

# A BILL

# To

Amend the Arbitration Ordinance to adjust the circumstances under which the opt-in provisions in Schedule 2 to the Ordinance do not automatically apply; to update the Arbitration (Parties to New York Convention) Order; and to make related amendments.

Enacted by the Legislative Council.

## **Part 1**

### **Preliminary**

**1. Short title**

This Ordinance may be cited as the Arbitration (Amendment) Ordinance 2015.

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## **Part 2**

### **Amendments to Arbitration Ordinance**

**2. Arbitration Ordinance amended**

The Arbitration Ordinance (Cap. 609) is amended as set out in sections 3 to 7.

**3. Section 23 amended (article 10 of UNCITRAL Model Law (number of arbitrators))**

Section 23—

**Repeal subsection (3)**

**Substitute**

“(3) The number of arbitrators in an arbitration is to be either 1 or 3 as decided by the HKIAC in the particular case if—

- (a) the parties fail to agree on the number of arbitrators; and
- (b) section 1 of Schedule 2 does not apply.”.

**4. Section 102 amended (circumstances under which opt-in provisions not automatically apply)**

(1) Section 102—

**Renumber the section as section 102(1).**

(2) Section 102(1)(b)(ii)—

**Repeal**

“any of the provisions in”

**Substitute**

“section 2, 3, 4, 5, 6 or 7 of”.

(3) After section 102(1)—

**Add**

“(2) Subsection (1)(b)(ii) does not derogate from the operation of section 99.”.

**5. Section 111 amended (savings and transitional provisions)**

(1) Section 111—

**Renumber the section as section 111(1).**

(2) Section 111(1), before “Schedule”—

**Add**

“Part 1 of”.

(3) After section 111(1)—

**Add**

“(2) Part 2 of Schedule 3 provides for the savings and transitional arrangements that apply on, or relate to, the commencement of the Arbitration (Amendment) Ordinance 2015 ( of 2015).”.

**6. Schedule 2 amended (provisions that may be expressly opted for or automatically apply)**

Schedule 2, section 1—

**Repeal**

“Despite section 23, any dispute arising between the parties to an arbitration agreement”

**Substitute**

“If the parties to an arbitration agreement fail to agree on the number of arbitrators, any dispute arising between the parties”.

7. **Schedule 3 amended (savings and transitional provisions)**

(1) Schedule 3, before section 1—

**Add**

**“Part 1**

**Savings and Transitional Provisions Relating to  
Commencement of this Ordinance”.**

(2) Schedule 3, after Part 1—

**Add**

**“Part 2**

**Savings and Transitional Provisions Relating to  
Commencement of Arbitration (Amendment)  
Ordinance 2015**

**1. Conduct of arbitral and related proceedings**

(1) If an arbitration has commenced under article 21 of the UNCITRAL Model Law before the commencement date, that arbitration and all related proceedings are to be governed by the pre-amended Ordinance as if the Arbitration (Amendment) Ordinance 2015 ( of 2015) had not been enacted.

(2) In subsection (1)—

*all related proceedings* (所有相關程序) includes arbitral proceedings resumed after the setting aside of the award made in the arbitration;

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**article 21 of the UNCITRAL Model Law** (《貿法委示範法》第21條) means article 21 of the UNCITRAL Model Law as given effect to by section 49(1);

**commencement date** (生效日期) means the day on which the Arbitration (Amendment) Ordinance 2015 ( of 2015) comes into operation;

**pre-amended Ordinance** (《原本條例》) means this Ordinance as in force immediately before the commencement date.”.

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## Part 3

### Amendments to Arbitration (Parties to New York Convention) Order

8. **Arbitration (Parties to New York Convention) Order amended**  
The Arbitration (Parties to New York Convention) Order (Cap. 609 sub. leg. A) is amended as set out in section 9.
9. **Schedule amended**
- (1) The Schedule—  
**Repeal**  
“Bolivia”  
**Substitute**  
“Bolivia (Plurinational State of)”.
- (2) The Schedule, entry relating to United Kingdom of Great Britain and Northern Ireland, after “Bermuda,”—  
**Add**  
“British Virgin Islands,”.
- (3) The Schedule—  
**Add in alphabetical order**  
“Bhutan  
Burundi  
Democratic Republic of the Congo  
Guyana”.
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## Explanatory Memorandum

This Bill seeks to amend the Arbitration Ordinance (Cap. 609) (*the Ordinance*) and the Arbitration (Parties to New York Convention) Order (Cap. 609 sub. leg. A) (*the Order*).

### Amendments to the Ordinance

2. Clause 3 amends section 23(3) of the Ordinance to clarify that if the parties fail to agree on the number of arbitrators in an arbitration and section 1 of Schedule 2 to the Ordinance does not apply, such number is to be either 1 or 3 as decided by the Hong Kong International Arbitration Centre in the particular case.
3. Section 102 of the Ordinance deals with the circumstances under which sections 100 and 101 of the Ordinance (*those 2 sections*) do not apply. Clause 4 amends section 102 so that an express provision in an arbitration agreement that section 1 of Schedule 2 to the Ordinance applies, or does not apply, would not trigger the disapplication of those 2 sections. Those 2 sections provide for the provisions of that Schedule (*opt-in provisions*) to apply automatically to certain arbitration agreements. Hence, the effect of not triggering the disapplication of those 2 sections would be that the opt-in provisions still apply whether or not section 1 of that Schedule applies to the arbitration agreement concerned.
4. Clause 4 further adds a new subsection to section 102 of the Ordinance to spell out that section 102(1)(b)(ii) does not derogate from the operation of section 99 of the Ordinance.

5. Clause 5 adds a new subsection to section 111 of the Ordinance to provide that the savings and transitional provisions contained in Part 2 of Schedule 3 to the Ordinance (added by clause 7) apply in relation to the Arbitration (Amendment) Ordinance 2015 (*the Amendment Ordinance*).
6. Clause 6 amends section 1 of Schedule 2 to the Ordinance so that for an arbitration to which section 1 of that Schedule applies, any dispute arising between the parties to the arbitration agreement concerned is to be submitted to a sole arbitrator for arbitration if the parties fail to agree on the number of arbitrators.
7. Clause 7 adds a new Part 2 to Schedule 3 to the Ordinance to provide for the savings and transitional provisions so that the Amendment Ordinance does not apply to certain arbitrations.

### **Amendments to the Order**

8. The Schedule to the Order specifies the States or territories declared to be parties to the New York Convention. Clause 9 amends that Schedule to update the list of parties to the Convention.