

Chapter:	341	ARBITRATION ORDINANCE	Gazette Number	Version Date
		Long title		30/06/1997

ARBITRATION*

To make provision for arbitration in respect of civil matters.

[5 July 1963]

(Originally 22 of 1963)

Notes:

* For transitional provisions relating to previous amendments, see the Notes below-

1. Section 26 of the Arbitration (Amendment) (No. 2) Ordinance 1989 (64 of 1989) provides as follows:

"26. Transitional

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

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

@ Commencement date: 6 April 1990.

2. Section 18 of the Arbitration (Amendment) Ordinance 1996 (75 of 1996) provides as follows:

"18. Transitional provisions

(1) A provision of this Ordinance applies to and in relation to an agreement entered into before or after the commencement# of the provision. However, such a provision does not apply to or in relation to an arbitration commenced before the commencement# of the provision and in that case the provisions of the principal Ordinance that were in force immediately before that commencement continue to apply to and in relation to the arbitration in so far as it has not been completed.

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

Commencement date: 27 June 1997.

3. Section 12 of the Arbitration (Amendment) Ordinance 2000 (2 of 2000) provides as follows:

"12. Transitional

Notwithstanding the repeal of Part III of the Arbitration Ordinance (Cap 341) by section 4, an award to which that Part applied immediately before the commencement+ of that section shall be governed by the Arbitration Ordinance (Cap 341) in force immediately before that commencement, as if this Ordinance had not been enacted."

+ Commencement date: 1 February 2000.

Section:	1	Short title		30/06/1997
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PART I

PRELIMINARY

This Ordinance may be cited as the Arbitration Ordinance.

Section:	2	Interpretation	L.N. 26 of 2000	01/02/2000
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Remarks:

Adaptation amendments retroactively made - 2 of 2000 s. 3

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

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

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

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

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

"Convention award" (公約裁決) means an award to which Part IV applies, namely, an award made in pursuance of an arbitration agreement in a State or territory, other than China or any part thereof, which is a party to the New York Convention; (Added 85 of 1975 s. 2. Amended 2 of 2000 s. 3)

"Court" (法院) means the Court of First Instance; (Amended 92 of 1975 s. 59; 25 of 1998 s. 2)

"dispute" (爭議) includes a difference; (Added 64 of 1989 s. 2)

"domestic arbitration agreement" (本地仲裁協議) means an arbitration agreement that is not an international arbitration agreement; (Added 64 of 1989 s. 2)

"function" (職能) includes a power and a duty; (Added 75 of 1996 s. 3)

"HKIAC" (香港國際仲裁中心) means Hong Kong International Arbitration Centre, a company incorporated in Hong Kong under the Companies Ordinance (Cap 32) and limited by guarantee; (Added 75 of 1996 s. 3)

"international arbitration agreement" (國際仲裁協議) means an arbitration agreement pursuant to which an arbitration is, or would if commenced be, international within the meaning of article 1(3) of the UNCITRAL Model Law; (Added 64 of 1989 s. 2)

"the Mainland" (內地) means any part of China other than Hong Kong, Macau and Taiwan; (Added 2 of 2000 s. 3)

"Mainland award" (內地裁決) means an arbitral award made on the Mainland by a recognized Mainland arbitral authority in accordance with the Arbitration Law of the People's Republic of China; (Added 2 of 2000 s. 3)

"the New York Convention" (紐約公約) means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration on 10 June 1958 the text of which is set out in the Third Schedule; (Added 85 of 1975 s. 2)

"recognized Mainland arbitral authority" (認可內地仲裁當局) means an arbitral authority which is specified in the list of Mainland arbitral authorities provided from time to time for the purposes of this definition to the Government by the Legislative Affairs Office of the State Council of the People's Republic of China via the Hong Kong and Macau Affairs Office; (Added 2 of 2000 s. 3)

"the UNCITRAL Model Law" (聯合國國際貿易法委員會示範法) means the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on 21 June 1985, the text of which is set out in the Fifth Schedule. (Added 64 of 1989 s. 2. Amended 56 of 1991 s. 2)

(Amended 2 of 2000 s. 3)

(2) (Repealed 75 of 1996 s. 3)

(3) In interpreting and applying the provisions of the UNCITRAL Model Law, regard shall be had to its international origin and to the need for uniformity in its interpretation, and regard may be had to the documents specified in the Sixth Schedule. (Added 64 of 1989 s. 2)

(4) In the UNCITRAL Model Law a reference to-

(a) "this State" (本國) shall be treated as being a reference to Hong Kong;

(b) "any agreement in force between this State and any other State or States" (本國與其他任何一國或

多國之間有效力的任何協定) shall be treated as being a reference to any agreement that binds Hong Kong and any other place and that has the force of law in Hong Kong;

(c) "a State" (一國) shall be treated as including a reference to Hong Kong; and

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

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

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

Section:	2AA	Objective and principles of Ordinance		30/06/1997
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(1) The object of this Ordinance is to facilitate the fair and speedy resolution of disputes by arbitration without unnecessary expense.

(2) This Ordinance is based on the principles that-

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

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

(Added 75 of 1996 s. 4)

Section:	2AB	Ordinance to apply to statutory arbitrations		30/06/1997
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(1) This Ordinance (other than the provisions specified in subsection (3)) applies to arbitrations under every other Ordinance, whether passed before or after the commencement of this section, as if-

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

(b) the other enactment were such an agreement.

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

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

(Added 75 of 1996 s. 4)

Section:	2AC	Arbitration agreement to be in writing		30/06/1997
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(1) An agreement is not an arbitration agreement for the purposes of this Ordinance unless it is in writing.

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

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

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

(c) although the agreement is not itself in writing, there is evidence in writing of the agreement; or

(d) the parties to the agreement agree otherwise than in writing by referring to terms that are in writing; or

(e) the agreement, although made otherwise than in writing, is recorded by one of the parties to the agreement, or by a third party, with the authority of each of the parties to the agreement; or

(f) there is an exchange of written submissions in arbitral or legal proceedings in which the existence of an agreement otherwise than in writing is alleged by one party against another party and is not denied by the other party in response to the allegation.

(3) A reference in an agreement-

(a) to a written form of arbitration clause; or

(b) to a document containing an arbitration clause,

constitutes an arbitration agreement if the reference is such as to make that clause part of the agreement.

(4) In this section "writing" (書面) includes any means by which information can be recorded.

(5) This section applies to all agreements that would, if they were arbitration agreements, be either domestic arbitration agreements or international arbitration agreements and applies to those agreements to the exclusion of article 7(2) of the UNCITRAL Model Law.

(Added 75 of 1996 s. 4)

Section:	2AD	Application (Part IA)		30/06/1997
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Application of Part

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

(Added 75 of 1996 s. 6)

Section:	2A	Appointment of conciliator		30/06/1997
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PART IA

PROVISIONS APPLICABLE TO DOMESTIC AND INTERNATIONAL ARBITRATION

(Replaced 75 of 1996 s. 5)

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

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

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

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

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

Section:	2B	Power of arbitrator to act as conciliator		30/06/1997
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(1) If all parties to a reference consent in writing, and for so long as no party withdraws in writing his consent, an arbitrator or umpire may act as a conciliator.

(2) An arbitrator or umpire acting as conciliator-

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

(3) Where confidential information is obtained by an arbitrator or umpire from a party to the reference during conciliation proceedings and those proceedings terminate without the parties reaching agreement in settlement of their dispute, the arbitrator or umpire shall, before resuming the arbitration proceedings, disclose to all other parties to the reference as much of that information as he considers is material to the arbitration proceedings.

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

(Added 64 of 1989 s. 5)

Section:	2C	Settlement agreements		30/06/1997
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If the parties to an arbitration agreement reach agreement in settlement of their dispute and enter into an agreement in writing containing the terms of settlement (the "settlement agreement") the settlement agreement shall, for the purposes of its enforcement, be treated as an award on an arbitration agreement and may, by leave of the Court or a judge thereof, be enforced in the same manner as a judgment or order to the same effect and, where leave is so given, judgment may be entered in terms of the agreement.

(Added 64 of 1989 s. 5)

Section:	2D	Proceedings to be heard otherwise than in open court		30/06/1997
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Proceedings under this Ordinance in the Court or Court of Appeal shall on the application of any party to the proceedings be heard otherwise than in open court.

(Added 64 of 1989 s. 5)

Section:	2E	Restrictions on reporting of proceedings heard otherwise than in open court		30/06/1997
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(1) This section applies to proceedings under this Ordinance in the Court or Court of Appeal heard otherwise than in open court.

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

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

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

(4) Notwithstanding subsection (3), where a court gives a judgment in respect of proceedings to which this section applies and considers that judgment to be of major legal interest, it shall direct that reports of the judgment may be published in law reports and professional publications but, if any party to the proceedings reasonably wishes to conceal any matter, including the fact that he was such a party, the court shall-

- (a) give directions as to the action that shall be taken to conceal that matter in those reports; and
- (b) if it considers that a report published in accordance with directions given under paragraph (a) would be likely to reveal that matter, direct that no report shall be published until after the end of such period, not exceeding 10 years, as it considers appropriate.

(Added 64 of 1989 s. 5)

Section:	2F	Representation and preparation work		30/06/1997
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For the avoidance of doubt, it is hereby declared that sections 44, 45 and 47 of the Legal Practitioners Ordinance (Cap 159) do not apply to-

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

(Added 64 of 1989 s. 5)

Section:	2G	Costs in respect of unqualified person		30/06/1997
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Section 50 of the Legal Practitioners Ordinance (Cap 159), (which provides that no costs in respect of anything done by an unqualified person acting as a solicitor shall be recoverable in any action, suit or matter) shall not apply to the recovery of costs directed by an award.

(Added 64 of 1989 s. 5)

Section:	2GA	General responsibilities of arbitral tribunal		30/06/1997
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Conduct of Arbitration Proceedings

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

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

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

(Added 75 of 1996 s. 7)

Section:	2GB	General powers exercisable by arbitral tribunal		30/06/1997
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(1) When conducting arbitration proceedings, an arbitral tribunal may make orders or give directions dealing with any of the following matters-

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

(2) Property is relevant property for the purposes of subsection (1)(e) if-

- (a) the property is owned by or is in the possession of a party to the proceedings; and
- (b) the property is subject to the proceedings, or any question relating to the property arises in the proceedings.

(3) An arbitral tribunal must not make an order requiring a claimant to provide security for costs only on the ground that the claimant-

- (a) is a natural person who is ordinarily resident outside Hong Kong; or
- (b) is a body corporate that is incorporated, or an association that is formed, under a law of a place outside Hong Kong, or whose central management and control is exercised outside Hong Kong.

(4) An arbitral tribunal-

- (a) must, when making an order to provide security for costs, specify a period within which the order is to be complied with; and
- (b) may extend that period or an extended period.

(5) An arbitral tribunal may dismiss or stay a claim if it has made an order requiring the claimant to provide security for costs and the order has not been complied with within the period allowed under subsection (4).

(6) In conducting arbitration proceedings, an arbitral tribunal may decide whether and to what extent it should itself take the initiative in ascertaining the facts and the law relevant to those proceedings.

(7) An arbitral tribunal may-

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

(8) A person cannot be required to produce in arbitration proceedings any document or other material evidence that the person could not be required to produce in civil proceedings before a court.

(9) Subsections (6) and (7) are subject to any agreement to the contrary of the parties to the relevant arbitration

proceedings.

(Added 75 of 1996 s. 7)

Section:	2GC	Special powers of Court in relation to arbitration proceedings	L.N. 18 of 2009	02/04/2009
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(1) Subject to subsection (1A), the Court or a judge of the Court may, in relation to particular arbitration proceedings which have been or are to be commenced in Hong Kong or in a place outside Hong Kong, do any of the following— (Amended 3 of 2008 s. 11)

- (a) make an order directing an amount in dispute to be secured;
- (b) in relation to relevant property—
 - (i) make an order directing the inspection, photographing, preservation, custody, detention or sale of the property by the tribunal, a party to the proceedings or an expert; or
 - (ii) make an order directing samples to be taken from, observations to be made of, or experiments to be conducted on the property;
- (c) grant an interim injunction or direct any other interim measure to be taken.

(1A) In relation to arbitration proceedings that have been or are to be commenced in a place outside Hong Kong, the Court or a judge of the Court, may make an order under subsection (1), grant an interim injunction or direct any other interim measure to be taken under that subsection, only if the arbitration proceedings are capable of giving rise to an arbitral award (whether interim or final) which may be enforced in Hong Kong under this Ordinance or any other Ordinance. (Added 3 of 2008 s. 11)

(1B) Subsection (1A) applies notwithstanding that—

- (a) the subject matter of the arbitration proceedings would not, apart from that subsection, give rise to a cause of action over which the Court or a judge of the Court would have jurisdiction; or
- (b) the order sought, the interim injunction or other interim measure is not ancillary or incidental to any arbitration proceedings in Hong Kong. (Added 3 of 2008 s. 11)

(1C) In exercising the power under subsection (1) in relation to arbitration proceedings in a place outside Hong Kong, the Court or a judge of the Court, shall have regard to the fact that the power is—

- (a) ancillary to arbitration proceedings outside Hong Kong; and
- (b) for the purpose of facilitating the process of a court or arbitral tribunal outside Hong Kong that has primary jurisdiction over the arbitration proceedings. (Added 3 of 2008 s. 11)

(1D) The Court or a judge of the Court, has the same power to make any incidental order or direction for the purpose of ensuring the effectiveness of interim relief granted in relation to arbitration proceedings in a place outside Hong Kong as if the interim relief were granted in relation to arbitration proceedings in Hong Kong. (Added 3 of 2008 s. 11)

(1E) In subsection (1D), “interim relief” (臨時濟助) means—

- (a) an order made under subsection (1);
- (b) an interim injunction granted under that subsection; or
- (c) any other interim measure directed to be taken under that subsection. (Added 3 of 2008 s. 11)

(2) Property is relevant property for the purposes of subsection (1)(b) if—

- (a) the property is owned by or is in the possession of a party to the arbitration proceedings concerned; and
- (b) the property is subject to the proceedings, or any question relating to the property has arisen in those proceedings.

(3) The Court or a judge of the Court may order a person to attend proceedings before an arbitral tribunal to give evidence or to produce documents or other material evidence.

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

(5) The powers conferred by this section can be exercised irrespective of whether or not similar powers may be exercised under section 2GB in relation to the same dispute.

(6) The Court or a judge of the Court may decline to make an order under this section in relation to a matter referred to in subsection (1) on the ground that—

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

(Added 75 of 1996 s. 7)

Section:	2GD	Power to extend time for arbitration proceedings		30/06/1997
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(1) This section applies to an arbitration agreement to refer future disputes to arbitration that provides for a claim to be barred, or for a claimant's right to be extinguished, unless the claimant, before a time or within a period fixed by the agreement, takes a step-

- (a) to commence arbitration proceedings; or
- (b) to commence some other dispute resolution procedure that must be exhausted before arbitration proceedings can be commenced.

(2) On the application of a party to an arbitration agreement to which this section applies, an arbitral tribunal may, in accordance with this section, make an order extending the period for taking a step of the kind referred to in subsection (1).

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

(4) An applicant must give notice of the application to the other parties within 7 days after making it. Those other parties are entitled to be heard when the application is determined.

(5) An arbitral tribunal may make an order under this section extending a period only if it is satisfied that-

- (a) the circumstances were such as to be outside the reasonable contemplation of the parties when they entered into the arbitration agreement, and that it would be just to extend the period; or
- (b) the conduct of one party makes it unjust to hold the other parties to the strict terms of the agreement.

(6) An arbitral tribunal may extend a period for such further period and on such terms as it thinks fit, and may do so even though the period previously fixed (whether by agreement or by a previous order) has expired.

(7) This section does not affect the operation of any enactment that limits the period for commencing arbitration proceedings.

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

(Added 75 of 1996 s. 7)

Section:	2GE	Delay in prosecuting claims		30/06/1997
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(1) There is an implied term in every arbitration agreement that a party who has a claim under the agreement will prosecute the claim without delay if the claim relates to a dispute that is capable of settlement by arbitration. This subsection is subject to any express term in the agreement to the contrary.

(2) In arbitration proceedings before an arbitral tribunal, the tribunal may make an order-

- (a) dismissing a party's claim; and
- (b) prohibiting the party from commencing further arbitration proceedings in respect of the claim,

if satisfied that the party or the party's adviser has unreasonably delayed in bringing or prosecuting the claim.

(3) Such an order may be made either on the initiative of the arbitral tribunal or on the application of another party to the arbitration proceedings before the tribunal.

(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 the other parties to the arbitration proceedings.

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

(Added 75 of 1996 s. 7)

Section:	2GF	Decision of arbitral tribunal		30/06/1997
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In deciding a dispute, an arbitral tribunal may award any remedy or relief that could have been ordered by the Court if the dispute had been the subject of civil proceedings in the Court. This section is subject to section 17.

(Added 75 of 1996 s. 7)

Section:	2GG	Enforcement of decisions of arbitral tribunal	38 of 2000	23/06/2000
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(1) An award, order or direction made or given in or in relation to arbitration proceedings by an arbitral tribunal is enforceable in the same way as a judgment, order or direction of the Court that has the same effect, but only with the leave of the Court or a judge of the Court. If that leave is given, the Court or judge may enter judgment in terms of the award, order or direction. (Added 75 of 1996 s. 7. Amended 38 of 2000 s. 2)

(2) Notwithstanding anything in this Ordinance, this section applies to an award, order and direction made or given whether in or outside Hong Kong. (Added 38 of 2000 s. 2)

Section:	2GH	Arbitral tribunal may award interest		30/06/1997
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Interest

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

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

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

(Added 75 of 1996 s. 7)

Section:	2GI	Rate of interest on money awarded in arbitration proceedings		30/06/1997
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Interest is payable on the amount of an award from the date of the award at the same rate as for a judgment debt, except when the award otherwise provides.

(Added 75 of 1996 s. 7)

Section:	2GJ	Costs of arbitration proceedings		30/06/1997
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Costs, Fees and Expenses

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

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

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

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

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

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

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

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

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

(Added 75 of 1996 s. 7)

Section:	2GK	Liability to pay fees of arbitral tribunal		30/06/1997
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(1) The parties to proceedings before an arbitral tribunal are jointly and severally liable to pay to the tribunal such reasonable fees and expenses (if any) of the tribunal as are appropriate in the circumstances.

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

(3) Nothing in this section affects-

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

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

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

(Added 75 of 1996 s. 7)

Section:	2GL	Arbitral tribunal may limit amount of recoverable costs		30/06/1997
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(1) An arbitral tribunal may direct that the recoverable costs of arbitration proceedings before it are limited to a specified amount, unless the parties have agreed to the contrary.

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

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

(Added 75 of 1996 s. 7)

Section:	2GM	Arbitral tribunal to be liable for certain acts and omissions		30/06/1997
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Liability for Certain Acts and Omissions

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

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

(Added 75 of 1996 s. 7)

Section:	2GN	Appointors and administrators to be liable only for certain acts and omissions		30/06/1997
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(1) A person-

- (a) who appoints an arbitral tribunal; or
- (b) who exercises or performs any other function of an administrative nature in connection with arbitration proceedings,

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

(Amended 80 of 1997 s. 102)

(2) Subsection (1) does not apply to an act done or omitted to be done by the parties to the arbitration proceedings or to their legal representatives or advisers in the exercise or performance or the purported exercise or performance, of a function of an administrative nature in connection with those proceedings.

(3) An employee or agent of a person who has done or omitted to do an act referred to in subsection (1) is liable in law for the consequence of the act done or omission only if it is proved-

- (a) that the act or omission was committed dishonestly; and
- (b) that the employee or agent was a party to the dishonesty.

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

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

(Added 75 of 1996 s. 7)

Section:	2H	(Repealed)		30/06/1997
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(Repealed 75 of 1996 s. 8)

Section:	2I	(Repealed)		30/06/1997
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(Repealed 75 of 1996 s. 8)

Section:	2J	(Repealed)		30/06/1997
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(Repealed 75 of 1996 s. 8)

Section:	2K	(Repealed)		30/06/1997
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(Repealed 75 of 1996 s. 8)

Section:	2L	Application to domestic arbitration agreements		30/06/1997
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PART II

DOMESTIC ARBITRATION

(Amended 64 of 1989 s. 6)

Application

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

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

(Added 64 of 1989 s. 7)

Section:	2M	Application to international arbitration agreements		30/06/1997
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This Part applies to an international arbitration agreement and to an arbitration pursuant to an international arbitration agreement if, but only if, the agreement provides or the parties to the reference agree in writing-

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

(Added 64 of 1989 s. 7)

Section:	3	Authority of arbitrators and umpires to be irrevocable	30/06/1997
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Effect of Arbitration Agreements, etc.

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

[cf. 1950 c. 27 s. 1 U.K.]

Section:	4	Death of party	30/06/1997
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(1) An arbitration agreement shall not be discharged by the death of any party thereto, either as respects the deceased or any other party, but shall in such an event be enforceable by or against the personal representative of the deceased.

(2) The authority of an arbitrator shall not be revoked by the death of any party by whom he was appointed.

(3) Nothing in this section shall be taken to affect the operation of any enactment or rule of law by virtue of which any right of action is extinguished by the death of a person.

[cf. 1950 c. 27 s. 2 U.K.]

Section:	5	Bankruptcy	30/06/1997
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(1) Where it is provided by a term in a contract to which a bankrupt is a party that any disputes arising thereout or in connection therewith shall be referred to arbitration, the said term shall, if the trustee in bankruptcy adopts the contract, be enforceable by or against him so far as relates to any such disputes. (Amended 64 of 1989 s. 8)

(2) Where a person who has been adjudged bankrupt had, before the commencement of the bankruptcy, become a party to an arbitration agreement, and any matter to which the agreement applies requires to be determined in connection with or for the purposes of the bankruptcy proceedings, then, if the case is one to which subsection (1) does not apply, any other party to the agreement, or, with the consent of the committee of inspection, the trustee in bankruptcy, may apply to the Court for an order directing that the matter in question shall be referred to arbitration in accordance with the agreement, and the Court may, if it is of opinion that, having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

[cf. 1950 c. 27 s. 3 U.K.]

Section:	6	Court to refer matter to arbitration in certain cases	30/06/1997
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(1) Subject to subsections (2) and (3), article 8 of the UNCITRAL Model Law (Arbitration agreement and substantive claim before court) applies to a matter that is the subject of a domestic arbitration agreement in the same way as it applies to a matter that is the subject of an international arbitration agreement.

(2) Subject to subsection (3), if a party to an arbitration agreement that provides for the arbitration of a dispute involving a claim or other matter this is within the jurisdiction of the Labour Tribunal or a person claiming through or under such a party, commences legal proceedings in any court against any other party to the agreement or any person claiming through or under that other party, in respect of any matter agreed to be referred, and any party to those legal proceedings applies to that court after appearance and before delivering any pleadings or taking any other step in the proceedings, to stay the proceedings, the court or a judge of that court may make an order staying the proceedings, if satisfied that-

(a) there is no sufficient reason why the matter should not be referred in accordance with the agreement; and

(b) the applicant was ready and willing at the time the proceedings were commenced to do all things necessary for the proper conduct of the arbitration, and remains so.

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

(Replaced 75 of 1996 s. 9)

Section:	6A	(Repealed)		30/06/1997
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(Repealed 64 of 1989 s. 9)

Section:	6B	Consolidation of arbitrations		30/06/1997
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- (1) Where in relation to two or more arbitration proceedings it appears to the Court-
- (a) that some common question of law or fact arises in both or all of them, or
 - (b) that the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions, or
 - (c) that for some other reason it is desirable to make an order under this section,

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

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

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

(Added 10 of 1982 s. 3)

Section:	7	Reference of interpleader issues to arbitration		30/06/1997
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Where relief by way of interpleader is granted and it appears to the Court that the claims in question are matters to which an arbitration agreement, to which the claimants are parties, applies, the Court may direct the issue between the claimants to be determined in accordance with the agreement.

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

Section:	8	When reference is to a single arbitrator		30/06/1997
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Arbitrators and Umpires

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

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

Section:	9	Power of parties in certain cases to supply vacancy		30/06/1997
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Where an arbitration agreement provides that the reference shall be to 2 arbitrators, one to be appointed by each party, then, unless a contrary intention is expressed therein-

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

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

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

Section:	10	Umpires		30/06/1997
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(1) Unless a contrary intention is expressed therein, every arbitration agreement shall, where the reference is to 2 arbitrators, be deemed to include a provision that the 2 arbitrators may appoint an umpire at any time after they are themselves appointed and shall do so forthwith if they cannot agree. (Amended 10 of 1982 s. 4)

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

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

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

Section:	11	Majority award of 3 arbitrators		30/06/1997
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Unless the contrary intention is expressed in the arbitration agreement, in any case where there is a reference to 3 arbitrators, the award of any 2 of the arbitrators shall be binding and in the event that no 2 of the arbitrators agree the award, the award of the arbitrator appointed by the arbitrators to be chairman shall be binding.

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

Section:	12	Power of HKIAC in certain cases to appoint an arbitrator or umpire		30/06/1997
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(1) In any of the following cases-

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

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint, or, as the case may be, concur in appointing, an arbitrator, umpire or third arbitrator, and if the appointment is not made within 7 clear days after the service of the notice, HKIAC may, on application by the party who gave the notice, appoint an arbitrator, umpire or third arbitrator who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties. (Amended 75 of 1996 s. 10)

(2) In any case where-

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

any party to the agreement may serve the person in question with a written notice to appoint an arbitrator or umpire and, if the appointment is not made within 7 clear days after the service of the notice, HKIAC may, on the application of the party who gave the notice, appoint an arbitrator or umpire who shall have the like powers to act in the reference and make an award as if he had been appointed in accordance with the terms of the agreement. (Added 10 of 1982 s. 6. Amended 75 of 1996 s. 10)

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

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

Section:	13	(Repealed)		30/06/1997
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(Repealed 52 of 1987 s. 45)

Section:	13A	Power of judges to take arbitrations	LN. 362 of 1997	01/07/1997
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(1) Subject to the following provisions of this section a judge, District Judge, magistrate or public officer, may, if in all the circumstances he thinks fit, accept appointment as a sole or joint arbitrator, or as umpire, by or by virtue of an arbitration agreement.

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

(3) A public officer shall not accept appointment as an arbitrator or umpire unless the Secretary for Justice has informed him that he can be made available to do so. (Amended L.N. 362 of 1997)

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

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

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

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

Section:	13B	Arbitral tribunal may determine own jurisdiction		30/06/1997
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Jurisdiction of Domestic Arbitral Tribunals

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

(Added 75 of 1996 s. 11)

Section:	14	(Repealed)		30/06/1997
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Conduct of Proceedings, Witnesses, etc.

(Repealed 75 of 1996 s. 12)

Section:	14A	(Repealed)		30/06/1997
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(Repealed 64 of 1989 s. 13)

Section:	15	Time for making award		30/06/1997
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Provisions as to Awards

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

(2) The time, if any, limited for making an award, whether under this Ordinance or otherwise, may from time to

time be enlarged by order of the Court or a judge thereof, whether that time has expired or not.

(3) The Court may, on the application of any party to a reference, remove an arbitrator or umpire who fails to use all reasonable dispatch in entering on and proceeding with the reference and making an award, and an arbitrator or umpire who is removed by the Court under this subsection shall not be entitled to receive any remuneration in respect of his services.

For the purposes of this subsection, the expression "proceeding with a reference" (處理所提交的仲裁) includes, in a case where 2 arbitrators are unable to agree, giving notice of that fact to the parties and to the umpire.

[cf. 1950 c. 27 s. 13 U.K.]

Section:	16	Interim awards		30/06/1997
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Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the arbitrator or umpire may, if he thinks fit, make an interim award, and any reference in this Part to an award includes a reference to an interim award.

[cf. 1950 c. 27 s. 14 U.K.]

Section:	17	Specific performance		30/06/1997
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Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the arbitrator or umpire shall have 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.

[cf. 1950 c. 27 s. 15 U.K.]

Section:	18	Awards to be final		30/06/1997
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Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the award to be made by the arbitrator or umpire shall be final and binding on the parties and the persons claiming under them respectively.

[cf. 1950 c. 27 s. 16 U.K.]

Section:	19	Power to correct slips		30/06/1997
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Unless a contrary intention is expressed in the arbitration agreement, the arbitrator or umpire shall have power to correct in an award any clerical mistake or error arising from any accidental slip or omission.

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

Section:	20	(Repealed)		30/06/1997
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Costs, Fees and Interest

(Repealed 75 of 1996 s. 12)

Section:	21	Taxation of arbitrator's or umpire's fees		30/06/1997
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(1) If in any case an arbitrator or umpire refuses to deliver his award except on payment of the fees demanded by him, the Court may, on an application for the purpose, order that the arbitrator or umpire shall deliver the award to the applicant on payment into court by the applicant of the fees demanded, and further that the fees demanded shall be taxed by the taxing officer and that out of the money paid into court there shall be paid out to the arbitrator or umpire by way of fees such sum as may be found reasonable on taxation and that the balance of the money, if any, shall be paid out to the applicant.

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

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

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

this section.

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

Section:	22	(Repealed)		30/06/1997
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(Repealed 75 of 1996 s. 12)

Section:	22A	(Repealed)		30/06/1997
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(Repealed 75 of 1996 s. 12)

Section:	23	Judicial review of arbitration awards		30/06/1997
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Judicial Review, Determination of Preliminary Point of Law, Exclusion Agreements, Interlocutory Orders, Remission and Setting aside of Awards, etc.

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

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

(a) confirm, vary or set aside the award; or

(b) remit the award to the reconsideration of the arbitrator or umpire together with the Court's opinion on the question of law which was the subject of the appeal;

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

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

(a) with the consent of all the other parties to the reference; or

(b) subject to section 23B, with the leave of the Court.

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

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

(a) with the consent of all the other parties to the reference; or

(b) subject to section 23B, with the leave of the Court,

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

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

(a) that before the award was made one of the parties to the reference gave notice to the arbitrator or umpire concerned that a reasoned award would be required; or

(b) that there is some special reason why such a notice was not given.

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

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

(Replaced 10 of 1982 s. 9)

[cf. 1979 c. 42 s. 1 U.K.]

Section:	23A	Determination of preliminary point of law by Court	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

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

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

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

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

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

(3) A decision of the Court under subsection (1) shall be deemed to be a judgment of the Court within the meaning of section 14 of the High Court Ordinance (Cap 4) (appeals to the Court of Appeal), but no appeal shall lie from such a decision unless the Court or the Court of Appeal gives leave. (Amended 25 of 1998 s. 2)

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

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

Section:	23B	Exclusion agreements affecting rights under sections 23 and 23A		30/06/1997
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(1) Subject to the following provisions of this section and section 23C-

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

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

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

(3) An exclusion agreement may be expressed so as to relate to a particular award, to awards under a particular reference or to any other description of awards, whether arising out of the same reference or not; and an agreement may be an exclusion agreement for the purposes of this section whether it is entered into before or after the passing of this Ordinance and whether or not it forms part of an arbitration agreement.

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

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

- (a) to prohibit or restrict access to the Court; or
- (b) to restrict the jurisdiction of that Court; or
- (c) to prohibit or restrict the making of a reasoned award.

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

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

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

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

Section:	23C	Interlocutory orders		30/06/1997
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(1) If any party to a reference under an arbitration agreement fails within the time specified in the order or, if no time is so specified, within a reasonable time to comply with an order made by the arbitrator or umpire in the course of the reference, then, on the application of the arbitrator or umpire or of any party to the reference, the Court may make an order extending the powers of the arbitrator or umpire as mentioned in subsection (2).

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

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

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

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

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

(Added 10 of 1982 s. 10)
[cf. 1979 c. 42 s. 5 U.K.]

Section:	24	Power to remit award		30/06/1997
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(1) In all cases of reference to arbitration the Court or a judge thereof may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrator or umpire.

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

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

Section:	25	Removal to arbitrator and setting aside of award		30/06/1997
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(1) Where an arbitrator or umpire has misconducted himself or the proceedings, the Court may remove him.

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

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

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

Section:	26	Power of Court to give relief where arbitrator is not impartial or the dispute involves question of fraud		30/06/1997
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(1) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred to an arbitrator named or designated in the agreement, and after a dispute has arisen any party applies, on the ground that the arbitrator so named or designated is not or may not be impartial, for leave to revoke the authority of the arbitrator or for an injunction to restrain any other party or the arbitrator from proceeding with the arbitration, it shall not be a ground for refusing the application that the said party at the time when he made the agreement knew, or ought to have known, that the arbitrator, by reason of his relation towards any other party to the agreement or of his connection with the subject referred, might not be capable of impartiality.

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

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

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

Section:	27	Power of Court where arbitrator is removed or authority of arbitrator is revoked		30/06/1997
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(1) Where an arbitrator, not being a sole arbitrator, or 2 or more arbitrators, not being all the arbitrators, or an umpire who has not entered on the reference is or are removed by the Court, the Court may, on the application of any party to the arbitration agreement, appoint a person or persons to act as arbitrator or arbitrators or umpire in place of the person or persons so removed.

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

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

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

(4) Where it is provided, whether by means of a provision in the arbitration agreement or otherwise, that an award under an arbitration agreement shall be a condition precedent to the bringing of an action with respect to any matter to which the agreement applies, the Court, if it orders, whether under this section or under any other enactment, that the agreement shall cease to have effect as regards any particular dispute, may further order that the provision making an award a condition precedent to the bringing of an action shall also cease to have effect as regards that dispute.

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

Section:	28	(Repealed)		30/06/1997
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Enforcement of Award

(Repealed 64 of 1989 s. 17)

Section:	29	(Repealed)		30/06/1997
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Miscellaneous

(Repealed 75 of 1996 s. 12)

Section:	29A	(Repealed)		30/06/1997
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(Repealed 75 of 1996 s. 12)

Section:	30	Terms as to costs, etc.		30/06/1997
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Any order made under this Part may be made on such terms as to costs or otherwise (including, in the case of an order under section 6B or 2GE, the remuneration of the arbitrator or umpire in respect of his services as the authority making the order thinks just.

(Amended 85 of 1975 s. 5; 10 of 1982 s. 12; 75 of 1985 s. 3; 75 of 1996 s. 13)
 [cf. 1950 c. 27 s. 28 U.K.]

Section:	31	Commencement of arbitration		30/06/1997
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(1) An arbitration shall be deemed to be commenced when one party to the arbitration agreement serves on the other party or parties a notice requiring him or them to appoint or concur in appointing an arbitrator, or, where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring him or them to submit the dispute to the person so named or designated.

(2) Any such notice as is mentioned in subsection (1) may be served either-

- (a) by delivering it to the person on whom it is to be served; or
- (b) by leaving it at the usual or last known place of abode in Hong Kong of that person; or
- (c) by sending it by post in a registered letter addressed to that person at his usual or last known place of abode in Hong Kong,

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

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

Section:	32	(Repealed)		30/06/1997
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(Repealed 64 of 1989 s. 18)

Section:	33	(Repealed)		30/06/1997
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(Repealed 64 of 1989 s. 19)

Section:	34	Transitional - Part II		30/06/1997
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This Part shall not affect any arbitration commenced, within the meaning of section 31(1), before the commencement of this Ordinance, but shall apply to an arbitration so commenced after the commencement of this Ordinance under an agreement made before the commencement of this Ordinance.

[cf. 1950 c. 27 s. 33 U.K.]

Section:	34A	Application to international arbitration agreements		30/06/1997
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PART IIA

INTERNATIONAL ARBITRATION

Application

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

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

(Added 64 of 1989 s. 20)

Section:	34B	Application to domestic arbitration agreements		30/06/1997
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This Part applies to a domestic arbitration agreement, and to an arbitration pursuant to a domestic arbitration agreement, to which, by virtue of section 2L, Part II does not apply.

(Added 64 of 1989 s. 20)

Section:	34C	Application of UNCITRAL Model Law	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

Application of the UNCITRAL Model Law

(1) An arbitration agreement and an arbitration to which this Part applies are governed by Chapters I to VII of the UNCITRAL Model Law.

(2) Article 1(1) of the UNCITRAL Model Law shall not have the effect of limiting the application of the UNCITRAL Model Law to international commercial arbitrations.

(3) HKIAC is the court or other authority competent to perform the functions referred to in article 11(3) and (4) of the UNCITRAL Model Law and may make rules to facilitate the performance of those functions. Any such rules take effect only when the Chief Justice has approved them. (Replaced 75 of 1996 s. 14)

(4) The Court of First Instance is the court or other authority competent to perform the functions referred to in articles 13(3), 14, 16(3) and 34(2) of the UNCITRAL Model Law. (Added 75 of 1996 s. 14. Amended 25 of 1998 s. 2)

(5) If the parties to an arbitration agreement to which this Part applies fail to agree as to the number of arbitrators that is to determine a dispute arising under the agreement, the number of arbitrators is to be either 1 or 3 as decided by HKIAC in the particular case. This subsection applies to the exclusion of article 10(2) of the UNCITRAL Model Law. (Added 75 of 1996 s. 14)

Section:	34D	(Repealed)		30/06/1997
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(Repealed 75 of 1996 s. 15)

Section:	34E	(Repealed)		30/06/1997
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(Repealed 75 of 1996 s. 15)

Section:	35	(Repealed 2 of 2000 s. 4)	L.N. 26 of 2000	01/02/2000
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PART III*

Note:

* **Section 12 of the Arbitration (Amendment) Ordinance 2000 (2 of 2000) provides as follows:**

"12. Transitional

Notwithstanding the repeal of Part III of the Arbitration Ordinance (Cap 341) by section 4, an award to which that Part applied immediately before the commencement+ of that section shall be governed by the Arbitration Ordinance (Cap 341) in force immediately before that commencement, as if this Ordinance had not been enacted."

+ Commencement date: 1 February 2000.

Section:	36	(Repealed 2 of 2000 s. 4)	L.N. 26 of 2000	01/02/2000
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Section:	37	(Repealed 2 of 2000 s. 4)	L.N. 26 of 2000	01/02/2000
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Section:	38	(Repealed 2 of 2000 s. 4)	L.N. 26 of 2000	01/02/2000
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Section:	39	(Repealed 2 of 2000 s. 4)	L.N. 26 of 2000	01/02/2000
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Section:	40	(Repealed 2 of 2000 s. 4)	L.N. 26 of 2000	01/02/2000
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Section:	40A	Awards to which Part IIIA applies	L.N. 26 of 2000	01/02/2000
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Expanded Cross Reference:

40B, 40C, 40D, 40E

PART IIIA

ENFORCEMENT OF MAINLAND AWARDS

(1) Subject to subsection (2), this Part shall have effect with respect to the enforcement of Mainland awards.

(2) Where-

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

then sections 40B to 40E shall have no effect with respect to the enforcement of that award. <* Note - Exp. X-Ref.: Sections 40B, 40C, 40D, 40E *>

(Part IIIA Added 2 of 2000 s. 5)

Section:	40B	Effect of Mainland awards	L.N. 26 of 2000	01/02/2000
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(1) A Mainland award shall, subject to this Part, be enforceable in Hong Kong either by action in the Court or in the same manner as the award of an arbitrator is enforceable by virtue of section 2GG.

(2) Any Mainland award which is enforceable under this Part shall 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, and any references in this Part to enforcing a Mainland award shall be construed as including references to relying on a Mainland award.

(Part IIIA Added 2 of 2000 s. 5)

Section:	40C	Restrictions on enforcement of Mainland awards	L.N. 26 of 2000	01/02/2000
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(1) A Mainland award shall not, subject to subsection (2), be enforceable under this Part if an application has been made on the Mainland for enforcement of the award.

(2) Where-

(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 may be enforceable under this Part.

(Part IIIA Added 2 of 2000 s. 5)

Section:	40D	Evidence	L.N. 26 of 2000	01/02/2000
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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) where 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.

(Part IIIA Added 2 of 2000 s. 5)

Section:	40E	Refusal of enforcement	L.N. 26 of 2000	01/02/2000
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- (1) Enforcement of a Mainland award shall 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 him) under some incapacity; or
 - (b) that the arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the Mainland; or
 - (c) that he was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
 - (d) subject to subsection (4), that the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration; or
 - (e) that the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the Mainland; or
 - (f) that the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the Mainland or under the law of the Mainland.
- (3) Enforcement of a Mainland award may also be refused if the award is in respect of a matter which is not capable of settlement by arbitration under the law of Hong Kong, or if 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 not so submitted.

(Part IIIA Added 2 of 2000 s. 5)

Section:	40F	Publication of list of recognized Mainland arbitral authorities	L.N. 26 of 2000	01/02/2000
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- (1) The Secretary for Justice shall from time to time publish in the Gazette a list of the recognized Mainland arbitral authorities.
- (2) A list published under subsection (1) is not subsidiary legislation.

(Part IIIA Added 2 of 2000 s. 5)

Section:	40G	Saving	L.N. 26 of 2000	01/02/2000
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Notwithstanding 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 may, subject to section 40A(2), be enforceable under this Part as if enforcement of the award had not previously been so refused.

(Part IIIA Added 2 of 2000 s. 5)

Section:	41	Awards to which Part IV applies	L.N. 26 of 2000	01/02/2000
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PART IV

ENFORCEMENT OF CONVENTION AWARDS

This Part shall have effect with respect to the enforcement of Convention awards.

(Replaced 2 of 2000 s. 6)

Section:	42	Effect of Convention awards		30/06/1997
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- (1) A Convention award shall, subject to this Part, be enforceable either by action or in the same manner as the

award of an arbitrator is enforceable by virtue of section 2GG. (Amended 64 of 1989 s. 22; 80 of 1997 s. 102)

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

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

Section:	43	Evidence		30/06/1997
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The party seeking to enforce a Convention award must produce-

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

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

Section:	44	Refusal of enforcement		30/06/1997
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- (1) Enforcement of a Convention award shall not be refused except in the cases mentioned in this section.
- (2) Enforcement of a Convention award may be refused if the person against whom it is invoked proves-
 - (a) that a party to the arbitration agreement was (under the law applicable to him) under some incapacity; or
 - (b) that the arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the country where the award was made; or
 - (c) that he was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
 - (d) subject to subsection (4), that the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration; or
 - (e) that the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the country where the arbitration took place; or
 - (f) that the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made.

(3) Enforcement of a Convention award may also be refused if the award is in respect of a matter which is not capable of settlement by arbitration, or if it would be contrary to public policy to enforce the award.

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

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

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

Section:	45	Saving	L.N. 26 of 2000	01/02/2000
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Nothing in this Part shall prejudice any right to enforce or rely on an award otherwise than under this Part.

(Amended 2 of 2000 s. 7)

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

Section:	46	Order to be conclusive evidence	2 of 2000	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 2 of 2000 s. 8

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

(Amended 2 of 2000 s. 8)
 [cf. 1975 c. 3 s. 7(2) U.K.]
 (Part IV added 85 of 1975 s. 8)

Section:	47	Government to be bound	L.N. 26 of 2000	01/02/2000
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PART V

GENERAL

This Ordinance (other than Part IV) binds the Government.

(Amended 2 of 2000 s. 9)
 (Part V added 75 of 1996 s. 16)

Section:	48	Chief Executive in Council may amend Sixth Schedule	2 of 2000	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 2 of 2000 s. 10

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

(Amended 2 of 2000 s. 10)
 (Part V added 75 of 1996 s. 16)

Section:	49	Rules of court	L.N. 18 of 2009	02/04/2009
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(1) The power to make rules of court under section 54 of the High Court Ordinance (Cap 4) includes power to make rules of court for—

- (a) the making of an application for an order under section 2GC(1) or for an interim injunction or any other interim measure under that section; and
- (b) the service out of the jurisdiction of an application for such order, interim injunction or other interim measure.

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

(Added 3 of 2008 s. 12)

Schedule:	1	(Repealed 2 of 2000 s. 11)	L.N. 26 of 2000	01/02/2000
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Schedule:	2	(Repealed 2 of 2000 s. 11)	L.N. 26 of 2000	01/02/2000
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Schedule:	3	CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS. DONE AT NEW YORK, ON 10 JUNE 1958		30/06/1997
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Article I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in

the State where their recognition and enforcement are sought.

2. The term "arbitral awards" (仲裁裁決) shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

2. The term "agreement in writing" (書面協定) shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, at the request of one of the parties, refer the parties to arbitration unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article III

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

Article IV

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

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

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

Article V

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

- (a) the parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- (b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
- (c) the award deals with a difference not contemplated by or not falling within the terms of the submission

to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

- (d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
- (e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

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

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

Article VI

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

Article VII

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

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

Article VIII

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

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

Article IX

1. This Convention shall be open for accession to all States referred to in article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all

or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article XI

In the case of a federal or non-unitary State, the following provisions shall apply-

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

Article XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

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

Article XIII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

Article XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States

except to the extent that it is itself bound to apply the Convention.

Article XV

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

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

Article XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article VIII.

(Third Schedule added 85 of 1975 s. 9)

Schedule:	4	APPLICATION OF THIS ORDINANCE TO JUDGE-ARBITRATORS		30/06/1997
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[section 13A]

1. In this Schedule "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.

1A. The leave required by section 2GG (enforcement of decisions of arbitral tribunal) for an award on an arbitration agreement to be enforced as mentioned in that section may, in the case of an award by a judge-arbitrator or a judge-umpire, be given by the judge-arbitrator or judge-umpire himself. (Added 64 of 1989 s. 24. Amended 80 of 1997 s. 102)

2. In section 3 (authority of arbitrator to be irrevocable except by leave of the court), in its application to a judge-arbitrator or judge-umpire, the Court of Appeal shall be substituted for the Court.

3. The power of the Court under section 9 (vacancy among arbitrators supplied by parties) to set aside the appointment of an arbitrator shall not be exercisable in the case of the appointment of a judge-arbitrator.

4. Section 10(3) (power of Court to order umpire to enter immediately on reference as sole arbitrator) shall not apply to a judge-umpire; but a judge-umpire may, on the application of any party to the reference and notwithstanding anything to the contrary in the arbitration agreement, enter on the reference in lieu of the arbitrators and as if he were the sole arbitrator.

5. (1) The powers conferred on the Court or a judge thereof by section 2GC (special powers of Court in relation to arbitration proceedings) shall be exercisable in the case of a reference to a judge-arbitrator or judge-umpire as in the case of any other reference to arbitration, but shall in any such case be exercisable also by the judge-arbitrator or judge-umpire himself. (Amended 80 of 1997 s. 102)

(2) Anything done by an arbitrator or umpire in the exercise of powers conferred by this paragraph shall be done by him in his capacity as judge of the Court and have effect as if done by that court; but nothing in this paragraph prejudices any power vested in the arbitrator or umpire in his capacity as such.

6. Section 15(2) and (3) (extension of time for making award; provision for ensuring that reference is conducted with reasonable dispatch) shall not apply to a reference to a judge-arbitrator or judge-umpire; but a judge-arbitrator or judge-umpire may enlarge any time limited for making his award (whether under this Ordinance or otherwise),

whether that time has expired or not.

7. (1) Section 2GJ (costs of arbitration proceedings) applies as if the second sentence of subsection (4) of that section were omitted. (Replaced 80 of 1997 s. 102)

(2) The power of the Court to make declarations and orders for the purposes of section 2GJ(6) (Costs of arbitration proceedings) shall be exercisable in the case of an arbitration by a judge-arbitrator or judge-umpire as in the case of any other arbitration, but shall in any such case be exercisable also by the judge-arbitrator or judge-umpire himself. (Amended 80 of 1997 s. 102)

(3) A declaration or order made by an arbitrator or umpire in the exercise of the power conferred by sub-paragraph (2) shall be made by him in his capacity as judge of the Court and have effect as if made by that court.

8. (1) Section 21 (power of Court to order delivery of award on payment of arbitrators' fees into court) shall not apply with respect to the award of a judge-arbitrator or judge-umpire.

(2) A judge-umpire may withhold his award until the fees payable to the arbitrators have been paid into the Court.

(3) Arbitrators' fees paid into court under this paragraph shall be paid out in accordance with rules of court, subject to the right of any party to the reference to apply (in accordance with the rules) for any fee to be taxed, not being a fee which has been fixed by written agreement between him and the arbitrator.

(4) A taxation under this paragraph may be reviewed in the same manner as a taxation of the costs of an award.

(5) On a taxation under this paragraph, or on a review thereof, an arbitrator shall be entitled to appear and be heard.

8A. (1) In the application of-

(a) section 23 (appeal on a question of law) to the award of a judge-arbitrator or judge-umpire; and

(b) section 23B (exclusion of certain agreements), other than subsection (5) thereof, to proceedings under section 23 relating to the award of a judge-arbitrator or judge-umpire, (Amended 64 of 1989 s. 24)

the Court of Appeal shall be substituted for the Court.

(2) Where sub-paragraph (1) applies, section 23 shall have effect as if-

(a) subsection (7) thereof were omitted; and

(b) in section 23B(5) references to the court included references to the Court of Appeal. (Added 1 of 1985 s. 2)

8B. Section 23A (determination of a preliminary point of law by Court) shall not apply to a reference to a judge-arbitrator or judge-umpire. (Added 1 of 1985 s. 2. Amended 64 of 1989 s. 24)

9. In sections 24 and 25 (remission and setting aside of awards, etc.), in their application to a judge-arbitrator or judge-umpire, and to a reference to him and to his award thereon, the Court of Appeal shall be substituted for the Court.

10. (1) Section 26(2) (removal of issue of fraud for trial in the Court) shall not apply to an agreement under or by virtue of which a judge-arbitrator or judge-umpire has been appointed; nor shall leave be given by the Court under that subsection to revoke the authority of a judge-arbitrator or judge-umpire.

(2) Where, on a reference of a dispute to a judge-arbitrator or judge-umpire, it appears to the judge that the dispute involves the question whether a party to the dispute has been guilty of fraud, he may, so far as may be necessary to enable that question to be determined by the Court, order that the agreement by or by virtue of which he was appointed shall cease to have effect and revoke his authority as arbitrator or umpire.

(3) An order made by a judge-arbitrator or judge-umpire under this paragraph shall have effect as if made by the Court.

11. Section 27 (powers of Court on removal of arbitrator or revocation of arbitration agreement) shall be amended as follows-

(a) after the words "the Court" where they first occur in subsection (1), where they occur for the first and second time in subsection (2), and in subsections (3) and (4), there shall be inserted the words "or the Court of Appeal"; and

- (b) after those words where they occur for the second time in subsection (1) and for the third time in subsection (2) there shall be inserted the words "or the Court of Appeal, as the case may be".

12. (Repealed 64 of 1989 s. 24)

(Fourth Schedule added 10 of 1982 s. 13)

Schedule:	5	UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION	36 of 2000	16/06/2000
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[section 2]

(As adopted by the United Nations Commission
on International Trade Law on 21 June 1985)

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, 35 and 36, apply only if the place of arbitration is in the territory of this State.

(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: This article is subject to section 34C(2) of this Ordinance. (Added 75 of 1996 s. 17)

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.

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.

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.

Article 5. Extent of court intervention

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

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: This article is subject to section 34C(3) and (4) of this Ordinance. (Added 75 of 1996 s. 17)

CHAPTER II. ARBITRATION AGREEMENT

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. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunications which provide a record of the agreement, or 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 another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract. (Amended 36 of 2000 s. 28)

Note: Section 2AC of this Ordinance applies instead of article 7(2). See subsection (5) of that section. (Added 75 of 1996 s. 17)

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.

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.

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: This article is subject to section 34C(5) of this Ordinance. (Added 75 of 1996 s. 17. Amended 80 of 1997 s. 102)

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 3 arbitrators, each party shall appoint one arbitrator, and the 2 arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within 30 days of receipt of a request to do so from the other party, or if the 2 arbitrators fail to agree on the third arbitrator within 30 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 2 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.

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.

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 15 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 30 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.

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).

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.

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 30 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.

Article 17. Power of arbitral tribunal to order interim measures

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of

the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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 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).

Article 33. Correction and interpretation of award; additional award

(1) Within 30 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 30 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 30 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 30 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 60 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.

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 3 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.

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

Note: This Chapter does not apply to international arbitration agreements or to arbitrations under those agreements. See section 34C(1) of this Ordinance. (Added 75 of 1996 s. 17)

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 duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an official language of this State, the party shall supply a duly certified translation thereof into such language.***

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.

(Fifth Schedule added 64 of 1989 s. 25)

Note:

- * **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 co-operation; carriage of goods or passengers by air, sea, rail or road.**
- *** **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.**

Schedule:	6		30/06/1997
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[sections 2 & 2K]

1. The report of the Secretary-General dated 25 March 1985 and entitled "Analytical Commentary on Draft Text of a Model Law on International Commercial Arbitration" (United Nations document A/CN.9/264).

2. The report of the United Nations Commission on International Trade Law on the work of its eighteenth session (3-21 June 1985) (United Nations document A/40/17).

3. The report of the Law Reform Commission of Hong Kong on the Adoption of the UNCITRAL Model Law.
(Sixth Schedule added 64 of 1989 s. 25)