Arbitration Ordinance (Cap 341), the documents required to be produced by section 40D or 43, as the case may be, of that Ordinance, (2 of 2000 s. 15)
- (b) stating the name and the usual or last known place of abode or business of the applicant (hereinafter referred to as "the creditor") and the person against whom it is sought to enforce the settlement agreement or award (hereinafter referred to as "the debtor") respectively,
- (c) as the case may require, either that the settlement agreement or award has not been complied with or the extent to which it has not been complied with at the date of the application.
- (4) An order giving leave must be drawn up by or on behalf of the creditor and must be served on the debtor by delivering a copy to him personally or by sending a copy to him at his usual or last known place of abode or business or in such other manner as the Court may direct.
- (5) Service of the order out of the jurisdiction is permissible without leave, and Order 11, rules 5, 6 and 8, shall apply in relation to such an order as they apply in relation to a writ.
- (6) Within 14 days after service of the order or, if the order is to be served out of the jurisdiction, within such other period as the Court may fix, the debtor may apply to set aside the order and the settlement agreement or award shall not be enforced until after the expiration of that period or, if the debtor applies within that period to set aside the order, until after the application is finally disposed of.
- (HK)(6A) An application under paragraph (6) to set aside the order must be made by summons supported by affidavit, and such affidavit must be filed at the same time as the summons. (L.N. 127 of 1995)
- (7) The copy of the order served on the debtor shall state the effect of paragraph (6).
- (8) In relation to a body corporate this rule shall have effect as if for any reference to the place of abode or business of the creditor or the debtor there were substituted a reference to the registered or principal address of the body corporate; so, however, that nothing in this rule shall affect any enactment which provides for the manner in which a document may be served on a body corporate.

**(HK) 10A. Other provisions as to applications
to set aside an order made under
rule 10 (O. 73, r. 10A)**

(HK) Where a debtor has applied to set aside an order made under rule 10, the Court may, either of

its own motion or on an application made by the creditor, and if, having regard to all the circumstances of the case it thinks it just to do so, impose such terms, as to giving security or otherwise, as a condition of the further conduct of the application, as it thinks fit.

(L.N. 167 of 1994)

11. Payments into court (O. 73, r. 11)

(HK)(1) In any arbitration proceedings any party to the reference may at any time pay into court a sum of money in satisfaction of any claim against him under the reference.

(2) On making payment into court under this rule, and on increasing any such payment already made the party making payment must give notice thereof in Form No. 100 in Appendix A to all other parties to the reference; and within 3 days after receiving the notice the recipient parties must send the party making payment a written acknowledgment of its receipt.

(3) A party who has made payment into court under this rule may, without leave, give notice of an increase in such a payment but, subject to that and without prejudice to paragraph (5), a notice of payment may not be withdrawn or amended without leave of the Court which may be granted on such terms as may be just.

(4) Where there are two or more matters in dispute in the arbitration proceedings and money is paid into court under this rule in respect of all, or some only of, those matters, the notice of payment-

- (a) must state that the money is paid in respect of all those matters in dispute or, as the case may be, must specify the matters in respect of which payment is made, and
- (b) where the party makes separate payments in respect of each, or any two of those matters in dispute, must specify the sum paid in respect of that matter or, as the case may be, those matters.

(5) Where a single sum of money is paid into court under this rule in respect of two or more matters in dispute, then, if it appears to the Court that any party to the arbitration proceedings is embarrassed by the payment, the Court may order the party making payment to amend the notice of payment so as to specify the sum paid in respect of each matter in dispute.

(6) For the purposes of this rule, a claim under a reference to arbitration shall be construed as a claim in respect, also, of such interest as might be included in the award if the award were made at the date of the payment into court.

12. Payment in by party who has counterclaimed (O. 73, r. 12)

(HK) Where a party, who makes by counterclaim in the arbitration proceedings a claim against any other party to the arbitration proceedings, pays a sum or sums of money into court under rule 11, the notice of payment must state if it be the case, that in making the payment he has taken into account and intends to satisfy the matter in dispute, or matters in dispute, as the case may be, under his counterclaim.

13. Acceptance of money paid into court (O. 73, r. 13)

(HK)(1) Where money is paid into court under rule 11, then, subject to paragraph (2), within 14 days after the receipt of the notice of payment or, where more than one payment has been made or the notice has been amended, within 14 days after receipt of the notice of the last payment or the amended notice but, in any case, before the hearing of the arbitration proceedings begins, a party to the arbitration proceedings may-

- (a) where the money was paid in respect of the matter in dispute or all the matters in dispute in respect of which he claims, accept the money in satisfaction of that matter in dispute or those matters in dispute, as the case may be, or
- (b) where the money was paid in respect of some only of the matters in dispute in respect of which he claims, accept in satisfaction of any such matter in dispute the sum specified in respect of that matter in dispute in the notice of payment,

by giving notice in Form No. 101 in Appendix A to all other parties to the arbitration proceedings.

(2) Where after the hearing of the arbitration proceedings has begun-

(a) money is paid into court under rule 11, or

(b) money in court is increased by a further payment into court under that rule,

any party may accept the money in accordance with paragraph (1) within 2 days after receipt of the notice of payment or notice of the further payment, as the case may be, but, in any case, before the arbitrator publishes his award.

(3) Rule 11(5) shall not apply in relation to money paid into court after the hearing of the arbitration proceedings has begun.

(4) On a party accepting any money paid into court all further proceedings in the arbitration proceedings or in respect of the specified matter in dispute or matters in dispute, as the case may be, to which the acceptance relates shall be stayed.

(5) Where money is paid into court by a party who made a counterclaim in the arbitration proceedings and the notice of payment stated, in relation to any sum so paid, that in making the payment the party had taken into account and satisfied the matter in dispute, or matters in dispute, as the case may be, in respect of which he claimed, then, on the claimant party accepting that sum, all further proceedings on the counterclaim or in respect of the specified matter or matters in dispute, as the case may be, shall be stayed.

(6) A party to arbitration proceedings who has accepted any sum paid into court shall, subject to rule 14, be entitled to receive payment of that sum in satisfaction of the matter or matters in dispute to which the arbitration proceedings relate.

14. Order for payment out of money accepted required (O. 73, r. 14)

(HK)(1) Where a party to arbitration proceedings accepts any sum paid into court and that sum was paid into court by some but not all of the other parties to the arbitration proceedings the money in court shall not be paid out except under paragraph (2) or in pursuance of an order of the Court, and the order shall deal with the whole costs of the arbitration proceedings or the matter in dispute to which the payment relates, as the case may be.

(2) Where an order of the Court is required under paragraph (1), then if, either before or after accepting the money paid into court by some only of the other parties the party discontinues the arbitration proceedings against all the other parties and those parties consent in writing to the payment out of that sum, it may be paid out without an order of the Court.

(3) Where after the hearing of the arbitration proceedings has begun a claimant party accepts any money paid into court and all further proceedings in the arbitration proceedings or in respect of the matter in dispute or matters in dispute, as the case may be, to which the acceptance relates are stayed by virtue of rule 13(4), then, notwithstanding anything in paragraph (2), the money shall not be paid out except in pursuance of an order of the Court, and the order shall deal with the whole costs of the arbitration proceedings or with the costs relating to the matter in dispute or matters in dispute as the case may be, to which the arbitration proceedings relate.

15. Money remaining in court (O. 73, r. 15)

(HK) If any money paid into court in connection with arbitration proceedings is not accepted in accordance with rule 13, the money remaining in court shall not be paid out except in pursuance of an order of the Court which may be made at any time before during or after the hearing of the arbitration proceedings; and where such an order is made before the hearing the money shall not be paid out except in satisfaction of the matter or matters in dispute in respect of which it was paid in.

16. Counterclaim (O. 73, r. 16)

(HK) A party to arbitration proceedings against whom a counterclaim is made may pay money into court in accordance with rule 11, and that rule and rules 13 (except paragraph (5)), 14 and 15 shall

apply accordingly with the necessary modifications.

17. Non-disclosure of payment into court; amendment of arbitrator's award (O. 73, r. 17)

(HK) Except in arbitration proceedings in which all further proceedings are stayed after the hearing has begun by virtue of rule 13(4), the fact that money has been paid into court under the foregoing provisions of this Order shall not be communicated to the arbitrator until he has published his award, whereupon the arbitrator may amend his award by adding thereto such directions as he may think proper with respect to the payment of the costs of the reference.

18. Investment of money in court (O. 73, r. 18)

(HK) Cash under the control of or subject to the order of the Court may be invested in any manner specified in the High Court Suitors' Funds Rules (Cap 4 sub. leg.) and the Trustee Ordinance (Cap 29).

(25 of 1998 s. 2)
(Enacted 1988)

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| Chapter: | 55 | LABOUR RELATIONS ORDINANCE | Gazette Number | Version Date |
|----------|----|-------------------------------|-------------------|-----------------|

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|----------|----|------------------------------------|--|------------|
| Section: | 21 | Arbitration Ordinance not to apply | | 30/06/1997 |
|----------|----|------------------------------------|--|------------|

The Arbitration Ordinance (Cap. 341) shall not apply to any arbitration, or to any award made by an arbitration tribunal, under this Ordinance.

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|----------|----|---|-------------------|-----------------|
| Chapter: | 71 | CONTROL OF EXEMPTION CLAUSES ORDINANCE | Gazette Number | Version Date |
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| Section: | 15 | Arbitration agreements | | 30/06/1997 |
|----------|----|------------------------|--|------------|

(1) As against a person dealing as consumer, an agreement to submit future differences to arbitration cannot be enforced except-

- (a) with his written consent signified after the differences in question have arisen; or
- (b) where he has himself had recourse to arbitration in pursuance of the agreement in respect of any differences.

(2) Subsection (1) does not affect-

- (a) the enforcement of an international arbitration agreement within the meaning of section 2(1) of the Arbitration Ordinance (Cap 341); (Replaced 76 of 1990 s. 2)
- (b) the resolution of differences arising under any contract so far as it is, by virtue of Schedule 1, excluded from the operation of section 7, 8, 9 or 12.

(Enacted 1989)

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| Chapter: | 104 | FERRY SERVICES ORDINANCE | Gazette Number | Version Date |
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|----------|----|-------------|--|------------|
| Section: | 27 | Arbitration | | 30/06/1997 |
|----------|----|-------------|--|------------|

(1) If the Government and an owner are unable to agree as to the amount of compensation payable under this Part, either party may refer the matter to arbitration under the Arbitration Ordinance (Cap 341).

(2) In determining the amount of compensation payable an arbitrator shall have regard to any matter he considers relevant, subject to this Ordinance and to the value of any asset taken over in the operation of a ferry service.

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| Chapter: | 106 | TELECOMMUNICATIONS ORDINANCE | Gazette Number | Version Date |
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|----------|----|---|------------|------------|
| Section: | 14 | Power to place and maintain telecommunications lines, etc., on land, etc. | 36 of 2000 | 16/06/2000 |
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PART IV

USE OF LAND FOR TELECOMMUNICATIONS LINES, ETC.

(1) The Authority, and any licensee authorized by the Authority either generally or for any particular occasion, may place and maintain a telecommunications line, and such posts as may be necessary, in, over or upon any land or seabed and may enter upon the land or seabed for the purpose of site inspection, or other activities for or incidental to placement and maintenance of a telecommunications line, subject- (Amended 36 of 2000 ss. 8 & 28)

- (a) in the case of unleased Government land or seabed, to the consent in writing of the Director of Lands or an officer of the Lands Department appointed by him for the purposes of this section; and (Amended L.N. 291 of 1993; 29 of 1998 s. 105; 36 of 2000 s. 8)
- (b) in the case of land vested in or occupied by Her Majesty's naval, military or airforce services, to the consent in writing of the Commander, British Forces, or such officer as he appoints to be his representative for the purposes of this section.

(1A) Notwithstanding any other law, but subject to subsections (1B) and (2), any licensee authorized by the Authority for any particular occasion may-

- (a) place and maintain a radiocommunications installation in, over or upon any land for the purpose of providing a radiocommunications service to a public place;
- (b) enter any such land for the purpose of-
 - (i) inspecting it; or
 - (ii) other activities which are for the purpose of or incidental to the maintenance and placement of the installation. (Added 36 of 2000 s. 8)

(1B) The Authority shall not grant an authorization referred to in subsection (1A)-

- (a) unless he is satisfied that the authorization is in the public interest;
- (b) except after taking into account-
 - (i) whether an alternative location can be reasonably utilized for placing the radiocommunications installation to which the authorization, if granted, will relate;
 - (ii) whether or not there are technical alternatives to the installation;

- (iii) whether or not the utilization of the land to which the authorization, if granted, will relate is critical for the supply of the service by the licensee seeking the authorization;
 - (iv) whether or not that land has available capacity to be so utilized having regard to the current and reasonable future needs of the occupants of that land; and
 - (v) the costs, time, penalties and inconvenience to the licensee and the public of the alternatives, if any, referred to in subparagraph (ii);
 - (c) unless he has given a reasonable opportunity to the persons having a lawful interest in the land concerned and to the licensees concerned to make representations and has considered all representations made before he decides whether or not to grant the authorization; and
 - (d) unless he-
 - (i) gives reasons in writing for the grant of the authorization; and
 - (ii) specifies in writing the technical requirements, if any, of the right of access arising from the authorization. (Added 36 of 2000 s. 8)
- (1C) Paragraph (a) of subsection (1) shall apply to land referred to in subsection (1A) as it applies to land referred to in subsection (1). (Added 36 of 2000 s. 8)
- (1D) Where subsection (1A) is applicable-
- (a) the Authority shall, upon application made to him by the licensee or the person having a lawful interest in the land concerned, specify in writing an interim fee (including the terms and conditions in accordance with which it shall be payable) to be paid by the licensee to the person; and
 - (b) the licensee shall not exercise any rights conferred by the authorization referred to in that subsection on the licensee-
 - (i) until-
 - (A) the licensee and the person having a lawful interest in the land concerned come to an agreement referred to in subsection (5)(a);
 - (B) the determination of the fee referred to in subsection (5)(a) in the arbitration proceedings concerned for the purposes of subsection (5)(b);
 - (C) the payment of the interim fee concerned to the person or, if the interim fee is to be paid in instalments, upon the payment of the first instalment of the interim fee to the person; or
 - (D) such time as is agreed between the licensee and the person; and
 - (ii) except in compliance with any other conditions to which the authorization is subject. (Added 36 of 2000 s. 8)
- (2) In exercising the powers conferred by subsection (1) or (1A), as the case may be, the Authority or the licensee, as the case may be, shall-
- (a) give reasonable notice to the owner of any land or seabed or to the person in control of any land or seabed of his or its intention to enter upon that land or seabed;
 - (b) do as little damage as possible,
- and-
- (i) full compensation shall be paid by the Authority, or the licensee, as the case may be, to any person having a lawful interest in the land or seabed, or being lawfully thereon, who suffers physical damage to any fixture or chattels found on the land or seabed as a result of the exercise of those powers;
 - (ii) where subsection (1A) is applicable, a fee (which may be a once only fee or a monthly or annual fee) shall be paid-
 - (A) which is fair and reasonable in all the circumstances of the case; and
 - (B) by the licensee to any person having a lawful interest in the land. (Replaced 36 of 2000 s. 8)
- (3) So far as may be necessary for the due exercise of the powers conferred by subsection (1) or (1A), as the case may be, the Authority or the licensee, as the case may be, may alter the position of any pipe or wire, other than a water, gas or electric main, if- (Amended 36 of 2000 s. 8)

- (a) reasonable notice has been given to the owner of the pipe or wire or the person in control thereof; and
 - (b) in the case of a pipe or wire in or over or upon unleased Government land or upon the seabed, the consent in writing of the Director of Lands or an officer of the Lands Department appointed by him for the purposes of this section has been obtained; and (Amended L.N. 291 of 1993; 29 of 1998 s. 105; 36 of 2000 s. 8)
 - (c) in the case of a pipe or wire in, over or upon land vested in or occupied by Her Majesty's naval, military or airforce services, the consent in writing of the Commander, British Forces, or such officer as he appoints to be his representative for the purposes of this section has been obtained.
- (4) The Authority, or a licensee authorized by the Authority under subsection (1) or (1A), as the case may be, may apply to a magistrate for an order that a person shall not prevent or obstruct the Authority or the licensee, as the case may be, from exercising the powers conferred by that subsection. (Added 36 of 2000 s. 8)
- (5) Where subsection (1A) is applicable-
- (a) the licensee and the person having a lawful interest in the land concerned shall endeavour to come to an agreement as to the fee to be paid under subsection (2)(ii) by the licensee to that person;
 - (b) in the absence of any such agreement within a reasonable time, then-
 - (i) the fee, and the terms and conditions in accordance with which it shall be payable, shall be determined by arbitration under the Arbitration Ordinance (Cap 341); and
 - (ii) for the purpose of subparagraph (i), the licensee and the person having a lawful interest in the land concerned shall be regarded as having made an arbitration agreement within the meaning of that Ordinance the provisions of which agreement shall be deemed to include-
 - (A) a provision that the fee, and the terms and conditions in accordance with which it shall be paid, shall, in the absence of agreement, be determined by a single arbitrator; and
 - (B) a provision equivalent to subsection (7). (Added 36 of 2000 s. 8)
- (6) In any arbitration proceedings for the purposes of subsection (5)(b)-
- (a) regard shall be given to-
 - (i) the principle that the fee to be paid shall be fair and reasonable in all the circumstances of the case, including, but not limited to, factors relating to cost, property-value and the benefits to be derived from the authorization concerned referred to in subsection (1A);
 - (ii) the guidelines issued by the Authority under section 6D(2)(b) on the application of the principle referred to in subparagraph (i) in any such proceedings; and
 - (iii) the reasons and technical requirements concerned, if any, referred to in subsection (1B)(d);
 - (b) regard shall not be given to the amount of any interim fee specified by virtue of the operation of subsection (1D). (Added 36 of 2000 s. 8)
- (7) Where in any arbitration proceedings for the purposes of subsection (5)(b)-
- (a) there is a dispute on a matter other than the technical requirements concerned, if any, referred to in subsection (1B)(d); and
 - (b) the arbitrator is of the opinion that, without determining that matter-
 - (i) the licensee and the person concerned will not reach an agreement to give effect to the authorization concerned referred to in subsection (1A); or
 - (ii) the determination referred to in subsection (5)(b) cannot be made,
- then the arbitrator may determine that matter in any manner fair and reasonable in all the circumstances of the case and not inconsistent with the authorization concerned referred to in subsection (1A). (Added 36 of 2000 s. 8)
- (8) In a determination referred to in subsection (5)(b), the arbitrator shall-
- (a) in specifying the fee to which the determination relates, include provisions for set-

- off in view of any interim fee paid by virtue of the operation of subsection (1D); and
- (b) specify that the fee to which it relates is payable for the period commencing on the first exercise of a right-
- (i) conferred by the authorization concerned referred to in subsection (1A); and
- (ii) by the licensee concerned in relation to the land concerned. (Added 36 of 2000 s. 8)
- (9) (a) The Authority may issue a certificate certifying that a licensee has the right of access under subsection (1) or (1A) to the land or seabed specified in the certificate to place and maintain telecommunications lines, or a radiocommunications installation, as the case may be, in, over or upon the land or seabed.
- (b) Where a person having an interest in the land or seabed specified in a certificate referred to in paragraph (a) does not allow the licensee concerned to gain access to the land or seabed for the purpose of placing and maintaining telecommunications lines, or a radiocommunications installation, as the case may be, in, over or upon the land or seabed, the licensee may apply to the court for an injunction. (Added 36 of 2000 s. 8)
- (10) In subsections (1) and (1A), "land" (土地) does not include land for the exclusive occupation or use of any person whilst the land is being so occupied or used. (Added 36 of 2000 s. 8)
- (11) For the avoidance of doubt, it is hereby declared that-
- (a) where there is an inconsistency between any provision of a technical requirement referred to in subsection (1B)(d) and any provision, relating to public safety, of any other Ordinance, then the second-mentioned provision shall prevail over the first-mentioned provision to the extent of the inconsistency;
- (b) compensation is not payable under subsection (2) in relation to any physical damage referred to in that subsection for which full compensation has been paid or is payable under any other provision of this Ordinance or under any other law. (Added 36 of 2000 s. 8)

(Amended L.N. 76 of 1982; L.N. 94 of 1986)

| | | | | |
|-----------|------|--------------------------------|------------------------------|--------------|
| Chapter: | 106A | TELECOMMUNICATIONS REGULATIONS | Gazette Number | Version Date |
| Schedule: | 3 | FORM OF LICENCES | 24 of 2005; L.N. 282 of 2006 | 02/01/2007 |

[Regulation 2(7)]

TELECOMMUNICATIONS ORDINANCE

(Chapter 106)

PRIVATE TELEGRAPH (RECEPTION) LICENCE

DATE OF ISSUE:

RENEWABLE:

FEE ON ISSUE:

FEE ON RENEWAL:

.....
of (hereinafter called
"the Licensee") having paid to the Telecommunications Authority an issue fee of

\$ is hereby licensed, subject to the conditions herein contained-
to possess, establish and maintain a telegraph apparatus for receiving telegraph signals
from a channel between and
..... for the sole purpose of receiving messages
concerning the business of the Licensee as

CONDITIONS

1. The apparatus shall be operated only by persons authorized by the Licensee in that behalf.
2. The Schedule attached shall show the address from which telegraph signals may be received. This address must be covered by a valid "Private Telegraph (Transmission) Licence".
3. Any alteration to the apparatus or channel to which it is connected, shall only be made with the prior approval in writing of the Telecommunications Authority.
4. The apparatus and this Licence shall be available for inspection at all reasonable times by duly authorized officers of the Telecommunications Authority.
5. This Licence shall continue in force for one year from the date of issue, and thereafter for successive periods of one year so long as the Licensee pays to the Telecommunications Authority in advance before the beginning of each successive period the renewal fee prescribed by or under the regulations for the time being in force:
Provided that the Telecommunications Authority may at any time after the date of issue revoke the Licence or vary the conditions thereof by a notice served in writing on the Licensee or by a notice published in the Gazette addressed to "All Private Telegraph (Reception) Licensees". Any notice given under this clause may take effect either forthwith or on such subsequent dates as may be specified in the notice.
6. This Licence is not transferable. The Licensee may not change each address at which the apparatus is kept or operated without the written consent to such change of the Telecommunications Authority.
7. The Licensee shall-
 - (a) furnish to the Telecommunications Authority his address for correspondence;
 - (b) give notice promptly in writing to the said Authority of any change of such address; and
 - (c) when giving the notice referred to in paragraph (b), return this Licence and the Schedule to the said Authority for amendment.
8. This Licence shall be returned to the Telecommunications Authority when it has expired or been revoked.
9. Any Licence or Permit however described which the Telecommunications Authority has previously granted to the Licensee in respect of the apparatus is hereby revoked.
10. This Licence does not authorize the Licensee to do any act which may infringe any copyright which may exist in the matter received.
11. The Licensee, and all persons operating any stations which the Licensee is authorized by this Licence to establish and use shall observe and comply with the relevant provisions of the Telecommunication Convention.
12. In this Licence "Telecommunication Convention" (電信公約) means any Constitution and

Convention of the International Telecommunication Union and the Regulations annexed thereto, which have from time to time or at any time been acceded to by or applied to Hong Kong.

.....
For and on behalf of the
Telecommunications Authority.

SCHEDULE

APPARATUS LOCATION FROM WHICH MESSAGES ARE RECEIVED

(L.N. 43 of 1966; L.N. 4 of 1984; 36 of 2000 s. 28)

TELECOMMUNICATIONS ORDINANCE (Chapter 106)

PRIVATE TELEGRAPH (TRANSMISSION) LICENCE

DATE OF ISSUE:
RENEWABLE:
FEE ON ISSUE:
FEE ON RENEWAL:

.....
of (hereinafter called
"the Licensee") having paid to the Telecommunications Authority an issue fee of \$ is hereby
licensed, subject to the conditions herein contained-
to possess, establish and maintain a telegraph apparatus for transmitting telegraph
signals into a channel or channels between
and for the sole purpose of transmitting messages concerning
the business of the Licensee as

CONDITIONS

1. The apparatus shall be operated only by persons authorized by the Licensee in that behalf.
2. The address or addresses to which telegraph signals may be transmitted are set out in the Schedule. No telegraph signals may be transmitted to any other addresses.
3. Any alteration to the apparatus or channels to which it is connected, shall only be made with the prior approval in writing of the Telecommunications Authority.
4. The apparatus and this Licence shall be available for inspection at all reasonable times by duly authorized officers of the Telecommunications Authority.
5. This Licence shall continue in force for one year from the date of issue, and thereafter for successive periods of one year so long as the Licensee pays to the Telecommunications Authority in advance before the beginning of each successive period the renewal fee prescribed by or under the regulations for the time being in force:

Provided that the Telecommunications Authority may at any time after the date of issue revoke the Licence or vary the conditions thereof by a notice served in writing on the Licensee or by a notice published in the Gazette addressed to "All Private Telegraph (Transmission) Licensees". Any notice given under this clause may take effect either

forthwith or on such subsequent dates as may be specified in the notice.

- 6 This Licence is not transferable. The Licensee may not change each address at which the apparatus is kept or operated without the written consent to such change of the Telecommunications Authority.
7. The Licensee shall-
 - (a) furnish to the Telecommunications Authority his address for correspondence;
 - (b) give notice promptly in writing to the said Authority of any change of such address; and
 - (c) when giving the notice referred to in paragraph (b), return this Licence and the Schedule to the said Authority for amendment.
8. This Licence shall be returned to the Telecommunications Authority when it has expired or been revoked.
9. Any Licence or Permit however described which the Telecommunications Authority has previously granted to the Licensee in respect of the apparatus is hereby revoked.
10. The Licensee, and all persons operating any stations which the Licensee is authorized by this Licence to establish and use shall observe and comply with the relevant provisions of the Telecommunication Convention.
11. In this Licence "Telecommunication Convention" (電信公約) means any Constitution and Convention of the International Telecommunication Union and the Regulations annexed thereto, which have from time to time or at any time been acceded to by or applied to Hong Kong.

.....
For and on behalf of the
Telecommunications Authority.

SCHEDULE

APPARATUS LOCATIONS TO WHICH MESSAGES ARE TRANSMITTED

(L.N. 43 of 1966; L.N. 4 of 1984; 36 of 2000 s. 28)

TELECOMMUNICATIONS ORDINANCE

(Chapter 106)

PRIVATE TELEGRAPH (TRANSMISSION AND RECEPTION) LICENCE

DATE OF ISSUE:

RENEWABLE:

FEE ON ISSUE:

FEE ON RENEWAL:

.....
of (hereinafter called
"the Licensee") having paid to the Telecommunications Authority an issue fee of
\$ is hereby licensed, subject to the conditions herein contained-
to possess, establish and maintain telegraph transmitting and receiving apparatus for
the purpose of transmitting and receiving telegraph signals into and from telegraph

channels, between
andfor the sole purpose of transmitting and
receiving messages concerning the business of the Licensee
as

CONDITIONS

1. The apparatus shall be operated only by persons authorized by the Licensee in that behalf.
2. The address or addresses to which telegraph signals may be transmitted are set out in the Schedule. No telegraph signals may be transmitted to any other addresses.
3. Any alteration to the apparatus or channel to which it is connected, shall only be made with the prior approval in writing of the Telecommunications Authority.
4. The apparatus and this Licence shall be available for inspection at all reasonable times by duly authorized officers of the Telecommunications Authority.
5. This Licence shall continue in force for one year from the date of issue, and thereafter for successive periods of one year so long as the Licensee pays to the Telecommunications Authority in advance before the beginning of each successive period the renewal fee prescribed by or under the regulations for the time being in force:
Provided that the Telecommunications Authority may at any time after the date of issue revoke the Licence or vary the terms, provision or limitations thereof by a notice served in writing on the Licensee or by a notice published in the Gazette addressed to "All Private Telegraph (Transmission and Reception) Licensees". Any notice given under this clause may take effect either forthwith or on such subsequent date as may be specified in the notice.
6. This Licence is not transferable. The Licensee shall not change the address at which any apparatus is kept or operated without the written consent to such change of the Telecommunications Authority.
7. The Licensee shall-
 - (a) furnish to the Telecommunications Authority his address for correspondence;
 - (b) give notice promptly in writing to the said Authority of any change of such address; and
 - (c) when giving the notice referred to in paragraph (b), return this Licence and the Schedule to the said Authority for amendment.
8. This Licence shall be returned to the Telecommunications Authority when it has expired or been revoked.
9. Any Licence or Permit however described which the Telecommunications Authority has previously granted to the Licensee in respect of the apparatus is hereby revoked.
10. The Licensee, and all persons operating any stations which the Licensee is authorized by this Licence to establish and use shall observe and comply with the relevant provisions of the Telecommunication Convention.
11. In this Licence "Telecommunication Convention" (電信公約) means any Constitution and Convention of the International Telecommunication Union and the Regulations annexed thereto, which have from time to time or at any time been acceded to by or applied to Hong Kong.

.....
For and on behalf of the
Telecommunications Authority.

SCHEDULE

(L.N. 43 of 1966; L.N. 4 of 1984; 36 of 2000 s. 28)

TELECOMMUNICATIONS ORDINANCE
(Chapter 106)

HONG KONG

SHIP STATION LICENCE
LICENCE DE STATION DE NAVIRE
LICENCIA DE ESTACION DE BARCO

No.
Period of validity: 1 year

In accordance with the Telecommunications Ordinance (Cap 106) and with the Radio Regulations annexed to the Constitution and Convention of the International Telecommunication Union now in force, this licence is herewith issued, subject to conditions herein contained, to of (hereinafter referred to as "the Licensee") for the installation and use of the radio equipment described below (hereinafter referred to as "the Station")-

| 1 Name of ship or vessel ("the Ship") | | 2 Call sign or other identification (the "Call Sign") | | 3 Public correspondence category | |
|---|-------------------------------|--|------------|--|---|
| Equipment | | a Type | b Power | c Class of emission | d Frequency bands or assigned frequencies |
| 4 | Transmitters | | | | |
| 5 | Ship's emergency transmitters | | | | |
| 6 | Survival craft transmitters | | | | |
| 7 | Other equipment | | | | |

For the Issuing Authority:

| | | |
|-------|---------------|----------------|
| | | |
| Place | Date of Issue | Authentication |

Renewal on or before

GENERAL CONDITIONS

Apparatus

1. When used for transmitting, the Station shall be used only with emissions which are of the classes specified in the Schedule, on the frequencies specified in the Schedule in relation to those respective classes of emission, and with a power not exceeding that specified in the Schedule in relation to the class of emission and frequency in use at the time.
2. (a) The apparatus comprised in the Station shall be so designed, constructed, maintained and used that the use of the Station does not cause any avoidable interference with any radiocommunications.
 (b) Any such apparatus shall at all times comply with-
 - (i) in case of ships registered in Hong Kong, the Merchant Shipping (Safety) Ordinance (Cap 369) and the regulations made thereunder or, in case of vessels certificated under the Merchant Shipping (Local Vessels) Ordinance (Cap 548), that Ordinance and the regulations made thereunder; and
 - (ii) the relevant performance specifications issued by the Telecommunications Authority.

Operation of the Station

3. The Licensee and all persons operating the Station shall observe and comply with the relevant provisions of the Telecommunication Convention.
4. The Licensee shall not permit or suffer any unauthorized person to operate the Station or to have access to the apparatus comprised therein:
 Provided that the Licensee shall permit any person, acting in the course of his duty on behalf of the Telecommunications Authority or the Director of Marine, to have access to the Station at all reasonable times for the purpose of inspecting and testing the apparatus comprised therein. The Licensee shall ensure that persons operating the Station shall observe the conditions of this licence at all times.
5. The Station shall be operated only by persons authorized by the Licensee in that behalf and possessing the written authority of the Telecommunications Authority to fill the position of operator of a ship's station for radiocommunications of the type of the Station, but these requirements-
 - (a) shall not prevent the use or operation of the Station in time of distress in whatever manner and by any persons for the purpose of attracting attention, making known their position and obtaining help; and
 - (b) shall not apply when used for receiving messages from radio-determination stations or authorized broadcasting stations.
6. If any message, the receipt of which is not authorized by this licence, is received, neither the Licensee nor any person using the Station shall make known the contents of any such message, its origin or destination, its existence or the fact of its receipt to any person except a duly authorized officer of the Telecommunications Authority or a competent legal tribunal, and shall not retain any copy or make any use of any such message, or allow it to be

reproduced in writing, copied or made use of.

7. If the Station is used within the territorial limits of a state or territory outside Hong Kong, such use shall be in accordance with any regulations which may have been made by the relevant administration of such state or territory.

Inspection and closure

8. (a) The Station shall be closed down at any time on the demand in writing of an officer of the Telecommunications Authority.
(b) The Station shall be open to inspection at all reasonable times by duly authorized officers of the Telecommunications Authority and shall cease to be used at any time on demand in writing of any such officer.
(c) This licence together with any notices of variation served on the Licensee in writing by virtue of the provisions of clause 9(c) of this licence shall be available for inspection, when required, by any person acting in the course of his duty on behalf of the Telecommunications Authority or the Director of Marine and by competent authorities of the countries where the Ship calls.

General

9. (a) Subject as hereinafter provided, this licence may be renewed from year to year until revoked by the Telecommunications Authority.
(b) The Licensee shall pay to the Telecommunications Authority-
 - (i) on the issue of this licence the sum prescribed by or under regulations for the time being in force under the Telecommunications Ordinance (Cap 106); and
 - (ii) in advance in each year on or before the anniversary of the date of issue the renewal fee prescribed by or under the said regulations, and on payment of such fee the Telecommunications Authority shall issue to the Licensee a document in the form of the front page of this licence which shall indicate the date which this licence will be next due for renewal.
(c) The Telecommunications Authority may at any time after the date of issue revoke this licence or vary the terms, provisions or limitations thereof by a notice in writing served on the Licensee, or by a general notice published in the Gazette addressed to all holders of Ship Station Licences. Any notice given under this clause may take effect forthwith or on such subsequent date as may be specified in the notice.
(d) The Licensee shall make application promptly in writing to the Telecommunications Authority for a new licence whenever there is any change-
 - (i) of his address;
 - (ii) of the name of the Ship; or
 - (iii) of the radio equipment fitted.
(e) This licence shall be revoked with effect from the date upon which a new licence is granted. The Licensee shall upon receipt by him of the new licence return this licence to the Telecommunications Authority. No refund shall be made in respect of fees paid for a licence that is revoked.
(f) The Licensee shall pay to the Telecommunications Authority in respect of the new licence the fee prescribed by or under the regulations for the time being in force under the Telecommunications Ordinance (Cap 106).
10. This licence is not transferable and shall be returned forthwith to the Telecommunications Authority-
 - (a) if it has been cancelled;
 - (b) if it has expired by effluxion of time;
 - (c) if the Licensee has ceased to be the owner of the Ship;
 - (d) if, in case of the Ship registered in Hong Kong, the Ship has ceased to be so

- registered; or
- (e) if, in case of a vessel certificated under the Merchant Shipping (Local Vessels) Ordinance (Cap 548), the vessel has ceased to be so certificated.

11. Nothing in this licence shall be deemed to waive any requirement imposed on the Licensee by or under any Ordinance.
12. In this licence, "the Telecommunication Convention" (電信公約) means any Constitution and Convention of the International Telecommunication Union and the Radio Regulations annexed thereto, which for the time being applies to Hong Kong.

SPECIAL CONDITIONS

.....
For the Telecommunications Authority.

SCHEDULE

| Equipment Particulars | Maximum Power (dBW) | Frequencies (in MHz) | Classes of Emission |
|--------------------------|------------------------|-------------------------|------------------------|
|--------------------------|------------------------|-------------------------|------------------------|

(L.N. 406 of 1992; 36 of 2000 s. 28; 24 of 2005 s. 55)

TELECOMMUNICATIONS ORDINANCE (Chapter 106)

AIRCRAFT STATION LICENCE

No.
Period of Validity

In accordance with the requirements of the Telecommunications Ordinance (Cap 106) and with the Radio Regulations annexed to the Constitution and Convention of the International Telecommunication Union now in force, this licence is herewith issued for the installation and for the use of the radio equipment described below-

| 1 Nationality and Registration Mark of the Aircraft | 2 Call Sign or other Identification | 3 Type of Aircraft | 4 Owner of Aircraft |
|--|---|--------------------------|--|
| a | b | c | d |
| Equipment | Type | Power (Watts) | Class of Emission |
| | | | Frequency Bands of Assigned Frequencies |

- 5 Transmitters
- 6 Survival Craft
- Transmitters
- (when applicable)
- 7 Other Equipment

For the Issuing Authority:

.....
Place. Date of Issue. Authentication.

M
of

(hereinafter called "the Licensee") is hereby licensed, subject to the conditions herein contained-

- (a) to possess and establish in the aircraft described above (hereinafter called "the aircraft") a transmitting and receiving station for radiocommunications (hereinafter called "the Station" which expression includes any apparatus for radiocommunications in any survival-craft associated with and normally carried by the aircraft); and
- (b) to use the Station for the purpose of-
 - (i) transmitting messages by radiocommunications; and
 - (ii) receiving by radiocommunications messages transmitted for general reception by aircraft stations or for reception by the Station, and receiving by radiocommunications messages including programmes transmitted by authorized broadcasting stations;
- (c) to possess and establish an aircraft's radar transmitting and receiving station for radio determination (hereinafter called "the Radar Station") in the aircraft; and
- (d) to use the Radar Station for transmitting and receiving signals (not being messages having a verbal significance) within the frequency band specified in the Schedule hereto, for the purposes of the determination of position, bearing or distance, or for the gaining of information as to the presence, absence, position or motion of any object or of any objects of any class.

CONDITIONS

1. (1) The Station and the Radar Station shall be operated only by persons authorized by the Licensee in that behalf, and the Licensee shall not permit or suffer it to be operated by any other person:

Provided that nothing in this Licence shall prevent the use or operation of radiocommunications apparatus in survival-craft in distress in whatever manner may be necessary for the purpose of attracting attention, making known their position and obtained help.

- (2) The Licensee and all persons operating the Station and the Radar Station shall observe and comply with the relevant provisions of the Telecommunication Convention.
- (3) The apparatus comprised in the Station and the Radar Station shall be so designed, constructed, maintained and used that the use of the Station does not cause any avoidable interference with any radiocommunications.
- (4) This Licence shall be available for inspection when required by any person acting in the course of his duty on behalf of the Telecommunications Authority or the Director-General of Civil Aviation and by competent authorities of the countries where the aircraft calls.

- (5) No message which is grossly offensive or of an indecent or obscene character shall be transmitted.
2. If the Station is used for transmitting public correspondence, the following provisions shall apply-
- The Licensee shall render to the Telecommunications Authority such accounts as the Telecommunications Authority shall direct in respect of all charges due or payable under the Telecommunication Convention in respect of messages exchanged between the Station and any other stations; and shall pay to the Telecommunications Authority at such times and in such manner as the Telecommunications Authority shall direct all sums which shall be due from the Licensee for such messages. A certified statement of any such sums signed on behalf of the Telecommunications Authority by an officer authorized in that behalf shall for all purposes (including the purposes of any proceedings by or against the Government) be sufficient evidence, unless the contrary is proved, of the facts stated therein.
3. (1) Subject as hereinafter provided this Licence shall continue in force from year to year until revoked by the Telecommunications Authority.
- (2) The Licensee shall pay to the Telecommunications Authority on the issue of this Licence the sum prescribed by or under regulations for the time being in force under the Telecommunications Ordinance (Cap 106) and in advance in each year on or before the anniversary of the date of issue the renewal fee prescribed by or under the said regulations.
- (3) The Licensee shall make application promptly in writing to the Telecommunications Authority for a new licence whenever there is any change-
- (a) of his address; or
- (b) of the radio equipment fitted.
- (4) This Licence shall be revoked with effect from the date upon which a new licence is granted. The Licensee shall upon receipt by him of the new licence return this Licence to the said Authority.
- (5) The Licensee shall pay to the Telecommunications Authority in respect of the new licence the fee prescribed by or under the regulations for the time being in force under the Telecommunications Ordinance (Cap 106) for an Aircraft Station Licence less an amount equal to one-twelfth of such fee multiplied by the number of months that remain in the unexpired period within which this Licence would have been valid had the same not been revoked. Such number of months shall be calculated from the first day of the month next following the day on which the new licence is granted.
- For the purpose of this subclause, in calculating the one-twelfth of the licence fee mentioned herein any fraction of a dollar shall be disregarded.
4. This Licence is not transferable.
5. This Licence shall be returned to the Telecommunications Authority when it has been revoked.
6. Any licence however described which the Telecommunications Authority as previously granted to the Licensee in respect of the Station or the Radar Station is hereby revoked.
7. Nothing in this Licence shall be deemed to exempt any person from the requirements of the Civil Aviation Ordinance (Cap 448) or any regulation or order made under that Ordinance. (66 of 1997 s. 18)
8. In this Licence, "the Telecommunication Convention" (電信公約) means any Constitution and Convention of the International Telecommunication Union, and the Radio Regulations annexed thereto, which has from time to time or at any time been acceded to by or applied to Hong Kong.

.....
For and on behalf of the
Telecommunications Authority.

(L.N. 43 of 1966; L.N. 72 of 1972; L.N. 4 of 1984; 29 of 1998 s. 105; 36 of 2000 s. 28; L.N. 326 of 2000)

TELECOMMUNICATIONS ORDINANCE
(Chapter 106)

PRESS RECEPTION (DIRECT) LICENCE

DATE OF ISSUE:

RENEWABLE:

FEE ON ISSUE:

FEE ON RENEWAL:

..... of
.....
(hereinafter called "the Licensee") having paid to the Telecommunications Authority an issue fee of \$ is hereby licensed, subject to the conditions herein contained-

(a) to possess, establish and maintain a receiving station for radiocommunications, (hereinafter called "the Station") at; and
(Address).

(b) to use the Station for the sole purpose of receiving press messages sent by stations for radiotelegraphy outside Hong Kong and addressed to all stations, and such press messages addressed to several destinations as are specified in the Schedule hereto.

CONDITIONS

1. The apparatus comprised in the Station shall be so designed, constructed, maintained and used that the use of the Station does not cause any interference with any radiocommunications.
2. The Station and the Licence shall be available for inspection at all reasonable times by an officer of the Telecommunications Authority.
3. The Licensee and all persons operating the Station shall observe and comply with the relevant provisions of the Telecommunication Convention.
4. This Licence shall continue in force until, and thereafter so long as the Licensee pays to the Telecommunications Authority in advance in each year on or before
(date) a renewal fee of \$, provided that the Telecommunications Authority may at any time after the date of issue revoke this Licence or vary the terms, provisions or limitations thereof by a notice in writing served on the Licensee. Any such notice given under this clause may take effect either forthwith or on such subsequent date as may be specified in the notice.

5. This Licence is not transferable.
6. This Licence shall be returned to the Telecommunications Authority when it has expired or been revoked.
7. Any Licence however described which the Telecommunications Authority has previously granted to the Licensee in respect of the Station is hereby revoked.
8. In this Licence-
 - (1) "Press message" (新聞訊息) means messages of which the text consists exclusively of information, comment, reports and narratives on subjects of public interest for the time being intended for publication in a newspaper; or for broadcasting;
 - (2) (Repealed L.N. 4 of 1984)
 - (3) "The Telecommunication Convention" (電信公約) means any Constitution and Convention of the International Telecommunication Union, and the Radio Regulations annexed thereto, which has from time to time or at any time been acceded to by or applied to Hong Kong;
 - (4) "Radiocommunications" (無線電通訊) shall mean a system of telecommunications for the transmission of written matter by the use of a signal code.
9. The Licensee shall-
 - (a) give notice promptly in writing to the Telecommunications Authority of any change-
 - (i) of his address;
 - (ii) of the address of the Receiving Station; or
 - (iii) of any of the particulars set out in the Licence and the Schedule; and
 - (b) when giving any notice mentioned in paragraph (a), return this Licence and the Schedule to the said Authority for amendment.
10. If the power for working the Station is taken from a public electricity supply, no direct connection shall be made between the supply mains and the aerial.
11. An aerial which crosses above or is liable to fall or to be blown on to any overhead power wire (including electric lighting and tramway wires) or power apparatus shall be guarded to the reasonable satisfaction of the owner of the power wire or power apparatus concerned.
12. This Licence does not authorize the Licensee to do any act which is an infringement of any copyright which may exist in the matter sent or received.
13. If any message, the receipt of which is not authorized by this Licence, is received by means of the Station, neither the Licensee nor any person using the Station shall make known the contents of any such message, its origin or destination, its existence or the fact of its receipt, to any person except a duly authorized officer of the Telecommunications Authority or a competent legal tribunal, and shall not retain a copy or make any use of any such message, or allow it to be reproduced in writing, copied or made use of.

.....
For and on behalf of the
Telecommunications Authority.

SCHEDULE

| | | | |
|--|--------------------------------------|--|--|
| Name and Call Sign of Agency Sending Station | Frequencies Used for Reception | Hours of Reception (0000-2400 G.M.T.) | Names and Addresses of Recipients of Press Messages |
|--|--------------------------------------|--|--|

(L.N. 43 of 1966; L.N. 4 of 1984; 36 of 2000 s. 28)

TELECOMMUNICATIONS ORDINANCE
(Chapter 106)

GENERAL COMMUNICATION RADIO RECEIVING
STATION (OTHER THAN A SOUND BROADCAST
RECEIVING APPARATUS) LICENCE

DATE OF ISSUE:
DATE OF EXPIRY:
FEE ON ISSUE:
FEE ON RENEWAL:
Licence No.

Mof
(Name in full).

.....
(Address in full).

(hereinafter called "the Licensee") is hereby licensed to possess, establish and maintain, subject to the conditions set forth hereon, a Receiving Station containing the apparatus mentioned in the Schedule at(here specify the address where the apparatus is maintained) for the purpose of

Dated this day of 19 .

CONDITIONS

1. The Licensee shall not allow the Station to be used for any purpose other than that specified in this Licence.
2. The Licensee shall enter in a book (hereinafter referred to as the Log Book) the date and time of receipt of each and every message received, the call sign of the sending station and a summary of the message. The Log Book shall be available for inspection at all reasonable times by a duly authorized officer of the Telecommunications Authority.
3. If any message, for the receipt of which the use of the apparatus is not authorized, is unintentionally received, no person shall make known its contents, origin, destination or existence, or the fact of its receipt to any person other than a duly authorized officer of the Telecommunications Authority or a competent legal tribunal, and shall not reproduce in writing, copy or make any use of such message or allow it to be reproduced in writing,

copied or made use of.

4. The Station shall not be used in such a manner as to cause avoidable interference with the working of other telecommunications.
 5. An aerial which crosses above, or is liable to fall upon, or to be blown onto any overhead power wire, including electric lighting and tramway wires, must be guarded to the reasonable satisfaction of the owner of the power wire concerned. No aerial shall be erected in such a way as to contravene any provision of the Hong Kong Airport (Control of Obstructions) Ordinance (Cap 301) or, in such a way that, in falling or being lowered, it shall occupy or traverse a public thoroughfare.
 6. If an earth connection is used it shall, where possible, consist of a buried metallic plate or tube in the ground external to the building. Where this arrangement is not possible, an efficient connection to a cold water mains' metal pipe may be used. A gas or hot water pipe shall on no account be used. The cross sectional area of the earth conductor wire shall be not less than 4 mm^2 (7/0.85). The earth system shall be such that the voltage to ground from the earth terminal of the radio receiver shall not exceed 40 volts R.M.S. under fault conditions.
 7. The Station and this Licence shall be open to inspection at all reasonable times by a duly authorized officer of the Telecommunications Authority.
 8. This Licence is not transferable.
 9. The Licensee shall give notice promptly in writing to the Telecommunications Authority of any change of his address, or the address where the apparatus is maintained or any proposed change in the details mentioned in the Schedule and, when giving such notice, shall return this Licence to the said Authority for amendment.
 10. This Licence shall continue in force for one year from the date of issue and thereafter for successive periods of one year, so long as the Licensee pays to the Telecommunications Authority in advance before the beginning of each successive period the renewal fee prescribed by or under the regulations for the time being in force.
 11. In the event of any contravention by the Licensee of any condition herein or of the Telecommunications Ordinance (Cap 106) the Telecommunications Authority may at any time after the date of issue cancel this Licence by a notice in writing served on the Licensee. Any notice given under this paragraph may take effect forthwith or on any such subsequent date as may be specified in the notice.
- Note: (1) This Licence does not authorize any infringement of copy right in the matter received.
(2) A licence is required for apparatus which is rented or hired (See section 8(2) of the Telecommunications Ordinance (Cap 106)).

.....
For and on behalf of the
Telecommunications Authority.

SCHEDULE

APPARATUS

| Make | Type | Serial No. | Frequency Range of Receiver | Remarks |
|------|------|------------|--------------------------------|---------|
|------|------|------------|--------------------------------|---------|

STATION FUNCTION

Service(s)
Authorized

Operating
Frequencies

Authority for
Reception

Remarks

(L.N. 195 of 1967; L.N. 294 of 1985; 36 of 2000 s. 28)

TELECOMMUNICATIONS ORDINANCE
(Chapter 106)

EXPERIMENTAL STATION LICENCE

DATE OF ISSUE:

RENEWABLE:

FEE ON ISSUE:

FEE ON RENEWAL:

.....
of (hereinafter called
"the Licensee") is hereby licensed, subject to the conditions herein contained-

(a) to possess, establish and maintain a transmitting and receiving station for
radiocommunications (hereinafter called "the Station") at

.....; and
(Address).

(b) for the purpose only of testing and developing the radiocommunications apparatus
from time to time comprised in the Station, to use the Station for transmitting test
messages intended solely for reception within the room in which the Station is
situated and receiving the same test messages, and for receiving test messages
from any of the stations specified in the Schedule hereto.

CONDITIONS

1. (a) The Station shall be used only under suppressed radiation conditions, that is to say,
in such a way that no electro-magnetic energy capable of reception by any station
or apparatus for radiocommunications situated outside the curtilage of the premises
in which the Station is situated shall be emitted from the Station.
(b) The Station shall be operated only by persons authorized by the Licensee in that
behalf.
2. The apparatus comprised in the Station shall be so designed, constructed, maintained and
used that the use of the Station does not cause any interference with any
radiocommunications.
3. The Licensee shall not permit or suffer any unauthorized person to operate the Station or to
have access to the apparatus contained therein. The Licensee shall ensure that persons

operating the Station observe the terms, provisions and limitations of this Licence at all times.

4. The Station, and this Licence, shall be available for inspection at all reasonable times by duly authorized officers of the Telecommunications Authority.
5. This Licence shall continue in force for one year from the date of issue, and thereafter for successive periods of one year so long as the Licensee pays to the Telecommunications Authority in advance before the beginning of each successive period the renewal fee prescribed by or under the regulations for the time being in force:
Provided that the Telecommunications Authority may at any time after the date of issue revoke this Licence or vary the terms, provisions or limitations thereof by a notice in writing served on the Licensee. Any notice given under this clause may take effect either forthwith or on such subsequent date as may be specified in the notice.
6. This Licence is not transferable.
7. The Licensee shall-
 - (a) give notice promptly in writing to the Telecommunications Authority of any change-
 - (i) of his address; or
 - (ii) of the location of the premises where the equipment to which the Licence relates is operated; and
 - (b) when giving any notice mentioned in paragraph (a), return this Licence to the said Authority for amendment.
8. This Licence shall be returned to the Telecommunications Authority when it has expired or been revoked.
9. Any Licence however described which has previously been granted to the Licensee in respect of the Station is hereby revoked.
10. This Licence does not authorize the use of the Station for the reception of messages for the purpose of conveying news or any other information not directly related to the purpose of the testing of the radiocommunications apparatus.
11. If any message, the receipt of which is not authorized by this Licence, is received by means of the Station, neither the Licensee nor any person using the Station shall make known the contents of any such message, its origin or destination, its existence or the fact of its receipt to any person except a duly authorized officer of the Telecommunications Authority or a competent legal tribunal, and shall not retain any copy or make use of any such message, or allow it to be reproduced in writing, copied or made use of.
12. The Licensee, and all persons operating any stations which the Licensee is authorized by this Licence to establish and use shall observe and comply with the relevant provisions of the Telecommunication Convention.
13. In this Licence "Telecommunication Convention" (電信公約) means any Constitution and Convention of the International Telecommunication Union and the Radio Regulations annexed thereto, which have from time to time or at any time been acceded to by or applied to Hong Kong.

.....

For and on behalf of the
Telecommunications Authority.

(L.N. 43 of 1966; L.N. 4 of 1984; 36 of 2000 s. 28)

TELECOMMUNICATIONS ORDINANCE
(Chapter 106)

MOBILE RADIO SYSTEM
FIXED STATION LICENCE

DATE OF ISSUE:

RENEWABLE:

FEE ON ISSUE:

FEE ON RENEWAL:

..... of
..... (hereinafter
called "the Licensee") is hereby licensed, subject to the conditions attached hereto-

- (a) to possess, establish and maintain a transmitting and receiving station for radiotelephony (hereinafter called "the Fixed Station") at ; and
(Address).
- (b) to use the Fixed Station for the purpose of transmitting and receiving spoken messages concerning the business of the Licensee as

CONDITIONS

1. Messages referred to in paragraph (b) above may be exchanged between the Stations comprised in the Mobile Radio System licensed in the name of the Licensee, and shown on the second part of the Schedule.
2. This Licence must be displayed in a glass frame in the Station.
3. (a) The Stations shall be used only with emissions at the frequencies and of the classes and characteristics respectively specified in the Schedule hereto in relation to the class and characteristic of the emission in use.
(b) The Stations shall be operated only by persons authorized by the Licensee in that behalf.
4. The apparatus comprised in the Stations shall be so designed, constructed, maintained and used that the use of the Stations does not cause any avoidable interference with any other duly licensed or authorized telecommunications.
5. The apparatus comprised in the Stations shall at all times comply with the performance specifications shown in the Schedule annexed to this Licence, subject however to such modifications thereof in favour of the Licensee as the Telecommunications Authority may from time to time permit. The Licensee shall not make any alteration in the said apparatus without the previous written consent of the Telecommunications Authority, except-
 - (a) an alteration the effect of which is to cause the said apparatus to comply, or to continue to comply, with the said specifications; or
 - (b) a replacement of any component by another component of the same type.
6. The Licensee shall not permit or suffer any unauthorized person to operate the Stations or to have access to the apparatus contained therein. The Licensee shall ensure that persons

operating the Stations observe the terms, provisions and limitations of the Licence at all times.

7. Every message sent from any of the Stations shall start with an announcement of the call sign of the called and calling Stations. The call sign of the calling Stations shall be repeated at the end of every period of transmission provided that no call sign need be announced more than once in any period of one minute. The Stations shall be called and identified only by their authorized call signs which are specified in the Schedule hereto.
8. The Stations, and the Licence, shall be available for inspection at all reasonable times by duly authorized officers of the Telecommunications Authority.
9. This Licence shall continue in force so long as the Licensee pays to the Telecommunications Authority in advance on or before the date of expiryin each year the renewal fee prescribed by or under the regulations for the time being in force:
Provided that the Telecommunications Authority may at any time after the date of issue revoke the Licence or vary the terms, provisions or limitations thereof by a notice in writing served on the Licensee. Any notice given under this clause may take effect forthwith or on such subsequent date as may be specified in the notice.
10. The Licence is not transferable.
11. The Licence shall be returned to the Telecommunications Authority when it has expired been revoked.
12. Any Licence or Permit however described which the Telecommunications Authority has previously granted to the Licensee in respect of the Stations or any of them is hereby revoked.
13. The Telecommunications Authority shall be notified promptly of any change of the address of the Licensee, or any proposed change in any of the Stations comprised in the Licence and whenever any such change occurs this Licence and the Schedule must be returned promptly to the Telecommunications Authority for amendment. (Prior authority is needed before any of the Stations is established in any vehicle, ship, aircraft or place other than as specified in the Schedule to this Licence).
14. If power for the working of a Fixed Station is taken from a public electricity supply, no direct connection shall be made between the supply mains and the aerial.
15. If the Fixed Station aerial crosses above or is liable to fall or to be blown on to any overhead power wire (including electric lighting and tramway wires) or power apparatus it must be guarded to the reasonable satisfaction of the owner of the power wire or power apparatus concerned.
16. The connection of any of the Stations with the public telephone exchange will not be permitted.
17. Unless the Licence expressly so provides, it does not authorize the relaying of messages received at any Station to any other premises or place, or the communicating of such messages to the public.
18. If any message, the receipt of which is not authorized by the Licence, is received by means of the Station, neither the Licensee nor any person using the Stations shall make known the contents of any such message, its origin or destination, its existence or the fact of its receipt to any person except a duly authorized officer of the Telecommunications Authority

or a competent legal tribunal, and shall not retain any copy or make any use of any such message, or allow it to be reproduced in writing, copied or made use of.

19. The Telecommunications Authority may publish at his discretion the Licensee's name and address, and the frequencies allotted for his service, unless the Licensee specifically asks that this should not be done.
20. The Licensee, and all persons operating any stations which the Licensee is authorized by this Licence to establish and use shall observe and comply with the relevant provisions of the Telecommunication Convention.
21. In this Licence "Telecommunication Convention" (電信公約) means any Constitution and Convention of the International Telecommunication Union and the Radio Regulations annexed thereto, which have from time to time or at any time been acceded to by or applied to Hong Kong.

.....
For and on behalf of the
Telecommunications Authority.

MOBILE RADIO STATION

SCHEDULE

Name and Address of Licensee
.....
.....

| | Call Sign | Frequency and Maximum Frequency Tolerance (Para. D applies) | Bandwidth of Emission (Para. D applies) | Class of Emission (Para. C applies) | Maximum Effective Radiated Power (Watts) (Paras. A & B apply) | Aerial Characteristics (Paras. A & B apply) |
|------------------------------|--------------|--|---|--|---|--|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Part 1 Fixed Station | | | | | | |
| Part 2 Mobile Stations | | | | | | |

Issued
19

For the purposes of the Schedule

- A. Effective radiated power (ERP) is the mean radio frequency power multiplied by the gain of

the aerial in the horizontal plane. The mean radio frequency power (RFP) will be taken as that delivered to the aerial and generally for the unmodulated condition; but in the case of systems in which the application of modulation causes an increase in the effective carrier power, apart from any change in power due to redistribution between the carrier and sidebands, this will be allowed for.

- B. RFP, ERP, and the aerial characteristics will be assessed either by measurements or by calculation from the characteristics of the types of apparatus used, at the discretion of the Telecommunications Authority.
- C. The symbols used to designate the classes of emission have the meanings assigned to them in the Telecommunication Convention.
- D. "Bandwidth" (頻帶寬度) and "frequency tolerance" (頻差容限) have the meanings assigned to them in the Telecommunication Convention.

(L.N. 43 of 1966; L.N. 4 of 1984; 36 of 2000 s. 28)

TELECOMMUNICATIONS ORDINANCE (Chapter 106)

MOBILE RADIO SYSTEM MOBILE STATION LICENCE

DATE OF ISSUE:

RENEWABLE:

FEE ON ISSUE:

FEE ON RENEWAL:

.....
of (hereinafter
called "the Licensee") is hereby licensed, subject to the conditions attached hereto-

- (a) to possess, establish and maintain a transmitting and receiving station for radiotelephony (hereinafter called "the Mobile Station") at ; and
(Address).
- (b) to use the Mobile Station for the purpose of transmitting and receiving spoken messages concerning the business of the Licensee as

CONDITIONS

1. Messages referred to in paragraph (b) above may be exchanged between Mobile Stations or between the Mobile Station and a Fixed Station if the latter is duly licensed, in the name of the Licensee, as a Mobile Radio Station System, Fixed Station and be shown in the second part of the Schedule attached to the Fixed Station Licence concurrently held by the Licensee.
2. This Licence must be displayed in a glass frame in the Station.
3. This Licence is subject to the conditions attached to the Mobile Radio System Fixed Station Licence.
4. The Licensee, and all persons operating any stations which the Licensee is authorized by this Licence to establish and use shall observe and comply with the relevant provisions of the Telecommunication Convention.
5. In this Licence "Telecommunication Convention" (電信公約) means any Constitution and Convention of the International Telecommunication Union and the Radio Regulations annexed thereto, which have from time to time or at any time been acceded to by or applied to Hong Kong.

.....
For and on behalf of the
Telecommunications Authority.

(L.N. 4 of 1984; 36 of 2000 s. 28)

TELECOMMUNICATIONS ORDINANCE
(Chapter 106)

AERONAUTICAL V.H.F. STATION LICENCE

DATE OF ISSUE:
RENEWABLE:
FEE ON ISSUE:
FEE ON RENEWAL:

.....
of (hereinafter
called "the Licensee") is hereby licensed, subject to the conditions herein contained-

- (a) to possess, establish and maintain at a transmitting and receiving station for radiocommunications (hereinafter called "the Station");
- (b) to use the Station for the purpose of transmitting and receiving messages only to aircraft in flight which are owned by or represented exclusively by the Licensee;
- (c) messages authorized in paragraph (b) above must relate solely to the business of the airline company and have reference only to the aircraft being communicated with and may not include any message which, in the opinion of the Telecommunications Authority, should properly be transmitted or received by or through the facilities of the Department of Civil Aviation or the general telegraph service.

CONDITIONS

- 1. (a) The Station shall be used only with the emissions at the frequencies and of the classes and characteristics respectively specified in the Schedule hereto in relation to the class and characteristics of the emission in use.
(b) The Station shall be operated only by persons authorized by the Licensee in that behalf.
- 2. The apparatus comprised in the Station shall be so designed, constructed, maintained and used that the use of the Station does not cause any interference with any other duly licensed or authorized telecommunications.
- 3. The apparatus comprised in the Station shall at all times comply with the performance specifications annexed to this Licence, subject however to such modifications thereof in favour of the Licensee as the Telecommunications Authority may from time to time permit. The Licensee shall not make any alterations in the said apparatus without the previous written consent of the Telecommunications Authority, except-
 - (a) an alteration the effect of which is to cause the said apparatus to comply, or to continue to comply, with the said specifications; or
 - (b) a replacement of any component by another component of the same type.
- 4. The Licensee shall not permit or suffer any unauthorized person to operate the Station or to have access to the apparatus contained therein. The Licensee shall ensure that persons operating the Station observe the terms, provisions and limitations of this Licence at all

times.

5. Every message transmitted from the Station shall start with an announcement of the call sign of the called and calling stations. The call sign of the calling station shall be repeated at the end of every period of transmission provided that no call sign need be announced more than once in any period of one minute. The Station shall be called and identified only by the authorized call sign which is specified in the Schedule hereto.
6. The Station, and this Licence shall be available for inspection at all reasonable times by duly authorized officers of the Telecommunications Authority.
7. This Licence shall continue in force until the and thereafter so long as the Licensee pays to the Telecommunications Authority in advance on or before the and on or before the in each subsequent year the renewal fee prescribed by or under the regulation for the time being in force:
Provided that the Telecommunications Authority may at any time after the date of issue revoke this Licence or vary the terms, provisions or limitations thereof by a notice in writing served on the Licensee. Any notice given under this clause may take effect either forthwith or on such subsequent date as may be specified in the notice.
8. This Licence is not transferable.
9. This Licence shall be returned to the Telecommunications Authority when it has expired or been revoked.
10. Any Licence or Permit however described which the Telecommunications Authority has previously granted to the Licensee in respect of the Station is hereby revoked.
11. The Licensee shall-
 - (a) give notice promptly in writing to the Telecommunications Authority-
 - (i) of any change of his address;
 - (ii) of any proposed change in the station; or
 - (iii) of any proposed change of the place at which the station is installed; and
 - (b) return this Licence and the Schedule to the said Authority for amendment when giving the notice mentioned in paragraph (a)(i) or when the change referred to in paragraph (a)(ii) or (iii) has been effected.
12. If power for the working of the Station is taken from a public electricity supply, no direct connection shall be made between the supply mains and the aerial.
13. If the aerial crosses above or is liable to fall or to be blown on to any overhead power wire (including electric lighting and tramway wires) or power apparatus it shall be guarded to the reasonable satisfaction of the owner of the power wire or power apparatus concerned.
14. The connection of the Station with the public telephone system will not be permitted.
15. If any message, the receipt of which is not authorized by this Licence, is received by means of the Station, neither the Licensee nor any person using the Station shall make known the contents of any such message, its origin or destination, its existence or the fact of its receipt to any person except a duly authorized officer of the Telecommunications Authority or a competent legal tribunal, and shall not retain any copy or make any use of any such message, or allow it to be reproduced in writing, copied or made use of.
16. The Telecommunications Authority may publish at his discretion the Licensee's name and

address, and the frequencies allotted for his service.

17. The Licensee, and all persons operating any stations which the Licensee is authorized by this Licence to establish and use shall observe and comply with the relevant provisions of the Telecommunication Convention.
18. In this Licence "Telecommunication Convention" (電信公約) means any Constitution and Convention of the International Telecommunication Union and the Radio Regulations annexed thereto, which have from time to time or at any time been acceded to by or applied to Hong Kong.

.....
For and on behalf of the
Telecommunications Authority.

AERONAUTICAL V.H.F. STATION

SCHEDULE

Name and Address of Licensee
.....
.....
.....

| Station Installed (Location) | Call Sign | Frequency and Maximum Frequency Tolerance (Para. D applies) | Bandwidth of Emission (Para. D applies) | Class of Emission (Para. C applies) | Maximum Effective Radiated Power (Watts) (Paras. A & B apply) | Aerial Characteristics (Paras. A & B apply) |
|------------------------------------|--------------|---|---|--|---|--|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |

Issued
19

For the purposes of the Schedule

- A. Effective radiated power (ERP) is the mean radio frequency power multiplied by the gain of the aerial in the horizontal plane. The mean radio frequency power (RFP) will be taken as that delivered to the aerial and generally for the unmodulated condition; but in the case of systems in which the application of modulation causes an increase in the effective carrier power, apart from any change in power due to redistribution between the carrier and the side bands, this will be allowed for.
- B. RFP, ERP, and the aerial characteristics will be assessed either by measurements or by calculation from the characteristics of the types of apparatus used, at the discretion of the Telecommunications Authority.

- C. The symbols used to designate the classes of emission have the meanings assigned to them in the Telecommunication Convention.
- D. "Bandwidth" (頻帶寬度) and "frequency tolerance" (頻差容限) have the meanings assigned to them in the Telecommunication Convention.
(L.N. 43 of 1966; L.N. 4 of 1984; 36 of 2000 s. 28)

TELECOMMUNICATIONS ORDINANCE
(Chapter 106)

RADIOPHONE COMMUNICATION (FIXED) STATION LICENCE

DATE OF ISSUE:

RENEWABLE:

FEE ON ISSUE:

FEE ON RENEWAL:

.....
of (hereinafter
called "the Licensee") is licensed, subject to the conditions herein contained-

- (a) to possess, establish and maintain a transmitting and receiving station for radiotelephony (hereinafter called "the Station") at ; and
(Address).
- (b) to use the Station for the purpose of-
 - (i) transmitting to any duly authorized station telephone calls originating from the public telephone service;
 - (ii) receiving from any duly authorized station telephone calls for interconnection to the public telephone service.

CONDITIONS

1. (a) The Station shall be used only with emissions at the frequencies and of the classes and characteristics specified below, and with such power and aerial characteristics as are specified below in relation to the class and characteristics of the emission in use-

| 1 | 2 | 3 | 4 |
|---|--|---|--|
| Transmitting Frequency and Maximum Frequency Tolerance (See Clause 7(d)) | Class of Emission (See Clause 7(c)) | Maximum Effective Radiated Power (Watts) (See Clause 7(a) & 7(b)) | Aerial Characteristics (See Clause 7(a) & 7(b)) |

- (b) The apparatus comprised in the Station shall at all times comply with the same technical standards as may be prescribed by the Telecommunications Authority.

2. The apparatus comprised in the Station shall be so designed, constructed, maintained and operated that the use of the Station does not cause any avoidable interference with any radiocommunications.
3. The Station shall be operated only by the Licensee or by persons authorized by the Licensee in that behalf. The Licensee shall not permit or suffer any unauthorized person to have access to the apparatus comprised in the Station. The Licensee shall ensure that persons operating the Station observe the terms, provisions and limitations of the Licence at all times.
4. The Station, and this Licence shall be available for inspection at all reasonable times by duly authorized officers of the Telecommunications Authority.
5.
 - (i) This Licence shall continue in force until revoked by the Telecommunications Authority or surrendered by the Licensee in the manner hereinafter provided.
 - (ii) The Licensee shall pay to the Telecommunications Authority on the issue of this Licence the fee of \$ and thereafter in advance in respect of each year so long as this Licence shall continue in force the renewal fee of \$ the first of such renewal fees being in respect of the year beginning, 19
 - (iii) The Telecommunications Authority may at any time after the date of issue revoke this Licence or vary the terms, provisions or limitations thereof by a notice in writing served on the Licensee. Any notice given under this paragraph may take effect forthwith or on such subsequent date as may be specified in the notice.
 - (iv) The revocation or surrender of the Licence shall not prejudice any right of action or other remedy of the Telecommunications Authority against the Licensee in respect of any antecedent breach, non-observance or non-performance by or any accrued liability of the Licensee under any of the terms, provisions or limitations thereof, and in particular the issue fee shall not be returnable in whole or in part.
 - (v) This Licence shall be returned to the Telecommunications Authority when it has been revoked or surrendered.
 - (vi) This Licence is not transferable.
 - (vii) The Licensee shall-
 - (a) give notice promptly in writing to the Telecommunications Authority-
 - (i) of any change of his address;
 - (ii) of any proposed change in the station; or
 - (iii) of any proposed change of the place at which the station is installed;
 and
 - (b) return this Licence and the Schedule to the said Authority for amendment when giving the notice mentioned in paragraph (a)(i), or when the change referred to in paragraph (a)(ii) or (iii) has been effected.
6. Any Licence however described which the Telecommunications Authority has previously granted to the Licensee is hereby revoked.
7. The following definitions apply to the technical characteristics specified in clause 1(a) of the Licence-
 - (a) Effective radiated power (ERP) is the mean radio frequency power multiplied by the gain of the aerial in the horizontal plane. The mean radio frequency power (RFP) will be taken as that delivered to the aerial and generally for the unmodulated conditions; but in the case of systems in which the application of modulation causes an increase in the effective carrier power, apart from any change in power due to redistribution between the carrier and the side bands, this will be allowed for.
 - (b) RFP, ERP and the aerial characteristics will be assessed either by measurements or by calculation from the characteristics of the types of apparatus used, at the

discretion of the Telecommunications Authority.

- (c) The symbols used to designate the classes of emission have the meanings assigned to them in the Telecommunication Convention.
- (d) "Frequency" (頻率) and "frequency tolerance" (頻差容限) have the meanings assigned to them in the Telecommunication Convention.

- 8. The Licensee, and all persons operating any stations which the Licensee is authorized by this Licence to establish and use shall observe and comply with the relevant provisions of the Telecommunication Convention.
- 9. In this Licence "Telecommunication Convention" (電信公約) means any Constitution and Convention of the International Telecommunication Union and the Radio Regulations annexed thereto, which have from time to time or at any time been acceded to by or applied to Hong Kong.

.....
For and on behalf of the
Telecommunications Authority.

(L.N. 43 of 1966; L.N. 4 of 1984; 36 of 2000 s. 28)

TELECOMMUNICATIONS ORDINANCE (Chapter 106)

RADIOPHONE COMMUNICATION (MOBILE) STATION LICENCE

DATE OF ISSUE:

RENEWABLE:

FEE ON ISSUE:

FEE ON RENEWAL:

..... of
..... (hereinafter
called "the Licensee") is hereby licensed, subject to the conditions herein contained-

- (a) to possess, establish and maintain in a vehicle or other mobile object (hereinafter called "the Mobile Station")
..... (Registered name or number of vehicle or other mobile object) a transmitting and receiving station for radiotelephony; and
- (b) to use the Mobile Station for the purpose of-
 - (i) transmitting to any duly authorized fixed station telephone calls for interconnection to the public telephone service;
 - (ii) receiving from any duly authorized fixed station telephone calls transmitted through the public telephone service.

CONDITIONS

- 1. (i) The Mobile Station shall be used only with emissions at the frequencies and of the classes and characteristics specified below, in relation to the class and characteristics of the emission in use-

| 1 | 2 | 3 | 4 |
|------------------------|----------|-------------------|--------|
| Transmitting Frequency | Class of | Maximum Effective | Aerial |

| | | | |
|---|----------------------------------|---|--|
| and Maximum Frequency Tolerance (See Clause 7(d)) | Emission (See Clause 7(c)) | Radiated Power (Watts) (See Clause 7(a) & 7(b)) | Characteristics (See Clause 7(a) & 7(b)) |
|---|----------------------------------|---|--|

- (ii) The apparatus comprised in the Mobile Station shall at all times comply with the same technical standards as may be prescribed by the Telecommunications Authority.
- 2. The apparatus comprised in the Mobile Station shall be so designed, constructed, maintained and operated that the use of the Mobile Station does not cause any avoidable interference with any radiocommunications.
- 3. The Mobile Station shall be operated only by the Licensee or by persons authorized by the Licensee in that behalf. The Licensee shall not permit or suffer any unauthorized person to have access to the apparatus comprised in the Mobile Station. The Licensee shall ensure that persons operating the Mobile Station observe the terms, provisions and limitations of the Licence at all times.
- 4. The Mobile Station and this Licence shall be available for inspection at all reasonable times by duly authorized officers of the Telecommunications Authority.
- 5.
 - (i) This Licence shall continue in force until revoked by the Telecommunications Authority or surrendered by the Licensee in the manner hereinafter provided.
 - (ii) The Licensee shall pay to the Telecommunications Authority on the issue of this Licence the fee of \$.....and thereafter in advance in respect of each year so long as this Licence shall continue in force the renewal fee of \$..... the first of such renewal fees being in respect of the year beginning, 19
 - (iii) The Telecommunications Authority may at any time after the date of issue revoke this Licence or vary the terms, provisions or limitations thereof by a notice in writing served on the Licensee. Any notice given under this paragraph may take effect forthwith or on such subsequent date as may be specified in the notice.
 - (iv) The revocation or surrender of the Licence shall not prejudice any right of action or other remedy of the Telecommunications Authority against the Licensee in respect of any antecedent breach, non-observance or non-performance by or any accrued liability of the Licensee under any of the terms, provisions or limitations thereof, and in particular the issue fee shall not be returnable in whole or in part.
 - (v) This Licence shall be returned to the Telecommunications Authority when it has been revoked or surrendered.
 - (vi) This Licence is not transferable.
 - (vii) The Licensee shall-
 - (a) give notice promptly in writing to the Telecommunications Authority-
 - (i) of any change of his address;
 - (ii) of any proposed change in the station; or
 - (iii) of any proposed change of the place at which the station is installed;
 and
 - (b) return this Licence and the Schedule to the said Authority for amendment

when giving the notice mentioned in paragraph (a)(i) or when the change referred to in paragraph (a)(ii) or (iii) has been effected.

6. Any Licence however described which the Telecommunications Authority has previously granted to the Licensee is hereby revoked.
7. The following definitions apply to the technical characteristics specified in clause 1(i) of the Licence-
 - (a) Effective radiated power (ERP) is the mean radio frequency power multiplied by the gain of the aerial in the horizontal plane. The mean radio frequency power (RFP) will be taken as that delivered to the aerial and generally for the unmodulated conditions; but in the case of systems in which the application of modulation causes an increase in the effective carrier power, apart from any change in power due to redistribution between the carrier and the side bands, this will be allowed for.
 - (b) RFP, ERP and the aerial characteristics will be assessed either by measurements or by calculation from the characteristics of the types of apparatus used, at the discretion of the Telecommunications Authority.
 - (c) The symbols used to designate the classes of emission have the meanings assigned to them in the Telecommunication Convention.
 - (d) "Frequency" (頻率) and "frequency tolerance" (頻差容限) have the meanings assigned to them in the Telecommunication Convention.
8. The Licensee, and all persons operating any stations which the Licensee is authorized by this Licence to establish and use shall observe and comply with the relevant provisions of the Telecommunication Convention.
9. In this Licence "Telecommunication Convention" (電信公約) means any Constitution and Convention of the International Telecommunication Union and the Radio Regulations annexed thereto, which have from time to time or at any time been acceded to by or applied to Hong Kong.

.....
For and on behalf of the
Telecommunications Authority.

(L.N. 43 of 1966; L.N. 4 of 1984; 36 of 2000 s. 28)

TELECOMMUNICATIONS ORDINANCE
(Chapter 106)

INDUCTION COMMUNICATION LICENCE

DATE OF ISSUE:
RENEWABLE:
FEE ON ISSUE:
FEE ON RENEWAL:

.....
of (hereinafter
called "the Licensee") is hereby licensed, subject to the conditions herein contained-

- (a) to possess, establish and maintain at
(Address).

a transmitting and receiving station for radio telegraphy (hereinafter called "the

Fixed Station") and to establish such transmitting and receiving stations for radio telegraphy (hereinafter called "the Mobile Stations") as the Licensee may require; and

- (b) to use the Fixed Station and the Mobile Stations (hereinafter collectively called "the Stations") for the purpose of transmitting and receiving messages concerning the business of the Licensee as between the Fixed Station on the one hand and the Mobile Stations on the other.

CONDITIONS

1.
 - (a) The Stations shall operate only in the induction field.
 - (b) The Stations shall be used only within the frequency bands and with emissions of the classes and with the maximum radiated field, which are respectively specified in the Schedule hereto.
 - (c) The Stations shall be operated only by persons authorized by the Licensee in that behalf and the Licensee shall ensure that such persons observe the terms, provisions and limitations of the Licence at all times.
2.
 - (a) The apparatus comprised in the Stations shall be so designed, constructed, maintained and used that the use of the Stations does not cause any interference with any radiocommunications, or with the working of any station or circuit duly licensed or authorized by the Telecommunications Authority.
 - (b) A satisfactory method of frequency stabilization shall be employed in the transmitting apparatus.
 - (c) The frequency of the transmitting apparatus shall be verified at such times, and by measuring equipment of such accuracy, as may be necessary to ensure that the emissions are within the authorized frequency bands.
3. The Stations, and this Licence, shall be available for inspection at all reasonable times by duly authorized officers of the Telecommunications Authority.
4. This Licence shall continue in force for one year from the date of issue, and thereafter so long as the Licensee pays to the Telecommunications Authority in advance each year on or before the anniversary date of the issue the renewal fee prescribed by or under the regulations for the time being in force:
Provided that the Telecommunications Authority may at any time after the date of issue revoke this Licence or vary the terms, provisions or limitations thereof by a notice in writing served on the Licensee. Any notice given under this clause may take effect either forthwith or on such subsequent date as may be specified in the notice.
5. This Licence is not transferable.
6. The Licensee shall-
 - (a) give notice promptly in writing to the Telecommunications Authority-
 - (i) of any change of his address; or
 - (ii) of any proposed change of the place at which the station is installed; and
 - (b) return the Licence and the Schedule to the said Authority for amendment when giving the notice mentioned in paragraph (a)(i) or when the change referred to in or paragraph (a)(ii) has been effected.
7. This Licence shall be returned to the Telecommunications Authority when it has expired or been revoked.
8. Any Licence however described which has previously been granted to the Licensee in respect of the Stations or any of them is hereby revoked.

9. If power for the working of the Station is taken from a public electricity supply, no direct connection shall be made between the supply mains and the induction loop.
10. The Licensee, and all persons operating any stations which the Licensee is authorized by this Licence to establish and use shall observe and comply with the relevant provisions of the Telecommunication Convention.
11. In this Licence "Telecommunication Convention" (電信公約) means any Constitution and Convention of the International Telecommunication Union and the Radio Regulations annexed thereto, which have from time to time or at any time been acceded to by or applied to Hong Kong.

.....
For and on behalf of the
Telecommunications Authority.

SCHEDULE

| Frequency Bands (Kc/s.) | Classes of Emission (See A below) | Maximum Radiated Field |
|-------------------------------|--------------------------------------|--|
| | A1, A2, A3, F1, F2, F3 | The radiated field at 90 m from the radiating system shall not exceed 20 mV/m. |

For the purpose of the Schedule.

- A. The symbols used to designate the classes of emission have the meanings assigned to them in the Radio Regulations annexed to or in force under the Telecommunication Convention.
- B. "The Telecommunication Convention" (電信公約) means any Constitution and Convention of the International Telecommunication Union, and the Radio Regulations annexed thereto, which has from time to time or at any time been acceded to by or applied to Hong Kong.
(L.N. 43 of 1966; L.N. 4 of 1984; L.N. 294 of 1985; 36 of 2000 s. 28)

TELECOMMUNICATIONS ORDINANCE (Chapter 106)

RADIO DEALERS LICENCE (RESTRICTED)

DATE OF ISSUE:
RENEWABLE:
FEE ON ISSUE:
FEE ON RENEWAL:

.....
of (hereinafter called
"the Licensee") is hereby licensed, subject to the conditions attached hereto-
to possess and deal in the course of trade or business in apparatus or material for
radiocommunications other than transmitting apparatus or in any component parts

therefor (hereinafter called "the Licensed Apparatus").

CONDITIONS

1. Subject to the provisions of this clause, the Licensee may carry on the business or Radio Dealer at the address shown above only. In the event of the Licensee changing his place of business to an address other than the address shown above, he shall give notice promptly in writing to the Telecommunications Authority of such change, and shall when giving such notice, return this Licence to the said Authority for amendment.
2. All the Licensed Apparatus shall, unless and until disposed of in accordance with this Licence, be stored atand in no other place without the written permission of the Telecommunications Authority.
3. The Licensed Apparatus shall not be used for or by the Licensee for the purpose of radiocommunications, except under and in accordance with a Licence granted by the Telecommunications Authority.
4. This Licence Form shall be placed in a glass fronted frame and prominently displayed in the licensed premises at all times.
5. The Licensee shall-
 - (a) keep and maintain complete and accurate registers of the Licensed Apparatus and of all his dealings and transactions therewith;
 - (b) produce such registers and exhibit his stock of such Licensed Apparatus to and on the demand of the Telecommunications Authority or any officer authorized by him in that behalf;
 - (c) forward to the Telecommunications Authority each month a complete and accurate list of all transactions carried out, which list shall reach the Telecommunications Authority not later than the tenth day of the month subsequent to that to which the list refers.

The list referred to in paragraph (c) above shall consist of four parts, namely, "Goods Purchased", "Goods Sold", "Repairs Carried Out" and "Stock in Hand", in the case of the first three parts the names and addresses of all customers or suppliers shall be included.
6. This Licence does not permit the Licensee to import, export, sell, hire or purchase or obtain in any manner whatsoever any apparatus or appliances or arts thereof which are or can be used for transmitting purposes.
7. This Licence shall continue in force for one year from the date of issue, and thereafter so long as the Licensee pays to the Telecommunications Authority in advance in each year on or before the anniversary of the date of issue a renewal fee of \$.....:
Provided that the Telecommunications Authority may at any time after the date of issue revoke this Licence or vary the terms, provisions or limitations thereof by a notice in writing served on the Licensee.
8. This Licence is not transferable.
9. This Licence shall be returned to the Telecommunications Authority when it has expired or been revoked.
10. Any Licence however described which has previously been granted to the Licensee in respect of a Radio Dealers Business is hereby revoked.

.....
For and on behalf of the
Telecommunications Authority.

(L.N. 43 of 1966; 36 of 2000 s. 28)

TELECOMMUNICATIONS ORDINANCE
(Chapter 106)

RADIO DEALERS LICENCE
(UNRESTRICTED)

DATE OF ISSUE:
RENEWABLE:
FEE ON ISSUE:
FEE ON RENEWAL:

.....
of (hereinafter called
"the Licensee") is hereby licensed, subject to the conditions attached hereto-
to possess and deal in the course of trade or business in apparatus or material for
radiocommunications or in any component parts therefor (hereinafter called "the
Licensed Apparatus").

CONDITIONS

1. The Licensee may carry on the business of Radio Dealer at the address shown above only and shall not, without the consent of the Telecommunications Authority, change such address. If at any time the Licensee wishes to change the address shown above he shall make application in writing to the Telecommunications Authority for consent to the proposed change not less than 10 days before the date on which he intends to make such change. The Licensee shall, when making such application, return this Licence to the said Authority for amendment in the event of consent to the proposed change being granted.
2. All the Licensed Apparatus shall, unless and until disposed of in accordance with the Licence, be stored at and in no other place without the written permission of the Telecommunications Authority.
3. The Licensed Apparatus shall not be used for or by the Licensee for the purpose of radiocommunications, except under and in accordance with a Licence granted by the Telecommunications Authority.
4. This Licence Form shall be placed in a glass fronted frame and prominently displayed in the licensed premises at all times.
5. The Licensee shall-
 - (a) keep and maintain complete and accurate registers of the Licensed Apparatus and of all his dealings and transactions therewith;
 - (b) produce such registers and exhibit his stock of such Licensed Apparatus to and on the demand of the Telecommunications Authority or any officer authorized by him in that behalf;
 - (c) forward each month to the Telecommunications Authority a complete and accurate list of all transactions carried out, which list shall reach the Telecommunications Authority not later than the tenth day of the month subsequent to that to which the list refers.

The list referred to in paragraph (c) above shall consist of four parts, namely, "Goods Purchased", "Goods Sold", "Repairs Carried Out" and "Stock in Hand", and in the case of the first three parts the names and addresses of all customers or suppliers shall be included.

6. This Licence shall continue in force for one year from the date of issue and thereafter so long as the Licensee pays to the Telecommunications Authority in advance in each year on or before the anniversary of the date of issue a renewal fee of \$:

Provided that the Telecommunications Authority may at any time after the date of issue revoke this Licence or vary the terms, provisions or limitations thereof by a notice in writing served on the Licensee.

7. This Licence is not transferable.
8. This Licence shall be returned to the Telecommunications Authority when it has expired or been revoked.
9. Any Licence, however described, which has previously been granted to the Licensee in respect of a Radio Dealers Business is hereby revoked.

.....
For and on behalf of the
Telecommunications Authority.

(L.N. 43 of 1966; 36 of 2000 s. 28)

TELECOMMUNICATIONS ORDINANCE
(Chapter 106)

DEMONSTRATION LICENCE
(UNRESTRICTED)

DATE OF ISSUE:

CALL SIGNS:

RENEWABLE:

FEE ON ISSUE:

FEE ON RENEWAL:

.....
of (hereinafter called
"the Licensee") is hereby licensed, subject to the terms, provisions and limitations herein
contained-

- (a) to possess, establish and maintain transmitting and receiving station(s) for radiocommunications (hereinafter called the "Base Station(s)") at locations approved by the Telecommunications Authority and to establish transmitting and receiving station(s) for radiocommunications (hereinafter called "the Mobile Station(s)"); and
- (b) to use the Base Station(s) and the Mobile Station(s) (hereinafter collectively called "the Stations") for the purpose of transmitting and receiving, between the Base Station(s) on the one hand and the Mobile Station(s) on the other, or between one of the Mobile Stations and another of the Mobile Stations, spoken test messages for demonstrating the apparatus comprised in the Stations in the course of the Licensee's business as manufacturer or dealer in such apparatus.

CONDITIONS

1.
 - (a) No messages relating to the business or private affairs of the Licensee or of any other person, company or organization shall be transmitted or received by means of the Stations.
 - (b) The Stations shall be operated only by persons authorized by the Licensee in that behalf.
2. The apparatus comprised in the Stations shall be so designed, constructed, maintained and used that the use of the Stations does not cause any interference with any other duly licensed or authorized telecommunications.
3. The apparatus comprised in the Stations shall at all times comply with the performance specifications as laid down by the Telecommunications Authority.
4. The Licensee shall not permit or suffer any unauthorized person to operate the Stations or to have access to the apparatus comprised therein. The Licensee shall ensure that persons operating the Stations observe the terms, provisions and limitations of this Licence at all times.
5. Every message transmitted from any of the Stations shall start with an announcement of the call sign of the called and calling Stations. The call sign of the calling Stations shall be repeated at the end of every period of transmission provided that no call sign need be announced more than once in any period of one minute. The Stations shall be called and identified only by their authorized call signs listed on the first page of this Licence.
6. The Stations and this Licence shall be available for inspection at all reasonable times by duly authorized officers of the Telecommunications Authority.
7. This Licensee shall continue in force for one year from the date of issue, and thereafter so long as the Licensee pays to the Telecommunications Authority in advance in each year on or before the anniversary of the date of issue the renewal fee prescribed by order or under the regulations for the time being in force:

Provided that the Telecommunications Authority may at any time after the date of issue revoke this Licence or vary the terms, provisions or limitations thereof by a notice in writing served on the Licensee. Any notice given under this clause may take effect either forthwith or on such subsequent date as may be specified in the notice.
8. This Licence is not transferable.
9. This Licence shall be returned to the Telecommunications Authority when it has expired or been revoked.
10. Any Licence or Permit however described which has previously been granted to the Licensee in respect of the Stations or any of them is hereby revoked.
11. The Licensee shall give notice promptly in writing to the Telecommunications Authority of any change of his address and, when giving any such notice, return this Licence to the said Authority for amendment. (Prior authority is needed before any demonstration is made).
12. If power for the working of any Base Station is taken from a public electricity supply, no direct connection shall be made between the supply mains and the aerial.
13. If any Base Station aerial crosses above or is liable to fall or to be blown on to any overhead power wire (including electric lighting and tramway wires) or power apparatus it shall be guarded to the reasonable satisfaction of the owner of the power wire or power apparatus

concerned.

14. The connection of any of the Stations with the public telephone exchange system will not be permitted.
15. Unless this Licence expressly so provides, it does not authorize the relaying of messages received at any Station to any other premises or place, or the communicating of such messages to the public, e.g. by loudspeaker.
16. If any message, the receipt of which is not authorized by this Licence, is received by means of the Stations, neither the Licensee nor any person using the Stations shall make known the contents of any such message, its origin or destination, its existence or the fact of its receipt to any person except a duly authorized officer of the Telecommunications Authority or a competent legal tribunal, and shall not retain any copy or make use of any such message, or allow it to be reproduced in writing, copied or made use of.
17. The Licensee, and all persons operating any stations which the Licensee is authorized by this Licence to establish and use shall observe and comply with the relevant provisions of the Telecommunication Convention.
18. In this Licence "Telecommunication Convention" (電信公約) means any Constitution and Convention of the International Telecommunication Union and the Radio Regulations annexed thereto, which have from time to time or at any time been acceded to by or applied to Hong Kong.

.....
For and on behalf of the
Telecommunications Authority.

(L.N. 43 of 1966; L.N. 4 of 1984; 36 of 2000 s. 28)

TELECOMMUNICATIONS ORDINANCE
(Chapter 106)

RADIOCOMMUNICATIONS SCHOOL LICENCE

DATE OF ISSUE:

RENEWABLE:

FEE ON ISSUE:

FEE ON RENEWAL:

.....
of(hereinafter called
"the Licensee") is hereby licensed, subject to the terms, provisions and limitations herein
contained to possess, establish and maintain, work and maintain a radiocommunications
transmitting and receiving station at

.....
(Address)

for the sole purpose of instructing pupils in the theory and practice of radiocommunications.

CONDITIONS

1. The transmitting apparatus shall not be connected to any aerial and shall be such that the

radiation therefrom will not be perceptible outside the building in which the apparatus is installed, except as otherwise specified by the Telecommunications Authority in the Schedule.

2. The licensed premises and apparatus shall be available for inspection at all reasonable times by duly authorized officers of the Telecommunications Authority.
3. The licensed premises and apparatus shall be closed down at any time if the Telecommunications Authority deems it expedient and notifies the Licensee in writing of his decision so to do.
4. This Licence shall continue in force for one year from the date of issue and thereafter so long as the Licensee pays to the Telecommunications Authority in advance in each year on or before the anniversary of the date of issue the renewal fee prescribed by or under the regulations for the time being in force:
Provided that the Telecommunications Authority may at any time after the date of issue revoke this Licence or vary the terms, provisions or limitations thereof by a notice in writing served on the Licensee. Any notice given under this clause may take effect either forthwith or on such subsequent date as may be specified in the notice.
5. This Licence is not transferable.
6. This Licence shall be returned to the Telecommunications Authority when it has expired or been revoked.
7. Any Licence or Permit, however described which has previously been granted to the Licensee in respect of the School is hereby revoked.
8. The Licensee shall-
 - (a) give notice promptly in writing to the Telecommunications Authority-
 - (i) of any change of his address;
 - (ii) of any change of the address of the school; or
 - (iii) of any proposed change in the transmitting apparatus or its characteristics as listed in the Schedule; and
 - (b) when giving any notice referred to in paragraph (a), return this Licence to the said Authority for amendment.
9. If any message, the receipt of which is not authorized by this Licence, is received by means of receiving apparatus installed and worked in the School, neither the Licensee nor any person using the said receiving apparatus shall make known the contents of any such message, its origin or destination, its existence or the fact of its receipt.
10. The Licensee, and all persons operating any stations which the Licensee is authorized by this Licence to establish and use shall observe and comply with the relevant provisions of the Telecommunication Convention.
11. In this Licence "Telecommunication Convention" (電信公約) means any Constitution and Convention of the International Telecommunication Union and the Radio Regulations annexed thereto, which for the time being applies to Hong Kong.

.....
For and on behalf of the
Telecommunications Authority.

SCHEDULE

Name and address of Licensee

Location of station

Transmitting apparatus that may be connected to an aerial and radiation therefrom may go beyond the building in which the apparatus is installed-

Description of apparatus

Call Sign

Transmitting Frequency

Maximum Frequency Tolerance

Maximum Effective Radiated Power

Aerial Characteristics

(L.N. 43 of 1966; L.N. 4 of 1984; L.N. 406 of 1992; 36 of 2000 s. 28)

TELECOMMUNICATIONS ORDINANCE

(Chapter 106)

HONG KONG

AMATEUR STATION LICENCE

DATE OF ISSUE:

RENEWABLE:

FEE ON ISSUE:

FEE ON RENEWAL:

CLASS:

CALL SIGN:

..... of
.....(hereinafter
referred to as "the Licensee") is hereby licensed, subject to the conditions herein contained-

- (a) to possess, establish and maintain an amateur transmitting and receiving station for radiocommunications (hereinafter referred to as "the Station");
- (b) to use the Station, as a part of the self-training of the Licensee, to communicate with other amateur stations by transmitting and receiving-
 - (i) messages about matters of a personal nature in which the Licensee, or the person with whom he is in communication, has been directly concerned;
 - (ii) signals (not being in secret code or cypher) which form part of, or relate to, the transmission of such messages.

GENERAL CONDITIONS

Limitations of use

1. The Licensee shall use only classes of emission, powers and frequency bands as authorized by the Telecommunications Authority (hereinafter referred to as "the Authority") in Schedule 1.
2. (a) The Licensee may establish the Station, as specified by the Authority in Schedule 2-
 - (i) at a fixed location on a permanent or temporary basis;
 - (ii) on a vehicle within the territory of Hong Kong;

- (iii) on a vessel or watercraft registered or licensed in Hong Kong; or
 - (iv) as a portable station within the territory of Hong Kong.
 - (b) The Licensee shall not establish the Station aboard an aircraft or other airborne vehicle.
 - (c) The Licensee shall not change the location of the Station as specified in Schedule 2 without the prior consent of the Authority.
 - (d) The Licensee shall notify the Authority in writing, in such form as the Authority may specify, of any change in the particulars set forth in Schedule 1 within 72 hours of such change.
 - (e) The Licensee shall establish the Station subject to restrictions as stipulated by the Authority in Schedule 1.
3.
 - (a) Mobile operation shall not be conducted within the jurisdiction of a state or territory outside Hong Kong except with the permission of the administration of such state or territory.
 - (b) When a vessel or watercraft is in international waters, the Licensee shall use only those frequency bands which, in accordance with the Telecommunication Convention, have been allocated to the amateur service in the region being visited.
 4. The Licensee shall ensure that only persons authorized by him operate the Station. The Licensee shall ensure that persons operating the Station shall observe the terms, provisions and limitations of this licence at all times.
 5. This licence does not authorize the use of the Station-
 - (a) for business, advertisement or propaganda purposes; or
 - (b) for the transmission of news or messages of, or on behalf of, or for the benefit or information of, any organization or any person other than the Licensee and the person with whom he is in communication unless the prior consent of the Authority in writing has been obtained.
 6. Notwithstanding General Condition 5(b), and subject to the limitations in Resolution 640 of the World Administrative Radio Conference 1979, the Licensee may use the Station for international disaster communications within the frequency bands stipulated in Schedule 1.
 7.
 - (a) Except with the prior consent in writing of the Authority, the Licensee shall not send messages (other than initial calls) for general reception by licensed amateurs, but shall send messages to-
 - (i) individual licensed amateurs; or
 - (ii) groups of licensed amateurs as long as communication is first established separately with at least one licensed amateur in any such group.
 - (b) In the case of communication with stations outside Hong Kong, the Licensee shall send the messages in plain language and shall be limited to messages of a technical nature relating to tests, and to remarks of a personal character.
 - (c) The Licensee shall not transmit such material as music, public broadcasts or speeches.
 8. No message which is offensive, obscene or indecent shall be transmitted from the Station.
 9. If any message, the receipt of which is not authorized by this licence is received, neither the Licensee nor any person using the Station shall make known the contents of any such message, its origin or destination, its existence or the fact of its receipt to any person except a duly authorized officer of the Authority or a competent legal tribunal, and shall not retain any copy or make any use of any such message, or allow it to be reproduced in writing, copied or made use of.

Apparatus

10.
 - (a) A satisfactory method of frequency stabilization shall be employed in the transmitting

- apparatus.
- (b) Equipment for frequency and power measurement shall be provided capable of verifying that the transmitting apparatus is operating with emissions within the authorized frequency bands and power limits.
 - (c) The Station shall be comprised of transmitting and receiving apparatus which is of a type approved by the Authority.
11. (a) The apparatus comprised in the Station shall be so designed, constructed, maintained and used that the use of the Station does not cause any undue interference to other amateur stations, or any other duly licensed or authorized radiocommunications.
- (b) At all times, every precaution shall be taken to avoid over-modulation, and to keep the radiated energy within the narrowest possible frequency bands having regard to the class of emission in use. In particular, the radiation of harmonics and other spurious emissions shall be suppressed to such a level that they cause no interference to any radiocommunications. Tests shall be carried out from time to time to ensure that the requirements of this paragraph are met.
12. An aerial shall be installed and maintained to good engineering standard so as not to pose unacceptable risks to persons or property in the vicinity.

Record of operation

13. A record of operation of the Station shall be kept in the format and manner stipulated by the Authority in Schedule 1.

Call sign

14. When the Station is operated, the call sign assigned under this licence shall be used in accordance with the procedure stipulated by the Authority in Schedule 1.

Inspection and close-down

15. The Station, this licence and the record of operation shall be available for inspection at all reasonable times by duly authorized officers of the Authority.
16. (a) This licence, or its duplicate issued by the Authority, shall be available for inspection upon request by duly authorized officers of the Authority at each fixed location, vessel or watercraft where the Station is installed.
- (b) The Licensee shall-
- (i) display on the windscreen of a vehicle in which the Station is installed; or
 - (ii) affix on a portable apparatus, such disc or document issued by the Authority showing the fact that the Station is licensed.
17. The Station shall be closed down on the demand of a person acting under the authority of the Authority when undue interference is being caused to other duly licensed or authorized radiocommunications.

Interpretation

18. In this licence-
- "messages about matters of a personal nature" (關於個人事務的訊息) does not include messages about business affairs;
- "messages" (訊息) and "signals" (訊號) include telephony, visual communication, digital communication and telegraphy;

"the Telecommunication Convention" (電信公約) means any Constitution and Convention of the International Telecommunication Union, and the Radio Regulations annexed thereto, which for the time being applies to Hong Kong.

Others

19. The Licensee and all persons operating any stations which the Licensee is authorized by this licence to establish and use shall observe and comply with the relevant provisions of the Telecommunication Convention.
20. This licence shall continue in force for one year from the date of issue, and thereafter so long as the Licensee pays to the Authority in advance in each year on or before the anniversary date of the issue the renewal fee prescribed by or under the regulations for the time being in force:
Provided that the Authority may at any time after the date of issue revoke this licence or vary the terms, provisions or limitations thereof by a notice in writing served on the Licensee. Any notice given under this clause may take effect forthwith or on such subsequent date as may be specified in the notice.
21. This licence is not transferable.
22. This licence or its duplicate issued by the Authority or any disc or document issued by the Authority showing the fact that the Station is licensed shall be returned to the Authority when this licence has expired or been revoked.
23. Any licence, however described, which has previously been granted to the Licensee in respect of the Station is hereby revoked.
24. The Authority may publish the Licensee's name and address at his discretion unless the Licensee specifically asks that this should not be done.
25. This licence does not authorize the Licensee to do any act which is an infringement of any copyright which may exist in the matter sent or received.
26. The Licensee-
 - (a) shall give notice, as soon as practicable, in writing to the Authority of any change of his address for correspondence; and
 - (b) shall return this licence and the Schedules to the Authority for amendment when any of the changes mentioned in paragraph (a) or General Condition 2(c) have been effected.

SPECIAL CONDITIONS

.....
For the Telecommunications Authority.

SCHEDULE 1

CLASSES OF EMISSION, POWERS, FREQUENCY BANDS AND STATUS OF ALLOCATION

SCHEDULE 2

DETAILS OF APPARATUS

Location of Station

Remarks

(L.N. 406 of 1992; 36 of 2000 s. 28)

TELECOMMUNICATIONS ORDINANCE

(Chapter 106)

MODEL CONTROL LICENCE

DATE OF ISSUE:

RENEWABLE:

FEE ON ISSUE:

FEE ON RENEWAL:

.....
of(hereinafter
called "the Licensee") is hereby licensed, subject to the conditions herein contained-

to possess, establish and maintain and use a radiocommunications station (hereinafter called "the Station") for the purpose only of controlling the movement of a model vehicle, vessel or aircraft, by means of the emission of electromagnetic energy from transmitting apparatus, and the reception of such energy by receiving apparatus in the model (which transmitting and receiving apparatus are together comprised in the expression "the Station").

CONDITIONS

1. The Licence is subject to the following limitations-
Emissions:
Frequencies:
Power:
Hours of use:
Prohibited areas:
The Station shall be operated only (a) by the Licensee personally or (b) in the presence of and under the direct supervision of the Licensee, by any other person authorized by him.
2.
 - (i) The apparatus comprised in the Station shall be so designed, constructed, maintained and used that the use of the Station does not cause any interference with any other duly licensed or authorized telecommunications.
 - (ii) A satisfactory method of frequency stabilization shall be employed in the transmitting apparatus.
 - (iii) The frequency of the transmitting apparatus shall be verified at such times, and by measuring equipment of such accuracy, as may be necessary to ensure that the emissions are within the authorized frequency bands.
 - (iv) The use of spark transmitting apparatus is specifically forbidden.
3. The Station and this Licence shall be available for inspection at all reasonable times by duly authorized officers of the Telecommunications Authority.

4. This Licence shall continue in force for one year from the date of issue, and thereafter for successive periods of one year so long as the Licensee pays to the Telecommunications Authority in advance before the beginning of each successive period the renewal fee by or under the regulations for the time being in force:
 Provided that the Telecommunications Authority may at any time after the issue revoke this Licence or vary the terms, provisions or limitations thereof by a notice in writing served on the Licensee.
5. This Licence is not transferable.
6. This Licence shall be returned to the Telecommunications Authority when it has expired or been revoked.
7. Any Licence or Permit however described which the Telecommunications Authority has previously granted to the Licensee in respect of the Station is hereby revoked.
8. The Licensee shall give notice promptly in writing to the Telecommunications Authority of any change of his address and when giving such notice shall forward this Licence to that Authority for amendment.
9. If power for the working of the Station is taken from a public electricity supply, no direct connection shall be made between the supply mains and the aerial.
10. The Licensee is advised to check the frequency of the transmitting apparatus whenever it has been subjected to rough treatment and if the transmitting apparatus is not crystal controlled, to check the frequency as shortly before the apparatus is used as is practicable.
11. The Licensee, and all persons operating any stations which the Licensee is authorized by this Licence to establish and use shall observe and comply with the relevant provisions of the Telecommunication Convention.
12. In this Licence "Telecommunication Convention" (電信公約) means any Constitution and Convention of the International Telecommunication Union and the Radio Regulations annexed thereto, which have from time to time or at any time been acceded to by or applied to Hong Kong.

.....
 For and on behalf of the
 Telecommunications Authority.

(L.N. 43 of 1966; L.N. 4 of 1984; 36 of 2000 s. 28)

TELECOMMUNICATIONS ORDINANCE (Chapter 106)

INDUSTRIAL, SCIENTIFIC AND MEDICAL ELECTRONIC MACHINE LICENCE

DATE OF ISSUE:

RENEWABLE:

FEE ON ISSUE: PER HIGH FREQUENCY GENERATOR. FEE

ON RENEWAL: PER HIGH FREQUENCY GENERATOR

..... of
.....(hereinafter.
called "the Licensee") is hereby licensed, subject to the terms, provisions and limitations herein
contained-

to possess, maintain and use apparatus
at
..... for the purpose of generating high frequency electro-
magnetic energy which shall be used for industrial, scientific and medical processes
only.

CONDITIONS

1. (a) The apparatus shall be used only under suppressed radiation conditions. Radiation outside the internationally allocated frequencies causing interference to communication services shall be suppressed to the satisfaction of the Telecommunications Authority.
(b) The apparatus shall be operated only by persons authorized by the Licensee in that behalf.
2. The Schedule attached hereto shall show the number of apparatuses covered by this Licence and their operating frequencies.
3. (1) During the period of validity of this Licence, the Licensee shall not without the consent in writing of the Telecommunications Authority-
 - (a) make any alteration or addition to the apparatus (apparatuses) covered by this Licence; or
 - (b) change the address of the place where the apparatus (apparatuses) is maintained and used.(2) If at any time the Licensee wishes to make-
 - (a) any alteration or addition mentioned in subclause (1)(a); or
 - (b) a change of address mentioned in subclause (1)(b),he shall make application in writing to the Telecommunications Authority for consent to such alteration, addition or change not less than 10 days before the date on which he intends to make such alteration, addition or change. The Licensee shall, when making such application, return this Licence and the Schedule to the Telecommunications Authority for amendment in the event of the application being granted.
4. The Licensee shall give notice promptly in writing to the Telecommunications Authority of any change of his postal address and, when giving such notice, shall return this Licence to the said Authority for amendment.
5. The Station, the apparatus (apparatuses) and this Licence shall be available for inspection at all reasonable times by duly authorized officers of the Telecommunications Authority.
6. This Licence shall continue in force for one year from the date of issue, and thereafter for successive periods of one year so long as the Licensee pays to the Telecommunications Authority in advance before the beginning of each successive period the renewal fee prescribed by or under the regulations for the time being in force:
Provided that the Telecommunications Authority may at any time after the date of issue revoke this Licence or vary the terms, provisions or limitations thereof by a notice served in writing on the Licensee or by a notice published in the Gazette addressed to "All Electronic Industrial Machine Licensees". Any notice given under this clause may take effect either forthwith or on such subsequent date as may be specified in the notice.
7. This Licence is not transferable.

8. This Licence shall be returned to the Telecommunications Authority when it has expired or been revoked.
9. Any previous Licence or Permit however described which the Telecommunications Authority has previously granted to the Licensee in respect of the apparatus is hereby revoked.
10. The Licensee, and all persons operating any stations which the Licensee is authorized by this Licence to establish and use shall observe and comply with the relevant provisions of the Telecommunication Convention.
11. In this Licence "Telecommunication Convention" (電信公約) means any Constitution and Convention of the International Telecommunication Union and the Radio Regulations annexed thereto, which have from time to time or at any time been acceded to by or applied to Hong Kong.

.....
For and on behalf of the
Telecommunications Authority.

SCHEDULE

| Apparatus | Date Installed | Operating Frequency |
|-----------|----------------|---------------------|
|-----------|----------------|---------------------|

(L.N. 43 of 1966; L.N. 4 of 1984; 36 of 2000 s. 28)

TELECOMMUNICATIONS ORDINANCE (Chapter 106)

RADIO PAGING SYSTEM LICENCE

DATE OF ISSUE:

RENEWABLE:

FEE: FIXED TRANSMITTING

STATIONS Nos. \$500 per annum each.
FEE: RECEIVING STATIONS Nos. \$ 50 per annum
each.
of

.....(hereinafter
called "the Licensee") is hereby licensed, subject to the conditions attached hereto-
to establish, possess and maintain fixed transmitting stations (as detailed in the
Schedule) for the purpose of communicating to receiving stations by means of selective
calling tone only.

CONDITIONS

1. The fixed transmitting stations comprised in the system shall not transmit any message or signal other than the selected tones required to actuate the receiving stations.

2. The apparatus comprising the system shall at all times comply with any performance specifications laid down by the Telecommunications Authority, subject to such modification in favour of the Licensee, as the Telecommunications Authority may from time to time permit.
3. The apparatus comprising the system shall be so designed, constructed, maintained and used, that the use of the same shall not cause any interference with any other duly licensed or authorized telecommunications.
4. The stations shall be operated only by persons authorized by the Licensee in that behalf, and the Licensee shall ensure that such authorized persons observe the terms, provisions and limitations of this Licence at all times.
5. The Licensee, or any other person authorized by him, shall not operate, except for testing purposes, any fixed transmitting station or receiving station unless the fee prescribed by or under the regulations for the time being in force has been paid to the Telecommunications Authority in respect of such fixed transmitting station or receiving station. The Licensee shall number every receiving station and keep a record at all times of the name and address of every person authorized by the Licensee to operate a receiving station and the number of the receiving station issued to that person.
6. The apparatus comprising the system and this Licence shall be available for inspection at all reasonable times by any duly authorized officer of the Telecommunications Authority.
7. This Licence shall continue in force so long as the licensee pays to the Telecommunications Authority on or before the date of expiry in each year in respect of every fixed transmitting station and every receiving station specified in this Licence the fee prescribed by or under the regulations for the time being in force:
 Provided that the Telecommunications Authority may at any time after the date of issue, revoke the Licence or vary the terms, provisions or limitations thereof by a notice in writing served on the Licensee. Any notice given under this clause may take effect either forthwith or on such subsequent date as may be specified in the notice.
8. This Licence shall be displayed in a prominent position at the control station.
9. This Licence is not transferable and shall be returned to the Telecommunications Authority when it has expired or has been revoked.
10. Any Licence or Permit however described, which the Telecommunications Authority has previously granted to the Licensee in respect of any or all of the stations comprising the system is hereby revoked.
11. The Telecommunications Authority shall be notified promptly of any change of address of the Licensee, or any proposed change in any of the fixed transmitting stations comprised in the system and whenever any such change occurs this Licence and the Schedule shall be returned promptly to the Telecommunications Authority for amendment. Prior authority on the siting of each fixed transmitting station shall be obtained from the Telecommunications Authority, if any fixed transmitting station is to be resited at a place other than that specified in this Licence.
12. If the power for the working of a fixed transmitting station is taken from the public electricity supply, no direct connection shall be made between the supply mains and the aerial.
13. If a fixed transmitting station aerial crosses above or is liable to be blown on to any

overhead power wire (including electric lighting or tramway wires) or power apparatus, it shall be guarded to the reasonable satisfaction of the owner of the power wire or power apparatus concerned.

14. The connection of any of the apparatus comprising the system with the Public Telephone Network is forbidden.
15. Unless authorized in writing by the Telecommunications Authority, the relaying of messages received at any station to any other premises or place is not permitted.
16. If any signal or message, the receipt of which is not authorized by this Licence, is received by means of the receiving stations, neither the Licensee nor any person using such stations shall make known the contents of any such signal or message, its origin or destination, its existence or the fact of its receipt to any person except a duly authorized officer of the Telecommunications Authority or a competent legal tribunal and shall not retain any copy or make any use of such a signal or message, or allow it to be reproduced in writing, copied or made use of.
17. The Telecommunications Authority may publish at his discretion the Licensee's name and address and the frequencies allotted for the service of the Licensee, unless the Licensee specifically asks that this should not be done.
18. The Licensee, and all persons authorized by the Licensee to operate any station which the Licensee is authorized by this Licence to establish and use, shall observe and comply with the provisions of the Telecommunication Convention.
19. In this Licence, "Telecommunication Convention" (電信公約) means any Constitution and Convention of the International Telecommunication Union and the Radio Regulations annexed thereto, which have from time to time or at any time been acceded to by or applied to Hong Kong.

.....
For and on behalf of the
Telecommunications Authority.

RADIO PAGING SYSTEM

SCHEDULE

Name and address of Licensee:

.....
.....
.....
.....

Location of Fixed Transmitting Stations:

.....
.....
.....
.....

| Frequency and Maximum Frequency Tolerance | Bandwidth of Emission | Class of Emission | Maximum Effective Radiated Power (Watts) | Aerial Characteristics |
|--|--------------------------|----------------------|--|---------------------------|
|--|--------------------------|----------------------|--|---------------------------|

For the purposes of the Schedule

- A. Effective radiated power (ERP) is the mean radio frequency power multiplied by the gain of the aerial in the horizontal plane. The mean radio frequency power (RFP) will be taken as that delivered to the aerial and generally for the unmodulated condition; but in case of systems in which the application of modulation causes an increase in the effective carrier power, apart from any change in power due to redistribution between the carrier and sidebands, this will be allowed for.
- B. RFP, ERP and the aerial characteristics will be assessed either by measurements or by calculation from the characteristics of the types of apparatus used, at the discretion of the Telecommunications Authority.
- C. The symbols used to designate the classes of emission have the meanings assigned to them in the Telecommunication Convention.
- D. "Bandwidth" (頻帶寬度) and "frequency tolerance" (頻差容限) have the meanings assigned to them in the Telecommunication Convention.

NUMBER OF RECEIVING STATIONS

.....

(L.N. 37 of 1971; L.N. 4 of 1984; 36 of 2000 s. 28)

TELECOMMUNICATIONS ORDINANCE

(Chapter 106)

WIDE BAND LINK AND RELAY STATION LICENCE

DATE OF ISSUE:

RENEWABLE:

FEE ON ISSUE:

FEE ON RENEWAL:

(1) of

.....

(hereinafter called "the Licensee"), having paid to the Telecommunications Authority an issue fee of, is hereby licensed, subject to the terms, provisions and limitations herein

contained-

- (a) to establish a wide-band link / relay station operating on the assigned frequency/frequencies of MHz GHz utilizing a bandwidth of MHz at the location referred to in the Schedule hereto; and
- (b) to use the wide-band link/relay station for the purpose of sending to and receiving from the station-
 - (i) Facsimile signals
 - (ii) Spoken messages
 - (iii) Signals not having verbal significance but being coded and carrying data.

(2) Limitations: The foregoing licence to use the wide-band link/relay station is subject to the limitations-

- (a) The station shall be used only with emissions at the frequency /frequencies and of the class and characteristics respectively specified in the Schedule hereto; and with such power and aerial characteristics as are specified in the Schedule hereto; in relation to the class and characteristics of the emission in use.
- (b) The station shall be operated only on the licensee's behalf by persons authorized by the licensee so to do.
- (c) The station shall be used only for the purpose of conducting the business of the licensee as

(3) Non-Interference: The apparatus comprised in the station shall be so designed, constructed maintained and used that the use of the station does not cause any avoidable interference with any radiocommunications service.

(4) Operators and Access to Apparatus: The licensee shall not permit or suffer any unauthorized person to operate the station or to have access to the apparatus comprised therein. The licensee shall ensure that persons operating the station observe the terms, provisions and limitations of this licence at all times.

(5) Inspection: The station and this licence shall be available for inspection at all reasonable times by a person acting under the authority of the Telecommunications Authority.

(6) Station to close down: The station shall be closed down at any time on the demand of a person acting under the authority of the Telecommunications Authority.

(7) Other stations: Other wide-band link/relay stations may have assigned to them the frequency channels assigned to the station referred to in this licence at the discretion of the Telecommunications Authority.

(8) Period of Licence, Renewal, Revocation and Variation: This licence shall continue in force for one year from the date of issue and thereafter so long as the licensee pays to the Telecommunications Authority in advance in each year on or before the anniversary of the date of issue a renewal fee of: Provided that the Telecommunications Authority may at any time after the date of issue revoke this licence or vary the terms, provisions or limitations thereof by a notice in writing served on the licensee.

(9) This licence is not transferable.

(10) Other links: Usage of the allocated frequency for other links established by the licensee under the terms of this licence, shall be subject to the approval of the Authority and shall not incur an additional fee.

(11) Application of licence: This licence shall apply to wide-band link and relay systems utilizing

frequencies allocated by the Authority above 890 MHz.

.....
For and on behalf of the
Telecommunications Authority.

SCHEDULE

Name and address of
Licensee:
.....
.....

| Location of Station | Frequency and Maximum Frequency Tolerance (para. D applies) | Bandwidth of Emission (para. D applies) | Class of Emission (para. C applies) | Pulse characteristics (pulse repetition frequency, pulse duration, pulse rise time-para 2 applies) | Effective radiated power in the direction of maximum radiation (Watts) (paras. A & B apply) | Aerial Characteristic s (paras. A & B apply) |
|---------------------------|---|---|--|---|--|--|
|---------------------------|---|---|--|---|--|--|

For the purposes of the Schedule

- A. Effective Radiated Power (ERP) is the power supplied to the antenna multiplied by the relative gain of the antenna in a given direction.
The (ERP) shall be expressed in terms of the peak envelope power (Pp), the mean power (Pm), or the carrier power (Po), whichever is appropriate, taking into account the class of emission used. These powers shall have the meanings assigned to them in the Telecommunication Convention.
- B. ERP and the aerial characteristics will be assessed either by measurements or by calculation from the characteristics of the types of apparatus used, at the discretion of the Telecommunications Authority. For this purpose the appropriate recommendation of the International Radio Consultative Committee (CCIR) should be used as a guide.
- C. The symbols used to designate the classes of emission have the meanings assigned to them in the Telecommunication Convention.
- D. "Bandwidth" (頻帶寬度) and "frequency tolerance" (頻差容限) have the meanings

assigned to them in the Telecommunication Convention.

- E. Public Repetition Frequency (PRF) is the reciprocal of the minimum interval separating corresponding points (e.g., 50% of the peak amplitude) of successive pulses. Pulse duration (length) of any specific pulse is the interval between the first and the last instance at which the instantaneous amplitude reaches 50% of the peak amplitude. Pulse rise time is the time taken during any specific pulse for the amplitude to increase from 10% to 90% of the peak amplitude.

(L.N. 159 of 1972; L.N. 204 of 1973; 36 of 2000 s. 28)

TELECOMMUNICATIONS ORDINANCE

(Chapter 106)

BROADCAST RELAY STATION LICENCE

DATE _____ OF _____
ISSUE: _____

_____ of _____

(hereinafter called "the licensee") is hereby licensed, subject to the conditions herein contained-

- (a) to establish and maintain a radio communication receiving station or stations (hereinafter referred to as "the stations") at the place or places specified in the Schedule;
- (b) to receive at any of the stations-
 - (i) sound programmes and broadcast messages (except messages in facsimile) broadcast by the authorized broadcasting stations specified in the Schedule; and
 - (ii) all television programmes broadcast by the Hong Kong television broadcasting stations specified in the Schedule; and
- (c) to connect by wires any of the stations with the premises of a subscriber in the area or areas specified in the Schedule and to distribute thereby to those premises the programmes and messages received in accordance with paragraph (b).

CONDITIONS

- 1. The stations shall be so maintained and operated that they do not cause undue interference with any other radiocommunications station.
- 2. (1) If any message which the licensee is not authorized to receive is unintentionally received by means of any of the stations, neither the licensee nor any person operating the station shall disclose the contents of any such message, its origin or destination, its existence or the fact of its receipt to any person except a public officer authorized by the Authority or a competent court or tribunal, and shall not retain any copy, or make any use, of any such message, or allow it to be reproduced, copied or made use of.
(2) The licensee shall take all practicable steps to prevent such a message from being received by any subscriber.
- 3. The licensee shall not originate any material or message which is distributed to subscribers to the system.
- 4. The licensee shall furnish to the Authority such information in relation to the operation of the stations as the Authority may require.
- 5. The licensee shall, if required by the Authority in writing so to do, keep a record of the

programmes and messages received at the stations and distributed to subscribers, showing the names of the broadcasting stations from which they were received and the approximate times of reception.

6. Nothing herein contained authorizes the licensee to do any act which is an infringement of any copyright which may exist in any programme or other matter received by the stations.
7. The licensee shall provide to every subscriber a full and contemporaneous relay of all the sound and television programmes broadcast by the broadcasting stations specified in the Schedule.
8. All apparatus used by the licensee shall comply with such requirements as may be specified by the authority and shall be so designed, constructed, maintained and operated that the same does not cause any interference with any other means of telecommunications or interference between subscribers.
9. The system shall be operated only by persons authorized by the licensee in that behalf.
10. The licensee shall permit any public office authorized in writing by the Authority to inspect at all reasonable times the apparatus used by the licensee and this licence.
11. Nothing in this licence confers any right to a renewal thereof on its expiry or to the grant of a new licence.
12. The licensee shall notify the Authority of any extension or modification of the system before the same is carried out.
13. This licence is not transferable and shall be returned to the Authority if it is revoked or when it has expired.
14. The licensee shall notify the Authority forthwith of any change of address of the licensee.
15. The licensee shall ensure that any apparatus which is operated from the public mains supply of electricity is so designed that the said means supply cannot be applied to the aerial or the cable distribution system.
16. The aerial shall be suitably earthed to guard against lightning strikes and shall be securely mounted.
17. The Authority may publish the name and address of the licensee and technical details of the system unless the licensee objects thereto on reasonable grounds.
18. (1) No wire forming part of the system shall cross any street or unleased Government land without the written consent of the Authority.
(2) The licensee shall comply with any conditions imposed, or directions given, by the Authority on the giving of his consent for the purposes of paragraph (1).
19. (1) If in the opinion of the Governor an emergency has arisen, the Authority may from time to time-
 - (a) issue directions to the licensee concerning the programmes and messages to be distributed to subscribers from any of the stations;
 - (b) require the licensee to receive by means of any of the stations messages from any specified broadcasting station and distribute those messages to subscribers; and
 - (c) require the licensee to distribute to subscribers from any of the stations messages of any kind or description.

- (2) The licensee shall comply with any direction given under paragraph (1).
 - (3) The licensee shall not be entitled to any payment or compensation in respect of the exercise by the Authority of any of the powers conferred on him by this clause.
20. The licensee shall notify the Authority of the charge made by him from time to time to subscribers.

SCHEDULE

Name and address of the Licensee
 Location of Relay Stations
 Broadcasts to be received and distributed

| Station | Frequency or Channel | Point of Reception |
|---------|----------------------|--------------------|
|---------|----------------------|--------------------|

Area of distribution

(L.N. 215 of 1973; 29 of 1998 s. 105; 36 of 2000 s. 28)

TELECOMMUNICATIONS ORDINANCE (Chapter 106)

CLOSED CIRCUIT TELEVISION LICENCE

VALID FOR ONE YEAR FROM (date of issue)

FEE:

..... of
 (hereinafter called "the licensee") is hereby licensed, subject to the conditions herein contained, to establish and maintain a closed circuit television system consisting of a television transmitter unit, with or without an associated audio system, connected by wire to reception units, which system (hereinafter referred to as "the system") is more particularly described in the First Schedule hereto.

GENERAL CONDITIONS

1. The system shall be operated only by the licensee and persons authorized by him in that behalf.
2. The licensee shall-
 - (a) furnish to the Telecommunications Authority (hereinafter called "the Authority") his address for correspondence;
 - (b) forthwith give notice in writing to the Authority of any change of such address; and
 - (c) when giving the notice referred to in paragraph (b), return this licence to the Authority for amendment.
3. The licensee shall-
 - (a) operate the system in such a manner as not to cause interference with any other means of telecommunications; and
 - (b) comply with any direction given by the Authority for the purpose of avoiding any

such interference.

4. The licensee shall permit any public officer authorized in writing by the Authority to inspect the system and this licence at all reasonable times, and shall forthwith furnish to the Authority any information required by the Authority in connection with the operation of the system.
5. (1) The licensee shall not use any instrument, apparatus or material on, or connect or apply any electrical currents to, any part of the system if the same interferes, or is likely to interfere, with the working of any other means of telecommunications.
(2) The licensee shall, on receipt of a notice in writing from the Authority, disconnect or remove any part of the system which, in the opinion of the Authority, is interfering, or is likely to interfere, with the working of any other means of telecommunications.
6. The licensee shall not operate the system except for the purpose of providing the information or security communication system or other system specified in the Second Schedule hereto.
7. The licensee shall not transmit by means of the system-
 - (a) any advertising material other than such material as-
 - (i) advertises only the goods or services sold or provided by the licensee; or
 - (ii) is transmitted free of charge by the licensee;
 - (b) any sound programmes, broadcast messages or television programmes broadcast by any authorized sound broadcasting or television broadcasting stations.
8. (1) No wire forming part of the system shall cross any street or unleased Government land without the written consent of the Authority.
(2) The licensee shall comply with any conditions imposed or directions given by the Authority on the giving of his consent for the purposes of paragraph (1).
9. This licence is not transferable.
10. This licence shall be returned to the Authority when it has expired or been revoked.
11. Nothing herein contained authorizes the licensee to do any act which is an infringement of any copyright.
12. The licensee shall ensure that any equipment which is operated from the mains supply of electricity is so designed that the mains supply cannot be applied to the wires of the system.

SPECIAL CONDITIONS

.....
For and on behalf of the
Telecommunications Authority.

FIRST SCHEDULE

DESCRIPTION OF SYSTEM

Location of transmitter unit

Number and location of reception units
.....
Other specifications

SECOND SCHEDULE

PURPOSE OF SYSTEM

(L.N. 215 of 1973; 29 of 1998 s. 105; 36 of 2000 s. 28)

TELECOMMUNICATIONS ORDINANCE (Chapter 106)

BROADCAST RADIO RELAY STATION LICENCE

DATE OF ISSUE:

RENEWABLE:

FEE ON ISSUE:

FEE ON RENEWAL:

..... of
.....
(hereinafter called "the licensee") is hereby licensed, subject to the conditions herein contained-

- (a) to establish and maintain a broadcast relay station at the place specified in the Schedule;
- (b) to receive *sound/television programmes broadcast by each of the authorized broadcasting stations specified in the Schedule; and
- (c) to transmit by radiowave within the area of coverage specified in the Schedule the programmes received in accordance with paragraph (b).

*Delete where inapplicable.

CONDITIONS

1. The station shall be operated only by the licensee and persons authorized by him in that behalf.
2. This licence shall continue in force for one year from the date of issue.
3. Nothing in this licence confers any right to a renewal thereof on its expiry or to the grant of a new licence.
4. The licence is not transferable and shall be returned to the Authority if it is revoked or when it has expired.
5. The licensee shall notify the Authority forthwith of any change of address of the licensee.
6. The licensee shall furnish to the Authority such information in relation to the operation of the station as the Authority may require.
7. The licensee shall permit any public officer authorized in writing by the Authority to inspect at all reasonable times the apparatus used by the licensee under this licence.
8. The licensee shall notify the Authority of any proposed extension or modification of the system before the same is carried out.

9. Nothing herein contained authorizes the licensee to do any act which is an infringement of any copyright which may exist in any programme or other matter received by the stations.
10. The licensee shall provide a full and contemporaneous relay of all *sound/television programmes broadcast by each of the broadcasting stations specified in the Schedule.
11. All apparatus used by the licensee shall comply with those technical requirements specified in the Schedule and shall be so designed, constructed, maintained and operated that the same does not cause undue interference with any other means of telecommunications.
12. (1) If any message which the licensee is not authorized to receive is unintentionally received by means of any of the stations, neither the licensee nor any person operating the station shall disclose the contents of any such message, its origin or destination, its existence or the fact of its receipt to any person except a public officer authorized by the Authority or a competent court or tribunal, and shall not retain any copy, or make any use, of any such message, or allow it to be reproduced, copied or made use of.
(2) The licensee shall take all practicable steps to prevent such a message from being received and re-broadcast.
13. The licensee shall not interject any message, programme, advertising material or announcement into the relay service except, in the case of an emergency, essential announcements concerning the safety of the public within the area of coverage specified in the Schedule.
14. The licensee shall maintain a record and enter therein the date and time and contents of every announcement interjected into the relay service.
15. Any aerial shall be suitably earthed to guard against lightning strikes and shall be securely mounted.
16. (1) No wire forming part of the system shall cross any public street or unleased Government land without the written consent of the Authority.
(2) The licensee shall comply with any conditions imposed, or directions given, by the Authority on the giving of his consent for the purpose of subparagraph (1).
17. (1) If in the opinion of the Governor an emergency has arisen, the Authority may from time to time-
(a) issue directions to the licensee concerning the programmes and messages to be broadcast from the station;
(b) require the licensee to receive by means of any of the station messages from any specified broadcasting station and broadcast those messages.
(2) The licensee shall comply with any direction given under subparagraph (1).
(3) The licensee shall not be entitled to any payment or compensation in respect of the exercise by the Authority of any of the powers conferred on him by this clause.

.....
For and on behalf of the
Telecommunications Authority.

*Delete where inapplicable.

SCHEDULE

1. Location of Broadcast Relay Station

- | | | | |
|----|---|--------------------------|--|
| 2. | Authorized Broadcasting Stations | Transmitting frequencies | Maximum effective radiated power (Watts) |
| 3. | Area of coverage | | |
| 4. | Technical Requirements (L.N. 259 of 1982; L.N. 365 of 1987; 29 of 1998 s. 105; 36 of 2000 s. 28) | | |

TELECOMMUNICATIONS ORDINANCE
(Chapter 106)

PUBLIC NON-EXCLUSIVE TELECOMMUNICATIONS
SERVICE LICENCE

DATE OF ISSUE: []*

RENEWABLE:

FEE ON ISSUE:

FEE ON RENEWAL:

(or such other fee)

RENEWABLE:

FEE ON ISSUE:

FEE

ON

RENEWAL:

(or such other fee

as may be prescribed)

(hereinafter called "the licensee") is hereby licensed, subject to the conditions hereinafter contained-

- (a) to provide a public service (hereinafter called "the service") more particularly described in the First Schedule hereto; and
- (b) to possess, establish, use and maintain such radiocommunications apparatus as described in the Second Schedule hereto as may be necessary to provide for service; and
- (c) to deal in and demonstrate with a view to sale in the course of trade or business, such apparatus or material for radiocommunications as may be necessary to supply customers of the service.

2. This licence shall not be construed as granting any exclusive rights to the licensee in the operation of the service.
3. This licence replaces any licence, however described, which the Telecommunications Authority may have granted to the licensee in respect of the service.

NOTES

1. It is an offence for the licensee or his customers to operate licensed apparatus in such a manner as to cause direct or indirect interference with any other telecommunications service lawfully carried on, or other apparatus for telecommunications lawfully operated in or outside Hong Kong.
2. Under section 34(2) of the Telecommunications Ordinance (Chapter 106) any licence may at any time be cancelled or withdrawn by the Telecommunications Authority or suspended for such period, not exceeding 12 months as the Authority specifies in the event of any

contravention by the licensee of the Ordinance (which includes the regulations thereunder) or of any condition to which the licence is subject.

3. It is an offence upon the expiry or cancellation of this licence not to surrender it to the Telecommunications Authority within 4 weeks of such expiry or cancellation.

4. (Repealed L.N. 238 of 1995)

* Insert here a description of the service.

GENERAL CONDITIONS

This licence is issued subject to the following conditions-

1. The licensee shall at all times and from time to time during the continuation of this licence operate, maintain and provide the service in a manner satisfactory to the Telecommunications Authority.
2. The licensee shall at all times perform and observe the requirements and except insofar as the Telecommunications Authority may in writing expressly absolve the licensee from such compliance all provisions of the Constitution and Convention of the International Telecommunication Union and all regulations and recommendations annexed thereto or made thereunder as are applicable in Hong Kong.
3. (1) Notwithstanding regulation 8(1) of the Telecommunications Regulations (Cap 106 sub. leg.) the licensee may with the prior consent in writing of the Telecommunications Authority transfer this licence and any permission or any right or benefit arising therefrom.
(2) Any such consent shall be subject to such conditions as the Telecommunications Authority may impose.
(3) Should any such transfer be made with such consent as aforesaid the licensee shall cause a true copy of the instrument effecting the same to be transmitted to the Telecommunications Authority within 2 months of the date thereof.
4. If the licensee possesses, uses, establishes or maintains apparatus for radiocommunications the following additional conditions shall apply-
 - (a) each fixed or base station shall be used only at the address and with emissions at the frequencies and of the classes and characteristics specified in the Second Schedule hereto, and with such power and aerial characteristics as are specified in the Second Schedule in relation to the class and characteristics of the emission in use;
 - (b) the apparatus comprised in each fixed or base station shall at all times comply with the technical and performance standards as may be prescribed by the Telecommunications Authority and specified in the Second Schedule;
 - (c) the apparatus comprised in each fixed, base or mobile station (being a mobile station used by the customer of the licensee) shall be of a type approved by the Telecommunications Authority and shall be so designed, constructed, maintained and operated that its use does not cause any avoidable interference with any radiocommunications;
 - (d) each fixed or base station shall be operated only by the licensee or a person authorized by the licensee in that behalf. The licensee shall not permit or suffer any person not so authorized to have access to the apparatus comprised in each fixed or base station. The licensee shall ensure that persons operating each fixed or base station observe the conditions of the licence at all times;
 - (e) the licensee-
 - (i) shall not make any change-

- (A) in any fixed or base station; or
 - (B) in the address at which each fixed or base station is installed, without the prior approval in writing of the Telecommunications Authority;
 - (ii) shall return this licence to the Telecommunications Authority for amendment when a change referred to in sub-subparagraph (i) has been effected;
 - (f) if power for the working of any fixed or base station is taken from a public electricity supply, no direct connection shall be made between the supply mains and the aerial;
 - (g) if any fixed or base station aerial crosses above or may fall or be blown onto any overhead power wire (including electric lighting and tramway wires) or power apparatus it shall be guarded to the reasonable satisfaction of the owner of the power wire or power apparatus concerned;
 - (h) the licensee shall take all reasonable measures to ensure that customers of the service do not cause interference to other users of radiocommunications and shall take all the necessary measures to stop such interference as may occur;
 - (i) the licensee shall cease to offer service to a customer thereof if instructed to do so by the Telecommunications Authority;
 - (j) the licensee shall, if so required, provide the Telecommunications Authority with a list of the names, addresses and other details requested by the Telecommunications Authority of the customers of the service annually on a date specified by the Telecommunications Authority by notice to the licensee;
 - (k) when any person ceases to be a customer of the licensee the licensee shall notify him, in such manner as the Telecommunications Authority may require, that he is no longer exempt from the licensing requirements of the Ordinance in relation to the apparatus used by him as a customer.
5. The apparatus operated by the licensee shall be operated only on such radio frequencies as the Telecommunications Authority may assign to the licensee and the Telecommunications Authority may refuse to assign further frequencies or require the licensee, by notice to him, to cease to operate the apparatus on any frequency previously assigned to him if in the opinion of the Telecommunications Authority the licensee is not making efficient use of that frequency.
 6. The Telecommunications Authority may, by giving not less than 12 months' notice in writing to the licensee, require him upon such date as may be specified in the notice to cease using any frequency previously assigned to him by the Telecommunications Authority and to use such new frequency as the Telecommunications Authority may designate.
 7. The licensee shall not enter into any agreement or arrangement whether legally enforceable or not which shall in any way prevent or restrict competition in relation to the operation of the service or any other telecommunications service licensed by the Telecommunications Authority.

SPECIAL CONDITIONS

FIRST SCHEDULE

DESCRIPTION OF THE PUBLIC TELECOMMUNICATIONS SERVICE

SECOND SCHEDULE

Address
 Transmitting Frequency
 Maximum Frequency Tolerance
 Class of Emission

Maximum Effective Radiated Power (Watts)
Aerial Characteristics
Performance and Technical Standards

.....
For and on behalf of the
Telecommunications Authority.

(L.N. 4 of 1984; 36 of 2000 s. 28)

TELECOMMUNICATIONS ORDINANCE
(Chapter 106)

PLEASURE VESSEL RADIO NETWORK STATION LICENCE

| | |
|-----------------|--------------------------------------|
| DATE OF ISSUE: | NAME OF PLEASURE VESSEL OR LOCATION: |
| RENEWABLE: | MARINE DEPARTMENT'S LICENCE NO.: |
| FEE ON ISSUE: | (WHEN ALLOCATED) |
| FEE ON RENEWAL: | CALL SIGN OR IDENTIFICATION: |

.....
of
hereinafter called the "Licensee") is hereby licensed, subject to the conditions hereinafter contained, to possess such apparatus as is specified in the Schedule hereto and to establish and maintain-

- (a) a transmitting and receiving station for radiocommunications in the pleasure vessel or location named above (hereinafter called "the Pleasure Vessel Radio Network Station");
- (b) transmitting and receiving stations for radiocommunications in the life boats or other survival-crafts associated with and normally carried by the pleasure vessel (hereinafter called "the Survival Craft Stations");
- (c) a radar station for the purpose of radio-determination (hereinafter called "the Radar Station") in the pleasure vessel or in any of the life boats or other survival-crafts associated with, and normally carried by, the pleasure vessel.

CONDITIONS

This licence is issued subject to the following conditions-

1. The apparatus comprised in the Pleasure Vessel Radio Network Station, Survival Craft Stations and Radar Station (hereinafter called "the Stations")-
 - (a) shall be so designed, constructed, maintained and used that the use of the Stations does not cause any avoidable interference with any radiocommunications; and
 - (b) shall be maintained in good working conditions and no modification or alteration shall be made without the consent in writing of the Telecommunications Authority (hereinafter called "the Authority").
2. The Stations shall be used only with emissions which are of the classes specified in the Schedule hereto, on the frequencies specified in the Schedule hereto in relation to those respective classes of emission, and with a power not exceeding that specified in the Schedule hereto in relation to the class of emission and frequency in use at the time.
3. The Stations shall be operated only by persons possessing a certificate granted by the

- Authority under regulation 4 of the Telecommunications Regulations (Cap 106 sub. leg.), but this requirement-
- (a) shall not apply to stations which operate solely on frequencies above 30 MHz other than frequencies assigned for international use; and
 - (b) shall not prevent the use or operation of the Stations in time of distress by any person for the purpose of attracting attention, making known their position and obtaining help.
4. The call sign of the Pleasure Vessel Radio Network Station referred to in the Schedule shall be used whenever it is necessary to identify the Pleasure Vessel Radio Network Station. Such call sign followed by two digits (other than 0 or 1) shall be used to identify any of the Survival Craft Stations. A different combination of digits shall be used in respect of each Survival Craft Station.
 5. The Licensee shall permit any person, acting in the course of his duty on behalf of the Authority or the Director of Marine, to have access to the Stations at all reasonable times for the purpose of inspecting and testing the apparatus comprised therein.
 6. The Licensee-
 - (a) shall not make any change in the Stations without the prior approval of the Authority; and
 - (b) shall give notice in writing, and return this licence for amendment, to the Authority within 4 weeks of any change of any of the particulars set out in the licence and the Schedule.
 7. This licence is not transferable.
 8. The licensee shall at all times perform and observe the requirements and, except insofar as the Authority may in writing expressly absolve the Licensee from such compliance, all provisions of the Constitution and Convention of the International Telecommunication Union and all regulations and recommendations annexed thereto or made thereunder as are applicable in Hong Kong.
 9. This licence shall continue in force for one year from the date of issue.
 10. The Licensee shall render to the Authority such accounts as the Authority may direct in respect of all charges due or payable under the Constitution and Convention of the International Telecommunication Union in respect of messages exchanged between the Stations and other stations, and shall pay to the Authority at such times and in such manner as the Authority may direct all sums due from the Licensee for such messages.
 11. Every message sent from the Pleasure Vessel Radio Network Station shall start with an announcement of the call sign of the called and calling stations. The call sign of the calling station shall be repeated at the end of every period of transmission but no call sign need be announced more than once in any period not exceeding one minute. The Pleasure Vessel Radio Network Station shall be called and identified only by its authorized call sign.
 12. If a message not intended for the Licensee or the general use of the public is received by the Stations, the Licensee or any person using the Stations shall not record, disclose or communicate the message unless-
 - (a) he has had the consent of the originator;
 - (b) the message indicates that the originator may be involved in any criminal activities; or
 - (c) the communication or disclosure is to an authorized officer of the Authority or a competent legal tribunal.

13. No message which is grossly offensive or of an indecent or obscene character shall be sent from the Stations.
14. The connection of any of the Stations with the public switched telephone system other than through the Hong Kong Coast Station is not permitted.

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For and on behalf of the
Telecommunications Authority.

SCHEDULE

1. Name of the Pleasure Vessel or location:
2. Apparatus:

| | Equipment | Type | Call sign | Power | Class of emission | Frequency | Equipment Serial No. |
|-----|-----------------|------|-----------|-------|-------------------|-----------|----------------------|
| (A) | Pleasure Vessel | | | | | | |
| | Radio Network | | | | | | |
| | Transmitter/ | | | | | | |
| | Receiver | | | | | | |
| (B) | Survival Craft | | | | | | |
| | Transmitter/ | | | | | | |
| | Receiver | | | | | | |
| (C) | Radar | | | | | | |
| (D) | Other Equipment | | | | | | |

(L.N. 269 of 1985; 36 of 2000 s. 28)

TELECOMMUNICATIONS ORDINANCE (Chapter 106)

RADIODETERMINATION AND CONVEYANCE OF COMMANDS, STATUS AND DATA LICENCE

DATE OF ISSUE:

RENEWABLE:

FEE ON ISSUE:

FEE ON RENEWAL:

.....
of

(hereinafter called "the Licensee") is hereby licensed, subject to the conditions herein contained-

- (a) to possess, establish and maintain a radio apparatus for the determination of position, velocity and/or other characteristics of an object, or the obtaining of information relating to these parameters, by means of the propagation properties of radio waves; and
- (b) to use the apparatus for the purpose of-
 - (i) transmitting information of any nature provided otherwise than by means of

- voice;
- (ii) receiving from any duly authorized radio station information of any nature provided otherwise than by means of voice.

CONDITIONS

1. The System shall comprise only of the Stations at the locations specified in the Schedule.
2. All characteristics of the Stations shall conform to the parameters and standards specified in the Schedule.
3. The apparatus comprised in the Stations shall be so designed, constructed, maintained and used that the use of the Stations does not cause any avoidable interference with any radiocommunications.
4. The Licensee shall permit any person, acting in the course of his duty on behalf of the Authority, to have access to the Stations at all reasonable time for the purpose of inspecting and testing the apparatus comprised therein.
5. The Licensee-
 - (a) shall not make any change in the Stations without the prior approval of the Authority;
 - (b) shall give notice in writing to the Authority within 4 weeks of any change of the particulars set out in the licence and the Schedules.
6. This Licence shall continue in force so long as the Licensee pays to the Telecommunications Authority in advance on or before the date of expiry in each year the renewal fee prescribed by or under the regulations for the time being in force:

Provided that the Telecommunications Authority may at any time after the date of issue revoke the Licence or vary the terms, provisions or limitations thereof by a notice in writing served on the Licensee. Any notice given under this clause may take effect forthwith or on such subsequent date as may be specified in the notice.
7. The Licence is not transferable.
8. The Licence shall be returned to the Telecommunications Authority when it has expired or been revoked.
9. If any message, the receipt of which is not authorized by the Licence, is received by means of the Station, neither the Licensee nor any person using the Stations shall make known the contents of any such message, its origin or destination, its existence or the fact of its receipt to any person except a duly authorized officer of the Telecommunications Authority or a competent legal tribunal, and shall not retain any copy or make any use of any such message, or allow it to be reproduced in writing, copied or made use of.
10. The Licensee, and all persons operating any stations which the Licensee is authorized by this Licence to establish and use shall observe and comply with the relevant provisions of the Telecommunication Convention.
11. In this Licence "Telecommunication Convention" (電信公約) means any Constitution and Convention of the International Telecommunication Union and the Radio Regulations annexed thereto, which have from time to time or at any time been acceded to by or applied to Hong Kong.

.....
For and on behalf of the
Telecommunications Authority.

SCHEDULE

Location
Transmitting Frequency
Maximum Frequency Tolerance
Class of Emission
Maximum Effective Radiated Power
Aerial Characteristics
Field Strength at Specified Distance
Other Performance and Technical Standards

(L.N. 193 of 1989; 36 of 2000 s. 28)

TELECOMMUNICATIONS ORDINANCE (Chapter 106)

HOTEL TELEVISION (TRANSMISSION) LICENCE

VALID FOR ONE YEAR FROM (date of issue)

FEE:

.....
of(hereinafter
called "the licensee") is hereby licensed, subject to the conditions herein contained, to establish
and maintain a closed circuit television system for hotel television services consisting of a
television transmitter unit or units and/or a radio receiver or receivers, with or without an
associated audio system, connected by wire and/or* radio and/or* any other electromagnetic
means to reception units, which system (hereinafter referred to as "the system") is more
particularly described in the First Schedule hereto.

*Delete where appropriate.

GENERAL CONDITIONS

1. The system shall be operated only by the licensee and persons authorized by him in that behalf.
2. The licensee shall-
 - (a) furnish to the Telecommunications Authority (hereinafter called "the Authority") his address for correspondence;
 - (b) forthwith give notice in writing to the Authority of any change of such address; and
 - (c) when giving the notice referred to in paragraph (b), return this licence to the Authority for amendment.
3. (1) The licensee shall-
 - (a) operate the system in such a manner as not to cause interference with any other means of telecommunications;
 - (b) comply with any direction given by the Authority for the purpose of avoiding any such interference; and
 - (c) on receipt of a notice in writing from the Authority, disconnect or remove any part

of the system which, in the opinion of the Authority, is interfering, or is likely to interfere, with the working of any other means of telecommunications.

- (2) The licensee shall not use any instrument, apparatus or material on, or connect or apply any electrical currents to, any part of the system if the same interferes, or is likely to interfere, with the working of any other means of telecommunications.
4. The licensee shall permit any public officer authorized in writing by the Authority to inspect the system, relevant records and this licence at all reasonable times, and shall forthwith furnish to the Authority any information required by the Authority in connection with the operation of the system.
 5. The licensee shall not operate the system except for the purpose of providing the system specified in the Second Schedule hereto.
 6. The licensee shall ensure that all advertising material transmitted by the system complies with the standards laid down in the Code of Practice relating to Advertising Standards issued under the Television Ordinance (Cap 52).
 7. Advertising material may not be transmitted during the showing of a feature film.
 8. There shall be no limit on the amount of advertising transmitted.
 9. Where the contents of the Code of Practice for Advertising Standards and these General Conditions are in conflict, the General Conditions shall prevail.
 10. The licensee shall submit detailed information on its programmes and any advertising material intended for transmission by the system to the Commissioner for Television and Entertainment Licensing ("CTEL") containing such particulars and at such time as may be required by the same.
 11. The licensee shall make available to CTETL on demand a video-tape of any programme or advertising material intended for transmission by the system. An exception should be made for news, current affairs and sports programmes transmitted to the licensee by microwave or other radio waves.
 12. The licensee shall retain video-tape recordings of all material transmitted by the system for 30 days and shall submit them on demand to CTETL for examination.
 13. The licensee shall ensure that any programme which may contain material unsuitable for children is preceded by a notice in the following form-
"WARNING: THIS PROGRAMME CONTAINS MATERIAL WHICH MAY BE
UNSUITABLE FOR CHILDREN
警告：本節目部分內容可能不適合兒童觀看".
 14. No wire forming part of the system shall cross any street or unleased Government land.
 15. This licence is not transferable.
 16. This licence shall be returned to the Authority when it has expired or been revoked.
 17. Nothing herein contained authorizes the licensee to do any act which is an infringement of any copyright.
 18. The licensee shall ensure that any equipment which is operated from the mains supply of

electricity is so designed that the mains supply cannot be applied to the wires of the system.

19. The licensee may not continue to receive signals on any microwave frequency more than 3 months after the Authority directs the licensee to terminate the reception on that microwave frequency on the ground that the premises containing the system have been passed by a cable of any cable television network licensed by the Government.

SPECIAL CONDITIONS

.....
For and on behalf of the
Telecommunications Authority.

FIRST SCHEDULE

DESCRIPTION OF SYSTEM

Location of transmitter unit or units
Location of reception units
.....
Other specifications

SECOND SCHEDULE

PURPOSE OF SYSTEM

(L.N. 301 of 1989; 29 of 1998 s. 105; 36 of 2000 s. 28; 48 of 2000 s. 44)

TELECOMMUNICATIONS ORDINANCE (Chapter 106)

PUBLIC RADIOCOMMUNICATIONS SERVICE LICENCE

DATE OF ISSUE:

VALIDITY PERIOD:

DATE OF EXTENSION (if applicable):

PERIOD OF EXTENSION (if applicable):

.....
of

(the "licensee") is licensed, subject to the conditions set out in this licence-

- (a) to provide a public radiocommunications service (the "Service") described in Schedule 1;
- (b) to establish, maintain, possess and use the radiocommunications apparatus described in Schedule 2 to provide the Service; and
- (c) to deal in and demonstrate with a view to sale in the course of trade or business, such apparatus or material for radiocommunications as may be necessary to supply customers of the Service.

GENERAL CONDITIONS

1. This licence shall not be construed as granting any exclusive rights to the licensee in the provision of the Service.

2. This licence replaces any licence, however described, which the Authority may have granted to the licensee for the Service.
3. The licensee shall at all times and from time to time during the continuance of this licence operate, maintain and provide the Service in a manner satisfactory to the Authority.
4. The licensee shall at all times perform and observe the requirements of the Constitution and Convention of the International Telecommunication Union and the regulations and recommendations annexed to or made under the Convention as are applicable to Hong Kong except to the extent that the Authority may in writing expressly exempt the licensee from such compliance.
5. (1) Notwithstanding regulation 8(1) of the Telecommunications Regulations, the licensee may with the prior written consent of the Authority transfer this licence and any permission, right or benefit under this licence.
(2) The consent of the Authority shall be subject to such conditions as the Authority thinks fit.
(3) If the licensee transfers the licence or other right, the licensee shall give the Authority a true copy of the transfer document within 2 months of the date of the transfer.
6. (1) Each base station shall be used only at the location and with emissions at the frequencies and of the classes and characteristics specified in Schedule 2, and with such power and aerial characteristics as are specified in Schedule 2 in relation to the class and characteristics of the emission in use.
(2) The apparatus comprised in each base station shall at all times comply with the technical and performance standards as may be prescribed by the Authority and specified in Schedule 2.
(3) The apparatus comprised in each base or mobile station (being a mobile station used by the customer of the licensee) shall be of a type approved by the Authority and shall be so designed, constructed, maintained and operated that its use does not cause any avoidable interference with any radiocommunications.
(4) Each base station shall be operated only by the licensee or a person authorized by the licensee in that behalf. The licensee shall not permit or suffer any person not so authorized to have access to the apparatus comprised in each base station. The licensee shall ensure that persons operating each base station observe the conditions of the licence at all times.
(5) The licensee-
 - (a) shall not make any change-
 - (i) in any base station; or
 - (ii) in the address at which each base station is installed, without the prior approval in writing of the Authority; and
 - (b) shall return this licence to the Authority for amendment when a change referred to in sub-subparagraph (a) has been effected.
(6) If power for the working of any base station is taken from a public electricity supply, no direct connection shall be made between the supply mains and the aerial.
(7) If any base station aerial crosses above or may fall or be blown onto any overhead power wire (including electric lighting and tramway wires) or power apparatus it shall be guarded to the reasonable satisfaction of the owner of the power apparatus concerned.
(8) The licensee shall take all reasonable measures to ensure that customers of the Service do not cause interference to other users of radiocommunications and shall take all the necessary measures to stop such interference as may occur.
(9) The licensee shall cease to offer service to a customer if instructed to do so by the Authority.
(10) The licensee shall, if so required, provide the Authority with a list of the names, addresses and other details, requested by the Authority, of the customers of the Service annually on a date specified by the Authority by notice to the licensee.

7. The apparatus operated by the licensee shall be operated only on such radio frequencies as the Authority may assign to the licensee and the Authority may refuse to assign further frequencies or required the licensee, by notice to him, to cease to operate the apparatus on any frequency previously assigned to him if in the opinion of the Authority the licensee is not making efficient use of that frequency.
8. The Authority may, by giving not less than 12 months' notice in writing to the licensee, require him upon such date as may be specified in the notice to cease using any frequency previously assigned to him by the Authority and to use such new frequency as the Authority may designate.
9. The licensee shall not enter into any agreement or arrangement whether legally enforceable or not which shall in any way prevent or restrict competition in relation to the operation of the Service or any other telecommunications service licensed by the Authority.

SPECIAL CONDITIONS

(Special conditions may be inserted on the Grant
or Extension of this Licence)

SCHEDULE 1

DESCRIPTION OF THE PUBLIC RADIOCOMMUNICATIONS SERVICE

SCHEDULE 2

Location
Transmitting Frequencies
Maximum Frequency Tolerance
Classes of Emission
Maximum Effective Radiated Power
Aerial Characteristics
Other Performance and Technical Standards

.....
For the Authority

(L.N. 430 of 1990; 36 of 2000 s. 28)

TELECOMMUNICATIONS ORDINANCES (Chapter 106)

SATELLITE MASTER ANTENNA TELEVISION LICENCE

DATE OF ISSUE:

.....
of

(hereinafter called "the licensee") is hereby licensed, subject to the conditions herein contained-

- (a) to establish and maintain a satellite master antenna television system or systems (hereinafter referred to as "the system") consisting of a radio communication receiving station or stations at the location or locations specified in the Schedule connected by wire to outlet points at the premises of users of the system within the

- area or areas specified in the Schedule;
- (b) to receive television programmes, teletext services or other subcarrier information and sound programmes transmitted from satellites intended for general reception;
- (baa) commencing from 1 January 2000, to receive telecommunications messages transmitted from satellites intended for reception by users of the system;
- (ba) by connecting the system with a subscription television network pursuant to an agreement between the licensee and the relevant subscription television broadcasting licensee-
 - (i) to receive-
 - (A) television programmes and ancillary telecommunications services; and
 - (B) functional data signals,
 transmitted by the relevant subscription television broadcasting licensee; and
 - (ii) to relay to the subscription television network functional data signals from outlet points of the system referred to in paragraph (a);
- (bb) by connecting the system with a programme service pursuant to an agreement between the licensee and the relevant programme service licensee-
 - (i) to receive-
 - (A) television programmes and ancillary telecommunications services; and
 - (B) functional data signals,
 provided by the relevant programme service licensee; and
 - (ii) to relay to the programme service functional data signals from outlet points of the system referred to in paragraph (a);
- (bc) by connecting the system with subscription satellite television services pursuant to an agreement between the licensee and the relevant Satellite Television Uplink and Downlink Licensee-
 - (i) to receive-
 - (A) television programmes and ancillary telecommunications services; and
 - (B) functional data signals,
 transmitted by the relevant Satellite Television Uplink and Downlink Licensee; and
 - (ii) to relay to the subscription satellite television services via a telecommunications system or a telecommunications service functional data signals from outlet points of the system referred to in paragraph (a);
- (bd) by connecting the system with a telecommunications system or a telecommunications service pursuant to an agreement between the licensee and the licensee, or the exempted person, of the relevant telecommunications system or telecommunications service-
 - (i) to receive telecommunications messages transmitted by the licensee, or the exempted person, of the relevant telecommunications system or telecommunications service; and
 - (ii) to relay telecommunications messages to the telecommunications system or telecommunications service from outlet points of the system referred to in paragraph (a);
- (be) to receive commercial television programmes by connecting the system with a communal aerial broadcast distribution system pursuant to an agreement between the licensee and the relevant communal aerial broadcast distribution system owner; and
- (c) to distribute to outlet points of the system referred to in paragraph (a) the programmes, services and signals received in accordance with paragraphs (b), (ba), (baa), (bb), (bc), (bd) and (be).

In this Licence-

"ancillary telecommunications services" (附屬電訊服務) means-

- (a) the teletext or other subcarrier information; and
- (b) the sound programmes,

transmitted in accordance with a subscription television broadcasting licence, a programme

service licence or a Satellite Television Uplink and Downlink Licence, as the case may be;

"commercial television broadcasting licensee" (商營電視廣播持牌人) has the same meaning as in section 2 of the Television Ordinance (Cap 52);

"commercial television programmes" (商營電視節目) is to be construed according to the meaning of commercial television broadcasting in the Television Ordinance (Cap 52);

"communal aerial broadcast distribution system" (公共天線系統) means a coaxial cable system distributing signals transmitted by commercial television broadcasting licensees;

"communication" (通訊) includes any communication-

- (a) whether between persons and persons, things and things or persons and things; and
- (b) whether in the form of speech, music or other sounds; or text, or visual images whether or not animated; or signals in any form or combination of forms;

"exempted person" (獲豁免人士) means, in relation to a telecommunications system or a telecommunications service, a person exempted from licensing under the Ordinance;

"functional data signals" (功能數據訊號) means data signals which are necessary for the reception, interruption or cessation of television programmes and ancillary telecommunications services or other functions incidental to the provision of such programmes and services;

"Ordinance" (《條例》) means the Telecommunications Ordinance (Cap 106);

"programme service" (節目服務) means a programme service within the meaning of the Television Ordinance (Cap 52);

"programme service licence" (節目服務牌照) and "programme service licensee" (節目服務持牌人) have the same meaning as in section 2 of the Television Ordinance (Cap 52);

"programme service programmes" (節目服務節目) is to be construed according to the meaning of programme service in the Television Ordinance (Cap 52);

"Satellite Television Uplink and Downlink Licence" (衛星電視上行及下行牌照) means a licence granted under sections 7 and 34 of the Ordinance that has the title "Satellite Television Uplink and Downlink Licence";

"Satellite Television Uplink and Downlink Licensee" (衛星電視上行及下行持牌人) means the holder of a Satellite Television Uplink and Downlink Licence;

"subscription satellite television programmes" (收費衛星電視節目) is to be construed according to the meaning of subscription satellite television services;

"subscription satellite television services" (收費衛星電視服務) means the subscription services expressly permitted to be provided in Hong Kong under a Satellite Television Uplink and Downlink Licence;

"subscription television broadcasting licence" (收費電視廣播牌照) has the same meaning as in section 2 of the Television Ordinance (Cap 52);

"subscription television broadcasting licensee" (收費電視廣播持牌人) and "subscription television network" (收費電視網絡) have the same meaning as in section 2 of the Television Ordinance (Cap 52);

"subscription television programmes" (收費電視節目) is to be construed according to the meaning of subscription television broadcasting in the Television Ordinance (Cap 52);

"telecommunications service" (電訊服務) means a telecommunications service licensed under the Ordinance, expressed as being licensed in exercise of the powers conferred by sections 7 and 34 of the Ordinance, exempted from licensing under the Ordinance or deemed to be licensed under the Ordinance;

"telecommunications system" (電訊系統) means a telecommunications system licensed under the Ordinance, expressed as being licensed in exercise of the powers conferred by sections 7 and

34 of the Ordinance, exempted from licensing under the Ordinance or deemed to be licensed under the Ordinance;

"telecommunications messages" (電訊訊息) means any communication sent or received by telecommunications but does not include-

- (a) television programmes, teletext or other subcarrier information, or sound programmes; or
- (b) other data signals incidental to the provision of such television programmes, teletext or other subcarrier information, or sound programmes, transmitted pursuant to a satellite broadcasting service or a terrestrial broadcasting service;

"television programme" (電視節目) has the same meaning as in section 2 of the Television Ordinance (Cap 52).

GENERAL CONDITIONS

1. The system shall be operated only by the licensee and persons authorized by him in that behalf.
2. The licensee shall-
 - (a) furnish to the Telecommunications Authority (hereinafter called "the Authority") his address for correspondence;
 - (b) forthwith give notice in writing to the Authority of any change of such address; and
 - (c) when giving the notice referred to in paragraph (b), return this licence to the Authority for amendment.
3. (1) The licensee shall-
 - (a) operate the system in such a manner as not to cause interference with any other means of telecommunications;
 - (b) comply with any direction given by the Authority for the purpose of avoiding any such interference; and
 - (c) on receipt of a notice in writing from the Authority, disconnect or remove any part of the system which, in the opinion of the Authority, is interfering, or is likely to interfere, with the working of any other means of telecommunications.

(2) The licensee shall not use any instrument, apparatus or material on, or connect or apply any electrical currents to, any part of the system if the same interferes, or is likely to interfere, with the working of any other means of telecommunications.
4. (1) The licensee shall at all reasonable times, when directed by the Authority, make the system available for inspection and testing by the Authority and any person authorized by the Authority in writing for that purpose.

(2) The licensee shall permit the Authority or any person authorized by the Authority in writing to enter its premises for inspection of records, documents and accounts relating to the licensee's business, at all reasonable times, in order for the Authority to perform his functions under this licence and the Ordinance. The licensee shall also provide copies of such records, documents and accounts to the Authority on demand.

(3) The Authority may make such use of any information obtained under this General Condition as he considers necessary for the administration of this licence and the Ordinance.
5. (1) If any message which the licensee is not authorized to distribute in accordance with General Condition 11 is unintentionally received by means of the system, neither the licensee nor any person operating the system shall disclose the contents of any such message, its origin or destination, its existence or the fact of its receipt to any person except a public officer authorized by the Authority or a competent court or tribunal, and shall not retain any copy, or make any use, of any such message, or allow it to be reproduced, copied or made

use of.

(2) The licensee shall take all practicable steps to prevent such a message from being received by any person.

6. The licensee shall not originate any material or message which is distributed to users of the system.
7. Nothing herein contained authorizes the licensee to do any act which is an infringement of any copyright which may exist in any programme or other communication received by the system.
8. This licence is not transferable and shall be returned to the Authority if it is revoked or when it has expired.
9. (1) No wire may be laid or maintained across any street or unleased Government land without the written authorization of the Authority.
(2) The licensee shall comply with any conditions imposed, or directions given, by the Authority on the giving of his authorization for the purposes of paragraph (1).
10. (1) The licensee shall not charge or receive the benefit of, directly or indirectly, any fee for the right to receive programmes or other communication distributed by means of the system.
(1A) The licensee shall not, except for subscription television programmes, programme service programmes, subscription satellite television programmes, their ancillary telecommunications services and telecommunications messages, facilitate the charging of a fee for the right to receive programmes or other communication received by means of the system.
(2) The licensee shall, except in so far as the Authority may otherwise in writing permit, publish in the manner specified in paragraph (3) a notice specifying, or specifying the method that is to be adopted for determining, the charges and other terms and conditions on which he offers his services.
(3) Publication of the notice referred to in paragraph (2) shall be effected by-
 - (a) sending a copy to the Authority not later than 7 days prior to the charges becoming effective;
 - (b) sending a copy to each user of the system 7 days prior to the charges becoming effective;
 - (c) sending a copy to each new user of the system on connection to the system; and
 - (d) sending a copy to any other person who may request such a copy.
(4) The licensee shall not levy charges exceeding or in addition to the charges specified in the notice referred to in paragraph (2).
(5) The licensee shall ensure a copy of an agreement-
 - (a) between the licensee and a subscription television broadcasting licensee for the connection of the system with a subscription television network;
 - (b) between the licensee and a programme service licensee for the connection of the system with a programme service;
 - (c) between the licensee and a Satellite Television Uplink and Downlink Licensee for the connection of the system with subscription satellite television services;
 - (d) between the licensee and the licensee, or the exempted person, of a telecommunications system or telecommunications service for the connection of the system with a telecommunications system or a telecommunications service; or
 - (e) between the licensee and a communal aerial broadcast distribution system owner for the connection of the system with a communal aerial broadcast distribution system,is filed with the Authority within 14 days of the agreement being made.
(6) The obligation under paragraph (5) may be waived by the Authority in relation to a particular agreement or agreements of a certain kind.

11. (1) Subject to paragraph (3), the licensee shall distribute only signals intended for general reception. For the purpose of this condition a signal is intended for general reception if-
- (a) the programme (or other communication) carried by the signal is not encrypted or where the programme (or other communication) carried by the signal is encrypted, the signal originator has declared publicly and notified the Authority and the Authority is satisfied that (i) the programme (or other communication) is intended for general reception and (ii) he will not charge any fee for the right to view or listen to the programme (or other communication) in Hong Kong; and
 - (b) neither the licensee nor the users of the system are required to pay a fee to the signal originator or his authorized agent.
- (2) For the purpose of paragraph (1)(a), it will be regarded as a public declaration if the signal originator declares publicly by publication in-
- (a) 1 Chinese language newspaper circulating in Hong Kong; and
 - (b) 1 English language newspaper circulating in Hong Kong.
- (3) The licensee may distribute signals carrying subscription television programmes, programme service programmes, subscription satellite television programmes, their ancillary telecommunications services and telecommunications messages.
12. (1) Subject to paragraph (2), the licensee shall not distribute programmes or other communication carried by signals in an encrypted form to outlet points.
- (2) For the purposes of paragraph (1), "programmes or other communication" (節目或其他通訊) does not include subscription television programmes, programme service programmes, subscription satellite television programmes, their ancillary telecommunications services and telecommunications messages.
- 12A. Without the Authority's consent in writing, the licensee shall not transmit any telecommunications messages received from satellites to any location outside the premises of users of the system.
13. The transmission plan employed in the system shall be approved by the Authority. The licensee shall distribute programmes, services, telecommunications messages and signals permitted under this licence in accordance with such approved plan and such approved plan may be modified by the Authority from time to time. The Performance Specification for Communal Aerial Distribution System (HKTA 1104) shall be observed unless otherwise directed by the Authority.
14. (1) The licensee shall submit written confirmation to the Authority that-
- (a) any aerial and supporting framework used in the system is capable of sustaining and transmitting to the supporting structure wind loads specified in the Hong Kong Code of Practice on Wind Effects, and that the stability of the supporting building is not affected by any aerial and supporting framework used in the system;
 - (b) any aerial and supporting framework used in the system is not erected in, over or upon any portion of any street whether or not on land held under lease from the Government, and no part of it is fixed to, or overhangs, the side wall of a building; and
 - (c) any aerial and supporting framework used in the system is not erected at a level which contravenes height limit provisions of the Hong Kong Airport (Control of Obstructions) Ordinance (Cap 301).
- (2) The licensee shall ensure that the state of matters referred to in paragraph (1) shall be maintained throughout the duration of the licence.
- (3) The confirmation referred to in paragraph (1) shall be made by a structural engineer registered under section 3 of the Buildings Ordinance (Cap 123).

15. The licensee shall at all times perform and observe the requirements of the Constitution and Convention of the International Telecommunication Union and the regulations and recommendations annexed to or made under the Constitution and Convention as are applicable to Hong Kong except to the extent that the Authority may in writing expressly exempt the licensee from such compliance.
16. The Authority may at his discretion make the terms and conditions of this licence (including any specific conditions, transmission plan and Schedules to this licence) publicly available in any manner he thinks fit.

SPECIAL CONDITIONS

SCHEDULE

Location of radio communication receiving station
Area of distribution
Number of outlet points within each area of distribution

.....
For the Telecommunications
Authority.

NOTE: Any reference in this form to a service, licence or licensee under the Television Ordinance (Cap 52) shall, with all necessary modifications, be construed to be a reference to a service, licence or licensee under the Broadcasting Ordinance (Cap 562), and the provisions of this licence shall apply accordingly.

(L.N. 182 of 1991; L.N. 362 of 1993; 29 of 1998 s. 105; L.N. 180 of 1999; 36 of 2000 s. 28; 48 of 2000 s. 44)

TELECOMMUNICATIONS ORDINANCE (Chapter 106)

FIXED TELECOMMUNICATIONS NETWORK SERVICES LICENCE

DATE OF ISSUE:

.....
of

(the "licensee") is licensed, subject to the following conditions set out in this licence-

- (a) to provide a public fixed telecommunications network service (the "Service"), the scope of which is described in Schedule 1;
- (b) to establish and maintain a telecommunications network (the "Network") described in Schedule 2 to provide the Service;
- (c) to possess and use the telecommunications installations for radiocommunications described in Schedule 3 to provide the Service; and
- (d) to deal in, import and demonstrate, with a view to sale in the course of trade or business, such apparatus or material for radiocommunications as may be necessary to supply customers of the Service.

GENERAL CONDITIONS

1. This licence shall not be construed as granting an exclusive right to the licensee to provide the Service.
2. This licence replaces any licence or any exemption from licensing, however described,

which the Authority may have granted to the licensee for providing the Service.

3. The grant of this licence does not authorize the licensee to do anything which infringes any exclusive right to provide telecommunications circuits or services granted under any Ordinance. In particular, this licence does not confer any right on the licensee to provide public telephonic communications prior to 30 June 1995.

Transfer

4. (1) The licensee may only with the prior written consent of the Authority and subject to such reasonable conditions as the Authority thinks fit transfer this licence or any permission, right or benefit under this licence. In giving his consent the Authority will have regard to such matters as he thinks fit including but not limited to the effect which the transfer will have on market structure and the financial and technical competence and viability of the transferee.
- (2) Where a licensee is in a dominant position in a market for the provision of a public basic telephonic service over fixed telecommunications networks within the meaning described in General Condition 16(2), it may not without the prior written consent of the Authority, which can be withheld for the purposes of General Condition 10(1), assign, transfer or otherwise dispose of more than 15% of the licensee's assets constituting the Network, other than where the transfer or disposal of those assets is in the ordinary course of the licensee's maintenance, replacement or upgrading of the Network.

Compliance

5. If the licensee employs any person under contract for the purpose of the Service, or for the installation, operation or maintenance of the Network (a "Contractor"), the licensee shall continue to be responsible for compliance with the conditions of this licence, and the performance thereof, by any Contractor.

International conventions

6. (1) The licensee shall at all times perform and observe the requirements of the Constitution and Convention of the International Telecommunication Union and the regulations and recommendations annexed to it, and without limiting the generality of the foregoing, the recommendations made by the Radiocommunications Sector and Standardisation Sector established under the Convention, as are stated to be applicable to Hong Kong, and any other international convention, agreement, protocol, understanding or the like to the extent that the instruments described in this paragraph impose obligations on Hong Kong of which the Authority gives notice to the licensee, except to the extent that the Authority may in writing exempt the licensee from such compliance.
- (2) Where the Government has been consulted about or is involved in the preparation or negotiation of an international convention, agreement, protocol or understanding or the like or amendments thereto which are on the subject-matter of telecommunications or which relate to another subject-matter but which the Government anticipates could have a material impact on the provision of services under this licence, the Government will, where practicable, provide the licensee with a reasonable opportunity to make a submission stating its views on the matter.

Compliance generally

7. The licensee shall comply with the Ordinance, Regulations made under the Ordinance, licence conditions or any other instruments which may be issued by the Authority under the Ordinance.

Control of interference and obstruction

8. (1) The licensee shall take reasonable measures to install, maintain and operate the Service and the Network in such a manner as not to cause any harmful radio interference or physical obstruction to any lawful telecommunications service, or cause any physical obstruction to the installation, maintenance, operation, adjustment, repair, alteration, removal or replacement of the facilities of any lawful telecommunications or utility service provider.
- (2) The licensee shall take reasonable measures to ensure that the customers of the Service do not cause harmful radio interference to lawful telecommunications services or utility services through use of the Service.
- (3) The Authority may give such reasonable directions as he thinks fit to avoid harmful radio interference or physical obstruction referred to in paragraph (1). The licensee shall comply with the directions.

Inspection and testing of installations

9. (1) On receiving reasonable prior written notice from the Authority, the licensee shall allow the Authority and any person authorized in writing by the Authority for the Authority's own purposes to enter and inspect the offices, places and premises in Hong Kong where the licensee has installed the Network or any equipment associated with the Network, or the provision of the Service, to verify that the licensee is in compliance with the licence conditions.
- (2) The licensee shall provide and maintain, up to the reasonable technical standards set by the Authority, facilities to enable the Authority to inspect, test, read or measure, as the case may be, any telecommunications installations, equipment (including, but not limited to testing instruments) or premises used or to be used for the provision of the Service, and may at its option, and shall on the written request of the Authority, and subject to the provision by the Authority of reasonable prior written notice, provide a representative to be present at any such inspection, testing, reading or measurement.
- (3) On giving reasonable prior written notice, the Authority may direct the licensee to demonstrate that the Service complies with the technical requirements imposed by the Ordinance and Regulations or any other instruments which may be issued by the Authority under the Ordinance and the licensee shall comply with such directions.
- (4) For the purpose of paragraph (2) or (3), the licensee shall provide adequate testing instruments and operating staff.

Provision of Service

10. (1) The licensee shall, subject to Schedule 1 and any Special Conditions of this licence relating to the provision of the Service, at all times during the validity period of this licence operate, maintain and provide a good, efficient and continuous service in a manner satisfactory to the Authority. The Authority may, on application in writing by the licensee, exempt a part or parts of the Service from the requirement of continuous provision.
- (2) The licensee shall, subject to Schedule 1 and any Special Conditions of this licence relating to the provision of the Service, provide the Service on its published terms and conditions and at the tariff published in accordance with General Condition 20 (as applicable) on request of a customer whether or not the customer intends the Service to be available for its own use or intends to utilize the Service to provide a lawful telecommunications service to third parties.
- (3) Subject to Schedule 1 and any Special Conditions relating to the provision of the Service, the licensee shall comply with a customer request for the Service as tarified by the licensee in accordance with General Condition 20 where the Service reasonably could be provided by the licensee to the customer at the location at which the Service is

requested utilizing the licensee's Network in place at the time of the request.

Customer charter

11. The licensee shall prepare a customer charter which sets out the minimum standards of service to the licensee's customers and gives guidance to the employees of the licensee in their relations and dealings with customers.

Confidentiality of customer information

12. (1) The licensee shall not disclose information of a customer except with the consent of the customer, which form of consent shall be approved by the Authority, except for the prevention or detection of crime or the apprehension or prosecution of offenders or except as may be authorized by or under any law.
- (2) The licensee shall not use information provided by its customers or obtained in the course of provision of service to its customers other than for and in relation to the provision by the licensee of the Service.

Requirements for interconnection

13. (1) The licensee shall interconnect the Service and the Network with the external public telecommunications network and services operated by Hong Kong Telecom International Limited under its licence granted under the Ordinance and other fixed telecommunications networks and services licensed under the Ordinance and, where directed by the Authority, other telecommunications networks and services licensed, or deemed to be licensed, or exempt from licensing under the Ordinance.
- (2) The licensee shall also interconnect the Service and the Network with the fixed telecommunications network and services provided by the Hong Kong Telephone Company Limited under the Telephone Ordinance (Cap 269) prior to 30 June 1995 or licensed under the Telecommunications Ordinance (Cap 106), as the case may be.
- (3) The licensee shall use all reasonable endeavours to ensure that interconnection is done promptly, efficiently and at charges which are based on reasonable relevant costs incurred so as to fairly compensate the licensee for those costs.
- (4) The licensee shall provide facilities and services reasonably necessary for the prompt and efficient interconnection of the Service and the Network with the telecommunications networks or services of the other entities referred to in paragraphs (1) and (2). Such facilities and services include-
 - (a) carriage services for codes, messages or signals across and between the interconnected networks;
 - (b) those necessary to establish, operate and maintain points of interconnection between the licensee's Network and the networks of the other entities, including the provision of transmission capacity to connect between the licensee's Network and networks of the other entities;
 - (c) billing information reasonably required to enable the other entities to bill their customers;
 - (d) facilities specified by the Authority pursuant to General Condition 31; and
 - (e) ancillary facilities and services required to support the above types of interconnection facilities and services.

Numbering plan

14. (1) The licensee shall conform to a numbering plan made or approved by the Authority and any directions given by the Authority in respect of the numbering plan.
- (2) The licensee shall at the request of the Authority or otherwise consult the Authority about the arrangements for the allocation and reallocation of numbers and codes within

the numbering plan.

- (3) Where requested by the Authority, the licensee shall prepare and furnish to the Authority proposals for developing, adding to or replacing the numbering plan relating to the Service.
- (4) The licensee shall, in such manner as the Authority may direct, facilitate the portability of numbers assigned to any customer of any fixed telecommunications network service licensee, or the Hong Kong Telephone Company Limited, so that any number so assigned may be used by that customer should it cease to be a customer of any such entity and become a customer of any other fixed telecommunications network service licensee or the Hong Kong Telephone Company Limited, as the case may be.
- (5) Directions by the Authority under paragraph (4) include reasonable directions concerning the equitable sharing of all relevant costs associated with providing portability of numbers as between the licensee, any other fixed telecommunications network services licensee, the Hong Kong Telephone Company Limited, and any other person.

Anti-competitive conduct

- 15. (1) (a) A licensee shall not engage in any conduct which, in the opinion of the Authority, has the purpose or effect of preventing or substantially restricting competition in the operation of the Service or in any market for the provision or acquisition of a telecommunications installation, service or apparatus.
- (b) Conduct which the Authority may consider has the relevant purpose or effect referred to in subparagraph (a) includes, but is not limited to-
 - (i) collusive agreements to fix the price for any apparatus or service;
 - (ii) boycotting the supply of goods or services to competitors;
 - (iii) entering into exclusive arrangements which prevent competitors from having access to supplies or outlets;
 - (iv) agreements between licensees to share the available market between them along agreed geographic or customer lines.
- (2) In particular, but without limiting the generality of the conduct referred to in paragraph (1), a licensee shall not-
 - (a) enter into any agreement, arrangement or understanding, whether legally enforceable or not, which has or is likely to have the purpose or effect of preventing or substantially restricting competition in any market for the provision or acquisition of any telecommunications installations, services or apparatus;
 - (b) without the authorization of the Authority, make it a condition of the provision or connection of telecommunications installations, services or apparatus that the person acquiring such telecommunications installations, services or apparatus also acquire or not acquire any other service or apparatus either from itself or of any kind from another person; or
 - (c) give an undue preference to, or receive an unfair advantage from, a business carried on by it or an associated or affiliated company, service or person if, in the opinion of the Authority, competitors could be placed at a significant competitive disadvantage or competition would be prevented or substantially restricted within the meaning of paragraph (1).

Abuse of position

- 16. (1) Where the licensee is, in the opinion of the Authority, in a dominant position with respect to a market for the relevant telecommunications services, it shall not abuse its position.

- (2) A licensee is in a dominant position when, in the opinion of the Authority, it is able to act without significant competitive restraint from its competitors and customers. In considering whether a licensee is dominant, the Authority will take into account the market share of the licensee, its power to make pricing and other decisions, the height of barriers to entry, the degree of product differentiation and sales promotion and such other relevant matters which are or may be contained in guidelines to be issued by the Authority.
- (3)
 - (a) A licensee which is in a dominant position within the meaning in paragraph (1) shall be taken to have abused its position if, in the opinion of the Authority, it has engaged in conduct which has the purpose of preventing or substantially restricting competition in a market for the provision or acquisition of telecommunications installations, services or apparatus.
 - (b) Conduct which the Authority may consider to fall within the conduct referred to in subparagraph (a) includes, but is not limited to-
 - (i) predatory pricing;
 - (ii) price discrimination;
 - (iii) the imposition of contractual terms which are harsh or unrelated to the subject of the contract;
 - (iv) tying arrangements;
 - (v) discrimination in supply of services to competitors.

Accounting practices

17. Where directed by the Authority in writing, the licensee shall implement such accounting practices as specified by the Authority. Such accounting practices are to be consistent with generally accepted accounting practices, where applicable, and may include (but are not limited to) accounting practices which allow for the identification of the costs and charges for different services or types or kinds of services.

Requirement to furnish information to the Authority

18.
 - (1) The licensee shall furnish to the Authority, in such manner and at such times as the Authority may request in writing, such information related to the business run by the licensee under this licence, including financial information, accounts and other records as the Authority may reasonably require in order to perform his functions under the Ordinance and this licence including but not limited to his functions under General Conditions 15, 16 and 20(4).
 - (2) Subject to paragraph (3), the Authority may use and disclose information to such person as the Authority thinks fit.
 - (3) Where the Authority proposes to disclose information obtained and the Authority considers that the disclosure would result in the release of information concerning the business or commercial or financial affairs of a licensee which disclosure would or could reasonably be expected to adversely affect the licensee's lawful business or commercial or financial affairs, the Authority will give the licensee a reasonable opportunity to make representations on the proposed disclosure before the Authority makes a final decision whether to disclose the information.

Inspection of records, documents and accounts

19. The licensee shall permit the Authority or any person authorized by him in writing for the Authority's own purpose to inspect and if required to make copies of records, documents and accounts relating to the licensee's business for the purpose of enabling the Authority to perform his functions under the Ordinance and this licence.

Tariffs

20. (1) The licensee shall publish and charge no more than the tariffs for the Service operated under this licence. The tariffs shall include the relevant terms and conditions for the provision of the Service.
- (2) Publication shall be effected by-
- (a) submission for publication in the Hong Kong Government Gazette and by sending a copy to the Authority on or before the date on which the licensed service is to be introduced;
 - (b) placing a copy in a publicly accessible part of the principal business place and other business premises of the licensee as advised by the Authority; and
 - (c) sending a copy to any person who may request it. The licensee shall not levy a charge greater than that is necessary to cover reasonable costs involved.
- (3) Where the licensee provides customer equipment integral to the provision of a telecommunications service to its customers, the tariff shall clearly state the price of the customer equipment separately from the charges for the telecommunications service.
- (4) The licensee shall not offer any discount to its published tariffs for a particular telecommunications service provided under this licence or customer equipment subject to paragraph (3) (other than a discount calculated in accordance with a formula or methodology approved by the Authority and published together with its tariffs) if, in the opinion of the Authority, the licensee is in a dominant position in any market for or which includes that telecommunications service.
- (5) The licensee shall not, without the approval of the Authority, bundle a number of services into a single tariff without also offering each of the constituent services under separate tariffs.
- (6) In this General Condition, "a dominant position" (優勢) has the meaning described by General Condition 16(2).

Tariffs revisions

21. (1) The licensee may propose any revision to the tariffs that it has published by submitting details of the proposed revision to the Authority in writing in a form approved by the Authority.
- (2) Subject to paragraph (5), the licensee may only proceed to publish the revised tariffs after the Authority has given his approval in writing.
- (3) The Authority will not approve the revision where-
- (a) he considers that the proposed revision is in contravention of General Condition 15, 16 or 20(4) or any applicable price control arrangements;
 - (b) he has notified the licensee within 30 days of the date of receipt of the licensee's proposed revision that he does not intend to give his approval.
- (4) The Authority will endeavour to consider proposed revisions within 5 business days after the date of receipt of the proposed revision by the Authority and will give written notice by that date whether the Authority requires more time to complete his review of the proposed revision.
- (5) Where the Authority has not notified the licensee within 30 days after receiving the licensee's proposed revision, the tariff revision will be deemed to be approved.

Tariffs for new services

22. (1) If the licensee proposes to introduce any new service and charge which is not contained in its published tariffs and conditions of service, it shall notify the Authority of such a proposal. The notification shall be in a written form approved by the Authority. The Authority shall give his approval of the proposed service and charge unless he considers that such service and charge would lead to a contravention of General Condition 15, 16

- or 20(4) or any applicable price control arrangements.
- (2) The Authority will endeavour to consider a proposal referred to in paragraph (1) within 15 business days of the date of receipt and will give written notice by that date whether the Authority requires more time to complete his review of the proposed service and charge.
 - (3) Where the Authority has not notified the licensee within 45 days after receiving the licensee's notice that he does not propose to give his approval, the new service and charge will be deemed to be approved.

Trials

23. (1) The Authority may, at the written request of the licensee, approve the introduction on a trial basis of-
 - (a) any service for which there is no published tariff and in such case the licensee may charge its customers for the provision of such service such amount as it considers reasonable; and
 - (b) any new charging options or billing schemes for existing services.

The Authority shall determine any request for approval within 30 days after the date of receipt of the request.
- (2) Any trial service for which the licensee seeks approval pursuant to paragraph (1) shall be-
 - (a) for the purpose of establishing the technical or commercial feasibility of the trial service;
 - (b) of a limited duration, not exceeding 6 months; and
 - (c) offered during the trial period only in a defined geographic area of Hong Kong or to a defined class of customers reasonably suitable for the purposes of conducting a trial of the service.
- (3) The Authority may request additional information from the licensee reasonably required by the Authority for the purposes of considering a request from the licensee to approve a trial service.
- (4) The Authority may reject a request from the licensee to conduct a trial service where the Authority reasonably concludes that were the tariffs of the requested trial service proposed under General Condition 20, 21 or 22 they would be disallowed under those General Conditions.

Metering accuracy

24. (1) The licensee shall take all reasonable steps to ensure that any metering equipment used in connection with the Service is accurate and reliable.
- (2) Upon the written request of the Authority, the licensee shall conduct tests on metering equipment to assess its accuracy, reliability and conformity to the technical standards, if any, specified by the Authority. The licensee shall submit the test result to the Authority within 14 days after the date of the test or such other longer period as the Authority may determine.
- (3) The licensee shall keep such records of any metering equipment in such form as may be specified by the Authority and shall supply such records to the Authority on the written request of the Authority.

Directory information and directory information service

25. (1) For the purposes of this General Condition-
 - (a) "directory information" (電話號碼索引資料) means information obtained by the licensee in the course of the provision of services under this licence

- concerning or relating to the name, address, business and telephone numbers of each of its customers;
- (b) "raw directory information" (原始電話號碼索引資料) means the licensee's directory information held in a basic format relating to all of its customers other than its customers who request that directory information about them not be disclosed.
- (2) This General Condition applies only in respect of standard printed directories and other directory databases and services which include all of the names of a licensee's customers listed in alphabetical order and does not apply to classified directories where customers are listed by business or trade category or to other business or specialised directories.
- (3) The licensee shall-
- (a) unless otherwise agreed by the Authority, publish or arrange at least biennially for the publication of directory information in a printed or other form approved by the Authority, relating to all its customers, other than its customers who request not to be included in a directory to be published ("the printed directory"); and
 - (b) establish, maintain and operate, or arrange for the establishment, maintenance or operation of a telecommunications service whereby customers may, upon request, be provided with directory information other than that of its customers who request the information not to be disclosed ("the telephonic directory service").
- (4) The printed directory and the telephonic directory service provided under paragraph (3) shall be made available free of charge to all of the licensee's customers and shall be provided in a manner satisfactory to the Authority.
- (5) The licensee is permitted to make commercial arrangements with one or more of the other fixed telecommunications network service licensees and the Hong Kong Telephone Company Limited to co-operate in the provision jointly by them of either or both of the printed directory and the telephonic directory service which the licensee is required to provide under paragraph (3).
- (6) The licensee's printed directory shall be a unified printed directory and the licensee's telephonic directory service shall be a unified telephonic directory service and shall utilise a unified directory database, containing directory information on all customers of all fixed telecommunications network service licensees and the Hong Kong Telephone Company Limited, except for those customers who request that directory information about them not be disclosed. The licensee shall provide, and regularly update, raw directory information about its customers to each other fixed telecommunications network service licensee and the Hong Kong Telephone Company Limited, for which the licensee will be able to impose a charge to fairly compensate it for providing the raw directory information. The licensee shall endeavour to agree with each of the other licensees and the Hong Kong Telephone Company Limited on a reasonable mode of exchange and transmission format for the raw directory information.
- (7) Where the licensee is unable to agree with another licensee pursuant to paragraph (6) on what amounts to fair compensation for provision of, or the reasonable mode of exchange and transmission format of, raw directory information, the matter at issue may be referred by either licensee or the Hong Kong Telephone Company Limited to the Authority for determination.
- (8) Except with the prior written approval of the Authority, the licensee shall not make use of raw directory information provided by another licensee or the Hong Kong Telephone Company Limited other than for discharging its obligations under this General Condition.

Emergency call service

26. The licensee shall provide a public emergency call service by means of which any member

of the public may, at any time and without incurring any charge, by means of compatible apparatus connected to the Network, communicate as quickly as practicable with the Hong Kong Police Emergency Centre or other entity as directed by the Authority to report an emergency.

Records and plans of the Network

27. (1) The licensee shall keep records and plans (including overall network plans and cable route maps) of the telecommunications installations, installations for radiocommunications and telecommunications nodes and exchanges provided under this license and any other details concerning the Network as may be reasonably required by the Authority, including but not limited to information from operational support systems, traffic flow information, and database information relating to the manner in which the Network treats calls of a particular kind ("Network Information").
- (2) As required by the Authority, the licensee shall make the Network Information available, within reasonable time, to the Authority or to a person authorized in writing by the Authority for inspection for the Authority's own purposes.
- (3) The Authority may disclose the Network Information in accordance with General Condition 18(2).
- (4) The licensee shall, at the reasonable request of any other licensee under the Ordinance or the Hong Kong Telephone Company Limited if so authorized by the Authority, give reasonable access to its Network Information for the facilitation of network planning, maintenance and reconfiguration required for the purposes of General Conditions 13 and 31. The licensee shall be permitted to charge the requesting party so as to be fairly compensated for the reasonable relevant costs incurred in the provision of such Network Information.
- (5) Where the licensee and any other licensee or the Hong Kong Telephone Company Limited that has requested access to the Network Information in accordance with paragraph (4) are unable to agree what amounts to reasonable access (including confidentiality requirements and fair compensation for the reasonable relevant costs incurred) or a reasonable request, the matter at issue may be referred by either the licensee, the other licensee, or the Hong Kong Telephone Company Limited to the Authority for determination.

Network location

28. (1) The licensee shall obtain the consent in writing of the Director of Lands before the commencement of any installation works for its Network under, in, over or upon any unleased Government land.
- (2) The licensee shall keep accurate records of the location of the Network installed under, in, over or upon any land.
- (3) The licensee shall record the information referred to under paragraph (2) on route plans drawn on an Ordinance Survey Map background of a scale to be determined by the licensee in consultation with the Director of Highways and the Director of Lands.
- (4) The licensee shall, at the request of the Director of Highways, the Director of Lands, the Authority or any person who intends to undertake works in the vicinity of the Network and who is authorized to do so by the Director of Highways, the Director of Lands or the Authority, provide free of charge information about the location of the Network in diagrammatic or other form. The licensee shall make trained staff available on site to indicate the location and nature of the Network to the Director of Highways, the Director of Lands, the Authority or any person authorized by the Director of Highways, the Director of Lands or the Authority.
- (5) The licensee shall mark or otherwise identify every wire laid or telecommunications installation installed by the licensee or any Contractor on its behalf throughout the course of the wire, or at the location of the installation, so as to distinguish it from any

- other wire or telecommunications installation laid or installed in Hong Kong.
- (6) The licensee shall provide, at such intervals as the Authority may determine, distinguishable surface markers of the underground position of the Network.

Changes to the Network

29. (1) For the purposes of this licence, a change in the Network is a material change where the implementation of the change would result in the Network no longer being in compliance with any relevant technical standard which the Authority has power to issue.
- (2) The licensee shall notify the Authority of any proposals for material changes to the Network and provide him with such information as the Authority reasonably requires.
- (3) The licensee shall not, without the prior consent in writing of the Authority, make any material changes which might reasonably be anticipated by the licensee to affect-
- (a) any telecommunications service or installation connected to the Network;
 - (b) a person producing or supplying telecommunications apparatus for connection to the Network;
 - (c) a licensee under the Ordinance;
 - (d) the Hong Kong Telephone Company Limited;
 - (e) a licensee under the Broadcasting Ordinance (Cap 562); or
 - (f) a customer or a consumer of goods and services provided by any person or entity,
- if the change is in the opinion of the Authority likely to require modifications or replacements to, or cessation in the production or supply of any of the telecommunications apparatus involved, or if the proposed alteration would require substantial Network reconfiguration or rerouting.
- (4) The licensee shall prepare and publish, after consultation with the Authority, its procedures for consulting with and giving notice to persons likely to be affected materially by changes to its Network which are required to be notified in accordance with paragraph (2) and any other changes required to be notified pursuant to any technical standard which the Authority has power to issue. Subject to approval of the Authority, the notification procedures to each of the classes of persons likely to be affected under paragraph (3) may differ having regard to the practicality and costs of notifying them.

Requirements for road opening

30. The licensee shall co-ordinate and co-operate with any other fixed telecommunications network services licensee under the Ordinance, the Hong Kong Telephone Company Limited and any other authorized person in respect of road openings and shall, after being consulted by the Authority, comply with any guidelines issued by the Authority.

Provision, use and sharing of certain facilities

31. (1) Where the Authority reasonably forms the opinion that it is in the public interest that certain types of facilities ought to be provided, used or shared by more than one licensee or the Hong Kong Telephone Company Limited, he may issue directions requiring the licensee to co-ordinate and co-operate with any other licensee, the Hong Kong Telephone Company Limited or any other authorized person in respect of such provision, use or sharing of any such facility. The licensee shall comply with such directions. Prior to forming any opinion and issuing any direction under this paragraph, the Authority will provide a reasonable opportunity for the licensee, the Hong Kong Telephone Company Limited and any other interested parties to make representations on the matter to the Authority.
- (2) In considering the public interest pursuant to paragraph (1), the Authority will take into account-

- (a) whether the facility is a bottleneck;
 - (b) whether the facility can be reasonably duplicated or substituted;
 - (c) the existence of technical alternatives for the facility;
 - (d) whether the facility is critical to the supply of service by the licensees;
 - (e) whether the facility has available capacity having regard to the current and reasonable future needs of the licensee to which the facility belongs;
 - (f) whether joint use of the facility encourages the effective and efficient use of telecommunications infrastructure; and
 - (g) the costs, time penalties and inconvenience to the licensees and the public of the alternatives to the shared provision and use of the facility.
- (3) Where a fixed telecommunications network service licensee, the Hong Kong Telephone Company Limited or another person authorized by the Authority reasonably requests to share a facility, the licensee shall endeavour to come to an agreement with the requesting party on the terms and conditions, including but not limited to providing for fair compensation to the licensee for the provision, use or sharing of any such facility. If an agreement cannot be reached within a reasonable time and the Authority requires sharing pursuant to paragraph (1), the terms and conditions shall be determined by the Authority.
- (4) For the purposes of this General Condition, "facility" (設施) means-
- (a) ducts, pits, tunnels and manholes;
 - (b) towers, masts, poles and antennae;
 - (c) land, buildings and ancillary equipment at sites on which radiocommunications facilities have been established;
 - (d) reasonable space within the licensee's, or the Hong Kong Telephone Company Limited's, exchange buildings or other sites for the purposes of locating equipment of another licensee required to establish interconnection between the licensee's and that other licensee's or the Hong Kong Telephone Company Limited's network at that exchange or site;
 - (e) other telecommunications or ancillary installations, including the in-building risers, cable trays and cable entry points into buildings, reasonably necessary for the efficient provision and establishment of fixed telecommunications networks.

Requirements of installation of lines or cables

32. (1) The Network, or any part of it, if installed under, in, over or upon any public street or other unleased Government land, shall be at such depth, course, route and position as may be determined by the Director of Lands or the Director of Highways.
- (2) Without prejudice and in addition to the provisions of any law or Ordinance, in the course of providing, establishing, operating, adjusting, altering, replacing, removing or maintaining the Network for the purposes of this licence, or any part of it, the licensee shall-
- (a) exercise all reasonable care, and cause as little inconvenience as possible to the public and as little damage to property as possible; and
 - (b) make good any physical damage caused to any person having a lawful interest in the land or being lawfully thereon and reinstate the land within a reasonable time in good and workmanlike manner. When it is not practicable to make good any damage or to reinstate the land to the condition in which it existed prior to the damage, the licensee shall pay, promptly and fully, compensation for any damage caused to any person having an interest or right in the land affected.

Restrictions on attachment to

public buildings and trees

33. No part of the Network shall be attached to any Government building except with the prior written consent of the Government Property Administrator or to any Urban Council or Regional Council building except with the prior written consent of the Director of Urban Services or the Director of Regional Services, or to any tree on any Government land except with the prior written consent of the Director of Agriculture, Fisheries and Conservation, the Director of Urban Services or the Director of Regional Services.

Works in public streets

34. (1) Where in the course of installing or maintaining the Network the licensee needs to open or break up any public street the licensee shall-
- (a) apply to the Director of Highways or the Director of Lands for permission to open or break up the public street;
 - (b) complete the works for which the licensee has opened or broken up the public street with all due speed and diligence, fill in the ground and remove all construction related refuse caused by its works;
 - (c) maintain the site of the works in a safe manner including the fencing of the site and the installation of adequate warning lighting at night;
 - (d) reinstate the street immediately after the completion of the works to the satisfaction of the Director of Highways or the Director of Lands.
- (2) If the licensee fails, within any period specified by the Director of Highways or the Director of Lands, to observe any of the requirements of paragraph (1), the Director of Highways or the Director of Lands may take action to remedy the failure. The licensee shall reimburse the Government any such sum as may be certified by the Director of Highways or the Director of Lands to be reasonable cost for executing any works under the terms of this paragraph.

Interference with works of others

35. (1) Where in the course of installing or maintaining the Network, the licensee after obtaining the approval of the Director of Highways breaks up or opens any public street it shall not remove, displace or interfere with any telecommunications line, any gas pipe or water pipe or main or any drain or sewer or any tube, casing, duct, wire or cable for the carriage of electrical current and ancillary installations installed by any other person without that other person's consent.
- (2) In the case where the other person holds a licence under the Land (Miscellaneous Provisions) Ordinance (Cap 28), any consent referred to in paragraph (1) is refused, or cannot be obtained for any reason, the licensee may request the consent to proceed from the relevant authority in accordance with the terms of any licence issued to such other person under the Land (Miscellaneous Provisions) Ordinance (Cap 28), if any.

Prohibition of claims against Government

36. The licensee shall have no claim against the Government in tort or in contract in respect of any disturbance or interruption to any part of the Network due to works carried out by or on behalf of the Government which result in disturbance to the Network.

Licensee to alter Network on notice

37. (1) The licensee shall, within such reasonable time and in such manner as may be directed by notice in writing by the Director of Highways or the Director of Lands, and at its own expense, alter the course, depth position or mode of attachment of any apparatus forming part of the Network.

- (2) Where the Director of Highways or the Director of Lands gives a direction under paragraph (1), General Condition 34 shall apply as if such alteration were part of the installation or maintenance of the Network.

Requirements of telecommunications installations for radiocommunications

38. (1) Each telecommunications installation for radiocommunications operated by or on behalf of the licensee shall be used only at the location and with emissions and at the frequencies and of the classes and characteristics specified in Schedule 3 and with such power and aerial characteristics as are specified in that Schedule in relation to the class and characteristics of the emission in use.
- (2) The apparatus comprised in each telecommunications installation for radiocommunications shall at all times comply with such technical standards as may be issued by the Authority.
- (3) The apparatus comprised in a telecommunications installation for radiocommunications shall be of a type approved by the Authority and shall be so designed, constructed, maintained and operated that its use shall not cause any interference to any radiocommunications.
- (4) A telecommunications installation for radiocommunications shall be operated only by the licensee or a person authorized by the licensee. The licensee shall not allow an unauthorized person to have access to the apparatus comprised in a telecommunications installation for radiocommunications. The licensee shall ensure that persons operating each telecommunications installation for radiocommunications shall at all times observe the conditions of this licence.
- (5) The licensee shall not make a change-
- (a) to any telecommunications installation for radiocommunications; or
 - (b) of the location of any installed telecommunications installation for radiocommunications,
- without the prior approval in writing of the Authority.
- (6) If any telecommunications installation or radiocommunications aerial crosses above or may fall or be blown onto any overhead power wire (including electric lighting and tramway wires) or power apparatus it shall be guarded to the reasonable satisfaction of the owner of the power wire or power apparatus concerned.

Use of frequencies

39. The telecommunications installations for radiocommunications operated by or on behalf of the licensee shall only be operated on such radio frequencies as the Authority may assign. The Authority may by notice require the licensee to cease operating the telecommunications installations for radiocommunications on any frequency assigned to the licensee if in the opinion of the Authority, the licensee is not making efficient use of that portion of the radio frequency spectrum.

Safety

40. (1) The licensee shall take proper and adequate safety measures for the safeguarding of life and property in connection with all installations, equipment and apparatus operated or used, including safeguarding against exposure to any electrical or radiation hazard emanating from the installations, equipment or apparatus used under this licence.
- (2) The licensee shall comply with the safety requirements laid down in any safety specification issued by the Authority and any directions of the Authority in relation to any safety matter.

Purchase of assets

41. (1) If a licensee is-
- (a) in a dominant position in a market within the meaning described in General Condition 16(2); or
 - (b) subject to a Universal Service Obligation specified under the terms of the Special Conditions of its licence and the Ordinance, the Government may elect to take over the licensee's undertaking and purchase its assets if any of the following circumstances occur-
 - (i) this licence expires;
 - (ii) this licence is revoked;
 - (iii) the licensee goes into liquidation; or
 - (iv) the licensee ceases to carry on business:

Provided that if the Government elects to do so it shall give notice in writing not later than 90 days in advance of the expiry of this licence, or immediately upon revocation of this licence or within a reasonable time of the happening of the events at sub-subparagraphs (iii) and (iv).
- (2) The selling price shall be agreed between the Government and the licensee on the basis of the fair market value at the time of acquisition determined on the basis that this licence remains in force and that the Network is continuing to be used for the provision of the Service. If no agreement can be reached between the Government and the licensee, the matter shall be settled by arbitration in accordance with the provisions of the Arbitration Ordinance (Cap 341).

Indemnity

42. The licensee shall indemnify the Government against any losses, claims, charges, expenses, actions, damages or demands which the Government incurs or which may be made against the Government as a result of or in relation to the activities of the licensee or any employee, agent or contractor of the licensee in relation to the provision of the Service or the installation, maintenance and operation of the Network.

Contravention beyond the licensee's control

43. (1) The licensee shall not be liable for any breach of this licence where it is able to demonstrate, to the reasonable satisfaction of the Authority, that the breach was caused by circumstances beyond its control and that it has taken all reasonable steps open to it to rectify that breach.
- (2) Where the circumstances referred to in paragraph (1) are such that there is an outage or interruption in the Service affecting a significant number of the licensee's customers for a period of more than 7 days the licensee shall provide the Authority with a full report in writing detailing the reasons for the breach and indicating when, or if, it will be able to continue to provide the Service.
- (3) If the Authority, after considering a report provided under paragraph (2), is of the reasonable belief that the licensee would be able to provide the Service within a reasonable period of time despite the circumstances outlined in that report the Authority may direct that the licensee recommence the Service within such reasonable period as the Authority may in writing direct. The licensee shall comply with such direction.

Applicability of certain conditions

44. Where the Authority forms the opinion that a licensee is not in a dominant position with respect to any market for telecommunications services provided under the licence within the meaning of General Condition 16(2), the Authority may by direction in writing, for such period and on such conditions as the Authority may determine, direct that either one or any combination of General Conditions 17, 20, 21, 22 and 23, either completely or as to

particular obligations imposed thereunder, shall not apply to the licensee.

Publication of licence

45. The licensee, or the Authority, may at their discretion make the terms and conditions of this licence, including any specific conditions, publicly available in any manner they think fit.

SPECIAL CONDITIONS

[Special conditions may be specified by the Authority on the grant or renewal of this licence.]

SCHEDULE 1

SCOPE OF THE SERVICE

SCHEDULE 2

DESCRIPTION OF NETWORK

SCHEDULE 3

TECHNICAL PARTICULARS OF RADIO STATIONS FOR THE PROVISION OF THE SERVICE

(L.N. 133 of 1995; 29 of 1998 ss. 24 & 105; L.N. 331 of 1999; 36 of 2000 s. 28; 48 of 2000 s. 44)

TELECOMMUNICATIONS ORDINANCE (Chapter 106)

SELF-PROVIDED EXTERNAL TELECOMMUNICATIONS SYSTEM LICENCE

DATE OF ISSUE:

.....of
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(hereinafter called "the Licensee") is hereby licensed, subject to the conditions herein contained, to possess, establish and maintain a telecommunications system (hereinafter called "the System") described in Schedule 1 and Schedule 2 and to use the System for transmitting messages or receiving messages, or both, as set out in the conditions attached to this licence.

CONDITIONS

1. This licence does not authorize the Licensee to use the System for the operation of a public telecommunications service.
2. This licence does not authorize the Licensee to do anything which infringes any exclusive right to provide telecommunications or telephone services granted under any Ordinance.
3. Subject to paragraph 4, the Licensee shall only use the System for carriage of, in the case of-
 - (a) outgoing messages from Hong Kong, messages that originate from the Licensee or, where the Licensee is a company, from-
 - (i) the Licensee's holding company;

- (ii) a subsidiary of the Licensee; or
 - (iii) any affiliated company; and
 - (b) incoming messages to Hong Kong, messages that are intended for the Licensee or, where the Licensee is a company, for-
 - (i) the Licensee's holding company;
 - (ii) a subsidiary of the Licensee; or
 - (iii) any affiliated company,
 and, in this licence-
 - (i) "affiliated company" (相關聯公司) means a company that is a subsidiary of the Licensee's holding company;
 - (ii) "company" (公司) has the same meaning as in the Companies Ordinance (Cap 32);
 - (iii) "holding company" (控股公司) has the same meaning as in the Companies Ordinance (Cap 32); and
 - (iv) "subsidiary" (附屬公司) has the same meaning as in the Companies Ordinance (Cap 32).
4. (1) Where the Licensee is an organization, the Licensee may send outgoing messages from Hong Kong and receive incoming messages to Hong Kong that relate to the common business or activity of the organization.
 (2) In this licence, "organization" (組織) means a group of persons, businesses or companies engaged in a common business or activity which group was formed for the specific purpose of furthering such common business or activity, and the Authority shall determine the types of messages that relate to the common business or activity having regard to the objects as stated in the organization's memorandum and articles of association or other relevant documents relating to its establishment.
 5. The Licensee shall not connect the System with any public telecommunications network in Hong Kong except for the use of circuits as specified in Schedule 1 for relaying messages between the System and the Licensee's premises, and such connection shall be done in accordance with conditions specified by the Authority.
 6. The Licensee shall at all times comply with the requirements of-
 - (a) the Constitution and Convention of the International Telecommunication Union and the regulations and recommendations annexed to it;
 - (b) the provisions of the ITU-R and ITU-T Recommendations made by the International Telecommunication Union that are applicable to Hong Kong; and
 - (c) any other international convention, agreement, protocol, understanding or similar document of which the Authority gives notice to the Licensee, except to the extent that the Authority may in writing exempt the Licensee from such compliance.
 7. If any message, the receipt of which is not authorized by this licence, is received, neither the Licensee nor any person using the System shall make known the contents of such a message, its origin or destination, or the fact of its receipt to any person except a duly authorized officer of the Authority or a competent legal tribunal, and shall not retain a copy or make use of such a message, nor allow any other person to do so.
 8. If the Licensee employs any person under contract for the installation, operation or maintenance of the System (a "contractor"), the Licensee shall continue to be responsible for compliance with the conditions of this licence, and the performance thereof, by any

contractor.

9. The Licensee shall indemnify the Government against any losses, claims, charges, expenses, actions, damages or demands which the Government incurs or which may be made against the Government as a result of or in relation to the activities of the Licensee or any employee, agent or contractor of the Licensee in relation to the installation, maintenance and operation of the System.
10. The Licensee shall furnish to the Authority, in such manner and at such times as the Authority may request in writing, such information and accounts as he may reasonably require to perform his functions under the Telecommunications Ordinance (Cap 106) and this licence.
11. (1) The Licensee shall permit the Authority and any person authorized by him in writing to enter any of the Licensee's offices or premises where telecommunications equipment is installed to inspect any of the telecommunications equipment or to monitor traffic carried by the equipment for the purpose of verifying whether the Licensee is running the System in accordance with this licence.
(2) The Licensee shall afford to the Authority all facilities for-
 - (a) examining or testing its telecommunications equipment and inspecting offices or facilities used or to be used under this licence; and
 - (b) monitoring the traffic carried by the licensed equipment and facilities,and the Licensee may be represented by an agent or employee of the Licensee who may be present during but must not interfere with the examining, testing, inspecting or monitoring.
(3) The Authority may from time to time require the Licensee to demonstrate that the System complies with-
 - (a) this licence, the Telecommunications Ordinance (Cap 106) and the Telecommunications Regulations (Cap 106 sub. leg.); and
 - (b) any technical standards, specifications, codes of practice, directions determinations or orders issued by the Authority from time to time.
12. The Licensee shall permit the Authority or an officer authorized by him in writing to inspect and make copies of records, documents and accounts relating to the Licensee's business for the purpose of confirming that the Licensee is complying with this licence.
13. (1) The Licensee shall submit written confirmation to the Authority that-
 - (a) any aerial and supporting framework used in the System is capable of sustaining and transmitting to the supporting structure wind loads specified in the Hong Kong Code of Practice on Wind Effects, and that the stability of the supporting building is not affected by any aerial and supporting framework used in the System;
 - (b) any aerial and supporting framework used in the System is not erected in, over or upon any portion of any street whether or not on land held under lease from the Government, and no part of it is fixed to, or overhangs, the side wall of a building; and
 - (c) any aerial and supporting framework used in the System is not erected at a level which contravenes height limit provisions of the Hong Kong Airport (Control of Obstructions) Ordinance (Cap 301).
(2) The Licensee shall ensure that the state of matters referred to in subparagraph (1) shall be maintained throughout the duration of this licence.
(3) The confirmation referred to in subparagraph (1) shall be made by a structural engineer registered under section 3 of the Buildings Ordinance (Cap 123).
14. (1) The Licensee shall-
 - (a) operate the System in such a manner as not to cause harmful interference with any other means of telecommunications; and

- (b) comply with any direction given by the Authority for the purpose of avoiding such harmful interference.
- (2) The Licensee shall not use any instrument, apparatus or material on, or connect or apply any electrical current to, any part of the System if it causes or is likely to cause harmful interference with the working of any other means of telecommunications.
- 15. (1) No wire may be laid or maintained across any street or unleased Government land without the prior written consent of the Authority.
- (2) The Licensee shall comply with any conditions imposed, or directions given, by the Authority on the giving of his written consent for the purposes of subparagraph (1).
- 16. (1) Each telecommunications installation for radiocommunications operated by or on behalf of the Licensee shall be used only at the location and with emissions at the frequencies and of the classes and characteristics (including aerial characteristics), and with such power or power density, as specified in Schedule 2.
- (2) The apparatus comprised in each telecommunications installation for radiocommunications shall at all times comply with such technical and performance standards as may be specified by the Authority.
 - (3) The apparatus comprised in a telecommunications installation for radiocommunications shall be of a type approved by the Authority and be so designed, constructed, maintained and operated that its use does not cause any avoidable and harmful interference with any other means of telecommunications.
 - (4) The Licensee-
 - (a) shall not make any change-
 - (i) in any telecommunications installation for radio communication; or
 - (ii) in the location of any installed telecommunications installation for radiocommunications, without the prior approval in writing of the Authority; and
 - (b) shall return this licence to the Authority for amendment when a change referred to in sub-subparagraph (a) has been effected.

SCHEDULE 1

The following telecommunications installation for radiocommunications and/or wireline communication is authorized to be established and maintained by the Licensee-

SCHEDULE 2

Technical particulars of the radiocommunications apparatus comprised in the System as follows-
(L.N. 291 of 1995; 29 of 1998 s. 105; 36 of 2000 s. 28)

TELECOMMUNICATIONS ORDINANCE (Chapter 106)

SELF-PROVIDED EXTERNAL TELECOMMUNICATIONS SYSTEM (SHORT TERM) LICENCE

DATE OF ISSUE:

DATE OF EXPIRY:

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of

(hereinafter called "the Licensee") is hereby licensed, subject to the conditions herein contained-

- (a) to possess, establish and maintain a telecommunications system (hereinafter called

- "the System") described in Schedule 1 and Schedule 2; and to use the System for transmitting messages or receiving messages, or both, as set out in the conditions attached to this licence; and
- (b) to possess, establish and maintain the ancillary and associated telecommunications installations (hereinafter called "the Ancillary Installations") described in Schedule 3; and to use the Ancillary Installations in accordance with the conditions attached to this licence and Schedule 3.

CONDITIONS

1. This licence does not authorize the Licensee to use the System or the Ancillary Installations for the operation of a public telecommunications service or a satellite broadcasting service.
2. This licence does not authorize the Licensee to do anything which infringes any exclusive right to provide telecommunications or telephone services granted under any Ordinance.
3. Subject to paragraph 4, the Licensee shall only use the System for carriage of, in the case of-
 - (a) outgoing messages from Hong Kong, messages that originate from the Licensee or, where the Licensee is a company, from-
 - (i) the Licensee's holding company;
 - (ii) a subsidiary of the Licensee; or
 - (iii) any affiliated company; and
 - (b) incoming messages to Hong Kong, messages that are intended for the Licensee or, where the Licensee is a company, for-
 - (i) the Licensee's holding company;
 - (ii) a subsidiary of the Licensee; or
 - (iii) any affiliated company,
 and, in this licence-
 - (i) "affiliated company" (相關聯公司) means a company that is a subsidiary of the Licensee's holding company;
 - (ii) "company" (公司) has the same meaning as in the Companies Ordinance (Cap 32);
 - (iii) "holding company" (控股公司) has the same meaning as in the Companies Ordinance (Cap 32); and
 - (iv) "subsidiary" (附屬公司) has the same meaning as in the Companies Ordinance (Cap 32).
4. (1) Where the Licensee is an organization, the Licensee may send outgoing messages from Hong Kong and receive incoming messages to Hong Kong that relate to the common business or activity of the organization.
 (2) In this licence, "organization" (組織) means a group of persons, businesses or companies engaged in a common business or activity which group was formed for the specific purpose of furthering such common business or activity, and the Authority shall determine the types of messages that relate to the common business or activity having regard to the objects as stated in the organization's memorandum and articles of association or other relevant documents relating to its establishment.
5. The Licensee shall not connect the System or the Ancillary Installations with any public telecommunications network in Hong Kong except for the use of circuits as specified in Schedule 1 for relaying messages between the System and the Licensee's premises, and such connection shall be done in accordance with conditions specified by the Authority.
6. The Licensee shall at all times comply with the requirements of-
 - (a) the Constitution and Convention of the International Telecommunication Union and the regulations and recommendations annexed to it;
 - (b) the provisions of the ITU-R and ITU-T Recommendations made by the International Telecommunication Union that are applicable to Hong Kong; and

- (c) any other international convention, agreement, protocol, understanding or similar document of which the Authority gives notice to the Licensee, except to the extent that the Authority may in writing exempt the Licensee from such compliance.
- 7. If any message, the receipt of which is not authorized by this licence, is received, neither the Licensee nor any person using the System or the Ancillary Installations shall make known the contents of such a message, its origin or destination, or the fact of its receipt to any person except a duly authorized officer of the Authority or a competent legal tribunal, and shall not retain a copy or make use of such a message, nor allow any other person to do so.
- 8. If the Licensee employs any person under contract for the installation, operation, or maintenance of the System or the Ancillary Installations (a "contractor"), the Licensee shall continue to be responsible for compliance with the conditions of this licence, and the performance thereof, by any contractor.
- 9. The Licensee shall indemnify the Government against any losses, claims, charges, expenses, actions, damages or demands which the Government incurs or which may be made against the Government as a result of or in relation to the activities of the Licensee or any employee, agent or contractor of the Licensee in relation to the installation, operation and maintenance of the System and the Ancillary Installations.
- 10. The Licensee shall furnish to the Authority, in such manner and at such times as the Authority may request in writing, such information and accounts as he may reasonably require to perform his functions under the Telecommunications Ordinance (Cap 106) and this licence.
- 11. (1) The Licensee shall permit the Authority and any person authorized by him in writing to enter any of the Licensee's offices or premises where telecommunications equipment is installed to inspect any of the telecommunications equipment or to monitor traffic carried by the equipment for the purpose of verifying whether the Licensee is running the System and the Ancillary Installations in accordance with this licence.
 (2) The Licensee shall afford to the Authority all facilities for-
 - (a) examining or testing its telecommunications equipment and inspecting offices or facilities used or to be used under this licence; and
 - (b) monitoring the traffic carried by the licensed equipment and facilities,
 and the Licensee may be represented by an agent or employee of the Licensee who may be present during but must not interfere with the examining, testing, inspecting or monitoring.
 (3) The Authority may from time to time require the Licensee to demonstrate that the System and the Ancillary Installations comply with-
 - (a) this licence, the Telecommunications Ordinance (Cap 106) and the Telecommunications Regulations (Cap 106 sub. leg.); and
 - (b) any technical standards, specifications, codes of practice, directions, determinations or orders issued by the Authority from time to time.
- 12. The Licensee shall permit the Authority or an officer authorized by him in writing to inspect and make copies of records, documents and accounts relating to the Licensee's business for the purpose of confirming that the Licensee is complying with this licence.
- 13. The Licensee shall ensure that the System and the Ancillary Installations are operated in conformity to the safety measures concerning health hazards caused by non-ionizing electromagnetic radiation as set out in the guidelines issued by the Authority from time to time.
- 14. (1) The Licensee shall-
 - (a) operate the System and the Ancillary Installations in such a manner as not to cause harmful interference with any other means of telecommunications; and
 - (b) comply with any direction given by the Authority for the purpose of avoiding such harmful interference.
 (2) The Licensee shall not use any instrument, apparatus or material on, or connect or apply any electrical current to, any part of the System or the Ancillary Installations if it causes or is likely to cause harmful interference with the working of any other means of telecommunications.
- 15. (1) No wire may be laid or maintained across any street or unleased Government land

- without the prior written consent of the Authority.
- (2) The Licensee shall comply with any conditions imposed, or directions given, by the Authority on the giving of his written consent for the purposes of subparagraph (1).
16. (1) Each telecommunications installation for radiocommunications operated by or on behalf of the Licensee shall be used only at the location and with emissions at the frequencies and of the classes and characteristics (including aerial characteristics), and with such power or power density, as specified in Schedule 2.
- (2) The apparatus comprised in each telecommunications installation for radiocommunications shall at all times comply with such technical and performance standards as may be specified by the Authority.
- (3) The apparatus comprised in a telecommunications installation for radiocommunications shall be of a type approved by the Authority and be so designed, constructed, maintained and operated that its use does not cause any avoidable and harmful interference with any other means of telecommunications.
- (4) The Licensee-
- (a) shall not make any change-
 - (i) in any telecommunications installation for radiocommunications; or
 - (ii) in the location of any installed telecommunications installation for radiocommunications,
 without the prior approval in writing of the Authority; and
 - (b) shall return this licence to the Authority for amendment when a change referred to in sub-subparagraph (a) has been effected.

SCHEDULE 1

The following telecommunications installation for radiocommunications and/or wireline communication is authorized to be established and maintained by the Licensee-

SCHEDULE 2

Technical particulars of the radiocommunications apparatus comprised in the System as follows-

SCHEDULE 3

The following ancillary or associated telecommunications installations for radiocommunications and/or wireline communication are authorized to be established, maintained and used by the Licensee-

.....
For the Telecommunications Authority.

(L.N. 28 of 1997; 29 of 1998 s. 105; 36 of 2000 s. 28)

TELECOMMUNICATIONS ORDINANCE (Chapter 106)

PUBLIC RADIOCOMMUNICATIONS SERVICE LICENCE (FOR SERVICES OTHER THAN LAND MOBILE SERVICES)

DATE OF ISSUE:
VALIDITY PERIOD:
DATE OF EXTENSION (if applicable):

PERIOD OF EXTENSION (if applicable):

.....
of

("the licensee") is licensed, subject to the conditions set out in this licence-

- (a) to provide a public radiocommunications service ("the Service") described in Schedule 1;
- (b) to establish, maintain, possess and use the radiocommunications apparatus described in Schedule 2 to provide the Service; and
- (c) to deal in and demonstrate with a view to sale in the course of trade or business, such apparatus or material for radiocommunications as may be necessary to supply customers of the Service.

GENERAL CONDITIONS

1. This licence shall not be construed as granting any exclusive rights to the licensee in the provision of the Service.
2. This licence replaces any licence, however described, which the Authority may have granted to the licensee for the Service.
3. The licensee shall at all times and from time to time during the continuance of this licence operate, maintain and provide the Service in a manner satisfactory to the Authority.
4. The licensee shall at all times perform and observe the requirements of the Constitution and Convention of the International Telecommunication Union and the regulations and recommendations annexed to or made under the Constitution and Convention as are applicable to Hong Kong except to the extent that the Authority may in writing expressly exempt the licensee from such compliance.
5. (1) Notwithstanding regulation 8(1) of the Telecommunications Regulations (Cap 106 sub. leg.), the licensee may with the prior written consent of the Authority transfer this licence and any permission, right or benefit under this licence.
(2) The consent of the Authority shall be subject to such conditions as the Authority thinks fit.
(3) If the licensee transfers the licence or other right, the licensee shall give the Authority a true copy of the transfer document within 2 months of the date of the transfer.
6. (1) Each land station or land earth station shall be used only at the location and with emissions at the frequencies and of the classes and characteristics specified in Schedule 2, and with such power and aerial characteristics as are specified in Schedule 2 in relation to the class and characteristics of the emission in use.
(2) The apparatus comprised in each land station or land earth station shall at all times comply with the technical and performance standards as may be prescribed by the Authority and specified in Schedule 2.
(3) The apparatus comprised in each land station or land earth station or mobile station or mobile earth station (being a mobile station or mobile earth station used by the customer of the licensee) shall be so designed, constructed, maintained and operated that its use does not cause any avoidable interference with any radiocommunications.
(4) Each land station or land earth station shall be operated only by the licensee or a person authorized by the licensee in that behalf. The licensee shall not permit or suffer any person not so authorized to have access to the apparatus comprised in each land station and land earth station. The licensee shall ensure that persons operating each land station or land earth station observe the conditions of the licence at all times.
(5) The licensee-

- (a) shall not make any change-
 - (i) in any land station or land earth station; or
 - (ii) in the address at which each land station or land earth station is installed, without the prior approval in writing of the Authority; and
 - (b) shall return this licence to the Authority for amendment when a change referred to in sub-subparagraph (a) has been effected.
- (6) If power for the working of any land station or land earth station is taken from a public electricity supply, no direct connection shall be made between the supply mains and the aerial.
- (7) If any land station or land earth station aerial crosses above or may fall or be blown onto any overhead power wire (including electric lighting and tramway wires) or power apparatus it shall be guarded to the reasonable satisfaction of the owner of the power apparatus concerned.
- (8) The licensee shall take all reasonable measures to ensure that customers of the Service do not cause interference to other users of radiocommunications and shall take all the necessary measures to stop such interference as may occur.
- 7. The apparatus operated by the licensee shall be operated only on such radio frequencies as the Authority may assign to the licensee and the Authority may refuse to assign further frequencies or require the licensee, by notice to him, to cease to operate the apparatus on any frequency previously assigned to him if in the opinion of the Authority the licensee is not making efficient use of that frequency.
- 8. The Authority may, by giving not less than 12 months' notice in writing to the licensee, require him upon such date as may be specified in the notice to cease using any frequency previously assigned to him by the Authority and to use such new frequency as the Authority may designate.
- 9. The licensee shall not enter into any agreement or arrangement whether legally enforceable or not which shall in any way prevent or restrict competition in relation to the operation of the Service or any other telecommunications service licensed by the Authority.
- 10. In this licence-
 - "land earth station" (陸地地球站) means an earth station in a mobile-satellite service not intended to be used while in motion;
 - "land station" (陸地電台) means a station in a mobile service not intended to be used while in motion;
 - "station" (電台), "earth station" (地球站), "mobile service" (移動業務), "land mobile service" (移地移動業務) and "mobile-satellite service" (衛星移動業務) have the same meanings as defined in the Radio Regulations annexed to the Constitution and Convention of the International Telecommunication Union.

SPECIAL CONDITIONS

(Special conditions may be inserted on the Grant
or Extension of this Licence)

SCHEDULE 1

DESCRIPTION OF THE PUBLIC RADIOCOMMUNICATIONS SERVICE

SCHEDULE 2

Location
 Transmitting Frequencies
 Maximum Frequency Tolerance
 Classes of Emission
 Maximum Effective Radiated Power
 Aerial Characteristics
 Other Performance and Technical Standards

.....
 For the Telecommunications Authority.
 (L.N. 52 of 1998; 36 of 2000 s. 28)

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| Chapter: | 107 | TRAMWAY ORDINANCE | Gazette Number | Version Date |
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| Section: | 6 | Attachment | 62 of 1999 | 01/07/1997 |
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Remarks:

Adaptation amendments retroactively made - see 62 of 1999 s. 3

(1) The company may with the consent of the owner of any house or building attach thereto such brackets, rosettes, wires and apparatus as may be required for the efficient working of the tramway.

(2) Where the company is unable to obtain such consent and is of the opinion that such consent is being unreasonably withheld, the company may apply to the Director, on notice to the owner, for a certificate that the attachment is essential to the efficient working of the tramway and the Director, if he is satisfied that the attachment is so essential, shall issue to the company a certificate under his hand to that effect.

(3) The company may serve on the owner a copy of such certificate and a copy of this section and, on the expiry of one month from the date of such service, if there shall be no appeal in accordance with the provisions of subsection (4), the company may enter upon the premises at any reasonable time, during the hours of daylight and make such attachment, subject nevertheless to the payment to the owner of such compensation as may be agreed between the company and the owner, or, in default of agreement, such compensation as may be determined by arbitration in accordance with the provisions of the Arbitration Ordinance (Cap 341).

(4) If an owner is aggrieved by the issue of a certificate in accordance with the provisions of subsection (2), he may, at any time during such period of one month as is referred to in subsection (3) on notice to the company, appeal by petition to the Chief Executive in Council and on such appeal, the Chief Executive in Council, after hearing the Director, may confirm or revoke such certificate. (Amended 62 of 1999 s. 3)

(5) No consent of an owner, decision of the Director or compensation payable in accordance with the provisions of subsection (3) shall have effect after that owner ceases to be the owner of the house or building in question but no attachments fixed under the provisions of this section shall be removed other than by or with the consent of the company until the expiration of 3 months after any subsequent owner has given to the company notice in writing requiring the attachments to be removed and where such notice is given the provisions of subsections (3) and (4) shall apply as if such owner has unreasonably withheld his consent in the first instance.

(6) An owner may require the company to remove temporarily the attachments where necessary during any reconstruction or repair to his house or building.

(7) For the purpose of this section, "owner" (擁有人) means the person whose name is

registered in the Land Registry as the owner or holder of the land on which the house or building in question is built and any registered mortgagee of such land. (Amended 8 of 1993 s. 2)

(Added 48 of 1962 s. 3)

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| Chapter: | 107 | TRAMWAY ORDINANCE | Gazette Number | Version Date |
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| Section: | 16 | Payment for works | 62 of 1999 | 01/07/1997 |
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Remarks:

Adaptation amendments retroactively made - see 62 of 1999 s. 3

(1) When the company has carried out, to the satisfaction of the Director, such work as is the subject of an order made in accordance with the provisions of section 15(5) or a notice given in accordance with the provisions of section 17, the company, subject to the provisions of this section, shall be entitled to be paid, out of the general revenue of Hong Kong, the reasonable cost of carrying out such work. (Amended 62 of 1999 s. 3)

(2) If-

- (a) the work includes the renewal or replacement of apparatus of the company so that the company derives a benefit from the life of new apparatus being longer than the life of the apparatus so renewed or replaced; or
- (b) by reason of the carrying out of such work the company has received or will receive any other benefit by way of greater efficiency of the running of the tramway system, reduction of wear on cars or tram rails or any other part of the apparatus of the company or by any other way,

the amount to be paid to the company shall be reduced by the amount or value of any such benefit.

(3) If by reason of the carrying out of such work the company has been or will be put to any greater expense or loss by way of lesser efficiency of the running of the tramway system or increase of wear on cars or tram rails or any other part of the apparatus of the company, the amount to be paid to the company shall be increased by the amount or value of any such additional expense or loss.

(4) The amount to be paid to the company shall be such amount as may be agreed between the Director and the company as the reasonable cost of the carrying out of such work, after deduction therefrom and addition thereto of such amounts as may be so agreed as representing the amount or value of such benefits and expenses and losses as are referred to respectively in subsections (2) and (3), or in default of agreement such amount as shall be determined by arbitration in accordance with the provisions of the Arbitration Ordinance (Cap 341).

(5) The Director may make payments on account whilst any such work is in progress but such payments on account shall not exceed in total four-fifths of the Director's estimate of the value of work done to the date of each such payment.

(Added 48 of 1962 s. 9)

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| Chapter: | 123 | BUILDINGS ORDINANCE | Gazette Number | Version Date |
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|----------|----|--------------------------------|------------|------------|
| Section: | 31 | Projections on or over streets | 29 of 1998 | 01/07/1997 |
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Remarks:

Adaptation amendments retroactively made - see 29 of 1998 s. 105

PART III

MISCELLANEOUS AND GENERAL

(1) No building or other structure shall be erected in, over, under or upon any portion of any street whether or not on land held under lease from the Government unless-

- (a) the building or other structure complies with the relevant criteria stipulated in Part II of the Building (Planning) Regulations (Cap 123 sub. leg. F); or
- (b) an exemption has been granted by the Building Authority pursuant to section 42. (Replaced 42 of 1992 s. 4)

(2) Where in the opinion of the Building Authority the public interest so requires he may-

- (a) by order in writing served on the owner of the building any part of which projects, or attached to which is any projection, over any street or unleased Government land require the alteration or removal of such projection within 3 months from the service of the order or within such lesser period as the Building Authority may deem necessary in the circumstances; or
- (b) carry out or cause to be carried out such alteration or removal and, except in the case of a projection over a street held on lease from the Government, recover the cost thereof from such owner. (Amended 29 of 1998 s. 105)

(2A) Where the owner referred to in subsection (2)(a) cannot be found or fails to comply with the requirements of an order served under subsection (2)(a), the Building Authority may carry out or cause to be carried out the works specified in the order or such other works as he considers to be necessary and the cost thereof shall be recoverable from the owner. (Added 42 of 1992 s. 4)

(3) Where-

- (a) no exemption is granted by the Building Authority under section 42 for the re-erection over or upon any portion of a street held on lease from the Government of a building which had been so built under the provisions of this or any earlier enactment; or
- (b) the Building Authority exercises his power under subsection (2) to require the alteration or removal of, or alters or removes any projection built under the provisions of this or any earlier enactment over any street or unleased Government land,

compensation shall be paid by the Government to the owner of such building. (Amended 23 of 1969 s. 7; 29 of 1998 s. 105)

(4) Any dispute as to whether any compensation is payable or as to the amount of such compensation shall, in default of agreement, be determined by arbitration in accordance with the provisions of the Arbitration Ordinance (Cap 341).

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| Chapter: | 215 | EASTERN HARBOUR CROSSING ORDINANCE | Gazette Number | Version Date |
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| Section: | 2 | Interpretation | L.N. 200 of 2007 | 02/12/2007 |
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(1) In this Ordinance, unless the context otherwise requires-

"Commissioner" means, subject to subsection (2), the Commissioner for Transport;

"construction works" (建造工程) means all works carried out or to be carried out under the project agreement and all works required to carry them out;

"court" (法院、法庭) includes a magistrate; (Added 29 of 1999 s. 2)

"design" (設計) means the design of the construction works or of any part or component thereof

- and includes plans and engineering information in support of that design;
- "Director" means, subject to subsection (2), the Director of Highways;
- "discharge date" (解除義務日期) means the date when the guarantors cease to have any obligations under the guarantee agreement;
- "engineering information" (工程資料) includes geotechnical and other necessary reports;
- "guarantee agreement" (保證協議) means the agreement designated as the guarantee agreement for the purposes of this definition by the Secretary by notice in the Gazette and any subsequent agreement amending or supplementing that agreement;
- "guarantors" (保證人) means the New Hong Kong Tunnel Consortium comprising the following members or such other persons as may undertake the obligations of guarantors under the guarantee agreement-
- Kumagai Gumi Company Limited
 - China International Trust and Investment Corporation
 - Paul Y. Construction Company Limited
 - Lilley Construction Limited;
- "immersed tube" (沉管) means the immersed cellular structure crossing Victoria Harbour from the sea-wall at Cha Kwo Ling to the sea-wall at Quarry Bay and containing 5 conduits-
- (a) 2 conduits each containing 2 road traffic lanes;
 - (b) 2 conduits each containing one single track railway line; and
 - (c) one conduit for services and utilities,
- and includes the protective rock armouring;
- "land" (土地) includes land under the sea;
- "motor vehicle" (汽車) means any mechanically propelled vehicle for use on roads;
- "operating agreement" (經營協議) means the agreement designated as the operating agreement for the purposes of this definition by the Secretary by notice in the Gazette and any subsequent agreement amending or supplementing that agreement;
- "plan" (圖則) means-
- (a) the plan numbered 1765 signed by the Director and deposited in the Land Registry, Victoria; and (Amended 8 of 1993 s. 2)
 - (b) any new plan deposited in accordance with section 3(3);
- "project" (工程項目) means the project, the subject of the project agreement, for the following works to be undertaken by the Road Company-
- (a) the construction of the immersed tube;
 - (b) reclamation and other works on or affecting the foreshore or sea-bed;
 - (c) the construction of approach roads and temporary and permanent alterations to existing roads;
 - (d) the construction of the railway works; and
 - (e) the construction of other buildings, and structures, and the undertaking of other works necessary for the proper carrying out of the project agreement;
- "project agreement" (工程項目協議) means the agreement designated as the project agreement for the purposes of this definition by the Secretary by notice in the Gazette and any subsequent agreement amending or supplementing that agreement;
- "Rail Company" (鐵路公司) means-
- (a) subject to paragraph (b)-
 - (i) the New Hong Kong Tunnel Company Limited;
 - (ii) in the event of an assignment under section 7(1) by the New Hong Kong Tunnel Company Limited to the Eastern Harbour Crossing Company Limited of the benefit of the franchise granted under section 5(1) and upon such assignment, the Eastern Harbour Crossing Company Limited in place of the New Hong Kong Tunnel Company Limited;

- (b) in the event of the benefit of the franchise granted under section 5(1) being assigned to, or vested in, a person other than the New Hong Kong Tunnel Company Limited or the Eastern Harbour Crossing Company Limited under or in accordance with this Ordinance (otherwise than by way of transfer under section 8), such other person in place of either of those companies;

"rail operating date" (鐵路開始經營日期) means the date notified in the Gazette under section 64(1);

"railway" (鐵路) means the railway constructed or to be constructed by the carrying out of the railway works;

"railway works" (鐵路工程) means-

- (a) the extension of the Mass Transit Railway's existing Kwun Tong Line on a viaduct as far as a new overhead station at Lam Tin, then in twin tunnels or at ground level to the north landfall of the immersed tube, then through the immersed tube on 2 single track lines to the south landfall of the immersed tube and continuing in twin tunnels to a terminus at the existing Quarry Bay Station;
- (b) at Quarry Bay Station, 2 railway station tunnels together with a rail cross-over in a tunnel on the south side of Quarry Bay Station;
- (c) a new overhead station at Lam Tin with pedestrian access by bridge across Kwun Tong Road, together with escalators to the Lam Tin Estate and modifications to the existing Quarry Bay Station providing a passenger interchange between the Island Line and the twin station tunnels constructed on the extension to the Kwun Tong Line; and
- (d) all electrical, mechanical and civil works required as a result of the extension of the Kwun Tong Line to Quarry Bay for the operation of the railway;

"Road Company" (道路公司) means-

- (a) subject to paragraph (b), the New Hong Kong Tunnel Company Limited;
- (b) in the event of the benefit of the franchise granted under section 4(1) being assigned to, or vested in, a person other than the New Hong Kong Tunnel Company Limited under or in accordance with this Ordinance, such other person in place of that company;

"road operating date" (道路開始經營日期) means the date notified in the Gazette under section 44(1);

"road tunnel" (行車隧道) means the conduits of the immersed tube which contain road traffic lanes;

"road tunnel area" (行車隧道區) means the area delineated and coloured red on the plan;

"Secretary" (局長) means the Secretary for Transport and Housing; (Replaced L.N. 106 of 2002. Amended L.N. 130 of 2007)

"start of construction" (開始建造日期) means the date upon which the construction works are commenced as agreed, or as determined, under section 16(1);

"toll structure" (隧道費構築物) means any structure erected by the Road Company for the purposes of section 59;

"utility" (公用設施) means any electric power cable, telephone cable or other cable used in communication, any telecommunications apparatus, and any pipe used in the supply of water, gas or oil, or for drainage or sewerage, together with any duct for such cable or pipe and any ancillary apparatus or works.

(Amended 11 of 2007 s. 36)

(2) Any reference to the Director or the Commissioner in any provision of this Ordinance shall be deemed to include any public officer whom the Director or Commissioner, as the case may be, authorizes to exercise his functions under that provision.

(3) Any function to be exercised by the Governor in Council under this Ordinance may, where the Governor is of the opinion that the matter is one of urgency, be exercised by the

Governor.

(4) A reference in this Ordinance to arbitration under the Arbitration Ordinance (Cap 341) shall be deemed, for the purposes of the Arbitration Ordinance (Cap 341), to be a reference by an arbitration agreement, as defined for the purposes of that Ordinance, to 2 arbitrators, one appointed by each party.

(5) (Repealed 11 of 2007 s. 36)

(Enacted 1986)

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| Chapter: | 215 | EASTERN HARBOUR CROSSING ORDINANCE | Gazette Number | Version Date |
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|----------|----|--|--|------------|
| Section: | 49 | Operation of road tunnel area by Government | | 30/06/1997 |
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(1) The Governor in Council may, if he is satisfied that it is necessary to do so in the interests of public security, order that the Government shall take over the operation of the road tunnel area or any part thereof together with such of the property of the Road Company as is necessary therefor, and continue such operation until the Governor in Council otherwise orders.

(2) The Government shall pay to the Road Company for any loss or damage suffered by that company by reason of any order under subsection (1), such amount as may be agreed between the Government and that company, or in default of such agreement such amount as may be determined by arbitration under the Arbitration Ordinance (Cap 341).

(3) Any period during which the Government operates the road tunnel area or any part of that area shall be computed in and not deducted from the periods specified in section 4(2).

(Enacted 1986)

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| Section: | 55 | Road Company to charge approved tolls for use of road tunnel | | 30/06/1997 |
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PART IX

COLLECTION OF TOLLS

(1) Subject to this Ordinance, the Road Company may demand and collect tolls in respect of the passage of motor vehicles through the road tunnel.

(2) The tolls that may be collected under subsection (1) shall be those specified in the Schedule.

(3) The tolls specified in the Schedule may be varied-

- (a) by agreement between the Governor in Council and the Road Company; or
- (b) in default of agreement by submission of the question of the variation of tolls to arbitration under the Arbitration Ordinance (Cap 341) by either the Governor in Council or the Road Company.

(4) On a submission to arbitration under subsection (3), the arbitrators shall be guided by the need to ensure that the carrying out by the Road Company of its obligations, or the exercise of its rights, under this Ordinance is reasonably but not excessively remunerative to the Road

Company, having regard to-

- (a) any material change in the economic conditions of Hong Kong since the enactment of this Ordinance or, as the case may be, since tolls were last determined under this section;
 - (b) the dismissal of any appeal by the Road Company made under section 75;
 - (c) any material change in any other circumstances affecting the exercise by the Road Company of its rights under the franchise granted by section 4(1);
 - (d) the effect of the introduction of, or alteration in, any tax or levy imposed on the use of the road tunnel;
 - (e) the principle that tolls or future rights to tolls should not be used to finance the construction of the railway works or to discharge directly or indirectly any obligation imposed on the Rail Company by this Ordinance; and
 - (f) any other relevant matter.
- (5) Where under subsection (3)-
- (a) the Governor in Council and the Road Company agree to a variation of the tolls; or
 - (b) in an award pursuant to submission to arbitration it is determined that the tolls should be varied,

the tolls specified in the Schedule shall be varied in compliance with such agreement or award, as the case may be.

(6) The Commissioner shall, by notice in the Gazette, as soon as is practicable after such agreement or award as is referred to in subsection (5) amend the Schedule.

(Enacted 1986)

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| Chapter: | 215 | EASTERN HARBOUR CROSSING ORDINANCE | Gazette Number | Version Date |
| Section: | 71 | Liability of companies and amount payable by the Government on the vesting in it of their assets | | 30/06/1997 |

(1) On the determination of the rights and obligations of both the Road Company and the Rail Company under section 70(1), the Road Company shall thereupon be liable, in addition to the payment of all other sums due to the Government, to pay-

- (a) all sums payable under section 20 notwithstanding that payment of such sums would, but for this paragraph, be suspended under section 20(2)(a); and
- (b) any expenses which may be incurred by the Government-
 - (i) in putting the sea-bed, any land and any uncompleted construction works in a satisfactory order to enable the construction works either to be maintained in a state in which they can be continued at a future time or abandoned as the Director may determine, including any costs of land or sea-bed restoration; and
 - (ii) in putting the construction works in a safe condition.

(2) On the determination of the rights and obligations of-

- (a) the Road Company and the Rail Company under section 70(1);
- (b) the Road Company under section 70(2); or
- (c) the Rail Company under section 70(3),

the Government shall be liable to pay to the company whose rights and obligations have been determined in respect of the assets of that company vesting in the Government under section 70(4) such amount as may be agreed between the Government and the Road Company or, as the case may be, the Rail Company, as representing the value of such assets to the Government at the time of vesting or, in default of such agreement, such amount as may be determined by arbitration under the Arbitration Ordinance (Cap 341).

- (3) In determining the value for the purposes of subsection (2)-
- (a) of assets forming part of the railway works, the value of the assets to the Government shall be deemed to be the value they would have had to the Mass Transit Railway Corporation, if these assets had, under section 70(4), vested in the Corporation;
 - (b) where the vesting of the assets in the Government is in consequence of a default, there shall be deducted from what would, but for this paragraph, be the value of the assets, such amount as may be agreed or determined in accordance with the provisions of that subsection for-
 - (i) damages occasioned to the Government by such default calculated on the basis that the construction works had been, or are to be, constructed, for the beneficial use of the Government and that the Government is the franchise holder under Part II;
 - (ii) the costs to the Government of obtaining the forfeiture of the franchise or franchises under this Part.

(4) No amount shall be payable to the Road Company or the Rail Company under subsection (2) upon the determination of the rights and obligations of both the Rail Company and the Road Company under section 70(1)(c) where the revocation of the franchises was on the grounds that the Road Company had failed or appeared likely to fail to complete the construction works within the period allowed by section 17.

(Enacted 1986)

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|----------|-----|------------------------------------|----------------|--------------|
| Chapter: | 215 | EASTERN HARBOUR CROSSING ORDINANCE | Gazette Number | Version Date |
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|----------|----|--|--|------------|
| Section: | 75 | Appeal by the Road Company or the Rail Company | | 30/06/1997 |
|----------|----|--|--|------------|

PART XIII

SUPPLEMENTARY

(1) If the Road Company or the Rail Company is aggrieved by any decision to which this section applies it may within 14 days of the notification to it of that decision, or such longer period as the Governor may allow, appeal against such decision by giving written notice to the Governor that it appeals against such decision and in that notice specifying the grounds upon which the appeal is based.

- (2) On receipt of a notice of appeal under subsection (1) the Governor-
- (a) shall, if the appeal is against any decision of the Director and the failure of the appeal would result in the company appealing being held to be in default under Part XII or if it appears to the Governor that this would be a probable result of such failure, refer the appeal to arbitration under the Arbitration Ordinance (Cap 341);
 - (b) subject to paragraph (a) may, where it appears to him that the issues raised by the appeal are matters of engineering practice, questions of the interpretation of the project agreement or other matters appropriately referred to arbitration, refer the appeal to arbitration under the Arbitration Ordinance (Cap 341),

and in, any other case, the appeal shall be determined by the Governor in Council.

(3) On an appeal under this section the Governor may give such instructions as he thinks fit as to the enforcement of the decision appealed against pending the determination or abandonment of the appeal but, subject to such instructions, such decision may, pending such determination or abandonment, be enforced as if no such appeal had been made.

(4) The decision of the arbitrator or Governor in Council on an appeal under this section

shall be final.

(5) In this section "decision" (決定) means any requirement, determination or direction made, or the withholding of any consent or approval (including the refusal to allow time under section 17(3)), by the Secretary, the Director or the Commissioner under this Ordinance other than the exercise by the Secretary of his powers under section 68; and this section shall apply to any such decision.

(Enacted 1986)

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|----------|-----|----------------------------------|-------------------|-----------------|
| Chapter: | 230 | PUBLIC BUS SERVICES ORDINANCE | Gazette Number | Version Date |
|----------|-----|----------------------------------|-------------------|-----------------|

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|----------|---|---------------------|------------|------------|
| Section: | 5 | Grant of franchises | 62 of 1999 | 01/07/1997 |
|----------|---|---------------------|------------|------------|

Remarks:

Adaptation amendments retroactively made - see 62 of 1999 s. 3

(1) Subject to this Ordinance, the Chief Executive in Council may grant to any company registered under the Companies Ordinance (Cap 32) the right to operate a public bus service on such routes as he specifies by order.

(2) A franchise may confer on the grantee the exclusive right to operate a service on any specified route.

(3) A franchise-

- (a) may be granted following a public tender or in such other manner as the Chief Executive in Council thinks fit;
- (b) shall, except where the Legislative Council by resolution excludes the application of all or any of the provisions of the profit control scheme, be subject to the profit control scheme;
- (c) shall be subject to such conditions as the Chief Executive in Council specifies; and
- (d) shall prescribe whether it may be extended under section 6(2) or (3).

(4) Without prejudice to any other provision of this Ordinance, a franchise may, with the consent of the grantee, be amended by the Chief Executive in Council.

(5) A franchise may, with or without the consent of the grantee, be amended by the Chief Executive in Council by order in the Gazette so as to restrict or prohibit the taking up or setting down of passengers within the North-west Transit Service Area or, where the boundaries of that Area are varied under section 2(3) of the Kowloon-Canton Railway Corporation Ordinance (Cap 372), to alter such a restriction or prohibition to take account of such variation. (Added 56 of 1986 s. 22)

(6) Where an amendment to a franchise is made under subsection (5) without the consent of the grantee, the grantee shall be entitled to compensation for the loss of any permitted return (as defined in Part V) on any investment which the grantee may reasonably have been expected to make had the franchise not been so amended, subject to the deduction from that permitted return of any sum required to be deducted under sections 28 and 29. (Added 56 of 1986 s. 22)

(7) In determining any compensation payable under subsection (6) account shall be had of any opportunity which the grantee may have had to mitigate his loss and to the effect the construction and operation of the North-west Railway under the Kowloon-Canton Railway Corporation Ordinance (Cap 372) would have had on the operations of the grantee (being an effect for which no compensation is payable) had his franchise not been amended. (Added 56 of 1986 s. 22)

(8) Compensation payable under subsection (6) shall be in such amount as may be agreed between the Commissioner and the grantee or, in the event of a failure to agree, as may be determined by arbitration under the Arbitration Ordinance (Cap 341) and, for the purposes of that Ordinance, the reference in this subsection to arbitration shall be deemed to be a reference by an

arbitration agreement, as defined for the purposes of that Ordinance, to 2 arbitrators, one appointed by the grantee and one by the Commissioner. (Added 56 of 1986 s. 22)

(9) The powers conferred on the Chief Executive in Council by subsection (5) shall cease to be exercisable after a period of 20 years from the commencement* of the Kowloon-Canton Railway Corporation (Amendment) Ordinance 1986 (56 of 1986) or such further period or periods as may be authorized by resolution of the Legislative Council. (Added 56 of 1986 s. 22)

(Amended 62 of 1999 s. 3)

Notes:

1. The Orders made under section 5(1) of the Ordinance specifying Schedules of routes in respect of the China Motor Bus Company Limited, the Kowloon Motor Bus Company (1933) Limited, the New Lantao Bus Company (1973) Limited, the Citybus Limited, Long Win Bus Company Limited and New World First Bus Services Limited have not been included in this Edition. For details of these Orders see L.N. 353 of 1991, L.N. 117 of 1997, L.N. 119 of 1997, L.N. 70 of 2001, L.N. 71 of 2001, L.N. 72 of 2001, L.N. 73 of 2001, L.N. 74 of 2001, L.N. 75 of 2001, L.N. 60 of 2003, L.N. 61 of 2003, L.N. 62 of 2003, L.N. 63 of 2003, L.N. 64 of 2003, L.N. 65 of 2003, L.N. 201 of 2004, L.N. 202 of 2004, L.N. 203 of 2004, L.N. 204 of 2004, L.N. 205 of 2004, L.N. 206 of 2004, L.N. 161 of 2006, L.N. 162 of 2006, L.N. 163 of 2006, L.N. 164 of 2006, L.N. 165 of 2006, L.N. 166 of 2006, L.N. 36 of 2008, L.N. 37 of 2008, L.N. 38 of 2008, L.N. 39 of 2008, L.N. 40 of 2008 and L.N. 41 of 2008, published in the Gazette.

2. Resolutions of the Legislative Council under s. 5(3)(b) of the Ordinance have not been included in this Edition. For details of these resolutions see L.N. 254 of 1991, L.N. 254 of 1993, L.N. 255 of 1993, L.N. 19 of 1995, L.N. 546 of 1995, L.N. 249 of 1996@, L.N. 70 of 1997@, L.N. 71 of 1997@, L.N. 72 of 1997@, L.N. 425 of 1997, L.N. 284 of 1998, L.N. 20 of 2003, L.N. 21 of 2003, L.N. 22 of 2003, L.N. 45 of 2006, L.N. 46 of 2006 and L.N. 47 of 2006.

@ These resolutions have been amended by the Adaptation of Laws (No. 25) Ordinance 1999 (62 of 1999), Schedule 3, items 21 to 24.

* In operation on 1 November 1986.

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| Chapter: | 230 | PUBLIC BUS SERVICES ORDINANCE | Gazette Number | Version Date |
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| Section: | 25D | Determination of compensation by arbitrator | | 30/06/1997 |
|----------|-----|---|--|------------|

(1) The Government may compromise or settle any claim for compensation under this Part.

(2) In default of an agreement between a claimant for compensation under this Part and the Government as regards the amount of compensation, if any, payable to the claimant the compensation shall be determined by arbitration under the Arbitration Ordinance (Cap 341) and for that purpose the Government and the claimant shall be regarded as having made an arbitration agreement within the meaning of that Ordinance whose provisions shall be deemed to include a provision that the compensation referred to shall, in the absence of an agreement, be determined by a single arbitrator.

(Added 82 of 1995 s. 6)

Notes:

1. The application of this section is affected by section 7 of the Public Bus Services (Amendment) Ordinance 1995 (82 of 1995), which section is reproduced as follows-

"7. Application

This Ordinance applies to franchises granted before the commencement of this

Ordinance as it applies to franchises granted after such commencement."

2. 82 of 1995 commenced operation on 4 August 1995.

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|----------|-----|---|----------------|--------------|
| Chapter: | 285 | MINING ORDINANCE | Gazette Number | Version Date |
| Section: | 12 | Compensation where action is taken under section 11 | 57 of 1999 | 01/07/1997 |

Remarks:

Adaptation amendments retroactively made - see 57 of 1999 s. 3

(1) Where any area has been closed to prospecting or mining under section 11 compensation shall be paid by the Chief Executive out of the general revenue to the holder of a prospecting or mining licence or the lessee of a mining lease who is adversely affected by such closure. (Replaced 33 of 1960 s. 4. Amended 57 of 1999 s. 3)

(2) Compensation shall be payable in the case of a prospecting licence in respect of disturbance and for the expenses incurred in prospecting the area and in the case of a mining licence or lease in respect of disturbance and for the loss of reasonable expectation of profits from proved minerals in, under or upon any land within the area in respect of which the mining licence or lease is held. (Replaced 33 of 1960 s. 4)

(3) Any dispute as to what are proved minerals in, under or upon any land to which this section relates, and any dispute as to whether any compensation is payable or as to the amount of such compensation, shall, in default of agreement, be determined by arbitration in accordance with the provisions of the Arbitration Ordinance (Cap 341).

(Amended 33 of 1960 s. 4)

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|----------|-----|---|------------------------|--------------|
| Chapter: | 285 | MINING ORDINANCE | Gazette Number | Version Date |
| Section: | 65 | Resumption of land required for public purposes | 29 of 1998; 57 of 1999 | 01/07/1997 |

Remarks:

Adaptation amendments retroactively made - see 29 of 1998 ss. 62 & 105; 57 of 1999 s. 3

(1) Whenever the Chief Executive in Council decides that the resumption of any Government land within the area of a mining lease is required for a public purpose, the Chief Executive may call upon the lessee thereof to surrender his rights and interests in such land under his lease, and the lessee shall, within two months after the date upon which such decision is communicated to him, execute an instrument of surrender thereof in such form as may be approved by the Director of Lands. (Amended 8 of 1993 s. 3; L.N. 291 of 1993; 29 of 1998 s. 105; 57 of 1999 s. 3)

(2) In this section, the expression "resumption for a public purpose" (收回作公共用途) has the meaning ascribed to that expression by section 2 of the Lands Resumption Ordinance (Cap 124), but otherwise the provisions of that Ordinance shall have no application to a resumption under the provisions of subsection (1). (Amended 29 of 1998 s. 62)

(3) If the lessee fails to execute an instrument of surrender within due time as provided in

subsection (1), the Chief Executive may revoke the mining lease, and thereupon the lease and the rights of the parties thereunder shall absolutely determine but without prejudice to the rights and remedies of the parties in respect of any antecedent breach, non-observance or non-performance of the provisions thereof. (Amended 57 of 1999 s. 3)

(4) Compensation shall be paid by the Government to the lessee for disturbance, and also for the loss of reasonable expectation of profits from proved minerals in, under or upon any land resumed under this section.

(5) Any dispute as to what are proved minerals in, under or upon any land resumed as aforesaid, and any dispute as to whether any compensation is payable or as to the amount of such compensation, shall, in default of agreement, be determined by arbitration in accordance with the provisions of the Arbitration Ordinance (Cap 341).

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|----------|-----|---|-------------------|-----------------|
| Chapter: | 301 | HONG KONG AIRPORT (CONTROL OF OBSTRUCTIONS) ORDINANCE | Gazette Number | Version Date |
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|----------|----|--|--|------------|
| Section: | 15 | Closure orders in relation to buildings to be demolished or reduced in height | | 30/06/1997 |
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(1) Where a building has to be demolished or reduced in height so that it may conform to the requirements of this Ordinance or any order made thereunder, and the owner of the building or the Director of Buildings, as the case may be, is about to undertake building works in order to effect such demolition or reduction in height, the owner or the Director may apply to a magistrate for a closure order in relation to that building or any part thereof, and the magistrate shall make such order if he is satisfied that notice has been given in accordance with the provisions of subsection (4), and that it is necessary or expedient to order the closure of the building or part thereof so that such works may be expeditiously and properly carried out. (Amended L.N. 76 of 1982; L.N. 94 of 1986; L.N. 291 of 1993)

(2) A closure order under this section shall-

- (a) specify the building or part thereof to be closed; and
- (b) order the closure of such building or part thereof under the direction of a police officer; and
- (c) order-
 - (i) in the case of demolition, that the building be closed; or
 - (ii) in the case of reduction in height, that the building or part thereof remain closed until the Director of Buildings has given a certificate to the owner that the order is no longer required. (Amended L.N. 76 of 1982; L.N. 94 of 1986; L.N. 291 of 1993)

(3) No person shall occupy a building or part of a building to which a closure order relates during the continuance in force of the order.

(4) At least 7 days' notice of intention to apply for a closure order shall be given by the person making such application by posting the notice on a conspicuous part of the building to which it relates, and upon being so posted it shall be sufficient notice to all persons of such intention.

(5) Such notice shall be in both the English and the Chinese languages and shall specify the building to which it relates and whether the same is to be demolished or reduced in height, and in the case of a reduction in height, the extent thereof, the premises to be closed and the estimated period of closure; and in addition, in the case of a reduction in height, such notice shall reproduce this section in full.

(6) Any occupier who is evicted from a building under a closure order made to enable a reduction in height thereof to be effected shall, subject to the following provisions of this section, be entitled to re-enter and re-occupy the premises occupied by him immediately prior to his

eviction, but this subsection shall not be taken to preserve or revive any rights necessarily extinguished or curtailed by the carrying out of any building works undertaken to effect such reduction in height.

- (7) (a) Not later than 14 days after the making of a closure order in relation to the reduction in height of a building, any occupier whose rights will not be extinguished by any building works undertaken to effect such reduction may serve upon the owner notice of his intention to re-occupy, on the expiry of the closure order, the premises occupied by him at the date of the giving of notice under subsection (4).
- (b) Such notice of intention to re-occupy shall specify an address at which a notice under subsection (8) may be served.
- (c) Such notice of intention to re-occupy may be revoked in like manner by the occupier during the continuance in force of the closure order.

(8) Within 3 days of the receipt of a certificate of the Director of Buildings given under subsection (2)(c)(ii), the owner of the building to which it relates shall serve notice of the expiry of the closure order upon every occupier who has given notice under subsection (7)(a), and has not revoked the same, and such notice of expiry shall be served by sending it by registered post to such occupier at the address specified in the notice given by him under subsection (7). (Amended L.N. 76 of 1982; L.N. 94 of 1986; L.N. 291 of 1993)

(9) Any occupier who has given notice under subsection (7) and has not revoked the same, may, within 14 days of the date of service of the notice of expiry, re-enter and re-occupy the premises previously occupied by him to the extent that the same are still in existence, upon such terms and conditions relating to the premises as were in force at the date of the closure order in so far as the same are still applicable, and, in the event of the value of the premises to the occupier having been diminished as a result of the carrying out of any such building works as are referred to in subsection (1), at such reduced rent as is reasonable having regard to all the circumstances, and in default of agreement between the parties as to the amount of such reduced rent, the amount shall be determined by arbitration in accordance with the provisions of the Arbitration Ordinance (Cap 341).

(10) Where an occupier who has given notice under subsection (7) and has not revoked the same fails to exercise his right to re-enter within the period allowed by subsection (9), he shall have no further rights of occupation, and the person who would have been entitled to receive the rent from such occupier shall be entitled to recover from him a sum equal to 1 month's rent by action brought in the District Court.

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|----------|------|--|----------------|--------------|
| Chapter: | 341B | ARBITRATION (APPOINTMENT OF ARBITRATORS AND UMPIRES) RULES | Gazette Number | Version Date |
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| Section: | 2 | Application | | 30/06/1997 |
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These Rules apply to the appointment of arbitrators and umpires under sections 12 and 34C of the Ordinance.

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| Chapter: | 341B | ARBITRATION (APPOINTMENT OF ARBITRATORS AND UMPIRES) RULES | Gazette Number | Version Date |
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|----------|---|--|--|------------|
| Section: | 3 | Constitution of Appointment Advisory Board | | 30/06/1997 |
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PART II

APPOINTMENT ADVISORY BOARD

(1) The Council shall establish an Appointment Advisory Board comprising one member nominated by each of the persons or organizations referred to in subrule (2), none of whom may be appointed as arbitrators by HKIAC during his or her term of office.

(2) The Council shall invite the following to nominate one person each to be a member of the Appointment Advisory Board-

- (a) the Chief Justice of Hong Kong;
- (b) the Chairman of the Hong Kong Bar Association;
- (c) the President of The Law Society of Hong Kong;
- (d) the Hong Kong General Chamber of Commerce;
- (e) the Chinese General Chamber of Commerce;
- (f) the President of The Hong Kong Institution of Engineers;
- (g) the President of The Hong Kong Institute of Surveyors;
- (h) the President of The Hong Kong Institute of Architects;
- (i) the Hong Kong Shipowners Association;
- (j) the Hong Kong Federation of Insurers.

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| Chapter: | 341B | ARBITRATION (APPOINTMENT OF ARBITRATORS AND UMPIRES) RULES | Gazette Number | Version Date |
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| Section: | 6 | Procedure for applying for appointment of arbitrator or umpire | | 30/06/1997 |
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PART III

PROCEDURE FOR APPOINTMENT OF AN ARBITRATOR OR UMPIRE

(1) Any party seeking the appointment of an arbitrator or umpire under section 12 of the Ordinance or under article 11 of the UNCITRAL Model law shall serve on HKIAC a document in Form 1 in the Schedule. The document shall be signed by the party or by a person authorized to sign on his behalf certifying that the details contained therein are true and accurate.

(2) The party seeking the appointment of the arbitrator or umpire shall serve a copy of the document on the other party at his last known address and shall lodge with HKIAC documentary verification of service and, for the purposes of this subrule, double registered post shall constitute good service.

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| Chapter: | 341B | ARBITRATION (APPOINTMENT OF ARBITRATORS AND UMPIRES) RULES | Gazette Number | Version Date |
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| Section: | 8 | Procedure for applying to HKIAC for decision as to number of arbitrators | | 30/06/1997 |
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PART IV

NUMBER OF ARBITRATORS

(1) Any party to an arbitration agreement who is, under section 34C(5) of the Ordinance, seeking a decision as to the number of arbitrators who are to determine a dispute arising under such agreement shall serve on HKIAC a document in Form 2 in the Schedule. The document shall be signed by the party or a person authorized to sign on his behalf certifying that the details contained therein are true and accurate.

(2) The party seeking such a decision as to the number of arbitrators shall serve a copy of the document on the other party at his last known address and shall lodge with HKIAC documentary verification of service and, for the purposes of this subrule, double registered post shall constitute good service.

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| Chapter: | 341B | ARBITRATION (APPOINTMENT OF ARBITRATORS AND UMPIRES) RULES | Gazette Number | Version Date |
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| Schedule: | | SCHEDULE | | 30/06/1997 |
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[sections 6 & 8]

FORM 1

Hong Kong International Arbitration Centre

APPLICATION FOR THE APPOINTMENT OF AN ARBITRATOR OR UMPIRE

This form shall be used to apply to Hong Kong International Arbitration Centre (HKIAC) pursuant to the Arbitration Ordinance (Cap 341) for the appointment of an arbitrator or umpire.

1. THE UNDERSIGNED HEREBY APPLIES TO HKIAC FOR THE APPOINTMENT OF:

2. DETAILS OF PARTIES:

CLAIMANT:

Name _____

Address _____

Tel. No. _____

Fax. No. _____

Nationality _____

Solicitor/Adviser (If Any):

Name _____

Address _____

RESPONDENT:

Name _____

Address _____

Tel. No. _____

Fax. No. _____

Nationality _____

Solicitor/Adviser (If Any):

Name _____

Address _____

Tel. No. _____
Fax. No. _____

- [illegible]

- DISPUTE: (Brief particulars of nature, circumstances and location of dispute; arbitration and amount at issue are all that are required.)

- [illegible]

7. APPOINTMENT FEE: A cheque payable to "Hong Kong International Arbitration Centre" for \$4000 for payment of the appointment fee is enclosed.
8. CERTIFICATE:
I hereby certify that the details contained herein are true and accurate.

(SIGNED) _____ Date: _____
Name and Capacity _____

FORM 2

Hong Kong International Arbitration Centre

APPLICATION FOR A DECISION AS TO THE NUMBER OF ARBITRATORS

This form shall be used to apply to Hong Kong International Arbitration Centre (HKIAC) pursuant to the Arbitration Ordinance (Cap 341) to apply for a decision as to the number of arbitrators.

1. THE UNDERSIGNED HEREBY APPLIES TO HKIAC FOR A DECISION AS TO WHETHER THERE SHALL BE 1 OR 3 ARBITRATORS:

2. DETAILS OF PARTIES:

CLAIMANT:

Name _____
Address _____

Tel. No. _____
Fax. No. _____
Nationality _____

Solicitor/Adviser (If Any):

Name _____
Address _____

Tel. No. _____
Fax. No. _____

RESPONDENT:

Name _____
Address _____

Tel. No. _____
Fax. No. _____
Nationality _____

Solicitor/Adviser (If Any):

Name _____
Address _____

Tel. No. _____
Fax. No. _____

3. CONTRACT/AGREEMENT: (Enclose a copy or summarize briefly.)

4. ARBITRATION CLAUSE OR AGREEMENT: (A copy is attached to this application.)
5. DISPUTE: (Brief particulars of nature, circumstances and location of dispute, issue for arbitration and amount at issue are all that are required.)

6. OTHER RELEVANT DETAILS:

7. APPOINTMENT FEE: A cheque payable to “Hong Kong International Arbitration Centre” for \$4000 for payment of the decision fee is enclosed.

8. CERTIFICATE:
I hereby certify that the details contained herein are true and accurate.

(SIGNED) _____ Date: _____
Name and Capacity _____

The Council of Hong Kong International Arbitration Centre has resolved that the Rules be made this 14th day of May 1997.

Peter CALDWELL,
Secretary General and Council member of
Hong Kong International Arbitration
Centre.

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|----------|-----|----------------------|-------------------|-----------------|
| Chapter: | 347 | LIMITATION ORDINANCE | Gazette Number | Version Date |
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| | | Long title | | 30/06/1997 |
|--|--|------------|--|------------|

To consolidate and amend the law relating to the limitation of actions and arbitrations.

[11 June 1965]

(Originally 31 of 1965)

| | | | | |
|----------|-----|----------------------|-------------------|-----------------|
| Chapter: | 347 | LIMITATION ORDINANCE | Gazette Number | Version Date |
|----------|-----|----------------------|-------------------|-----------------|

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|----------|----|---|--|------------|
| Section: | 34 | Application of Ordinance and other limitation enactments to arbitrations | | 30/06/1997 |
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PART IV

GENERAL

(1) This Ordinance and any other Ordinance or imperial enactment relating to the limitation of actions shall apply to arbitrations as they apply to actions in the High Court.

(2) Notwithstanding any term in an arbitration agreement to the effect that no cause of action shall accrue in respect of any matter required by the agreement to be referred until an award is made under the agreement, the cause of action shall, for the purpose of this Ordinance and of any other such Ordinance or imperial enactment (whether in their application to arbitrations or to other proceedings), be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement.

(3) For the purpose of this Ordinance and of any other such Ordinance or imperial enactment as aforesaid, an arbitration shall be deemed to be commenced when one party to the arbitration serves on the other party or parties a notice requiring him or them to appoint an arbitrator or to agree to the appointment of an arbitrator, or, where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring him or them to submit the dispute to the person so named or designated.

(4) Any such notice as aforesaid 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 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,

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.

(5) Where the court orders that an award be set aside or orders, after the commencement of an arbitration, that the arbitration shall cease to have effect with respect to the dispute referred, the court may further order that the period between the commencement of the arbitration and the date of the order of the court shall be excluded in computing the time prescribed by this Ordinance or any such other Ordinance or imperial enactment as aforesaid for the commencement of proceedings (including arbitration) with respect to the dispute referred.

(6) This section shall apply to an arbitration under an Ordinance as well as to an arbitration pursuant to an arbitration agreement, and subsections (3) and (4) shall have effect, in relation to an arbitration under an Ordinance, as if for the references to the arbitration agreement there were substituted references to such of the provisions of the Ordinance or of any order, scheme, rules, regulations or by-laws made thereunder as relate to the arbitration.

[cf. 1939 c. 21 s. 27 U.K.]

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|-----------|-----|--|------------------|--------------|
| Chapter: | 372 | KOWLOON-CANTON RAILWAY CORPORATION ORDINANCE | Gazette Number | Version Date |
| Schedule: | 2 | | L.N. 200 of 2007 | 02/12/2007 |

[section 7(1)]

PART I

1. There shall be vested in the Corporation for the interest specified in paragraphs 2, 3, 4 and 5 and for a period commencing on the appointed day and ending-

- (a) in the case of land situated in Kowloon, 75 years thereafter; and
- (b) in the case of land situated in the New Territories, on 30 June 2047, (Amended L.N. 325 of 1993)

all the Government land (in this Schedule called "the said land") described in the said paragraphs by reference to plans (in this Schedule called "the said plans"), certified under the hand of the Director of Lands as being the plans referred to in this Schedule, one set of which shall be deposited in the offices of the Land Registry, Victoria. (Amended 8 of 1993 s. 2; 29 of 1998 s. 105)

2. All that land bounded by a bold continuous black line on the said plans shall be vested absolutely:

Provided that there shall be excluded from the land so vested the land registered in the Land Registry, as Sha Tin Town Lot No. 87. (Amended 8 of 1993 s. 2; 20 of 2002 s. 5)

3. In respect of the land bounded by a bold discontinuous black line on the said plans there shall be vested such underground wayleaves or rights of passage as are necessary for the operation of the railway as existing immediately prior to the appointed day, including the right to maintain or reconstruct all railway tracks, tunnels and other works which were constructed for the purposes of or in connection with the railway and in existence immediately prior to the appointed day and to construct and maintain new works for the better exercise of such wayleave or right of passage. (Amended 11 of 2007 s. 34)

4. In respect of the land shown hatched black on the said plans there shall be vested-

- (a) such wayleaves or rights of passage as are necessary for the operation of the railway as existing immediately prior to the appointed day or, as the case may be,

as it will be after the execution of the works under the scheme referred to in section 10(1)(c)*; (Amended 11 of 2007 s. 34)

- (b) the right to maintain or reconstruct all railway tracks, railway bridges and other works on such land and to construct and maintain new works for the better exercise of such wayleave or right of passage.

5. In respect of the top of the concrete platform at Sha Tin Station, including all the under surface thereof, being a platform situated on Government land remaining in the possession of the Government and coloured grey on the said plans, there shall be vested in the Corporation the right to the exclusive use thereof and to permit other persons to use it, together with the right to construct on such platform, so long as the stability thereof is not affected, buildings and other structures. (Amended 29 of 1998 s. 105)

6. In respect of the Government land adjacent to the land vested under paragraphs 2, 3, 4 and 5 there shall be vested in the Corporation such rights as are appurtenant to the land so vested, being rights to continue to use such Government land for a purpose (being a railway purpose) for which the land was used immediately prior to the appointed day and, without derogation from the generality of the foregoing, such rights shall include-

- (a) the right to discharge storm water upon such Government land in the places and manner in which such water was discharged, or capable of being discharged, at such time;
- (b) such rights of way over such Government land as may have been so used; and
- (c) where any power under any repealed Ordinance relating to the railway was exercised for the benefit of the railway over any such Government land, the right to continue to use the Government land for the purposes for which the power was exercised. (Amended 29 of 1998 s. 105)

7. The Government and the Corporation may by agreement adjust the boundaries of the said land so as to transfer-

- (a) to the Government any lands included within the said land which ought not to have been so included, as not having been used for railway purposes immediately prior to the appointed day; (Amended 29 of 1998 s. 105)
- (b) to the Corporation any lands which ought to have been so included as having been used for railway purposes immediately prior to the appointed day.

8. The provisions of paragraphs 1(2) and 2 of the Third Schedule shall apply to an agreement under paragraph 7 as they do to an agreement under paragraph 1(1) of that Schedule and any certificate under paragraph 2 of the Third Schedule as read with this paragraph shall, as soon as may be, be annexed to the said plans and be deemed to form part thereof:

Provided that in applying the said paragraphs for the purposes of this paragraph references to the Secretary for Transport and Housing shall be deemed to be references to the Director of Lands. (Amended L.N. 106 of 2002; L.N. 130 of 2007)

9. Nothing in this Schedule shall vest in the Corporation any rights which were not vested in the Government immediately prior to the appointed day and nothing in this Schedule shall affect the exercise by any person, other than the Government, of any rights in respect of the said land which he possessed immediately prior to the appointed day. (Amended 29 of 1998 s. 80)

PART II

10. There shall be reserved to the Government liberty-

- (a) to use and permit the public to use the following together with all roads appurtenant thereto-
 - (i) the bridges designated on the said plans by a number prefixed by the letter "B" and shown cross hatched black;

- (ii) the subways designated on the said plans by a number prefixed by the letter "S" and shown cross hatched black;
 - (iii) the pedestrian ways along the railway bridges designated on the said plans by a number prefixed by the letter "P" and shown hatched black,
- and to keep all bridges, roads, tunnels and other works appertaining thereto on the said land;
- (b) to use exclusively, and to permit other persons to use, whether in accordance with a lease, tenancy agreement or otherwise-
 - (i) the top of the concrete platform at Sha Tin situated on land vested in the Corporation and coloured grey on the said plans, including all the under surface thereof;
 - (ii) that portion of the top of the concrete platform at Kowloon Station coloured grey on the said plans, including all the under surface of the said platform;
 - (iii) the top of the concrete platform at Mong Kok constructed under the rights reserved under sub-paragraph (c) hereof, including all the under surface thereof,

together with all necessary rights of access and the right to construct on such platforms, so long as the stability thereof is not affected and having regard to the rights of other persons to the use of such platforms, buildings and other structures;
- (c) to construct at Mong Kok at the places coloured grey on the said plans, concrete platforms over the railway in accordance with the scheme therefor as existing immediately prior to the appointed day and as may be subsequently modified by agreement between the Government and the Corporation;
- (d) to construct vehicular and other ways on the said land over or under the railway and intersecting at right angles or diagonally the railway and to use, or permit the public to use, such vehicular or other ways for any purpose whatsoever;
- (e) to lay mains, pipes, wires, cables and drains within or upon the said land and to keep upon the said land any such mains, pipes, wires, cables and drains which existed upon the said land immediately prior to the appointed day and were used wholly or mainly for purposes other than railway purposes;
- (f) to cleanse, repair and maintain any works constructed or kept under the provisions of sub-paragraphs (a), (b), (c), (d) and (e) (including any of the platforms referred to in sub-paragraph (b)) and for its servants or agents to enter upon the said land for such purposes and for the inspection of such works or for the exercise of the rights conferred by this paragraph;
- (g) to exercise on the said land such rights appurtenant to the beneficial enjoyment by the Government or its successors of land retained by the Government, being rights to continue to use land for a purpose for which the land was used immediately prior to the appointed day, and without derogation from the generality of the foregoing, such rights shall include-
 - (i) the right to discharge storm water upon the said land in the places in which such water was discharged, or capable of being discharged, at such time; and
 - (ii) such rights of way as may have been so used.

11. In the exercise of the rights conferred upon it by paragraph 10 the Government shall-
 - (a) not, without the consent of the Corporation, (which consent shall not unreasonably be withheld) do anything which might adversely affect the operation or safety of the railway and in the event of any injurious affection make reasonable compensation therefor;
 - (b) do as little damage as possible and make reasonable compensation for all damage done;
 - (c) reimburse the Corporation for any expenses incurred by it in undertaking works to facilitate, or enable the Government to exercise, such rights.
12. The Corporation shall not interfere with, or do anything which may injuriously affect, any

works kept or constructed by the Government in accordance with the rights reserved under paragraph 10, with any of the platforms referred to in that paragraph, or with any road or way constructed for the use of the public without the consent in writing of the Director of Lands, which consent shall not unreasonably be withheld:

Provided that-

- (a) such consent shall not be withheld should the Corporation desire to affix cables, pipes, signalling equipment or other equipment for the operation of the railway to the underside or supports of any bridge or concrete platform or to any retaining wall, but the Director of Lands may, in granting his consent, impose reasonable conditions for safeguarding the structure of the bridge, platform or wall, or the users thereof;
- (b) where a pedestrian way referred to in paragraph 10(a)(iii) is an integral part of the structure of any railway bridge, nothing in this paragraph shall prevent the Corporation from effecting any necessary repairs to such structure or from rebuilding such bridge;
- (c) nothing in this paragraph shall affect any right of the Corporation to use any portion of the top of any concrete platform the use of which is not reserved to the Government, and to permit others to use it, and to construct buildings or other structures thereon so long as the stability of the platform is not affected and the rights reserved to the Government in respect of that platform are not injuriously affected.

13. There shall be reserved to the Government in respect of all land within the said land occupied by the Mass Transit Railway Corporation immediately prior to the appointed day the right to lease such land or any part thereof to the Mass Transit Railway Corporation upon such terms and conditions as the Government may determine, so however that nothing in any such lease shall affect the right of the Corporation established under this Ordinance to use the surface of such land for railway or other purposes and to have reasonable support for such use.

14. The Corporation shall not withdraw or vary the terms of any licence granted prior to the appointed day by the Government to the Mass Transit Railway Corporation or to the Government of the United Kingdom entitling the Mass Transit Railway Corporation or the Government of the United Kingdom to use any part of the said land, or any arrangement made to that effect, without the written approval of the Secretary for Transport and Housing. (Amended L.N. 106 of 2002; L.N. 130 of 2007)

15. The Corporation may-

- (a) use and permit the use of the portion of the said land described in paragraphs 2 and 5-
 - (i) for railway purposes;
 - (ii) for any purpose in the exercise of the powers conferred on it by the Chief Executive under section 4(1)(e), (Amended 62 of 1999 s. 3; 32 of 2000 s. 48)

and for purposes ancillary thereto, excluding staff housing and including, within station premises only, the provision of services or articles for the use or enjoyment of passengers on the railway; or

- (b) where any portion of the said land described in paragraphs 2 and 5 was, immediately prior to the appointed day, used for other than railway purposes, or for staff housing, use and permit the use of the said land for such other purposes or such housing but only to the extent that such part of the said land was so used immediately prior to the appointed day,

and may not use the said land, or any portion thereof, for any other purpose without the consent in writing of the Director of Lands who may, in granting such permission, impose such conditions as he thinks fit including the payment by the Corporation of a reasonable premium to the Government for payment into general revenue as consideration for the grant of such consent.

16. The Corporation shall not assign, underlet, part with possession or otherwise dispose of the said land or any part thereof or any interest therein, or enter into any agreement so to do, for a period in excess of 3 years without the consent in writing of the Director of Lands:

Provided that nothing in this paragraph shall relate to the part of the said land referred to in paragraph 15(b).

17. The Corporation shall keep the railway and other works and erections made or erected on the said land in good and substantial repair:

Provided that nothing in this Schedule shall impose on the Corporation any obligation to repair any-

- (a) bridge or subway referred to in paragraph 10(a)(i) and (ii) and shown cross hatched black on the said plans;
- (b) pedestrian ways referred to in paragraph 10(a)(iii) and shown hatched black on the said plans except in the case of structural defects to a bridge on which a pedestrian way is situated and which affect the safety of the way;
- (c) concrete platform referred to in paragraph 10 and coloured grey on the said plans or an access used exclusively in connection therewith save to the extent that the Corporation has any interest in the top of the platform, and then only to the extent of that interest.

18. The Government may at any time enter upon any cutting, embankment or retaining wall on the said land which, by reason of its condition, injuriously affects or is likely to affect any Government land and execute such work thereon as may be reasonably necessary to prevent such injurious affection. The reasonable costs so incurred shall be a debt owing by the Corporation to the Government. (Amended 29 of 1998 s. 105)

19. The Corporation shall maintain in good and substantial repair fences erected on the said land to prevent access to the railway by members of the public or livestock and, in places where such fences are required for the protection of the public or livestock and were not in existence immediately prior to the appointed day, shall construct fences adequate for such purpose and so maintain them.

20. Subject to the proviso to paragraph 17 the Corporation shall be liable to pay a reasonable portion of all expenses incurred by the Government, and the Government a reasonable portion of all expenses incurred by the Corporation, in repairing and rebuilding and cleansing all party walls, fences, sewers, drains, roads, pavements and other things the use of which is common to the said land and to any adjoining land held by the Government. In the absence of agreement on the sum the Government or the Corporation shall pay, this shall be determined in accordance with the Arbitration Ordinance (Cap 341) by reference to 2 arbitrators, one to be appointed by each party. (Amended 29 of 1998 s. 105)

21. The Government shall have the right to such facilities as it may reasonably require for police, immigration or customs purposes on railway premises:

Provided that nothing in this paragraph shall require the Corporation to carry out any building or other works otherwise than at the expense of the Government.

PART III

22. The Chief Executive may by order in the Gazette amend- (Amended 62 of 1999 s. 3)

- (a) Part I of this Schedule by extending the term of years for which the said land, or any part thereof, is vested in the Corporation;
- (b) Part II of this Schedule:

Provided that the prior consent of the Corporation shall be required to any amendment which has the effect of imposing any new restriction on the Corporation as to the manner in which it may

use the said land or any part thereof or which otherwise limits the rights granted in this Schedule.

23. That part of the said land lying below the land registered in the Land Registry as Sha Tin Town Lot No. 87 shall be subject to the mutual rights and obligations reserved in and imposed by, and the agreements and conditions contained in, the Conditions of Sale registered in the Land Registry as New Grant No. 11326. (Amended 8 of 1993 s. 2; 20 of 2002 s. 5)

24. (1) In this Schedule the expressions "the said land" (所述土地) and "the said plans" (所述圖則) have the meanings assigned to them by paragraph 1.

(2) Any reference to the Government or the Corporation shall where the reference relates to any right to go onto any land or do anything thereon be deemed to refer also to their servants or agents.

(3) In this Schedule references to "the railway" shall be construed as referring to the Kowloon-Canton Railway and references to "railway purposes" shall be construed accordingly. (Added 56 of 1986 s. 19)

Note:

* **Repealed-see 13 of 1998 s. 6**

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| Chapter: | 372 | KOWLOON-CANTON RAILWAY CORPORATION ORDINANCE | Gazette Number | Version Date |
| Schedule: | 5 | | L.N. 200 of 2007 | 02/12/2007 |

[sections 7(6) & (7),
34A(1) & 35(3)]

PART I

1. There shall be vested in the Corporation for the interest specified in paragraphs 2, 3, 4 and 5 for a period ending on 30 June 2047 all the Government land (in this Schedule called "the land") described in those paragraphs by reference to plans (in this Schedule called "the plans"), certified under the hand of the Director of Lands as being the plans referred to in this Schedule, one set of which shall be deposited in the offices of the Land Registry. (Amended 8 of 1993 s. 2; L.N. 291 of 1993; 29 of 1998 s. 105)

2. In respect of the land shown grey on the plans there shall be vested-

- (a) such rights as are necessary to enable the Corporation to construct the North-west Railway;
- (b) such wayleaves or rights of passage as are necessary for the operation of the North-west Railway; (Amended 11 of 2007 s. 35)
- (c) the right to maintain or reconstruct all railway tracks, railway bridges and other works on such land and to construct and maintain new works for the better exercise of such wayleave or right of passage.

3. In respect of the land shown hatched black on the plans there shall be vested-

- (a) such rights as are necessary to enable the construction and maintenance of platforms (which expression in this paragraph includes the platforms proper, access ramps, shelters erected over such platforms and any necessary ancillary structures) for the use of persons alighting from and ascending into the carriages of

- the North-west Railway; (Amended 11 of 2007 s. 35)
 - (b) the right to place and maintain on such platforms ticket vending machines and other objects required for the operation of the said Railway;
 - (c) the right, subject to such reasonable conditions as the Director of Lands may impose, to place advertisements or allow the placement of advertisements by others, at the stops. (Amended L.N. 291 of 1993)
4. In respect of the land shown edged black on the plans there shall be vested-
- (a) the right to construct and maintain such buildings or other structures as may be specified on the plans at the places so specified;
 - (b) the right to use such buildings or structures for the operation of the North-west Railway or to provide facilities for its employees, being employees engaged in the construction or operation of the North-west Railway; and
 - (c) the right to repair or reconstruct such buildings or other structures.
5. In respect of the land in dotted tint on the plans and on payment of such fees as may be determined by the Director of Lands there shall also be vested the right to lay, maintain, repair and replace cables required for the operation of the North-west Railway: (Amended L. N. 291 of 1993)
- Provided that the Corporation shall not be required to pay any fees under this paragraph which are greater than those which the Government would require for the exercise by any other person of a like right over Government land. (Amended 29 of 1998 s. 105)
6. In respect of the Government land adjacent to the land vested under paragraphs 2, 3 and 4 there shall be vested in the Corporation such rights as are appurtenant to the land so vested and are necessary for the beneficial enjoyment by the Corporation of the rights so vested. (Amended 29 of 1998 s. 105)
7. Nothing in this Schedule shall vest in the Corporation any rights which were not vested in the Government immediately prior to the deposit of the plans in accordance with paragraph 1 and nothing in this Schedule shall affect the exercise by any person, other than the Government, of any rights in respect of the land which he possessed immediately prior to the commencement* of the Kowloon-Canton Railway Corporation (Amendment) Ordinance 1986 (56 of 1986). (Amended 29 of 1998 s. 81)

PART II

8. There is reserved to the Government liberty to open or break up any road along or across which the North-west Railway is laid, but in the exercise of the power the Government shall be subject to the following restrictions-
- (a) it shall cause as little detriment or inconvenience to the Corporation as circumstances may admit;
 - (b) before any Government Department commences any work whereby the traffic on the North-west Railway will be interrupted they shall give to the Corporation notice of their intention to commence such work, specifying the time at which they will begin to do so, such notice to be given 30 days at least before the commencement of the work unless the work is undertaken as a matter of urgency to remove any hazard to the safety of any person or property;
 - (c) in so far as such works may affect the safe operation of the North-west Railway, they shall not be executed, unless the Corporation otherwise determines, except under the superintendence of the Corporation;
 - (d) the works shall be executed without cost to and to the reasonable satisfaction of the Corporation; and
 - (e) the Government shall in consultation with the Corporation take such steps as are appropriate to minimize any disruption to the Corporation's rail services and loss

of income to the Corporation occasioned by the execution of the works.

9. Where the North-west Railway is laid along or across any road the Corporation shall at its own expense maintain in good condition and repair, and at their proper level so as not to be a danger or annoyance to the ordinary traffic, the rails of which the railway line for the time being consists, and the substructure upon which the rails rest.

10. The Corporation shall at its own expense repair and maintain the roads shown in grey on the plans to the reasonable satisfaction of the Director of Highways.

11. (1) The Director of Lands may, after having given prior notice to the Corporation of his intention to exercise his powers under this paragraph and after considering any representations of the Corporation thereon, direct the Corporation to divert any part of the railway line of the North-west Railway from the place where it has been constructed in pursuance of the right vested under paragraph 2 or this paragraph from that place to any other place specified in that direction, and where the Director of Lands gives any such direction- (Amended L.N. 291 of 1993)

- (a) the diversion shall be effected within 12 months from the date of the direction or within such further time as the Director may allow;
- (b) the direction may specify where any platform or other works ancillary to the North-west Railway are to be reconstructed;
- (c) subject to sub-paragraph (2), the reasonable costs of such diversion as agreed between the Corporation and the Director or, in the event of a failure to agree, as may be determined by arbitration, shall be payable by the Government out of general revenue;
- (d) upon the completion of the works required to effect the diversion-
 - (i) any rights which the Corporation may have under this Schedule to the place from which any works have been removed or destroyed for the purpose of effecting the diversion shall be deemed to be extinguished; and
 - (ii) there shall be vested in the Corporation for the same interest as it possessed in the place from which such works have been removed or destroyed, in respect of which any works have been constructed to effect the diversion, rights similar in all respects, except in respect of the place where they may be exercised, as the Corporation had, by virtue of this Schedule, in the land upon which such works had been removed or destroyed and the Corporation and the Government shall be subject to similar duties in respect of the exercise of such rights.

(2) If-

- (a) the work to effect a diversion under this paragraph includes the renewal or replacement of apparatus so that the Corporation derives a benefit from the life of the new apparatus being longer than the life of the apparatus so renewed or replaced; or
- (b) by reason of the carrying out of such work the Corporation has received or will receive any other benefit by way of greater efficiency in the running of the railway, reduction in wear of rolling stock on the North-west Railway or rails or any other part of the apparatus of the Corporation or by any other way,

the amount paid to the company under sub-paragraph (1)(c) shall be reduced by the amount of the value of any such benefit.

12. In the event of the Corporation failing to execute any works which it is required by paragraph 9, 10 or 11 to execute, the Director of Highways may cause such works to be executed and may recover the reasonable costs of such works from the Corporation, in such amount as he may certify to the Corporation, as a civil debt owed by the Corporation to the Government.

13. The Corporation shall keep the lines of rail and other works and erections made or erected in connection with the North-west Railway in good and substantial repair.

14. Where the Corporation, in pursuance of the rights granted under paragraph 6, lays any drainage channels or makes any connection with any drain maintained by the Government on any land outside the land vested under paragraph 2, 3 or 4, the Government shall maintain such drain and such connection in good condition and repair where such drain or connection has been constructed in accordance with the engineering standards of the Government applicable in the case of similar drains and connections.

15. The Corporation shall not assign, underlet, part with possession or otherwise dispose of the said land or any part thereof or any interest therein, or enter into any agreement so to do without the consent of the Director of Lands or otherwise than in accordance with such terms or conditions as he may impose in giving his consent including the payment of a premium to the Government for such consent. (Amended L.N. 291 of 1993)

PART III

16. The Corporation and the Director of Lands may agree that any right vested in the Corporation by section 7(6) and this Schedule may be varied or extinguished and, if extinguished, that a new right should be granted by the Chief Executive to the Corporation in place of the right extinguished and, where such agreement has the effect of varying any plan deposited in the Land Registry under paragraph 1, a plan showing such variation shall be so deposited and, upon such deposit, the variation shall have effect from the date of the deposit as if it had been shown on the plans as first deposited under that paragraph and the provisions of section 7(7) shall apply accordingly. (Amended 8 of 1993 s. 2; L.N. 291 of 1993; 62 of 1999 s. 3)

17. The Chief Executive may by order published in the Gazette amend Part II of this Schedule: (Amended 62 of 1999 s. 3)

Provided that the prior consent of the Corporation shall be required to any amendment which has the effect of imposing any new restriction on the Corporation as to the manner in which it may use the land or any part thereof or which otherwise limits the rights granted in this Schedule.

18. (1) In this Schedule-

- (a) a reference to arbitration shall be construed as a reference to arbitration under the Arbitration Ordinance (Cap 341) and shall, for the purposes of that Ordinance, be deemed to be a reference by an arbitration agreement, as defined for the purposes of that Ordinance, to 2 arbitrators, one appointed by the Corporation and the other by the Director of Lands; (Amended L.N. 291 of 1993)
- (b) the expressions "the land" (該等土地) and "the plans" (該等圖則) have the meanings assigned to them by paragraph 1.

(2) Any reference to the Government or the Corporation shall, where the reference relates to any right to go onto any land or do anything thereon, be deemed also to refer to their servants or agents.

(Fifth Schedule added 56 of 1986 s. 20)

Note:

* **Commencement date: 1 November 1986.**

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|----------|---|----------------|------------------|------------|
| Section: | 2 | Interpretation | L.N. 130 of 2007 | 01/07/2007 |
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Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

(1) In this Ordinance, unless the context otherwise requires-

"Commissioner" means, subject to subsection (2), the Commissioner for Transport;

"Company" (公司) means-

- (a) subject to paragraph (b), Tate's Cairn Tunnel Company Limited;
- (b) in the event of the benefit of the franchise being assigned to, or vested in, a person other than Tate's Cairn Tunnel Company Limited under or in accordance with this Ordinance, such other person in place of that Company;

"construction works" (建造工程) means all works carried out or to be carried out under the project agreement and all works required to carry them out;

"court" (法院、法庭) includes a magistrate; (Added 29 of 1999 s. 2)

"Director" means, subject to subsection (2), the Director of Highways;

"discharge date" (解除義務日期) means the date when the guarantors cease to have any obligations under the guarantee agreement;

"franchise" (專營權) means the franchise granted under section 4;

"further guarantee agreement" (另一項保證協議) means the agreement designated as the further guarantee agreement for the purposes of this definition by the Secretary by notice in the Gazette and any subsequent agreement amending or supplementing that agreement;

"guarantee agreement" (保證協議) means the agreement designated as the guarantee agreement for the purposes of this definition by the Secretary by notice in the Gazette and any subsequent agreement amending or supplementing that agreement;

"guarantors" (保證人) means-

Nishimatsu Construction Co., Ltd.
Jardine, Matheson & Co., Limited
Trafalgar House Public Limited Company
C. Itoh & Co., Ltd.
New World Development Company Limited
China Resources (Holdings) Co., Ltd.,
or such other persons as may undertake the obligations of guarantors under the guarantee agreement;

"motor vehicle" (汽車) means any mechanically propelled vehicle for use on roads;

"plan" (圖則) means-

- (a) the plan numbered KM 3951 signed by the Commissioner and deposited in the Land Registry, Victoria; and (Amended 8 of 1993 s. 2)
- (b) any new plan deposited in accordance with section 3(3);

"project" (工程項目) means the project, the subject of the project agreement, for the following works to be undertaken by the Company-

- (a) the construction of the tunnel;
- (b) the construction of approach roads and temporary and permanent alterations to existing roads; and
- (c) the construction of other adits, structures and buildings and the undertaking of other works necessary for the proper carrying out of the project agreement;

"project agreement" (工程項目協議) means the agreement designated as the project agreement for the purposes of this definition by the Secretary by notice in the Gazette and any subsequent agreement amending or supplementing that agreement;

"road operating date" (道路開始經營日期) means the date notified in the Gazette under section 25(1);

"Secretary" (局長) means the Secretary for Transport and Housing; (Replaced L.N. 106 of 2002. Amended L.N. 130 of 2007)

"start of construction" (開始建造日期) means the date upon which the construction works are commenced as agreed, or as determined, under section 13(1);

"toll structure" (隧道費構築物) means any structure erected by the Company for the purposes of section 40;

"tunnel" (隧道) means the twin tube tunnels each containing 2 traffic lanes passing under Tate's Ridge between Diamond Hill and Siu Lek Yuen;

"tunnel area" (隧道區) means the area delineated and coloured red on the plan;

"utility" (公用設施) means any electric power cable, telephone cable or other cable used in communication, any telecommunications apparatus, any pipe used in the supply of water, gas or oil, or for drainage or sewerage, together with any duct for such cable or pipe and any apparatus or works ancillary to such cable, apparatus, pipe or duct.

(2) Any reference to the Director or the Commissioner in any provision of this Ordinance shall be deemed to include any public officer whom the Director or Commissioner, as the case may be, authorizes to exercise his functions under that provision.

(3) Any function to be exercised by the Governor in Council under this Ordinance may, where the Governor is of the opinion that the matter is one of urgency, be exercised by the Governor.

(4) A reference in this Ordinance to arbitration under the Arbitration Ordinance (Cap 341) shall be deemed, for the purposes of the Arbitration Ordinance (Cap 341), to be a reference by an arbitration agreement, as defined for the purposes of that Ordinance, to 2 arbitrators, one appointed by each party.

(Enacted 1988)

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| Section: | 30 | Operation of tunnel area by Government | | 30/06/1997 |
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(1) The Governor in Council may, if he is satisfied that it is necessary to do so in the interests of public security, order that the Government shall take over the operation of the tunnel area or any part thereof together with such of the property of the Company as is necessary therefor, and continue such operation until the Governor in Council otherwise orders.

(2) The Government shall pay to the Company for any loss or damage suffered by the Company by reason of any order under subsection (1), such amount as may be agreed between the Government and the Company, or in default of such agreement such amount as may be determined by arbitration under the Arbitration Ordinance (Cap 341).

(3) Any period during which the Government operates the tunnel area or any part of that area shall be computed in and not deducted from the period specified in section 4(2).

(Enacted 1988)

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| Chapter: | 393 | TATE'S CAIRN TUNNEL ORDINANCE | Gazette Number | Version Date |
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| Section: | 36 | Company to charge approved tolls for use of tunnel | | 30/06/1997 |
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PART VIII

COLLECTION OF TOLLS

(1) Subject to this Ordinance, the Company may demand and collect tolls in respect of the passage of motor vehicles through the tunnel.

(2) The tolls that may be collected under subsection (1) shall be those specified in the Schedule.

(3) The tolls specified in the Schedule may be varied-

- (a) by agreement between the Governor in Council and the Company; or
- (b) in default of agreement by submission of the question of the variation of tolls to arbitration under the Arbitration Ordinance (Cap 341) by either the Governor in Council or the Company.

(4) On a submission to arbitration under subsection (3), the arbitrators shall be guided by the need to ensure that the carrying out by the Company of its obligations, or the exercise of its rights, under this Ordinance is reasonably but not excessively remunerative to the Company, having regard to-

- (a) any material change in the economic conditions of Hong Kong since the enactment of this Ordinance or, as the case may be, since tolls were last determined under this section;
- (b) the dismissal of any appeal by the Company made under section 53;
- (c) any material change in any other circumstances affecting the exercise by the Company of its rights under the franchise;
- (d) the effect of the introduction of, or alteration in, any tax or levy imposed on the use of the tunnel;
- (e) the project agreement; and
- (f) any other relevant matter.

(5) In determining for the purposes of subsection (4) whether the carrying out by the Company of its obligations, or the exercise of its rights has been reasonably but not excessively remunerative to the Company, the arbitrators shall, if there has been any failure by a guarantor under the further guarantee agreement to comply with the terms of that agreement, deem the Company to be in the financial position it would have been in had the further guarantee agreement been honoured, and subject to this subsection nothing in that subsection shall be deemed to render such failure a relevant matter which the arbitrators may take into consideration.

(6) Where under subsection (3)-

- (a) the Governor in Council and the Company agree to a variation of the tolls; or
- (b) in an award pursuant to a submission to arbitration it is determined that the tolls should be varied,

the tolls specified in the Schedule shall be varied in compliance with such agreement or award, as the case may be.

(7) The Commissioner shall, by notice in the Gazette, as soon as is practicable after such agreement or award as is referred to in subsection (6), amend the Schedule.

(Enacted 1988)

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| Section: | 49 | Liability of the Company and amount payable by the Government on the vesting in it of its assets | | 30/06/1997 |
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(1) On the determination of the rights and obligations of the Company under section 48(1), the Company shall thereupon be liable, in addition to the payment of all other sums due to the Government, to pay-

- (a) all sums payable under the project agreement; and
- (b) any expenses which may be incurred by the Government-
 - (i) in putting any land and any incomplete construction works in a satisfactory order to enable the construction works either to be maintained in a state in which they can be continued at a future time or abandoned as the Director may determine, including any costs of land restoration; and
 - (ii) in putting the construction works in a safe condition.

(2) Subject to subsection (4) and section 50 on the determination of the rights and obligations of the Company under section 48(1), the Government shall be liable to pay to the Company in respect of the assets of the Company vesting in the Government under section 48(2) such amount as may be agreed between the Government and the Company as representing the value of such assets to the Government at the time of vesting or, in default of such agreement, such amount as may be determined by arbitration under the Arbitration Ordinance (Cap 341).

(3) In determining the value for the purposes of subsection (2) where the vesting of the assets in the Government is in consequence of a default, there shall be deducted from what would, but for this subsection, be the value of the assets, such amount as may be agreed or determined in accordance with the provisions of that subsection for-

- (a) damages occasioned to the Government by such default calculated on the basis that the construction works had been, or are to be, constructed, for the beneficial use of the Government and that the Government is the franchise holder under Part II;
- (b) the costs to the Government of obtaining the forfeiture of the franchise under this Part.

(4) No amount shall be payable to the Company under subsection (2) upon the determination of the rights and obligations of the Company under section 48(1)(c) where the revocation of the franchise was on the grounds that the Company had failed or appeared likely to fail to complete the construction works within the period or extended period allowed by section 14.

(Enacted 1988)

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| Section: | 53 | Appeal by the Company | | 30/06/1997 |
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PART XI

SUPPLEMENTARY

(1) If the Company is aggrieved by any decision to which this section applies it may within 14 days of the notification to it of that decision, or such longer period as the Governor may allow, appeal against such decision by giving written notice to the Governor that it appeals against such decision and in that notice specifying the grounds upon which the appeal is based.

- (2) On receipt of a notice of appeal under subsection (1) the Governor-
 - (a) shall, if the appeal is against any decision of the Director and the failure of the appeal would result in the Company being held to be in default under Part X or if it

appears to the Governor that this would be a probable result of such failure, refer the appeal to arbitration under the Arbitration Ordinance (Cap 341);

(b) subject to paragraph (a) may, where it appears to him that the issues raised by the appeal are matters of engineering practice, questions of the interpretation of the project agreement or other matters appropriately referred to arbitration, refer the appeal to arbitration under the Arbitration Ordinance (Cap 341),

and, in any other case, the appeal shall be determined by the Governor in Council.

(3) On an appeal under this section the Governor may give such instructions as he thinks fit as to the enforcement of the decision appealed against pending the determination or abandonment of the appeal but, subject to such instructions, such decision may, pending such determination or abandonment, be enforced as if no such appeal had been made.

(4) The decision of the arbitrator or Governor in Council on an appeal under this section shall be final.

(5) In this section-

"decision" (決定) means any requirement, determination or direction made, or the withholding of any consent or approval (including the refusal to grant time under section 14(1)(b) as read with the project agreement), by the Secretary, the Director or the Commissioner under this Ordinance other than the exercise by the Secretary of his powers under section 46, and this section shall apply to any such decision.

(Enacted 1988)

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| Chapter: | 436 | WESTERN HARBOUR CROSSING ORDINANCE | Gazette Number | Version Date |
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| Section: | 2 | Interpretation | L.N. 130 of 2007 | 01/07/2007 |
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Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

(1) In this Ordinance, unless the context otherwise requires-

"approach road" (引道) means any road within the tunnel area for use by vehicles entering or leaving the tunnel;

"Commissioner" means, subject to subsection (2), the Commissioner for Transport;

"Committee" (委員會) means the Western Harbour Crossing Toll Stability Fund Management Committee established under section 38;

"Company" (公司) means-

(a) Western Harbour Tunnel Company Limited; or

(b) in the event of the franchise being-

(i) transferred under section 6 or 7 to; or

(ii) vested under section 59 in,

a person other than Western Harbour Tunnel Company Limited, such other person in place of Western Harbour Tunnel Company Limited;

"construction works" (建造工程) means works carried out by or on behalf of the Company, or required to be carried out by the Company, pursuant to the project agreement, and any other works ancillary to or incidental to such works or necessary for the carrying out of such works, but does not include designing of the works;

"court" (法院、法庭) includes a magistrate; (Added 29 of 1999 s. 2)

"Director" means, subject to subsection (2), the Director of Highways;

"discharge date" (解除責任日期) means the date referred to in the guarantee agreement as being the discharge date for the purposes of this Ordinance;

"franchise" (專營權) means a franchise granted under this Ordinance;

"franchise period" (專營期) means the period beginning on the start of construction and ending-

- (a) on the 30th anniversary of that date; or
- (b) where applicable, on such later date as is determined in accordance with the terms of the project agreement;

"Fund" (基金) means the Western Harbour Crossing Toll Stability Fund established under section 37;

"guarantee agreement" (保證協議) means the agreement designated as the guarantee agreement for the purposes of this definition by the Secretary by notice in the Gazette and any subsequent agreement amending, supplementing or novating that agreement;

"Guarantors" (保證人) means-

- (a) Adwood Company Limited;
- (b) The Cross-Harbour Tunnel Company, Limited; (Amended L.N. 440 of 1993)
- (c) China Merchants Holdings (Hong Kong) Company Limited;
- (d) (Repealed 68 of 1995 s. 2)
- (e) Kerry Holdings Limited;
- (f) CITIC Pacific Limited,

and includes any other person who undertakes the obligation of a Guarantor under the guarantee agreement;

"motor vehicle" (汽車) means any mechanically propelled vehicle;

"operating date" (開始經營日期) means the date notified in the Gazette under section 23(4);

"plan" (圖則) means-

- (a) the plan numbered WHC TAP/1 signed by the Commissioner and deposited in the Land Registry, or
- (b) any other plan deposited under section 3(3);

"project agreement" (工程項目協議) means the agreement designated as the project agreement for the purposes of this definition by the Secretary by notice in the Gazette and any subsequent agreement amending, supplementing or novating that agreement;

"Secretary" (局長) means, subject to subsection (2), the Secretary for Transport and Housing; (Replaced L.N. 106 of 2002. Amended L.N. 130 of 2007)

"start of construction" (開始建造日期) means the date agreed or determined, under section 12(1);

"toll" (隧道費) means a toll specified in Schedule 1;

"tunnel" (隧道) means the 4 conduits between the portal in Sai Ying Pun and that in West Kowloon shown on the plan;

"tunnel area" (隧道區) means the area-

- (a) delineated and marked as such; and
 - (b) the location, extent and boundaries of which are indicated,
- on the plan;

"utility" (公用設施) means any electric power cable, telephone cable or other cable used in communication, any telecommunications apparatus, any pipe used in or for the supply of water, gas or oil, or for drainage or sewerage, together with any duct for such cable or pipe and any apparatus or works ancillary to such cable, apparatus, pipe or duct;

"Western Harbour Crossing" (西區海底隧道) means the completed tunnel, approach roads and associated works within the tunnel area.

(2) Any reference in this Ordinance to the Secretary, the Director or the Commissioner, in relation to any power, duty or function conferred on, imposed on or assigned to the Secretary, the

Director or the Commissioner, as the case may be, includes a reference to any public officer whom the Secretary, the Director or the Commissioner, as the case may be, authorizes to exercise, discharge or perform such power, duty or function.

(3) Any power or function conferred on or assigned to the Governor in Council under this Ordinance may be exercised or performed by the Governor where he is of the opinion that the situation in which the power is to be exercised or the function performed is an emergency.

(4) A reference in this Ordinance to arbitration under the Arbitration Ordinance (Cap 341) shall be regarded as a reference to domestic arbitration for the purposes of Part II of that Ordinance and any reference to such arbitration shall be conducted in the manner in which a reference to arbitration is conducted under the project agreement.

(Enacted 1993)

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| Chapter: | 436 | WESTERN HARBOUR CROSSING ORDINANCE | Gazette Number | Version Date |
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| Section: | 27 | Operation of tunnel area by Government | | 30/06/1997 |
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(1) The Governor in Council may, if satisfied that it is necessary to do so in the interests of public security, order that the Government shall take over the operation of the tunnel area or any part thereof together with such of the facilities of the Company as is necessary therefor, and continue such operation until the Governor in Council otherwise orders.

(2) The Government shall pay to the Company for any loss or damage suffered by the Company by reason of any order under subsection (1), such amount as may be agreed between the Government and the Company, or in default of such agreement such amount as may be determined by arbitration under the Arbitration Ordinance (Cap 341).

(3) Any period during which the Government operates the tunnel area or any part of that area shall be regarded as part of the franchise period in computing the franchise period.

(4) Without affecting the generality of subsection (1), the Government may, in operating the tunnel pursuant to an order under that subsection, close the tunnel or any part of it.

(Enacted 1993)

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| Chapter: | 436 | WESTERN HARBOUR CROSSING ORDINANCE | Gazette Number | Version Date |
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| Section: | 61 | Liability of the Company and amount payable by the Government on the vesting in the Government of its assets | | 30/06/1997 |
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(1) On the cessation of the rights and obligations of the Company under section 60(1), the Company shall be liable, in addition to any other payment due to the Government, to pay-

- (a) all sums payable to the Government under the project agreement; and
- (b) any expenses which may be reasonably incurred by the Government-
 - (i) in bringing any land or incomplete construction works to a satisfactory condition in order to enable the construction works either to be maintained in a state in which they can be continued or abandoned as the Director may determine, including any costs of land restoration; or
 - (ii) in bringing the construction works to a safe condition.

(2) Subject to subsection (4) and section 62, on the cessation of the rights and obligations

of the Company under section 60(1), the Government shall be liable to pay to the Company in respect of the assets of the Company vesting in the Government under section 60(2), such amount as may be agreed between the Government and the Company, in accordance with the project agreement, as representing the reduced value of such assets at the time of vesting or, in default of such agreement, such amount as may be determined by arbitration under the Arbitration Ordinance (Cap 341).

(3) In determining the value for the purposes of subsection (2) where the vesting of the assets in the Government is in consequence of a default, there shall be deducted from what would, but for this subsection, be the reduced value of the assets, such amount as may be agreed or determined in accordance with the provisions of that subsection for-

- (a) damages occasioned to the Government by such default calculated on the basis that the construction works had been, or are to be, constructed for the beneficial use of the Government and that the Government is the franchise holder under Part II;
- (b) the costs to the Government of obtaining the revocation of the franchise under this Part.

(4) No amount shall be payable to the Company under subsection (2) on the cessation of the rights and obligations of the Company under-

- (a) section 60(1)(a) or (b), where the commencement of the voluntary winding up or the making of the winding-up order, as the case may be, takes place before the operating date; or
- (b) section 60(1)(c), where the revocation was on the ground that the Company had failed or appeared likely to fail to complete the construction works within the period referred to in section 13(a) or extended period referred to in section 13(b), as the case may be.

(Enacted 1993)

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| Chapter: | 448A | AIR TRANSPORT (LICENSING OF AIR SERVICES) REGULATIONS | Gazette Number | Version Date |
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| Regulation: | 5 | Issue of licences | | 30/06/1997 |
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(1) The Licensing Authority may grant to any person applying therefor a licence to carry passengers, mail or cargo by air for hire or reward on such scheduled journeys, and subject to such conditions, as may be specified in the licence.

(2) The Licensing Authority may attach such conditions to any licence as they may think fit having regard to the nature and circumstances of the application therefor.

(3) It shall be a condition of every licence that-

- (a) the holder of the licence and any person having a financial interest in the business of the holder of the licence shall refrain from stipulating that any other person shall-
 - (i) refuse booking facilities to any other holder of a licence;
 - (ii) grant such facilities to such other holder only on onerous terms; and
- (b) the holder of the licence shall perform all such reasonable services as the Postmaster General may from time to time require in regard to the conveyance of mails (and of any persons who may be in charge thereof) upon journeys made under the licence. The remuneration for any such services shall be such as may from time to time be determined by agreement between the Postmaster General and the holder of the licence:

Provided that any disputes and disagreements shall be subject to arbitration under the Arbitration Ordinance (Cap 341).

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| Chapter: | 474 | TAI LAM TUNNEL AND YUEN LONG APPROACH ROAD ORDINANCE | Gazette Number | Version Date |
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| Section: | 2 | Interpretation | L.N. 130 of 2007 | 01/07/2007 |
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Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

- (1) In this Ordinance, unless the context otherwise requires-
- "Commissioner" means, subject to subsection (2), the Commissioner for Transport;
- "Committee" (委員會) means the Tai Lam Tunnel and Yuen Long Approach Road Toll Stability Fund Management Committee established under section 32;
- "Company" (公司) means-
- (a) Route 3 (CPS) Company Limited (三號幹線(郊野公園段)有限公司); or
 - (b) in the event of the franchise being-
 - (i) transferred under section 6 or 7 to; or
 - (ii) vested under section 52 in, a person other than Route 3 (CPS) Company Limited, such other person in place of Route 3 (CPS) Company Limited;
- "construction works" (建造工程) means works carried out, by or on behalf of the Company, or required to be carried out by the Company, pursuant to the project agreement and any other works, ancillary to or incidental to such works or necessary for the carrying out of such works but does not include designing of the works;
- "court" (法院、法庭) includes a magistrate; (Added 29 of 1999 s. 2)
- "Director" means, subject to subsection (2), the Director of Highways;
- "discharge date" (解除責任日期) means the date referred to in the guarantee agreement as being the discharge date for the purposes of this Ordinance;
- "financial penalty" (罰款) means a financial penalty imposed under section 60;
- "franchise" (專營權) means a franchise granted under this Ordinance;
- "franchise period" (專營期) means the period beginning on the start of construction and ending on-
- (a) the 30th anniversary of that date; or
 - (b) where applicable, such later date as may be determined in accordance with the project agreement;
- "Fund" (基金) means the Tai Lam Tunnel and Yuen Long Approach Road Toll Stability Fund established under section 31;
- "guarantee agreement" (保證協議) means the agreement designated as the guarantee agreement for the purposes of this definition by the Secretary by notice in the Gazette and any subsequent agreement amending, supplementing or novating that agreement;
- "Guarantor" (保證人) means any person who for the time being has undertaken the obligations of a guarantor under the guarantee agreement;
- "motor vehicle" (汽車) means any mechanically propelled vehicle;
- "operating date" (開始經營日期) means the date notified in the Gazette under section 18(4);

"plan" (圖則) means-

- (a) the plan numbered CPS TAP/1 signed by the Commissioner and deposited in the Land Registry; or
- (b) any other plan deposited under section 3(4);

"project agreement" (工程項目協議) means the agreement designated as the project agreement for the purposes of this definition by the Secretary by notice in the Gazette and any subsequent agreement amending, supplementing or novating that agreement;

"Secretary" (局長) means, subject to subsection (2), the Secretary for Transport and Housing; (Replaced L.N. 106 of 2002. Amended L.N. 130 of 2007)

"start of construction" (開始建造日期) means the date agreed or determined under section 12(1);

"Tai Lam Tunnel and Yuen Long Approach Road" (大欖隧道及元朗引道) means the completed tunnel (namely, the structure between the portals shown on the plan and consisting of 2 conduits, each containing 3 lanes for traffic and 2 ventilation adits), the roads and associated works within the toll area;

"toll" (使用費) means a toll specified in Schedule 1;

"toll area" (收費區) means the area-

- (a) delineated and marked as such; and
- (b) the location, extent and boundaries of which are indicated, on the plan;

"utility" (公用事業設施) means any electric power cable, telephone cable or other cable used in communication, any telecommunications apparatus, any pipe used in or for the supply of water, gas or oil, or for drainage or sewerage, together with any duct for such cable or pipe and any apparatus or works ancillary to such cable, apparatus, pipe or duct.

(2) Any reference in this Ordinance to the Secretary, the Director or the Commissioner, in relation to any power, duty or function conferred on, imposed on or assigned to the Secretary, the Director or the Commissioner, as the case may be, includes a reference to any public officer whom the Secretary, the Director or the Commissioner, as the case may be, authorizes to exercise, discharge or perform such power, duty or function.

(3) Any power or function conferred on or assigned to the Governor in Council under this Ordinance may be exercised or performed by the Governor where he is of the opinion that the situation in which the power is to be exercised or the function performed is an emergency.

(4) For the purpose of sections 22(2), 54(2) and 62(2), "arbitration" (仲裁) means domestic arbitration under Part II of the Arbitration Ordinance (Cap 341), the reference to such arbitration being made in accordance with the requirements of the project agreement.

(Enacted 1995)

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| Chapter: | 482 | MERCHANT SHIPPING (LINER CONFERENCES) ORDINANCE | Gazette Number | Version Date |
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| Section: | 8 | Restrictions on legal proceedings | 25 of 1998 s. 2 | 01/07/1997 |
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Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

(1) Legal proceedings arising out of a dispute relating to the application or operation of the Code may be brought in Hong Kong only in the Court of First Instance.

(2) Proceedings arising out of a dispute to which Article 23(2) applies (disputes to be resolved within the framework of the national jurisdiction concerned) shall not be entertained by the Court of First Instance except as permitted by Article 23(2).

(3) The Court of First Instance shall stay proceedings before it if on the application of a party to the proceedings, made after appearance but before delivering any pleadings or taking any other steps in the proceedings, it is shown that the proceedings arise out of a dispute to which Article 23(4) applies and that-

- (a) the dispute has not been referred to conciliation in accordance with Article 23(4) or has been so referred and conciliation proceedings are still in progress; or
- (b) the parties to the dispute have made an agreement to which Article 25(1) applies (agreed procedures in lieu of conciliation) which is capable of being, or has been, performed.

(4) The Court of First Instance may attach to a stay granted under subsection (3) such conditions as appear to it appropriate, and in particular, conditions with respect to the institution or prosecution of conciliation or other proceedings.

(5) The Court of First Instance may remove a stay granted under subsection (3) if any condition attached under subsection (4) is not complied with or if at any time it appears to the Court of First Instance that the circumstances are such that a new application for the stay would not be granted.

(6) In relation to an arbitration agreement to which Article 25(1) applies, subsections (3) to (5) of this section shall apply in place of section 6(1) of, and Article 8(1) of the Fifth Schedule to, the Arbitration Ordinance (Cap 341) (which provide respectively for the staying of legal proceedings and for the parties to an action to be referred to arbitration).

(Amended 25 of 1998 s. 2)

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| Chapter: | 528 | COPYRIGHT ORDINANCE | Gazette Number | Version Date |
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| Section: | 174 | General power to make rules | | 30/06/1997 |
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(1) The Chief Justice may make rules for regulating proceedings before the Copyright Tribunal, as to the fees chargeable in respect of such proceedings, and as to the enforcement of orders made by the Tribunal.

(2) The rules may apply in relation to the Tribunal any of the provisions of the Arbitration Ordinance (Cap 341) and any provisions so applied must be set out in or scheduled to the rules.

(3) The rules may-

- (a) prohibit the Tribunal from entertaining a reference under section 155, 156 or 157 by a representative organization unless the Tribunal is satisfied that the organization is reasonably representative of the class of persons which it claims to represent;
- (b) specify the parties to any proceedings and enabling the Tribunal to make a party to the proceedings any person or organization satisfying the Tribunal that they have a substantial interest in the matter;
- (c) require the Tribunal to give the parties to proceedings an opportunity to state their case, in writing or orally as the rules may provide.

(4) The rules may make provision for regulating or prescribing any matter incidental to or consequential upon any appeal from the Tribunal under section 176 (appeal to the court on point of law).

[cf. 1988 c. 48 s. 150 U.K.]

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| Chapter: | 528C | COPYRIGHT TRIBUNAL RULES | Gazette Number | Version Date |
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| Rule: | 22 | Application of Arbitration Ordinance | | 30/06/1997 |
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Sections 2H, 14, 16 and 19 of the Arbitration Ordinance (Cap 341) shall apply in the case of proceedings before the tribunal as they respectively apply to an arbitration where no contrary intention is expressed in the arbitration agreement.

(L.N. 35 of 1990)

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| Chapter: | 553B | ELECTRONIC TRANSACTIONS (EXCLUSION) ORDER | Gazette Number | Version Date |
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| Schedule: | 1 | PROVISIONS EXCLUDED FROM APPLICATION OF SECTION 5 OF ORDINANCE | L.N. 215 of 2007 | 11/01/2008 |
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[section 2]

| Item | Enactment | Provision |
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| 1. | (Repealed 16 of 2004 s. 16) | |
| 2-4. | (Repealed L.N. 36 of 2003) | |
| 5. | Contracts for Employment Outside Hong Kong Ordinance (Cap 78) | Sections 5(1), 6 and 8(a) and (b) |
| 6. | (Repealed L.N. 36 of 2003) | |
| 7. | Dutiable Commodities (Liquor) Regulations (Cap 109 sub. leg. B) | Regulations 15 and 26 |
| 8. | Immigration Ordinance (Cap 115) | Sections 2AB(2)(a), 2AC(2)(a), 5(6) and (7) and 6(1) and (2) (L.N. 36 of 2003) |
| 9. | Buildings Ordinance (Cap 123) | Sections 8B(1), 8C(2), 8D(2), 17(1) (Column B), 19(1) and (4), 20(2), 21(2), 25(1) and 42(2) |
| 10. | Building (Administration) Regulations (Cap 123 sub. leg. A) | Regulations 6(1), 11, 18(1), 18A, 23(1A) and (2), 29(1), 31(1), 33(1), 38 and 47 |
| 11. | Building (Planning) Regulations (Cap 123 sub. leg. F) | Regulations 51(1), 53(1) and 64(1) and (2) |
| 12. | Building (Private Streets and Access Roads) Regulations (Cap 123 sub. leg. G) | Regulation 28 |
| 13. | Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) Regulations (Cap 123 sub. leg. I) | Regulations 62(1) and 73(1) |
| 14. | Building (Oil Storage Installations) Regulations (Cap 123 sub. leg. K) | Regulations 6(1) and 10(2) |
| 15-17. | (Repealed L.N. 152 of 2006) | |
| 18. | Town Planning Ordinance (Cap 131) | Sections 16(2), 17(1) and 24(1) |
| 19. | Commercial Bathhouses Regulation (Cap 132 sub. leg. I) | Section 5(1) |

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| 20. | Food Business Regulation (Cap 132 sub. leg. X) | Section 32(1) |
| 21. | Frozen Confections Regulation (Cap 132 sub. leg. AC) | Section 18(1) |
| 22. | Milk Regulation (Cap 132 sub. leg. AQ) | Section 15(1) |
| 23. | Offensive Trades Regulation (Cap 132 sub. leg. AX) | Section 9(2) |
| 24. | (Repealed L.N. 152 of 2006) | |
| 25. | Public Cemeteries Regulation (Cap 132 sub. leg. BI) | Section 5(a) |
| 26. | Slaughterhouses Regulation (Cap 132 sub. leg. BU) | Section 10(1) |
| 27. | Swimming Pools Regulation (Cap 132 sub. leg. CA) | Section 5(1) |
| 28. | Places of Public Entertainment Regulations (Cap 172 sub. leg. A) | Regulations 3(1), 5(1) and (2) and 162(1), (3), (4) and (5) |
| 29. | Births and Deaths Registration Ordinance (Cap 174) | Sections 12(2)(b)(i) and (c)(i) and 12A(b)(i) and (c)(i) (8 of 2006 s. 50) |
| 30. | Registration of Persons Regulations (Cap 177 sub. leg. A) | Regulation 4(1) and (1B)(a) |
| 31. | Marriage Reform Ordinance (Cap 178) | Section 9(4)(a) |
| 32. | Marriage Ordinance (Cap 181) | Section 14(1) |
| 33. | Aerial Ropeways (Safety) Ordinance (Cap 211) | Section 7 |
| 34-36. | (Repealed L.N. 152 of 2006) | |
| 37. | (Repealed L.N. 36 of 2003) | |
| 38. | Reserved Commodities (Control of Imports, Exports and Reserve Stocks) Regulations (Cap 296 sub. leg. A) | Regulations 11(2) and 12(2) |
| 39. | (Repealed L.N. 152 of 2006) | |
| 40. | (Repealed L.N. 215 of 2007) | |
| 41-43. | (Repealed L.N. 152 of 2006) | |
| 44. | Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap 374 sub. leg. E) | Regulations 12R(1), 17(2) and 20(1) (25 of 2005 s. 41; L.N. 152 of 2006) |
| 45. | Dangerous Goods (Consignment by Air) (Safety) Regulations (Cap 384 sub. leg. A) | Regulation 6(1)(b) |
| 46. | Land Drainage (Consent and Approval) Regulation (Cap 446 sub. leg. A) | Sections 3(1) and (2) and 4 |
| 47-48. | (Repealed L.N. 215 of 2007) | |
| 49-50. | (Repealed L.N. 152 of 2006) | |
| 51. | New Territories Land Exchange Entitlements (Redemption) Ordinance (Cap 495) | Section 5(1) and (2) (L.N. 152 of 2006) |
| 52. | Environmental Impact Assessment Ordinance (Cap 499) | Sections 4(5), 5(1), (2) and (4), 6(2), 7(1)(a), 8(1), 10(1)(a), 12(1) and (2) and 13(1) |
| 53. | (Repealed L.N. 152 of 2006) | |
| 54. | Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap 541 sub. leg. A) | Section 5(2) (L.N. 261 of 2000) |
| 55. | Electoral Affairs Commission | Section 21(2) (L.N. 261 of 2000; L.N. |

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| | (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap 541 sub. leg. B) | 268 of 2001) |
| 56. | Electoral Affairs Commission (Nominations Advisory Committees (Legislative Council)) Regulation (Cap 541 sub. leg. C) | Sections 5(13) and 8(2) |
| 57. | Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap 541 sub. leg. D) | Sections 23(8) and (12), 25(6) and (15), 42(11) and (13) and 66(7) and (10) (L.N. 268 of 2001) |
| 58. | Electoral Affairs Commission (Nominations Advisory Committees (District Councils)) Regulation (Cap 541 sub. leg. E) | Sections 5(8) and 8(2) |
| 59. | Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap 541 sub. leg. F) | Sections 26(5) and (9), 28(3), (9) and (12), 45(8) and (10), 66(6) and (9) and 102(4) |
| 59A. | Electoral Affairs Commission (Nominations Advisory Committees (Election Committee)) Regulation (Cap 541 sub. leg. H) | Sections 6(13) and 9(2) (L.N. 268 of 2001) |
| 59B. | Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap 541 sub. leg. I) | Sections 23(5) and (9), 25(2), 42(8) and (10) and 64(8) and (10) (L.N. 268 of 2001) |
| 59C. | Electoral Procedure (Chief Executive Election) Regulation (Cap 541 sub. leg. J) | Sections 4(1), 9(2), 14(3) and (5), 25(5) and (7), 44(4) and (6), 80(2) and 81(1)(b) (L.N. 282 of 2001) |
| 60. | Legislative Council Ordinance (Cap 542) | Sections 13(1), 14(1), 26(6), 38(3), 40(1)(b) and 42(2) (21 of 2001 s.75) |
| 61. | Registration of Electors (Appeals) Regulation (Cap 542 sub. leg. B) | Section 2(1) and (2)(c) |
| 62. | (Repealed L.N. 268 of 2001) | |
| 63. | District Councils Ordinance (Cap 547) | Sections 15(1), 23(1), 25(1), 34(1)(b), 35(2) and 63(1) and Schedule 5, section 2 |
| 64. | Election (Corrupt and Illegal Conduct) Ordinance (Cap 554) | Section 37(1) and (2) (L.N. 167 of 2000) |
| 65. | Chief Executive Election Ordinance (Cap 569) | Sections 16(2) and (7), 31(1), 33(1) and 34(2) and the Schedule, sections 3(3), 13(6) and 21(2) (21 of 2001 s. 75) |
| 66. | Election Committee (Appeals) Regulation (Cap 569 sub. leg. A) | Sections 4(1) and 5(1) and (2)(c) (L.N. 268 of 2001) |
| 67. | Election Committee (Registration) (Voters for Subsectors) (Members of Election Committee) (Appeals) Regulation (Cap 569 sub. leg. B) | Section 3(1) and (2)(c) (L.N. 268 of 2001) |
| 68. | Village Representative Election Ordinance (Cap 576) | Sections 8(1), 10(1), 24 and 26(2) (2 of 2003 s. 68) |

- 69-70. (Repealed
L.N. 152 of
2006)
71. (Repealed
L.N. 215 of
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| Chapter: | 553B | ELECTRONIC TRANSACTIONS (EXCLUSION) ORDER | Gazette Number | Version Date |
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| Schedule: | 2 | PROVISIONS EXCLUDED FROM APPLICATION OF SECTION 6 OF ORDINANCE | L.N. 215 of 2007 | 11/01/2008 |
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[section 3]

| Item | Enactment | Provision |
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| 1. | Contracts for Employment Outside Hong Kong Ordinance (Cap 78) | Sections 5(1) and 8(a) and (b) |
| 2. | (Repealed L.N. 36 of 2003) | |
| 3. | Immigration Ordinance (Cap 115) | Section 5(4)(b) and (5)(a)(ii) and (b)(ii) |
| 4. | (Repealed 15 of 2004 s. 62) | |
| 5. | Building (Administration) Regulations (Cap 123 sub. leg. A) | Regulations 12(1), (2), (3) and (5), 18(2), 20(1), 25(2), (3) and (4), 26(2) and 28 (15 of 2004 s. 62) |
| 6. | Registration of Persons Regulations (Cap 177 sub. leg. A) | Regulation 4(1) |
| 7. | Marriage Ordinance (Cap 181) | Section 6 |
| 8. | Legitimacy Ordinance (Cap 184) | Schedule, paragraph 1 |
| 9. | Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap 374 sub. leg. E) | Regulation 17(2) (L.N. 152 of 2006) |
| 10. | Dangerous Goods (Consignment by Air) (Safety) Regulations (Cap 384 sub. leg. A) | Regulation 6(3) |
| 11. | Land Drainage (Consent and Approval) Regulation (Cap 446 sub. leg. A) | Section 6 |
| 12. | (Repealed L.N. 152 of 2006) | |
| 13. | Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap 541 sub. leg. A) | Sections 14(2) and 15(6) (L.N. 261 of 2000) |
| 14. | Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap 541 sub. leg. B) | Sections 19(1)(e), 20(2), (3), (5), (7) and (8), 26(6), 30(2), 31(7), 31A(2) and 33(9) (L.N. 261 of 2000; L.N. 268 of 2001) |
| 15. | Electoral Affairs Commission (Nominations Advisory Committees (Legislative Council)) Regulation (Cap 541 sub. leg. C) | Section 5(4) |

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| 16. | Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap 541 sub. leg. D) | Sections 10(7) and (8), 11(7) and (8), 20(2), 23(9) and (12), 25(8) and (15), 42(11) and (13), 66(7) and (10) and 102(4) (L.N. 268 of 2001; 25 of 2003 s. 50) |
| 17. | Electoral Affairs Commission (Nominations Advisory Committees (District Councils)) Regulation (Cap 541 sub. leg. E) | Section 5(2) |
| 18. | Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap 541 sub. leg. F) | Sections 12(7) and (8), 20(2), 26(6) and (9), 28(5) and (12), 45(8), 66(6) and (9), 102(4) and 103(4) |
| 18A. | Electoral Affairs Commission (Nominations Advisory Committees (Election Committee)) Regulation (Cap 541 sub. leg. H) | Section 6(4) (L.N. 268 of 2001) |
| 18B. | Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap 541 sub. leg. I) | Sections 7(4), 8(6) and (7), 17(2), 23(6) and (9), 25(4) and (9), 42(8) and (10), 64(8) and (10), 99(2)(b) and 100(4) (L.N. 268 of 2001) |
| 18C. | Electoral Procedure (Chief Executive Election) Regulation (Cap 541 sub. leg. J) | Sections 4(1), 9(2), 14(3) and (5), 25(5) and (7), 44(4) and (6), 80(2) and 81(1)(b) (L.N. 282 of 2001) |
| 19. | Legislative Council Ordinance (Cap 542) | Sections 13(2), 14(2), 40(2) and 42(2) (21 of 2001 s. 76) |
| 20. | District Councils Ordinance (Cap 547) | Sections 15(2), 23(2), 25(2), 35(2) and 63(2) |
| 21. | Air Navigation (Hong Kong) Order 1995 (Cap 448 sub. leg. C) | Article 28(4) (L.N. 215 of 2007) |
| 22. | Chief Executive Election Ordinance (Cap 569) | Sections 16(3) and (8) and 33(2) and the Schedule, sections 3(4) and 21(2) (21 of 2001 s. 76) |
| 23. | Election Committee (Appeals) Regulation (Cap 569 sub. leg. A) | Section 3(2) (L.N. 268 of 2001) |
| 24. | Village Representative Election Ordinance (Cap 576) | Sections 8(2), 10(2), 24 and 26(2) (2 of 2003 s. 68) |
| 25-26. | (Repealed L.N. 152 of 2006) | |
| 27. | (Repealed L.N. 215 of 2007) | |

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| Chapter: | 556 | MASS TRANSIT RAILWAY ORDINANCE | Gazette Number | Version Date |
| Section: | 23 | Settlement or determination of claim for compensation | L.N. 136 of 2000 | 30/06/2000 |

PART V

COMPENSATION

(1) The Government may compromise or settle any claim for compensation under this Ordinance.

(2) In default of an agreement between the Government and a claimant as regards the amount of compensation, if any, payable to the claimant under this Ordinance, the compensation shall be determined by arbitration under the Arbitration Ordinance (Cap 341).

(3) For the purposes of an arbitration under subsection (2), the Government and the claimant shall be regarded as having made an arbitration agreement within the meaning of the Arbitration Ordinance (Cap 341) the terms of which include a provision that the compensation shall, in the absence of an agreement, be determined by a single arbitrator.

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| Chapter: | 562 | BROADCASTING ORDINANCE | Gazette Number | Version Date |
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|-----------|---|---|------------|------------|
| Schedule: | 4 | DOMESTIC FREE TELEVISION PROGRAMME SERVICE SUPPLEMENTARY PROVISIONS | 48 of 2000 | 07/07/2000 |
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[sections 2, 8 & 43 & Schedules 5, 6, 7 & 8]

PART 1

GENERAL

1. Interpretation

In this Schedule-

"licence" (牌照) means a domestic free television programme service licence;

"licensee" (持牌人) means the holder of a licence;

"service" (服務) means a domestic free television programme service the subject of a licence.

2. Application for licence

A licence shall not be granted to or held by a company which is the subsidiary of a corporation.

3. Television programmes supplied by Government

(1) Where a requirement is made on a licensee pursuant to a condition to include in its service, without charge, a television programme supplied by the Government or the Broadcasting Authority-

- the requirement may include the inclusion in its service, of television programmes supplied by the Government or the Broadcasting Authority, during the 3 hours commencing at 7 p.m., on any day from Monday to Friday inclusive;
- unless the licensee consents otherwise, the number of such hours of television programmes supplied by the Government or the Broadcasting Authority for inclusion in its service during the hours mentioned in paragraph (a) shall not be required to exceed, in any one day, 30 minutes in duration, in aggregate or otherwise;
- without prejudice to the operation of paragraphs (a) and (b), if the licensee's service is not provided on demand, the duration of the television programmes

supplied by the Government or the Broadcasting Authority shall not be required to exceed, in aggregate or otherwise, any of the following-

- (i) 2 1/2 hours in any period of 24 hours commencing at 6 a.m.;
- (ii) 2 1/2 hours in the 15 hours between the hours of 7 p.m. and 10 p.m. in any period from Monday to Friday inclusive in any one week;
- (iii) in the case of a service in the Chinese language, 12 hours in any week; and
- (iv) in the case of a service in the English language, 6 hours in any week.

(2) Nothing in subsection (1) shall be construed to prejudice the operation of section 19 of this Ordinance.

4. Duration of licence

(1) The Chief Executive in Council may by notice in the Gazette-

- (a) specify the period of validity of a licence;
- (b) order a licence to be reviewed within such period as is specified in the notice.

(2) A licence shall-

- (a) subject to paragraph (b), be valid for such period as is specified in a notice under subsection (1)(a) applicable to the licence, and shall, unless otherwise provided under this Ordinance, cease to have effect on the expiration of that period; and
- (b) be subject to review-
 - (i) within that period on such dates as are specified in the licence for the purpose; or
 - (ii) within such period as is specified in a notice under subsection (1)(b) applicable to the licence.

5. Disqualified persons not to increase control of licensee

(1) Subject to section 6, no disqualified person who exercises control of a licensee shall increase such control-

- (a) by increasing the percentage of voting shares of the licensee which he holds as the beneficial owner; or
- (b) as the result of any change of office held by him in the licensee.

(2) A disqualified person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$1000000 and to imprisonment for 2 years.

6. Circumstances in which disqualified person may increase control of licensee

On the application of a licensee, the Chief Executive in Council may, if he is satisfied that the public interest so requires, approve-

- (a) an increase in the control exercised by a disqualified person in the licensee; or
- (b) the introduction of a disqualified person to exercise control of the licensee.

7. Licensee to include certain statement in prospectus

A licensee shall ensure that a clear statement of the effect of section 8 of this Ordinance, of Schedule 1 and of sections 5 and 6 is made in any prospectus, within the meaning of the Companies Ordinance (Cap 32), issued at any time in respect of the licensee.

PART 2

EFFECT OF NON-RENEWAL OR REVOCATION OF LICENCE

8. Notice of non-renewal or revocation of licence

(1) Where the Chief Executive in Council decides under-

- (a) section 11(5) of this Ordinance not to extend or renew a licence, he shall cause notice in writing of the decision to be served on the licensee at least 12 months before the expiry of the validity of the licence under section 4(2)(a); or
- (b) section 32 of this Ordinance to revoke a licence, he shall cause notice in writing of the decision to be served on the licensee as soon as is practicable after the decision to revoke the licence.

(2) Where it is necessary for the purpose of complying with the requirement as to length of notice in subsection (1)(a), the Chief Executive in Council may extend the term of a licence (but no such extension shall continue in force any exclusive right to provide the licensed service).

9. Direction to Financial Secretary to purchase land and property belonging, etc. to licensee, etc.

(1) Where a notice is served under section 8(1)(a) or (b) in respect of a licence, or notice of a decision to revoke a licence is served under section 32(4) of this Ordinance, the Chief Executive in Council may direct The Financial Secretary Incorporated to purchase any property (including land) belonging to and used or kept by the licensee-

- (a) for the purpose of the licence; and
- (b) during the period of validity of the licence.

(2) Where a notice is served under section 32(4) of this Ordinance or section 8, then, not later than 12 months beginning on the date the notice is served, The Financial Secretary Incorporated shall do the following-

- (a) where the property is land, purchase the entirety of the land or acquire a lease or a licence over the land for a period not exceeding 2 years;
- (b) in the case of any other property, purchase the entirety of the property or acquire a licence to use the property for a period not exceeding 2 years.

(3) The consideration for the purchase of property under subsection (2) shall be an amount equal to the open market value of the property at the date of the decision not to extend or renew, or to revoke, as the case may be, the licence concerned as between a willing buyer and a willing seller but without regard to-

- (a) loss of profit;
- (b) goodwill;
- (c) the right of pre-emption;
- (d) the cost of related capital; and
- (e) all the property being placed on the market at the same time.

(4) In default of an agreement between The Financial Secretary Incorporated and a licensee as regards the consideration mentioned in subsection (3), the consideration shall be determined by arbitration under the Arbitration Ordinance (Cap 341) and, for that purpose, The Financial Secretary Incorporated and the licensee shall be regarded as having made an arbitration agreement within the meaning of that Ordinance whose provisions shall be deemed to include a provision that that consideration shall, in the absence of agreement, be determined by a single arbitrator.

(5) Where any land is purchased under this section, the licensee concerned shall execute an assignment in favour of The Financial Secretary Incorporated and The Financial Secretary Incorporated shall register the assignment in the Land Registry within 30 days of the execution of the assignment.

(6) Any property, other than land, purchased under this section shall vest in The Financial Secretary Incorporated-

- (a) in the case of a decision not to extend or renew the licence concerned, upon the expiry of the licence after notice is served under section 8;

(b) in the case of a decision to revoke the licence concerned under section 32 of this Ordinance, when the revocation takes effect or when an offer for the purchase is made by The Financial Secretary Incorporated, whichever is the later, and upon such vesting all the rights of the licensee in that property shall cease and determine.

(7) Nothing in this section shall be construed as conferring on a licensee any right to require The Financial Secretary Incorporated to purchase any property owned by the licensee.

(8) Where land is purchased under this section, The Financial Secretary Incorporated shall, within 30 days beginning on the date the land is purchased, register in the Land Registry by memorial a declaration that the land has been so purchased.

(9) For the purposes of this section, "licensee" (持牌人) includes any subsidiary of the licensee.

PART 3

TELEVISION PROGRAMMES

10. Minimum duration of television programme service

The duration of each language television programme service provided under a deemed licence, within the meaning of Schedule 8 to this Ordinance, falling within section 2(1) of that Schedule shall be not less than 5 hours for each day.

11. Advertising

(1) Subject to subsection (2), the aggregate advertising time of a television programme service shall not exceed 10 minutes per clock hour between the period from 5 p.m. to 11 p.m. each day and at other times the aggregate advertising time shall not exceed 18% of the total time the service is provided in that period.

(2) Where the Broadcasting Authority is satisfied that compliance with subsection (1) would adversely affect, or would have adversely affected, the standards of presentation of a television programme, or of television programmes belonging to a class of television programmes, of a television programme service, it may, by notice in writing served on the licensee concerned, exempt that television programme, or those television programmes, as the case may be, from compliance with that subsection in the manner specified in the notice.

12. Certain advertisements prohibited

A licensee shall not include in its service any advertisement of a religious or political nature or concerned with any industrial dispute.

PART 4

FEES AND CHARGES

13. Annual payment of fees

Subject to section 5 of Schedule 8 to this Ordinance, a licensee shall pay annually to the Director of Accounting Services a prescribed licence fee and such other fees as may be prescribed.

14. Procedural provisions for recovery of licence fees, etc.

(1) A licence fee or other fee or charge declared in writing by the Financial Secretary to be

owing to the Government shall be recoverable as a civil debt.

(2) A declaration in writing purporting to be made under subsection (1) shall be prima facie evidence of the debt specified in the declaration.

(3) A licence fee, and other fees and charges, owing by a licensee to the Government shall constitute a first charge on the property belonging to the licensee.

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| Chapter: | 571F | SECURITIES AND FUTURES (LEVERAGED FOREIGN EXCHANGE TRADING) (ARBITRATION) RULES | Gazette Number | Version Date |
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| Section: | 38 | Applicable law | L.N. 190 of 2002; L.N. 12 of 2003 | 01/04/2003 |
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- (1) Hong Kong law applies to the arbitration proceedings.
- (2) The arbitrator shall take into account the trade practice applicable to the transaction.
- (3) Pursuant to section 2AB of the Arbitration Ordinance (Cap 341), the provisions of that Ordinance apply to an arbitration conducted under these Rules, save for those matters that have been specifically provided for in these Rules.

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| Chapter: | 577 | TUNG CHUNG CABLE CAR ORDINANCE | Gazette Number | Version Date |
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| Section: | 2 | Interpretation | | 02/12/2007 |
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- (1) In this Ordinance, unless the context otherwise requires-
- "aerial ropeway" (架空纜車索道) means an aerial ropeway as defined in section 2 of the Aerial Ropeways (Safety) Ordinance (Cap 211);
- "arbitration" (仲裁) means domestic arbitration under Part II of the Arbitration Ordinance (Cap 341);
- "Cable Car System" (吊車系統) means an aerial ropeway system linking Tung Chung and Ngong Ping on Lantau Island, including but not limited to-
- (a) the Tung Chung Terminal and the Ngong Ping Terminal;
 - (b) one or more angle stations;
 - (c) buildings, pylons and other auxiliary structures;
 - (d) ancillary plant and related construction works;
- "Cable Car System area" (吊車系統區) means the land required for the Cable Car System as listed in paragraphs (a) to (d) of the definition of "Cable Car System" and delineated and coloured pink on the plan deposited in the Land Registry under section 3;
- "commercial GFA" (商用總樓面面積), in relation to a terminal, means the gross floor area for or ancillary to commercial use, as specified in the Project Agreement;
- "Company" (吊車公司) means the Company designated by the Secretary for the purposes of this Ordinance under subsection (2), or a person to whom the franchise is assigned under section 5, or a body corporate designated under section 27(7);

"construction works" (建造工程) means all construction works carried out or to be carried out by the Company under the Project Agreement;

"Director" (署長) means the Director of Lands;

"discharge date" (解除責任日期) means the date referred to in the guarantee agreement, if any, as being the discharge date of the guarantee;

"fare-paying passenger" (付費乘客) means a person who rides on the Cable Car System in return for payment, made in any form, at any time, at any place and by any person;

"financier" (出資人) means a person, not being a shareholder of the Company or a guarantor as defined in this section, who has provided credit (other than credit provided in the course of sale of goods or provision of services) or agreed to act as a surety or guarantor for or provided financial support to the Company for the purposes of the Project or to enable the Company to discharge its obligations under this Ordinance or the Project Agreement;

"franchise" (專營權) means the franchise granted by section 4;

"franchise period" (專營期) means the period commencing on a date specified in the Project Agreement and ending on the 30th anniversary of that date or on a later date by virtue of section 4(3);

"guarantee agreement" (保證協議) means the agreement, if any, designated as the guarantee agreement for the purposes of this Ordinance by the Secretary under subsection (3);

"guarantor" (保證人) means a person who for the time being has undertaken the obligations of a guarantor under the guarantee agreement, if any;

"level 2" (第2級) and "level 3" (第3級) mean respectively level 2 and level 3 in Schedule 8 to the Criminal Procedure Ordinance (Cap 221);

"MTR Corporation Limited" (香港鐵路有限公司) means the company incorporated under that name under the Companies Ordinance (Cap 32); (Amended 11 of 2007 s. 36)

"Ngong Ping Terminal" (昂坪終點站) means the aerial ropeway terminal situated at Ngong Ping on Lantau Island, and includes the terminal building, a car park, the commercial GFA and related ancillary facilities, as delineated on the plan deposited in the Land Registry under section 3;

"occupy" (佔用), in relation to any land, includes use, be in possession of, enjoy, erect or maintain a structure on or over, or place or maintain anything on the land;

"owner" (擁有人), in relation to any land to which Part 4 applies, means-

- (a) a person registered or entitled to be registered in the Land Registry as owner of the land; and
- (b) a person who has any estate, right or interest in the land;

"Project" (工程項目) means-

- (a) the financing, design, construction, installation, testing, commissioning, operation, management and maintenance of the Cable Car System; and
- (b) any other work carried out in relation to the Cable Car System, whether before or after the commencement of the Project Agreement;

"Project Agreement" (工程項目協議) means-

- (a) an agreement between the Company and the Government designated as the Project Agreement for the purposes of this Ordinance by the Secretary by notice published in the Gazette; and
- (b) any later agreement which amends or supplements that agreement or, consistently with this Ordinance, disposes of rights or obligations under it to any other person;

"route" (路線) means the alignment of the aerial ropeway of the Cable Car System;

"route projection area" (路線投射區) means the area delineated and coloured yellow on the plan deposited in the Land Registry under section 3;

"Secretary" (局長) means the Secretary for Commerce and Economic Development; (Amended L.N. 130 of 2007)

"terminal" (終點站) means the Tung Chung Terminal or the Ngong Ping Terminal;

"Tung Chung Terminal" (東涌終點站) means the aerial ropeway terminal situated at Tung Chung town centre, and includes the terminal building, a transport interchange, a footbridge, a vehicle park, the commercial GFA and related ancillary facilities, as delineated on the plan deposited in the Land Registry under section 3;

"utility" (公用設施) means any of the following-

- (a) telecommunications apparatus;
- (b) an electric power cable, telephone cable or other cable used in communication;
- (c) a pipe used for the supply of water, gas or oil, or for drainage or sewerage;
- (d) a duct for any such cable or pipe;
- (e) apparatus or works ancillary to any of the foregoing.

(2) Subject to subsection (3), the Secretary may by notice published in the Gazette designate a Company for the purposes of this Ordinance, which shall be either the MTR Corporation Limited or a wholly-owned subsidiary of the MTR Corporation Limited.

(3) If the Secretary designates as the Company under subsection (2) a wholly-owned subsidiary of the MTR Corporation Limited, the Secretary shall-

- (a) by notice published in the Gazette designate a guarantee agreement for the purposes of this Ordinance;
- (b) ensure that guarantors acceptable to the Secretary have entered into the guarantee agreement;
- (c) by order amend Schedule 1 to the Prevention of Bribery Ordinance (Cap 201) so as to include in that Schedule the wholly-owned subsidiary.

(4) A reference in this Ordinance to the Secretary or the Director, in relation to any power, duty or function conferred on, imposed on or assigned to the Secretary or Director, as the case may be, includes a reference to any public officer or other person whom the Secretary or Director respectively authorizes to exercise, discharge or perform the power, duty or function.

(5) A power or function conferred on or assigned to the Chief Executive in Council by this Ordinance may be exercised or performed by the Chief Executive acting in his or her discretion if the Chief Executive is of the opinion that the power needs to be exercised or the function to be performed in an emergency situation.

(6) For the purposes of this Ordinance, a body corporate shall be deemed to be the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees.