

《仲裁条例》

(第 609 章)

目录

条次		页次
	第 1 部 导言	
1.	简称	1-1
2.	释义	1-1
3.	本条例的目的及原则	1-7
4.	《贸法委示范法》在香港具有法律效力	1-9
5.	本条例适用的仲裁	1-9
6.	适用范围	1-11
	第 2 部 一般条文	
7.	《贸法委示范法》第 1 条 (适用范围)	2-1
8.	《贸法委示范法》第 2 条 (定义及解释规则)	2-1
9.	《贸法委示范法》第 2A 条 (国际渊源和一般原则)	2-1
10.	《贸法委示范法》第 3 条 (收到书面通讯)	2-3

ARBITRATION ORDINANCE

(Cap. 609)

Contents

Section		Page
	PART 1 PRELIMINARY	
1.	Short title	1-2
2.	Interpretation	1-2
3.	Object and principles of this Ordinance	1-8
4.	UNCITRAL Model Law to have force of law in Hong Kong	1-10
5.	Arbitrations to which this Ordinance applies	1-10
6.	Application	1-12
	PART 2 GENERAL PROVISIONS	
7.	Article 1 of UNCITRAL Model Law (Scope of application)	2-2
8.	Article 2 of UNCITRAL Model Law (Definitions and rules of interpretation)	2-2
9.	Article 2A of UNCITRAL Model Law (International origin and general principles)	2-2
10.	Article 3 of UNCITRAL Model Law (Receipt of written communications)	2-4

条次	页次
11. 《贸法委示范法》第 4 条 (放弃提出异议的权利)	2-5
12. 《贸法委示范法》第 5 条 (法院干预的限度)	2-5
13. 《贸法委示范法》第 6 条 (法院或其他机构对仲裁予以协助和监督的某种职责)	2-7
14. 《时效条例》及其他时效法规适用于仲裁	2-9
15. 法院将互争权利诉讼的争论点转介仲裁	2-11
16. 以非公开聆讯方式进行聆讯的法律程序	2-11
17. 对以非公开聆讯方式进行聆讯的法律程序的报导的限制	2-13
18. 禁止披露关乎仲裁程序及裁决的资料	2-15
第 3 部 仲裁协议	
19. 《贸法委示范法》第 7 条 (仲裁协议的定义和形式)	3-1
20. 《贸法委示范法》第 8 条 (仲裁协议和向法院提出的实体性申诉)	3-3
21. 《贸法委示范法》第 9 条 (仲裁协议和法院的临时措施)	3-9

Section	Page
11. Article 4 of UNCITRAL Model Law (Waiver of right to object)	2-6
12. Article 5 of UNCITRAL Model Law (Extent of court intervention)	2-6
13. Article 6 of UNCITRAL Model Law (Court or other authority for certain functions of arbitration assistance and supervision)	2-8
14. Application of Limitation Ordinance and other limitation enactments to arbitrations	2-10
15. Reference of interpleader issue to arbitration by court	2-12
16. Proceedings to be heard otherwise than in open court	2-12
17. Restrictions on reporting of proceedings heard otherwise than in open court	2-14
18. Disclosure of information relating to arbitral proceedings and awards prohibited	2-16
PART 3 ARBITRATION AGREEMENT	
19. Article 7 of UNCITRAL Model Law (Definition and form of arbitration agreement)	3-2
20. Article 8 of UNCITRAL Model Law (Arbitration agreement and substantive claim before court)	3-4
21. Article 9 of UNCITRAL Model Law (Arbitration agreement and interim measures by court)	3-10

条次		页次
22.	协议会否因一方死亡而解除	3-9
第 3A 部 紧急济助的强制执行		
22A.	释义	3A-1
22B.	强制执行紧急仲裁员批给的紧急济助	3A-1
第 4 部 仲裁庭的组成		
第 1 分部 —— 仲裁员		
23.	《贸法委示范法》第 10 条 (仲裁员人数)	4-1
24.	《贸法委示范法》第 11 条 (仲裁员的指定)	4-1
25.	《贸法委示范法》第 12 条 (回避的理由)	4-9
26.	《贸法委示范法》第 13 条 (申请回避的程序)	4-11
27.	《贸法委示范法》第 14 条 (未行事或不能行事)	4-13
28.	《贸法委示范法》第 15 条 (指定替代仲裁员)	4-15
29.	仲裁员或委任仲裁员的人的死亡	4-17
30.	公断人的委任	4-17

Section		Page
22.	Whether agreement discharged by death of a party	3-10
Part 3A Enforcement of Emergency Relief		
22A.	Interpretation	3A-2
22B.	Enforcement of emergency relief granted by emergency arbitrator	3A-2
Part 4 Composition of Arbitral Tribunal		
Division 1—Arbitrators		
23.	Article 10 of UNCITRAL Model Law (Number of arbitrators)	4-2
24.	Article 11 of UNCITRAL Model Law (Appointment of arbitrators)	4-2
25.	Article 12 of UNCITRAL Model Law (Grounds for challenge)	4-10
26.	Article 13 of UNCITRAL Model Law (Challenge procedure)	4-12
27.	Article 14 of UNCITRAL Model Law (Failure or impossibility to act)	4-14
28.	Article 15 of UNCITRAL Model Law (Appointment of substitute arbitrator)	4-16
29.	Death of arbitrator or person appointing arbitrator	4-18
30.	Appointment of umpire	4-18

T-7

第 609 章

T-8

Cap. 609

条次		页次
31.	公断人在仲裁程序中的职能	4-17
	第 2 分部 —— 调解员	
32.	调解员的委任	4-21
33.	仲裁员出任调解员的权力	4-23
	第 5 部	
	仲裁庭的管辖权	
34.	《贸法委示范法》第 16 条 (仲裁庭对其管辖权作出裁定的权力)	5-1
	第 6 部	
	临时措施和初步命令	
	第 1 分部 —— 临时措施	
35.	《贸法委示范法》第 17 条 (仲裁庭下令采取临时措施的权力)	6-1
36.	《贸法委示范法》第 17A 条 (准予采取临时措施的条件)	6-3
	第 2 分部 —— 初步命令	
37.	《贸法委示范法》第 17B 条 (初步命令的申请和下达初步命令的条件)	6-5
38.	《贸法委示范法》第 17C 条 (初步命令的具体制度)	6-7
	第 3 分部 —— 适用于临时措施和初步命令的条文	

Section		Page
31.	Functions of umpire in arbitral proceedings	4-18
	Division 2—Mediators	
32.	Appointment of mediator	4-22
33.	Power of arbitrator to act as mediator	4-24
	PART 5	
	JURISDICTION OF ARBITRAL TRIBUNAL	
34.	Article 16 of UNCITRAL Model Law (Competence of arbitral tribunal to rule on its jurisdiction)	5-2
	PART 6	
	INTERIM MEASURES AND PRELIMINARY ORDERS	
	Division 1—Interim measures	
35.	Article 17 of UNCITRAL Model Law (Power of arbitral tribunal to order interim measures)	6-2
36.	Article 17A of UNCITRAL Model Law (Conditions for granting interim measures)	6-4
	Division 2—Preliminary orders	
37.	Article 17B of UNCITRAL Model Law (Applications for preliminary orders and conditions for granting preliminary orders)	6-6
38.	Article 17C of UNCITRAL Model Law (Specific regime for preliminary orders)	6-8
	Division 3—Provisions applicable to interim measures and preliminary orders	

条次	页次
39. 《贸法委示范法》第 17D 条 (修改、中止和终结)	6-9
40. 《贸法委示范法》第 17E 条 (提供担保)	6-9
41. 《贸法委示范法》第 17F 条 (披露)	6-11
42. 《贸法委示范法》第 17G 条 (费用与损害赔偿)	6-11
第 4 分部 —— 临时措施的承认与执行	
43. 《贸法委示范法》第 17H 条 (承认和执行)	6-13
44. 《贸法委示范法》第 17I 条 (拒绝承认或执行的理由)	6-13
第 5 分部 —— 法院下令采取的临时措施	
45. 《贸法委示范法》第 17J 条 (法院下令采取的临时措施)	6-13
第 7 部 仲裁程序的进行	
46. 《贸法委示范法》第 18 条 (当事人平等待遇)	7-1
47. 《贸法委示范法》第 19 条 (程序规则的确定)	7-1

Section	Page
39. Article 17D of UNCITRAL Model Law (Modification, suspension, termination)	6-10
40. Article 17E of UNCITRAL Model Law (Provision of security)	6-10
41. Article 17F of UNCITRAL Model Law (Disclosure)	6-12
42. Article 17G of UNCITRAL Model Law (Costs and damages)	6-12
Division 4—Recognition and enforcement of interim measures	
43. Article 17H of UNCITRAL Model Law (Recognition and enforcement)	6-14
44. Article 17I of UNCITRAL Model Law (Grounds for refusing recognition or enforcement)	6-14
Division 5—Court-ordered interim measures	
45. Article 17J of UNCITRAL Model Law (Court-ordered interim measures)	6-14
PART 7 CONDUCT OF ARBITRAL PROCEEDINGS	
46. Article 18 of UNCITRAL Model Law (Equal treatment of parties)	7-2
47. Article 19 of UNCITRAL Model Law (Determination of rules of procedure)	7-2

条次		页次
48.	《贸法委示范法》第 20 条 (仲裁地点)	7-3
49.	《贸法委示范法》第 21 条 (仲裁程序的开始)	7-5
50.	《贸法委示范法》第 22 条 (语文)	7-5
51.	《贸法委示范法》第 23 条 (申请书和答辩书)	7-7
52.	《贸法委示范法》第 24 条 (开庭和书面审理程序)	7-7
53.	《贸法委示范法》第 25 条 (一方当事人的不为)	7-9
54.	《贸法委示范法》第 26 条 (仲裁庭指定的专家)	7-13
55.	《贸法委示范法》第 27 条 (法院协助取证)	7-15
56.	仲裁庭可行使的一般权力	7-17
57.	仲裁庭可限制可予追讨的费用款额	7-21
58.	延长仲裁程序时限的权力	7-23
59.	在仲裁程序中拖延继续申索的情况下作出命令	7-25
60.	原讼法庭就仲裁程序所具有的特别权力	7-27

Section		Page
48.	Article 20 of UNCITRAL Model Law (Place of arbitration)	7-4
49.	Article 21 of UNCITRAL Model Law (Commencement of arbitral proceedings)	7-6
50.	Article 22 of UNCITRAL Model Law (Language)	7-6
51.	Article 23 of UNCITRAL Model Law (Statements of claim and defence)	7-8
52.	Article 24 of UNCITRAL Model Law (Hearings and written proceedings)	7-8
53.	Article 25 of UNCITRAL Model Law (Default of a party)	7-10
54.	Article 26 of UNCITRAL Model Law (Expert appointed by arbitral tribunal)	7-14
55.	Article 27 of UNCITRAL Model Law (Court assistance in taking evidence)	7-16
56.	General powers exercisable by arbitral tribunal	7-18
57.	Arbitral tribunal may limit amount of recoverable costs	7-22
58.	Power to extend time for arbitral proceedings	7-24
59.	Order to be made in case of delay in pursuing claims in arbitral proceedings	7-26
60.	Special powers of Court in relation to arbitral proceedings	7-28

条次		页次
61.	仲裁庭的命令及指示的强制执行	7-31
62.	原讼法庭命令讨回仲裁员费用的权力	7-31
63.	代表及拟备工作	7-33
第 8 部 作出裁决和程序终止		
64.	《贸法委示范法》第 28 条 (适用于争议实体的规则)	8-1
65.	《贸法委示范法》第 29 条 (仲裁团作出的决定)	8-3
66.	《贸法委示范法》第 30 条 (和解)	8-3
67.	《贸法委示范法》第 31 条 (裁决的形式和内容)	8-5
68.	《贸法委示范法》第 32 条 (程序的终止)	8-7
69.	《贸法委示范法》第 33 条 (裁决的更正和解释; 补充裁决)	8-7
70.	判给补救或济助的裁决	8-11
71.	就事宜的不同方面作出裁决	8-13
72.	作出裁决的时间	8-13
73.	裁决的效力	8-13

Section		Page
61.	Enforcement of orders and directions of arbitral tribunal	7-32
62.	Power of Court to order recovery of arbitrator's fees	7-32
63.	Representation and preparation work	7-34
PART 8 MAKING OF AWARD AND TERMINATION OF PROCEEDINGS		
64.	Article 28 of UNCITRAL Model Law (Rules applicable to substance of dispute)	8-2
65.	Article 29 of UNCITRAL Model Law (Decision-making by panel of arbitrators)	8-4
66.	Article 30 of UNCITRAL Model Law (Settlement)	8-4
67.	Article 31 of UNCITRAL Model Law (Form and contents of award)	8-6
68.	Article 32 of UNCITRAL Model Law (Termination of proceedings)	8-8
69.	Article 33 of UNCITRAL Model Law (Correction and interpretation of award; additional award)	8-8
70.	Award of remedy or relief	8-12
71.	Awards on different aspects of matters	8-14
72.	Time for making award	8-14
73.	Effect of award	8-14

条次		页次
74.	仲裁庭可作出判给仲裁程序费用的裁决	8-13
75.	仲裁程序的费用 (仲裁庭的收费及开支除外) 的评定	8-17
76.	不合格人士的费用	8-17
77.	在有争议下裁定仲裁庭的收费及开支	8-17
78.	支付仲裁庭的收费及开支的法律责任	8-23
79.	仲裁庭可判给利息	8-23
80.	在仲裁程序中判给或命令支付的款项或费用的利息	8-25

第 9 部 对裁决的追诉

81.	《贸法委示范法》第 34 条 (申请撤销, 作为不服仲裁裁决的唯一追诉)	9-1
-----	--	-----

第 10 部 裁决的承认和强制执行 第 1 分部 —— 仲裁裁决的强制执行

82.	《贸法委示范法》第 35 条 (承认和执行)	10-1
83.	《贸法委示范法》第 36 条 (拒绝承认或执行的理由)	10-1

Section		Page
74.	Arbitral tribunal may award costs of arbitral proceedings	8-14
75.	Taxation of costs of arbitral proceedings (other than fees and expenses of arbitral tribunal)	8-18
76.	Costs in respect of unqualified person	8-18
77.	Determination of arbitral tribunal's fees and expenses in case of dispute	8-18
78.	Liability to pay fees and expenses of arbitral tribunal	8-24
79.	Arbitral tribunal may award interest	8-24
80.	Interest on money or costs awarded or ordered in arbitral proceedings	8-26

PART 9 RECOURSE AGAINST AWARD

81.	Article 34 of UNCITRAL Model Law (Application for setting aside as exclusive recourse against arbitral award)	9-2
-----	---	-----

Part 10 Recognition and Enforcement of Awards Division 1—Enforcement of arbitral awards

82.	Article 35 of UNCITRAL Model Law (Recognition and enforcement)	10-2
83.	Article 36 of UNCITRAL Model Law (Grounds for refusing recognition or enforcement)	10-2

条次	页次	Section	Page
84.	仲裁裁决的强制执行	84.	Enforcement of arbitral awards
85.	为强制执行仲裁裁决而提供证据	85.	Evidence to be produced for enforcement of arbitral awards
86.	拒绝强制执行仲裁裁决	86.	Refusal of enforcement of arbitral awards
	第 2 分部 —— 公约裁决的强制执行		Division 2—Enforcement of Convention awards
87.	公约裁决的强制执行	87.	Enforcement of Convention awards
88.	为强制执行公约裁决而提供证据	88.	Evidence to be produced for enforcement of Convention awards
89.	拒绝强制执行公约裁决	89.	Refusal of enforcement of Convention awards
90.	宣布《纽约公约》缔约方的命令	90.	Order for declaring party to New York Convention
91.	保留强制执行公约裁决的权利	91.	Saving of rights to enforce Convention awards
	第 3 分部 —— 内地裁决的强制执行		Division 3—Enforcement of Mainland awards
92.	内地裁决的强制执行	92.	Enforcement of Mainland awards
93.	强制执行内地裁决的限制	93.	Restrictions on enforcement of Mainland awards
94.	为强制执行内地裁决而提供证据	94.	Evidence to be produced for enforcement of Mainland awards
95.	拒绝强制执行内地裁决	95.	Refusal of enforcement of Mainland awards
96.	本分部某些条文不适用于内地裁决	96.	Mainland awards to which certain provisions of this Division do not apply

T-19
第 609 章T-20
Cap. 609

条次	页次
97. 认可内地仲裁当局名单的公布	10-21
98. 保留某些内地裁决	10-21
第 4 分部 —— 澳门裁决的强制执行	
98A. 澳门裁决的强制执行	10-23
98B. 已获部分履行的澳门裁决的强制执行	10-23
98C. 为强制执行澳门裁决而提供证据	10-23
98D. 拒绝强制执行澳门裁决	10-25
第 11 部 可以明文选择或自动适用的条文	
99. 仲裁协议可明文规定供选用的条文	11-1
100. 供选用的条文在某些情况下自动适用	11-1
101. 根据第 100 条自动适用的供选用的条文当作适用于香港建造分判个案	11-1
102. 供选用的条文不得自动适用的情况	11-5
103. 根据本部适用条文	11-7
第 12 部 杂项	

Section	Page
97. Publication of list of recognized Mainland arbitral authorities	10-22
98. Saving of certain Mainland awards	10-22
Division 4—Enforcement of Macao Awards	
98A. Enforcement of Macao awards	10-24
98B. Enforcement of Macao awards partially satisfied	10-24
98C. Evidence to be produced for enforcement of Macao awards	10-24
98D. Refusal of enforcement of Macao awards	10-26
Part 11 Provisions that may be Expressly Opted for or Automatically Apply	
99. Arbitration agreements may provide expressly for opt-in provisions	11-2
100. Opt-in provisions automatically apply in certain cases	11-2
101. Opt-in provisions that automatically apply under section 100 deemed to apply to Hong Kong construction subcontracting cases	11-2
102. Circumstances under which opt-in provisions not automatically apply	11-6
103. Application of provisions under this Part	11-8
Part 12 Miscellaneous	

条次		页次
104.	仲裁庭或调解员须为某些作为及不作为负上法律责任	12-1
105.	委任人及管理人只须为某些作为及不作为负上法律责任	12-1
106.	法院规则	12-5
107.	根据本条例提出申请等	12-5
108.	本条例所指的原讼法庭决定等	12-5
	第 13 部 废除、保留及过渡性条文	
109.	(已失时效而略去)	13-1
110.	废除附属法例的效果	13-1
111.	保留及过渡性条文	13-1
	第 14 部 (已失时效而略去)	
112.	(已失时效而略去)	14-1
附表 1	《贸易法委员会国际商事仲裁示范法》	S1-1
附表 2	可以明文选择或自动适用的条文	S2-1
附表 3	保留及过渡性条文	S3-1
附表 4	(已失时效而略去)	S4-1

Section		Page
104.	Arbitral tribunal or mediator to be liable for certain acts and omissions	12-2
105.	Appointors and administrators to be liable only for certain acts and omissions	12-2
106.	Rules of court	12-6
107.	Making an application, etc. under this Ordinance	12-6
108.	Decision, etc. of Court under this Ordinance	12-6
	Part 13 Repeal, Savings and Transitional Provisions	
109.	(Omitted as spent)	13-2
110.	Effect of repeal on subsidiary legislation	13-2
111.	Savings and transitional provisions	13-2
	Part 14 (Omitted as spent)	
112.	(Omitted as spent)	14-2
SCHEDULE 1	UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION	S1-2
Schedule 2	Provisions that may be Expressly Opted for or Automatically Apply	S2-2
Schedule 3	Savings and Transitional Provisions	S3-2
Schedule 4	(Omitted as spent)	S4-2

本条例旨在改革与仲裁有关的法律，以及就相关及相应事宜订定条文。

An Ordinance to reform the law relating to arbitration, and to provide for related and consequential matters.

[2011 年 6 月 1 日] 2011 年第 38 号法律公告

[1 June 2011] L.N. 38 of 2011

(略去制定语式条文——2014 年第 2 号编辑修订纪录)

(Enacting provision omitted—E.R. 2 of 2014)

第 1 部

导言

1. 简称

- (1) 本条例可引称为《仲裁条例》。
- (2) (已失时效而略去——2014 年第 2 号编辑修订纪录)
(编辑修订——2014 年第 2 号编辑修订纪录)

2. 释义

- (1) 在本条例中——
“一方”、“方”(party)——
 - (a) 指仲裁协议的一方；或
 - (b) 就仲裁程序或法院程序而言，指该程序的一方；
“内地”(the Mainland)指中国的任何部分，但香港、澳门及台湾除外；
“内地裁决”(Mainland award)指由认可内地仲裁当局按照《中华人民共和国仲裁法》在内地作出的仲裁裁决；

PART 1

PRELIMINARY

1. Short title

- (1) This Ordinance may be cited as the Arbitration Ordinance.
- (2) (Omitted as spent—E.R. 2 of 2014)
(Amended E.R. 2 of 2014)

2. Interpretation

- (1) In this Ordinance—
“arbitral tribunal”(仲裁庭) means a sole arbitrator or a panel of arbitrators, and includes an umpire;
“arbitration”(仲裁) means any arbitration, whether or not administered by a permanent arbitral institution;
“arbitration agreement”(仲裁协议) has the same meaning as in section 19;
“arbitrator”(仲裁员), except in sections 23, 24, 30, 31, 32 and 65 and section 1 of Schedule 2, includes an umpire;

1-3
第 609 章

第 1 部
第 2 条

- “公约裁决”(Convention award) 指在某一国家或在某一国家的领土(中国或其任何部分除外)作出的仲裁裁决,而该国家或该领土是《纽约公约》的缔约方;
- “申索人”(claimant) 指在仲裁中提出申索或反申索的人;
- “仲裁”(arbitration) 指不论是否由常设仲裁机构进行的任何仲裁;
- “仲裁协议”(arbitration agreement) 的涵义与第 19 条中该词的涵义相同;
- “仲裁员”(arbitrator) 除在第 23、24、30、31、32 及 65 条及附表 2 第 1 条外,包括一名公断人;
- “仲裁庭”(arbitral tribunal) 指一名独任仲裁员或一组仲裁员,并包括一名公断人;
- “争议”(dispute) 包括分歧;
- “香港国际仲裁中心”(HKIAC) 指香港国际仲裁中心,该中心是一间根据在当其时有效的《公司条例》(第 32 章)在香港成立为法团的担保有限公司;(由 2012 年第 28 号第 912 及 920 条修订)
- “被申请人”(respondent) 指在仲裁中提出的申索或反申索所针对的人;
- “《纽约公约》”(New York Convention) 指在 1958 年 6 月 10 日在纽约签订的《承认及执行外国仲裁裁决公约》;
- “原讼法庭”(Court) 指高等法院原讼法庭;
- “贸法委”(Commission) 指联合国国际贸易法委员会;
- “《贸法委示范法》”(UNCITRAL Model Law) 指在 1985 年 6 月 21 日由贸法委通过、并经贸法委在 2006 年 7 月 7 日修订的《贸易法委员会国际商事仲裁示范法》,该示范法全文列于附表 1;
- “认可内地仲裁当局”(recognized Mainland arbitral authority) 指由律政司司长根据第 97 条公布的认可内地仲裁当局的名单中指明的仲裁当局;

PART 1
Section 2

1-4
Cap. 609

- “claimant” (申索人) means a person who makes a claim or a counter-claim in an arbitration;
- “Commission” (贸法委) means the United Nations Commission on International Trade Law;
- “Convention award” (公约裁决) means an arbitral award made in a State or the territory of a State, other than China or any part of China, which is a party to the New York Convention;
- “Court” (原讼法庭) means the Court of First Instance of the High Court;
- “dispute” (争议) includes a difference;
- “function” (职能) includes a power and a duty;
- “HKIAC” (香港国际仲裁中心) means the Hong Kong International Arbitration Centre, a company incorporated in Hong Kong under the Companies Ordinance (Cap. 32) as in force at the time of the incorporation and limited by guarantee; (*Amended 28 of 2012 ss. 912 & 920*)
- “interim measure” (临时措施)—
- if it is granted by an arbitral tribunal, has the same meaning as in section 35(1) and (2); or
 - if it is granted by a court, has the same meaning as in section 45(9),
- and “interim measure of protection” (临时保全措施) is to be construed accordingly;
- Macao** (澳门) means the Macao Special Administrative Region; (*Added 7 of 2013 s. 3*)
- Macao award** (澳门裁决) means an arbitral award made in Macao in accordance with the arbitration law of Macao; (*Added 7 of 2013 s. 3*)
- “the Mainland” (内地) means any part of China other than Hong Kong, Macao and Taiwan;

1-5
第 609 章

第 1 部
第 2 条

“调解”(mediation) 包括调停；

澳门 (Macao) 指澳门特别行政区；(由 2013 年第 7 号第 3 条增补)

澳门裁决 (Macao award) 指按照澳门的仲裁法律在澳门作出的仲裁裁决；(由 2013 年第 7 号第 3 条增补)

“临时措施”(interim measure) ——

- (a) 如属仲裁庭批给者，其涵义与第 35(1) 及 (2) 条中该词的涵义相同；或
- (b) 如属法院批给者，其涵义与第 45(9) 条中该词的涵义相同，

而“临时保全措施”(interim measure of protection) 须据此解释；

“《旧有条例》”(repealed Ordinance) 指被第 109 条废除的《仲裁条例》(第 341 章)；

“职能”(function) 包括权力及责任。

(2) 如 ——

- (a) 本条例的条文提述各方已达成协议此一事实，或在任何其他情况下提述各方的协议，该协议包括该协议所提述的任何仲裁规则；或
- (b) 本条例的条文规定各方可达成协议，该协议(如有的话)可藉在该协议内提述任何仲裁规则而包括该等规则。

(3) 如 ——

- (a) 本条例的条文(第 53 及 68 条除外)提述申索，该条文亦适用于反申索；或
- (b) 本条例的条文(第 53 条除外)提述抗辩，该条文亦适用于对反申索的抗辩。

(4) 在本条例文本中的附注、本条例的条文的标题或《贸法委示范法》的条文的标题，仅供参考，并无立法效力。

PART 1
Section 2

1-6
Cap. 609

“Mainland award”(内地裁决) means an arbitral award made in the Mainland by a recognized Mainland arbitral authority in accordance with the Arbitration Law of the People's Republic of China;

“mediation”(调解) includes conciliation;

“New York Convention”(《纽约公约》) means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards done at New York on 10 June 1958;

“party”(一方、方)——

- (a) means a party to an arbitration agreement; or
- (b) in relation to any arbitral or court proceedings, means a party to the proceedings;

“recognized Mainland arbitral authority”(认可内地仲裁当局) means an arbitral authority that is specified in the list of recognized Mainland arbitral authorities published by the Secretary for Justice under section 97;

“repealed Ordinance”(《旧有条例》) means the Arbitration Ordinance (Cap. 341) repealed by section 109;

“respondent”(被申请人) means a person against whom a claim or a counterclaim is made in an arbitration;

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

(2) If—

- (a) a provision of this Ordinance refers to the fact that the parties have agreed, or in any other way refers to an agreement of the parties, the agreement includes any arbitration rules referred to in that agreement; or

- (5) 如本条例的任何条文所用的某英文词句的中文对等词句，有别于《贸法委示范法》的任何条文所用的同一英文词句的中文对等词句，则该等中文对等词句须视为效力相同。

3. 本条例的目的及原则

- (1) 本条例的目的，是促进在省却非必要开支的情况下，藉仲裁而公平及迅速地解决争议。
- (2) 本条例建基于以下原则——
 - (a) 除须奉行为公众利益而属必要的保障措施外，争议各方应有协议应该如何解决争议的自由；及
 - (b) 法院应只在本条例明文规定的情况下，才干预争议的仲裁。

- (b) a provision of this Ordinance provides that the parties may agree, the agreement, if any, may include any arbitration rules by referring to those rules in that agreement.
- (3) If—
 - (a) a provision of this Ordinance (other than sections 53 and 68) refers to a claim, that provision also applies to a counter-claim; or
 - (b) a provision of this Ordinance (other than section 53) refers to a defence, that provision also applies to a defence to a counter-claim.
- (4) A note located in the text of this Ordinance, a section heading of any provision of this Ordinance or a heading of any provision of the UNCITRAL Model Law is for reference only and has no legislative effect.
- (5) If the Chinese equivalent of an English expression used in any provision of this Ordinance is different from the Chinese equivalent of the same English expression used in any provision of the UNCITRAL Model Law, those Chinese equivalents are to be treated as being identical in effect.

3. Object and principles of this Ordinance

- (1) The object of this Ordinance is to facilitate the fair and speedy resolution of disputes by arbitration without unnecessary expense.
- (2) This Ordinance is based on the principles—
 - (a) that, subject to the observance of the safeguards that are necessary in the public interest, the parties to a dispute should be free to agree on how the dispute should be resolved; and

1-9
第 609 章

第 1 部
第 4 条

PART 1
Section 4

1-10
Cap. 609

4. 《贸法委示范法》在香港具有法律效力

《贸法委示范法》的在本条例中明文述明为有效的条文，经本条例明文规定的变通及补充后，在香港具有法律效力。

5. 本条例适用的仲裁

- (1) 在不抵触第 (2) 款的条文下，如仲裁地点是在香港，则本条例适用于根据仲裁协议（不论该协议是否在香港订立）而进行的仲裁。
- (2) 如仲裁地点是在香港以外地方，则只有本部、第 20 及 21 条、第 3A 部、第 45、60 及 61 条及第 10 部适用于有关仲裁。（由 2013 年第 7 号第 4 条修订）
- (3) 如任何其他条例规定，本条例适用于该其他条例所指的仲裁，则在符合以下各项的规定下，本条例（第 20(2)、(3) 及 (4)、22(1)、58 及 74(8) 及 (9) 条除外）适用于该其他条例所指的仲裁——
 - (a) 在藉第 34 条而具有效力的《贸法委示范法》第 16(1) 条中，提述就仲裁协议的存在或效力而提出的异议，须解释为就该其他条例适用于有关争议而提出的反对；
 - (b) 该其他条例当作已明文规定，附表 2 的所有条文，在 (c) 段的规限下适用；及
 - (c) 附表 2 第 2 条（如适用的话）只适用以授权将 2 项或多于 2 项的同一条例所指的仲裁程序合并处理，或同时聆讯该等程序，或以一项紧接另一项的方式，聆讯该等程序。
- (4) 就任何其他条例所指的仲裁而言，第 (3) 款只在本条例不抵触以下各项的范围内，具有效力——

- (b) that the court should interfere in the arbitration of a dispute only as expressly provided for in this Ordinance.

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

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

5. Arbitrations to which this Ordinance applies

- (1) Subject to subsection (2), this Ordinance applies to an arbitration under an arbitration agreement, whether or not the agreement is entered into in Hong Kong, if the place of arbitration is in Hong Kong.
- (2) If the place of arbitration is outside Hong Kong, only this Part, sections 20 and 21, Part 3A, sections 45, 60 and 61 and Part 10 apply to the arbitration. (*Amended 7 of 2013 s. 4*)
- (3) If any other Ordinance provides that this Ordinance applies to an arbitration under that other Ordinance, this Ordinance (other than sections 20(2), (3) and (4), 22(1), 58 and 74(8) and (9)) applies to an arbitration under that other Ordinance, subject to the following—
 - (a) a reference in article 16(1) of the UNCITRAL Model Law, given effect to by section 34, to any objections with respect to the existence or validity of the arbitration agreement is to be construed as any objections with respect to the application of that other Ordinance to the dispute in question;
 - (b) that other Ordinance is deemed to have expressly provided that, subject to paragraph (c), all the provisions in Schedule 2 apply; and

1-11
第 609 章

第 1 部
第 6 条

- (a) 该其他条例；及
- (b) 该其他条例所授权或认可的任何规则或程序。

6. 适用范围

本条例适用于政府及中央人民政府在香港特别行政区设立的机构。

PART 1
Section 6

1-12
Cap. 609

- (c) section 2 of Schedule 2 (if applicable) only applies so as to authorize 2 or more arbitral proceedings under the same Ordinance to be consolidated or to be heard at the same time or one immediately after another.
- (4) Subsection (3) has effect, in relation to an arbitration under any other Ordinance, only in so far as this Ordinance is consistent with—
 - (a) that other Ordinance; and
 - (b) any rules or procedures authorized or recognized by that other Ordinance.

6. Application

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

第 2 部

一般条文

7. **《贸法委示范法》第 1 条 (适用范围)**
第 5 条取代《贸法委示范法》第 1 条而具有效力。
8. **《贸法委示范法》第 2 条 (定义及解释规则)**
- (1) 第 2 条取代《贸法委示范法》第 2 条而具有效力。
 - (2) 为第 (1) 款的目的，在第 2 条 (第 2(5) 条除外) 中提述本条例，须解释为包括《贸法委示范法》。
 - (3) 在《贸法委示范法》的条文中——
 - (a) 提述本国，须解释为香港；
 - (b) 提述国或国家，须解释为包括香港；
 - (c) 提述不同的国家，须解释为包括香港及任何其他地方；
 - (d) 提述某条文，须解释为《贸法委示范法》的条文；及
 - (e) (藉第 9 条而具有效力的《贸法委示范法》第 2A 条除外) 提述本法，须解释为本条例。
9. **《贸法委示范法》第 2A 条 (国际渊源和一般原则)**
《贸法委示范法》第 2A 条具有效力，其文本列出如下——

PART 2

GENERAL PROVISIONS

7. **Article 1 of UNCITRAL Model Law (Scope of application)**
Section 5 has effect in substitution for article 1 of the UNCITRAL Model Law.
8. **Article 2 of UNCITRAL Model Law (Definitions and rules of interpretation)**
- (1) Section 2 has effect in substitution for article 2 of the UNCITRAL Model Law.
 - (2) For the purposes of subsection (1), a reference to this Ordinance in section 2 (other than section 2(5)) is to be construed as including the UNCITRAL Model Law.
 - (3) In the provisions of the UNCITRAL Model Law—
 - (a) a reference to this State is to be construed as Hong Kong;
 - (b) a reference to a State is to be construed as including Hong Kong;
 - (c) a reference to different States is to be construed as including Hong Kong and any other place;
 - (d) a reference to an article is to be construed as an article of the UNCITRAL Model Law; and
 - (e) (other than in article 2A of the UNCITRAL Model Law, given effect to by section 9) a reference to this Law is to be construed as this Ordinance.
9. **Article 2A of UNCITRAL Model Law (International origin and general principles)**

“第 2A 条. 国际渊源和一般原则

- (1) 在解释本法时，应考虑到其国际渊源和促进其统一适用及遵循诚信原则的必要性。
- (2) 与本法所管辖的事项有关的问题，在本法中未予明确解决的，应依照本法所基于的一般原则加以解决。”。

10. 《贸法委示范法》第 3 条 (收到书面通讯)

- (1) 《贸法委示范法》第 3 条具有效力，其文本列出如下——

“第 3 条. 收到书面通讯

- (1) 除非当事人另有约定：
 - (a) 任何书面通讯，经当面递交收件人，或投递到收件人的营业地点、惯常住所或通信地址的，或经合理查询不能找到上述任一地点而以挂号信或能提供作过投递企图的其他任何方式投递到收件人最后一个为人所知的营业地点、惯常住所或通信地址的，视为已经收到；
 - (b) 通讯视为已于以上述方式投递之日收到。
- (2) 本条规定不适用于法院程序中的通讯。”。

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

“Article 2A. International origin and general principles

- (1) In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.
- (2) Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.”.

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

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

“Article 3. Receipt of written communications

- (1) Unless otherwise agreed by the parties:
 - (a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the

2-5
第 609 章

第 2 部
第 11 条

- (2) 在不影响第 (1) 款的原则下，如书面通讯（法院程序的通讯除外）以任何能够将资料记录及传送给收件人的方法发送，则该通讯当作已在它如此发送当日收到。
- (3) 只有在有收件人收到有关通讯的纪录的情况下，第 (2) 款方适用。

11. 《贸法委示范法》第 4 条（放弃提出异议的权利）
《贸法委示范法》第 4 条具有效力，其文本列出如下——

“第 4 条. 放弃提出异议的权利

一方当事人知道本法中当事人可以背离的任何规定或仲裁协议规定的任何要求未得到遵守，但仍继续进行仲裁而没有不过分迟延地或在为此订有时限的情况下没有在此时限内对此种不遵守情事提出异议的，应视为已放弃其提出异议权利。”。

12. 《贸法委示范法》第 5 条（法院干预的限度）

PART 2
Section 11

2-6
Cap. 609

addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;

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

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

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

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

11. Article 4 of UNCITRAL Model Law (Waiver of right to object)
Article 4 of the UNCITRAL Model Law, the text of which is set out below, has effect—

“Article 4. Waiver of right to object

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

12. Article 5 of UNCITRAL Model Law (Extent of court

《贸法委示范法》第 5 条具有效力，其文本列出如下——

“第 5 条. 法院干预的限度

由本法管辖的事情，任何法院不得干预，除非本法有此规定。”。

13. **《贸法委示范法》第 6 条 (法院或其他机构对仲裁予以协助和监督的某种职责)**

- (1) 第 (2) 至 (6) 款取代《贸法委示范法》第 6 条而具有效力。
- (2) 藉第 24 条而具有效力的《贸法委示范法》第 11(3) 或 (4) 条所提述的法院或其他机构的职能，由香港国际仲裁中心执行。
- (3) 在获得终审法院首席法官批准后，香港国际仲裁中心可订立规则，以便利执行第 23(3)、24 或 32(1) 条所指的该中心的职能。
- (4) 藉——
 - (a) 第 26 条而具有效力的《贸法委示范法》第 13(3) 条所提述的法院或其他机构的职能；或
 - (b) 第 27 条而具有效力的《贸法委示范法》第 14(1) 条所提述的法院或其他机构的职能，
 由原讼法庭执行。
- (5) 藉——
 - (a) 第 34 条而具有效力的《贸法委示范法》第 16(3) 条所提述的法院的职能；或
 - (b) 第 81 条而具有效力的《贸法委示范法》第 34(2) 条所提述的法院的职能，

intervention)

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

“Article 5. Extent of court intervention

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

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

- (1) Subsections (2) to (6) have effect in substitution for article 6 of the UNCITRAL Model Law.
- (2) The functions of the court or other authority referred to in article 11(3) or (4) of the UNCITRAL Model Law, given effect to by section 24, are to be performed by the HKIAC.
- (3) The HKIAC may, with the approval of the Chief Justice, make rules to facilitate the performance of its functions under section 23(3), 24 or 32(1).
- (4) The functions of the court or other authority referred to in—
 - (a) article 13(3) of the UNCITRAL Model Law, given effect to by section 26; or
 - (b) article 14(1) of the UNCITRAL Model Law, given effect to by section 27,
 are to be performed by the Court.
- (5) The functions of the court referred to in—
 - (a) article 16(3) of the UNCITRAL Model Law, given effect to by section 34; or

2-9
第 609 章

第 2 部
第 14 条

由原讼法庭执行。

- (6) 藉第 55 条而具有效力的《贸法委示范法》第 27 条所提述的管辖法院的职能，由原讼法庭执行。

14. 《时效条例》及其他时效法规适用于仲裁

- (1) 《时效条例》(第 347 章) 及任何其他关乎诉讼时效的条例(“时效法规”), 均适用于仲裁, 犹如它们适用于法院的诉讼一样。
- (2) 为施行第 (1) 款, 在时效法规中提述提出诉讼, 就仲裁而言, 须解释为展开仲裁程序。
- (3) 凡仲裁协议规定任何事宜须提交仲裁, 而该协议有任何条款, 表明诉讼因由不可在根据该协议作出裁决前就该项事宜产生, 则尽管有该条款, 为施行时效法规 (不论是在其适用于仲裁或其他法律程序方面), 诉讼因由须当作在如非因该条款则本会已就该项事宜产生之时产生。
- (4) 如法院命令撤销某裁决, 则在计算时效法规所订明的就提交仲裁的事宜展开法律程序 (包括仲裁程序) 的时限时, 在 ——
 - (a) 展开仲裁程序; 与
 - (b) 该法院撤销该裁决的命令的日期, 之间的期间, 不得计算在内。

PART 2
Section 14

2-10
Cap. 609

- (b) article 34(2) of the UNCITRAL Model Law, given effect to by section 81, are to be performed by the Court.

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

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

- (1) The Limitation Ordinance (Cap. 347) and any other Ordinance relating to the limitation of actions (“limitation enactments”) apply to arbitrations as they apply to actions in the court.
- (2) For the purposes of subsection (1), a reference in a limitation enactment to bringing an action is to be construed as, in relation to an arbitration, commencing the arbitral proceedings.
- (3) Despite any term in an arbitration agreement to the effect that no cause of action may accrue in respect of any matter required by the agreement to be submitted to arbitration until an award is made under the agreement, the cause of action is, for the purposes of the limitation enactments (whether in their application to arbitrations or to other proceedings), deemed to accrue in respect of that matter at the time when it would have accrued but for that term.
- (4) If a court orders that an award is to be set aside, the period between—
 - (a) the commencement of the arbitral proceedings; and
 - (b) the date of the order of the court setting aside the award, must be excluded in computing the time prescribed by a limitation enactment for the commencement of proceedings

15. 法院将互争权利诉讼的争论点转介仲裁

- (1) 如 ——
- (a) 藉互争权利诉讼寻求济助，而法院已批给该济助；及
- (b) 在该互争权利诉讼的法律程序中的申索人之间，有就任何在他们之间的争论点订立的仲裁协议，
- 则除第 (2) 款另有规定外，批给该济助的法院，须指示按照该协议裁定该争论点。
- (2) 如情况是申索人就有关争论点提出的法律程序不会被搁置，则法院可拒绝根据第 (1) 款作出指示。
- (3) 如法院拒绝根据第 (1) 款作出指示，则在仲裁协议中任何规定裁决是就有关争论点提出法律程序的先决条件的条文，并不影响法院裁定该争论点。
- (4) 任何人不得针对第 (1) 款所指的法院指示提出上诉。
- (5) 凡法院根据第 (2) 款作出决定，则须获该法院许可，方可针对该决定提出上诉。

16. 以非公开聆讯方式进行聆讯的法律程序

- (1) 除第 (2) 款另有规定外，在法院进行的本条例所指的法律程序的聆讯，须以非公开聆讯方式进行。
- (2) 如 ——
- (a) 任何一方提出申请；或

(including arbitral proceedings) with respect to the matter submitted to arbitration.

15. Reference of interpleader issue to arbitration by court

- (1) If—
- (a) relief by way of interpleader is granted by a court; and
- (b) there is an arbitration agreement between the claimants in the interpleader proceedings in respect of any issue between those claimants,
- the court granting the relief must, subject to subsection (2), direct that the issue is to be determined in accordance with the agreement.
- (2) The court may refuse to make a direction under subsection (1) if the circumstances are such that legal proceedings brought by a claimant in respect of the issue would not be stayed.
- (3) If the court refuses to make a direction under subsection (1), any provision of the arbitration agreement that an award is a condition precedent to the bringing of legal proceedings in respect of the issue does not affect the determination of the issue by the court.
- (4) A direction of the court under subsection (1) is not subject to appeal.
- (5) The leave of the court making a decision under subsection (2) is required for any appeal from that decision.

16. Proceedings to be heard otherwise than in open court

- (1) Subject to subsection (2), proceedings under this Ordinance in the court are to be heard otherwise than in open court.
- (2) The court may order those proceedings to be heard in open court—
- (a) on the application of any party; or

(b) 法院在任何个别个案中，信纳上述法律程序应在公开法庭进行聆讯，

法院可命令该法律程序在公开法庭进行聆讯。

(3) 任何人不得针对第 (2) 款所指的法院命令提出上诉。

17. 对以非公开聆讯方式进行聆讯的法律程序的报导的限制

(1) 本条适用于在法院以非公开聆讯方式进行聆讯的、本条例所指的法律程序(“非公开法院程序”)。

(2) 法院在聆讯非公开法院程序时，须应任何一方的申请，作出哪些关乎该程序的资料(如有的话)可予发表的指示。

(3) 除非符合以下条件，否则法院不得作出准许发表资料的指示——

(a) 所有各方均同意该等资料可予发表；或

(b) 法院信纳如发表该等资料的话，并不会透露任何一方合理地希望保密的任何事宜(包括任何一方的身分)。

(4) 尽管有第 (3) 款的规定，如法院——

(a) 就非公开法院程序作出判决；及

(b) 认为该判决具有重大法律意义，

法院须指示该判决的报告可于法律汇报及专业刊物发表。

(5) 如法院根据第 (4) 款指示，判决的报告可予发表，但任何一方合理地希望隐藏该等报告中的任何事宜(包括他是该方的事实)，则法院须应该方的申请——

(a) 就采取何种行动以隐藏该等报告中的该项事宜，作出指示；及

(b) (如法院认为，按照根据 (a) 段作出的指示而发表的报告，依然相当可能会透露该项事宜) 指示在某段限期内不得发表该报告，该限期由法院指示，但不得超过 10 年。

(b) if, in any particular case, the court is satisfied that those proceedings ought to be heard in open court.

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

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

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

(2) A court in which closed court proceedings are being heard must, on the application of any party, make a direction as to what information, if any, relating to the proceedings may be published.

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

(a) all parties agree that the information may be published; or

(b) the court is satisfied that the information, if published, would not reveal any matter (including the identity of any party) that any party reasonably wishes to remain confidential.

(4) Despite subsection (3), if—

(a) a court gives a judgment in respect of closed court proceedings; and

(b) the court considers that judgment to be of major legal interest,

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

2-15
第 609 章

第 2 部
第 18 条

- (6) 任何人不得针对本条所指的法院指示提出上诉。

18. 禁止披露关乎仲裁程序及裁决的资料

- (1) 除非各方另有协议，否则任何一方不得发表、披露或传达——
- (a) 任何关乎仲裁协议所指的仲裁程序的资料；或
 - (b) 任何关乎在该仲裁程序中作出的裁决的资料。
- (2) 如有以下情况，第 (1) 款并不禁止任何一方作出该款所提述的资料发表、披露或传达——
- (a) 该项发表、披露或传达，是——
 - (i) 为保障或体现有关一方的法律权利或利益；或
 - (ii) 为强制执行或质疑该款所提述的裁决，而在香港或香港以外地方的法院或其他司法当局的法律程序中作出的；

PART 2
Section 18

2-16
Cap. 609

- (5) If a court directs under subsection (4) that reports of a judgment may be published, but any party reasonably wishes to conceal any matter in those reports (including the fact that the party was such a party), the court must, on the application of the party—
- (a) make a direction as to the action to be taken to conceal that matter in those reports; and
 - (b) if the court considers that a report published in accordance with the direction made under paragraph (a) would still be likely to reveal that matter, direct that the report may not be published until after the end of a period, not exceeding 10 years, that the court may direct.
- (6) A direction of the court under this section is not subject to appeal.

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

- (1) Unless otherwise agreed by the parties, no party may publish, disclose or communicate any information relating to—
- (a) the arbitral proceedings under the arbitration agreement; or
 - (b) an award made in those arbitral proceedings.
- (2) Nothing in subsection (1) prevents the publication, disclosure or communication of information referred to in that subsection by a party—
- (a) if the publication, disclosure or communication is made—
 - (i) to protect or pursue a legal right or interest of the party; or

2-17
第 609 章

第 2 部
第 18 条

- (b) 该项发表、披露或传达，是向任何政府团体、规管团体、法院或审裁处作出的，而在法律上，有关一方是有责任作出该项发表、披露或传达的；或
 - (c) 该项发表、披露或传达，是向任何一方的专业顾问或任何其他顾问作出的。
-

PART 2
Section 18

2-18
Cap. 609

- (ii) to enforce or challenge the award referred to in that subsection,
in legal proceedings before a court or other judicial authority in or outside Hong Kong;
 - (b) if the publication, disclosure or communication is made to any government body, regulatory body, court or tribunal and the party is obliged by law to make the publication, disclosure or communication; or
 - (c) if the publication, disclosure or communication is made to a professional or any other adviser of any of the parties.
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第 3 部

仲裁协议

19. 《贸法委示范法》第 7 条 (仲裁协议的定义和形式)

- (1) 《贸法委示范法》第 7 条的备选案文一具有效力，其文本列出如下——
- “备选案文一

第 7 条. 仲裁协议的定义和形式

- (1) “仲裁协议”是指当事人同意将他们之间一项确定的契约性或非契约性的法律关系中已经发生或可能发生的一切争议或某些争议交付仲裁的协议。仲裁协议可以采取合同中的仲裁条款形式或单独的协议形式。
- (2) 仲裁协议应为书面形式。
- (3) 仲裁协议的内容以任何形式记录下来的，即为书面形式，无论该仲裁协议或合同是以口头方式、行为方式还是其他方式订立的。
- (4) 电子通信所含信息可以调取以备日后查用的，即满足了仲裁协议的书面形式要求；“电子通信”是指当事人以数据电文方式发出的任何通信；“数据电文”是指经由电子手段、磁化手段、光学手段或类似手段生成、发送、接收或储存的信息，这些手段包括但不限于电子数据交换、电子邮件、电报、电传或传真。

PART 3

ARBITRATION AGREEMENT

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

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

Article 7. Definition and form of arbitration agreement

- (1) “Arbitration agreement” is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- (2) The arbitration agreement shall be in writing.
- (3) An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means.
- (4) The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference; “electronic communication” means any communication that

3-3
第 609 章

第 3 部
第 20 条

- (5) 另外，仲裁协议如载于相互往来的索赔声明和抗辩声明中，且一方当事人声称有协议而另一方当事人不予否认的，即为书面协议。
- (6) 在合同中提及载有仲裁条款的任何文件的，只要此种提及可使该仲裁条款成为该合同一部分，即构成书面形式的仲裁协议。”。
- (2) 在不影响第 (1) 款的原则下，仲裁协议如符合以下规定，即属以书面订立——
- (a) 该协议是载于文件之内的，不论该文件是否由该协议的各方签署；或
- (b) 该协议虽然并非以书面订立，但却是在该协议的每一方的授权下，由该协议的其中一方或由第三者记录下来的。
- (3) 如在协议中提述书面形式的仲裁条款，而该项提述的效果是使该条款成为该协议的一部分的，该项提述即构成仲裁协议。

20. 《贸法委示范法》第 8 条 (仲裁协议和向法院提出的实体性申诉)

- (1) 《贸法委示范法》第 8 条具有效力，其文本列出如下——

“第 8 条. 仲裁协议和向法院提出的实体性申诉

PART 3
Section 20

3-4
Cap. 609

- the parties make by means of data messages; “data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.
- (5) Furthermore, an arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.
- (6) The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.”.
- (2) Without affecting subsection (1), an arbitration agreement is in writing if—
- (a) the agreement is in a document, whether or not the document is signed by the parties to the agreement; or
- (b) the agreement, although made otherwise than in writing, is recorded by one of the parties to the agreement, or by a third party, with the authority of each of the parties to the agreement.
- (3) A reference in an agreement to a written form of arbitration clause constitutes an arbitration agreement if the reference is such as to make that clause part of the agreement.

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

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

“Article 8. Arbitration agreement and substantive

- (1) 就仲裁协议的标的向法院提起诉讼时，一方当事人不迟于其就争议实体提出第一次申述时要求仲裁的，法院应让当事人诉诸仲裁，除非法院认定仲裁协议无效、不能实行或不能履行。
- (2) 提起本条第 (1) 款所指诉讼后，在法院对该问题未决期间，仍然可以开始或继续进行仲裁程序，并可作出裁决。”。
- (2) 如仲裁协议的标的事宜中的争议，涉及在根据《劳资审裁处条例》(第 25 章) 第 3 条(审裁处的设立) 设立的劳资审裁处的司法管辖权内的申索或其他争议，而有人并已向法院提出诉讼，则如一方向该法院提出请求，而该法院信纳以下情况，该法院可将各方转介仲裁——
 - (a) 并无充分理由支持不应按照仲裁协议将各方转介仲裁；及
 - (b) 要求仲裁的一方在提出诉讼时，已准备和愿意作出一切为使仲裁恰当地进行而需要的事情，并一直准备和愿意作出该等事情。
- (3) 第 (1) 款在《管制免责条款条例》(第 71 章) 第 15 条(仲裁协议) 的规限下具有效力。
- (4) 如法院拒绝将各方转介仲裁，则在仲裁协议中任何规定裁决是就任何事宜提出法律程序的先决条件的条文，就该法律程序而言均属无效。
- (5) 如法院将诉讼的各方转介仲裁，法院须作出命令，搁置该诉讼的法律程序。
- (6) 如属海事法律程序，则——
 - (a) 尽管有第 (1) 及 (5) 款的规定，将各方转介仲裁及搁置该法律程序的命令，可在附带须为履行仲裁中作出的任何裁决提供保证的条件下作出；或
 - (b) (凡在该法律程序中，财产已被扣押，或已为防止财产被扣押或为使被扣押的财产得以发还，而提供保释金或其他保证) 如法院根据第 (5) 款作出命令，搁

claim before court

- (1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.
- (2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.”.
- (2) If a dispute in the matter which is the subject of an arbitration agreement involves a claim or other dispute that is within the jurisdiction of the Labour Tribunal established by section 3 (Establishment of tribunal) of the Labour Tribunal Ordinance (Cap. 25), the court before which an action has been brought may, if a party so requests, refer the parties to arbitration if it is satisfied that—
 - (a) there is no sufficient reason why the parties should not be referred to arbitration in accordance with the arbitration agreement; and
 - (b) the party requesting arbitration was ready and willing at the time the action was brought to do all things necessary for the proper conduct of the arbitration, and remains so.
- (3) Subsection (1) has effect subject to section 15 (Arbitration agreements) of the Control of Exemption Clauses Ordinance (Cap. 71).

置该法律程序，该法院可命令将被扣押的财产或将提供的保释金或保证，予以保留，以作为履行仲裁中作出的任何裁决的保证。

- (7) 除法院规则订定的任何条文另有规定外，并在经必要的变通后，适用于依据第 (6) 款所指的命令而保留的财产、保释金或保证的法律及常规，与假使该财产、保释金或保证是为作出该命令的法院的法律程序的目的而保留便会适用的法律及常规相同。
- (8) 法院如根据 ——
 - (a) 藉第 (1) 款而具有效力的《贸法委示范法》第 8 条；或
 - (b) 第 (2) 款，
 决定将各方转介仲裁，任何人不得针对该决定提出上诉。
- (9) 凡法院根据 ——
 - (a) 藉第 (1) 款而具有效力的《贸法委示范法》第 8 条；或
 - (b) 第 (2) 款，
 决定拒绝将各方转介仲裁，则须获该法院许可，方可针对该决定提出上诉。
- (10) 任何人不得针对第 (6) 款所指的法院决定或命令提出上诉。

- (4) If the court refuses to refer the parties to arbitration, any provision of the arbitration agreement that an award is a condition precedent to the bringing of legal proceedings in respect of any matter is of no effect in relation to those proceedings.
- (5) If the court refers the parties in an action to arbitration, it must make an order staying the legal proceedings in that action.
- (6) In the case of Admiralty proceedings—
 - (a) the reference of the parties to arbitration and an order for the stay of those proceedings may, despite subsections (1) and (5), be made conditional on the giving of security for the satisfaction of any award made in the arbitration; or
 - (b) if the court makes an order under subsection (5) staying those proceedings, the court may (where property has been arrested, or bail or other security has been given to prevent or obtain release from arrest, in those proceedings) order that the property arrested, or the bail or security given, be retained as security for the satisfaction of any award made in the arbitration.
- (7) Subject to any provision made by rules of court and to any necessary modifications, the same law and practice apply to the property, bail or security retained in pursuance of an order under subsection (6) as would apply if the property, bail or security retained were held for the purposes of proceedings in the court making the order.
- (8) A decision of the court to refer the parties to arbitration under—
 - (a) article 8 of the UNCITRAL Model Law, given effect to by subsection (1); or
 - (b) subsection (2),

3-9
第 609 章

第 3 部
第 21 条

PART 3
Section 21

3-10
Cap. 609

21. 《贸法委示范法》第 9 条 (仲裁协议和法院的临时措施)
《贸法委示范法》第 9 条具有效力，其文本列出如下——

“第 9 条. 仲裁协议和法院的临时措施

在仲裁程序开始前或进行期间，一方当事人请求法院采取临时保全措施和法院准予采取这种措施，并不与仲裁协议相抵触。”。

22. 协议会否因一方死亡而解除

- (1) 除非各方另有协议，否则仲裁协议并不因一方死亡而解除，而该协议可由该方的遗产代理人强制执行，或可针对该遗产代理人而强制执行。
- (2) 如某实质权利或义务凭借任何成文法则或法律规则，因有人死亡而终绝，第(1)款并不影响该法则或规则的实施。

- is not subject to appeal.
- (9) The leave of the court making a decision to refuse to refer the parties to arbitration under—
 - (a) article 8 of the UNCITRAL Model Law, given effect to by subsection (1); or
 - (b) subsection (2),
 is required for any appeal from that decision.
 - (10) A decision or order of the court under subsection (6) is not subject to appeal.

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

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

“Article 9. Arbitration agreement and interim measures by court

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

22. Whether agreement discharged by death of a party

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

3-11
第 609 章

第 3 部

PART 3
Section 22

3-12
Cap. 609

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

第 3A 部

紧急济助的强制执行

(第 3A 部由 2013 年第 7 号第 5 条增补)

22A. 释义

在本部中——

紧急仲裁员 (emergency arbitrator) 指为处理各方在仲裁庭组成前提出的紧急济助申请，而根据各方协议或采用的仲裁规则 (包括常设仲裁机构的仲裁规则) 委任的紧急仲裁员。

22B. 强制执行紧急仲裁员批给的紧急济助

- (1) 紧急仲裁员根据有关仲裁规则批给的任何紧急济助，不论是在香港或香港以外地方批给的，均可犹如具有同等效力的原讼法庭命令或指示般，以同样方式强制执行，但只有在原讼法庭许可下，方可如此强制执行。
- (2) 凡任何一方寻求强制执行在香港以外地方批给的任何紧急济助，则除非该方能显示，该济助只包含一项或多于一项短期措施 (包括强制令)，而紧急仲裁员是藉该项或该等措施，命令一方作出以下一项或多于一项事情——
 - (a) 在有关争议得以裁定之前，维持现状或恢复原状；
 - (b) 采取行动防止目前或即将对仲裁程序造成的危害或损害，或不采取可能造成这种危害或损害的行动；
 - (c) 提供一种保存资产以履行仲裁庭其后作出的裁决的方法；
 - (d) 保存可能与解决争议有关、并对解决争议具关键性的证据；

Part 3A

Enforcement of Emergency Relief

(Part 3A added 7 of 2013 s. 5)

22A. Interpretation

In this Part—

emergency arbitrator (紧急仲裁员) means an emergency arbitrator appointed under the arbitration rules (including the arbitration rules of a permanent arbitral institution) agreed to or adopted by the parties to deal with the parties' applications for emergency relief before an arbitral tribunal is constituted.

22B. Enforcement of emergency relief granted by emergency arbitrator

- (1) Any emergency relief granted, whether in or outside Hong Kong, by an emergency arbitrator under the relevant arbitration rules is enforceable in the same manner as an order or direction of the Court that has the same effect, but only with the leave of the Court.
- (2) The Court may not grant leave to enforce any emergency relief granted outside Hong Kong unless the party seeking to enforce it can demonstrate that it consists only of one or more temporary measures (including an injunction) by which the emergency arbitrator orders a party to do one or more of the following—
 - (a) maintain or restore the status quo pending the determination of the dispute concerned;
 - (b) take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;

3A-3
第 609 章

第 3A 部
第 22B 条

- (e) 就根据 (a)、(b)、(c) 或 (d) 段须作出的任何事情，提供相关连的保证；
 - (f) 就仲裁费用提供保证，
否则原讼法庭不得批予强制执行该济助的许可。
 - (3) 原讼法庭如根据第 (1) 款批予许可，可按有关紧急济助的条款，登录判决。
 - (4) 如原讼法庭决定根据第 (1) 款批予许可，或决定拒绝根据第 (1) 款批予许可，任何人不得针对该决定提出上诉。
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Part 3A
Section 22B

3A-4
Cap. 609

- (c) provide a means of preserving assets out of which a subsequent award made by an arbitral tribunal may be satisfied;
 - (d) preserve evidence that may be relevant and material to resolving the dispute;
 - (e) give security in connection with anything to be done under paragraph (a), (b), (c) or (d);
 - (f) give security for the costs of the arbitration.
 - (3) If leave is granted under subsection (1), the Court may enter judgment in terms of the emergency relief.
 - (4) A decision of the Court to grant or refuse to grant leave under subsection (1) is not subject to appeal.
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第 4 部**仲裁庭的组成***(格式变更——2015 年第 3 号编辑修订纪录)***第 1 分部 —— 仲裁员****23. 《贸法委示范法》第 10 条 (仲裁员人数)**

- (1) 《贸法委示范法》第 10(1) 条具有效力，其文本列出如下——

“第 10 条. 仲裁员人数

- (1) 当事人可以自由确定仲裁员的人数。
- (2) [不适用。]”。
- (2) 为施行第 (1) 款，各方的确定仲裁员人数的自由，包括各方的授权第三者 (包括机构) 作出该确定的权利。
- (3) 如——
- (a) 各方没有就仲裁中仲裁员人数，达成协议；及
- (b) 附表 2 第 1 条不适用，
- 则该仲裁中仲裁员人数须为 1 名或 3 名，由香港国际仲裁中心在个别个案中决定。(由 2015 年第 11 号第 3 条代替)

24. 《贸法委示范法》第 11 条 (仲裁员的指定)**Part 4****Composition of Arbitral Tribunal***(Format changes—E.R. 3 of 2015)***Division 1—Arbitrators****23. Article 10 of UNCITRAL Model Law (Number of arbitrators)**

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

“Article 10. Number of arbitrators

- (1) The parties are free to determine the number of arbitrators.
- (2) [Not applicable.]”.
- (2) For the purposes of subsection (1), the freedom of the parties to determine the number of arbitrators includes the right of the parties to authorize a third party, including an institution, to make that determination.
- (3) The number of arbitrators in an arbitration is to be either 1 or 3 as decided by the HKIAC in the particular case if—
- (a) the parties fail to agree on the number of arbitrators; and
- (b) section 1 of Schedule 2 does not apply. *(Replaced 11 of 2015 s. 3)*

24. Article 11 of UNCITRAL Model Law (Appointment of

- (1) 《贸法委示范法》第 11 条在第 13(2) 及 (3) 条的规限下具有效力，其文本列出如下 ——

“第 11 条. 仲裁员的指定

- (1) 除非当事人另有协议，不应以所属国籍为由排除任何人担任仲裁员。
- (2) 当事人可以自由约定指定一名或多名仲裁员的程序，但须遵从本条第 (4) 和 (5) 款的规定。
- (3) 未达成此种约定的，

(a) 在仲裁员为三名的仲裁中，由一方当事人指定一名仲裁员，并由如此指定的两名仲裁员指定第三名仲裁员；一方当事人在收到对方当事人提出指定仲裁员的要求后三十天内未指定仲裁员的，或两名仲裁员在被指定后三十天内未就第三名仲裁员达成协议的，经一方当事人请求，由第 6 条规定的法院或其他机构加以指定；

(b) 在独任仲裁员的仲裁中，当事人未就仲裁员达成协议的，经一方当事人请求，由第 6 条规定的法院或其他机构加以指定。

- (4) 根据当事人约定的指定程序，有下列情形之一的，

(a) 一方当事人未按这种程序规定的要求行事的，或

arbitrators)

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

“Article 11. Appointment of arbitrators

- (1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.
- (2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.

- (3) Failing such agreement,

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

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

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

(b) 当事人或两名仲裁员未能根据这种程序达成预期的协议的，或

(c) 第三人（包括机构）未履行根据此种程序所委托的任何职责的，

任何一方当事人均可请求第 6 条规定的法院或其他机构采取必要措施，除非指定仲裁员程序的协议订有确保能指定仲裁员的其他方法。

(5) 本条第 (3) 或 (4) 款交托由第 6 条规定的法院或其他机构受理的事项一经作出裁定，不得上诉。该法院或其他机构在指定仲裁员时应适当顾及当事人约定的仲裁员所需具备的任何资格，并适当顾及有可能确保指定独立和公正的仲裁员的考虑因素；在指定独任仲裁员或第三名仲裁员时，还应考虑到指定一名非当事人国籍的仲裁员的可取性。”。

(2) 在仲裁员人数为双数的仲裁中 ——

(a) 如各方未有根据藉第 (1) 款而具有效力的《贸法委示范法》第 11(2) 条，在委任仲裁员的程序方面达成协议，则每一方须委任相同数目的仲裁员；或

(b) 如 ——

(i) 一方未有按各方议定的委任程序的规定行事；或

(ii) （如属 (a) 段的情况）一方未有在收到另一方提出委任仲裁员的请求后 30 天内，根据该段委任适当数目的仲裁员，

则香港国际仲裁中心须应任何一方的请求，作出所需的委任。

(3) 在仲裁员人数为单数并且多于 3 名的仲裁中 ——

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

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

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

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

(5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.”.

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

(a) if the parties have not agreed on a procedure for appointing the arbitrators under article 11(2) of the UNCITRAL Model Law, given effect to by subsection

- (a) 如各方未有根据藉第 (1) 款而具有效力的《贸法委示范法》第 11(2) 条，在委任仲裁员的程序方面达成协议，则 ——
- (i) 每一方须委任相同数目的仲裁员；及
 - (ii) 除非各方另有协议，否则香港国际仲裁中心须委任余下的一名或多于一名仲裁员；或
- (b) 如 ——
- (i) 一方未有按各方议定的委任程序的规定行事；或
 - (ii) (如属 (a) 段的情况) 一方未有在收到另一方提出委任仲裁员的请求后 30 天内，根据该段委任适当数目的仲裁员，
- 则香港国际仲裁中心须应任何一方的请求，作出所需的委任。
- (4) 如属任何其他情况 (尤其是有多于两方的情况)，则藉第 (1) 款而具有效力的《贸法委示范法》第 11(4) 条适用，犹如它在没有委任程序方面达成协议的情况下适用一样。
- (5) 如香港国际仲裁中心凭借本条例作出任何仲裁员的委任，该项委任 ——
- (a) 须犹如它是经所有各方协议作出般具有效力；及
 - (b) 须受藉第 (1) 款而具有效力的《贸法委示范法》第 11(5) 条所规限。

- (1), each party is to appoint the same number of arbitrators; or
- (b) if—
- (i) a party fails to act as required under an appointment procedure agreed upon by the parties; or
 - (ii) in the case of paragraph (a), a party fails to appoint the appropriate number of arbitrators under that paragraph within 30 days of receipt of a request to do so from the other party,
- the HKIAC must make the necessary appointment upon a request to do so from any party.
- (3) In an arbitration with an uneven number of arbitrators greater than 3—
- (a) if the parties have not agreed on a procedure for appointing the arbitrators under article 11(2) of the UNCITRAL Model Law, given effect to by subsection (1)—
 - (i) each party is to appoint the same number of arbitrators; and
 - (ii) unless otherwise agreed by the parties, the HKIAC must appoint the remaining arbitrator or arbitrators; or
 - (b) if—
 - (i) a party fails to act as required under an appointment procedure agreed upon by the parties; or
 - (ii) in the case of paragraph (a), a party fails to appoint the appropriate number of arbitrators under that paragraph within 30 days of receipt of a request to do so from the other party,

25. 《贸法委示范法》第 12 条 (回避的理由)

《贸法委示范法》第 12 条具有效力，其文本列出如下 ——

“第 12 条. 回避的理由

(1) 在被询及有关可能被指定为仲裁员之事时，被询问人应该披露可能引起对其公正性或独立性产生正当怀疑的任何情况。仲裁员自被指定之时起并在整个仲裁程序进行期间，应毫不迟延地向各方当事人披露任何此类情况，除非其已将此情况告知各方当事人。

(2) 只有存在引起对仲裁员的公正性或独立性产生正当怀疑的情况或仲裁员不具备当事人约定的资格时，才可以申请仲裁员回避。当事人只有根据其作出指定之后知悉的理由，才可以对其所指定的或其所参与指定的仲裁员提出回避。”。

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

- (4) In any other case (in particular, if there are more than 2 parties) article 11(4) of the UNCITRAL Model Law, given effect to by subsection (1), applies as in the case of a failure to agree on an appointment procedure.
- (5) If any appointment of an arbitrator is made by the HKIAC by virtue of this Ordinance, the appointment—
 - (a) has effect as if it were made with the agreement of all parties; and
 - (b) is subject to article 11(5) of the UNCITRAL Model Law, given effect to by subsection (1).

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

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

“Article 12. Grounds for challenge

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

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party

26. 《贸法委示范法》第 13 条 (申请回避的程序)

- (1) 《贸法委示范法》第 13 条在第 13(4) 条的规限下具有效力，其文本列出如下 ——

“第 13 条. 申请回避的程序

- (1) 当事人可自由约定申请仲裁员回避的程序，但须遵从本条第 (3) 款的规定。
- (2) 未达成此种约定的，拟对仲裁员提出回避申请的当事人应在知悉仲裁庭的组成或知悉第 12(2) 条所指的任何情况后十五天内向仲裁庭提出书面陈述，说明提出回避申请的理由。除非被申请回避的仲裁员辞职或对方当事人同意所提出的回避，仲裁庭应就是否回避作出决定。
- (3) 根据当事人约定的任何程序或本条第 (2) 款的程序而提出的回避不成立的，提出回避申请的一方当事人可以在收到驳回其所提出的回避申请的决定通知后三十天内，请求第 6 条规定的法院或其他机构就是否回避作出决定，该决定不得上诉；在对该请求未决期间，仲裁庭包括被申请回避的仲裁员可以继续仲裁程序和作出裁决。”
- (2) 如原讼法庭被要求就对某仲裁员提出的质疑作出决定，则在该请求仍待决期间内，原讼法庭可拒绝根据第 84 条

may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.”.

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

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

“Article 13. Challenge procedure

- (1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.
- (2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in article 12(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.
- (3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal,

4-13
第 609 章

第 4 部 —— 第 1 分部
第 27 条

就任何由包括该仲裁员在内的仲裁庭在该期间内作出的裁决，批予强制执行的许可。

- (3) 根据藉第 (1) 款而具有效力的《贸法委示范法》第 13(2) 条提出的质疑所针对的仲裁员，如认为在有关质疑的情况下属适当的话，有权辞去仲裁员一职。
- (4) 如有以下情况，遭质疑的仲裁员的任命，即根据藉第 (1) 款而具有效力的《贸法委示范法》第 13 条终止 ——
 - (a) 该仲裁员辞职；
 - (b) 各方同意该项质疑；
 - (c) 仲裁庭判决质疑得直，而且没有人请求原讼法庭就该项质疑作出决定；或
 - (d) 原讼法庭应就该项质疑作出决定的请求，判决质疑得直。
- (5) 如原讼法庭判决质疑得直，原讼法庭可撤销有关的第 (2) 款所提述的裁决。

27. 《贸法委示范法》第 14 条 (未行事或不能行事)

《贸法委示范法》第 14 条在第 13(4) 条的规限下具有效力，其文本列出如下 ——

“第 14 条. 未行事或不能行事

Part 4—Division 1
Section 27

4-14
Cap. 609

including the challenged arbitrator, may continue the arbitral proceedings and make an award.”.

- (2) During the period that a request for the Court to decide on a challenge is pending, the Court may refuse to grant leave under section 84 for the enforcement of any award made during that period by the arbitral tribunal that includes the challenged arbitrator.
- (3) An arbitrator who is challenged under article 13(2) of the UNCITRAL Model Law, given effect to by subsection (1), is entitled, if the arbitrator considers it appropriate in the circumstances of the challenge, to withdraw from office as an arbitrator.
- (4) The mandate of a challenged arbitrator terminates under article 13 of the UNCITRAL Model Law, given effect to by subsection (1), if—
 - (a) the arbitrator withdraws from office;
 - (b) the parties agree to the challenge;
 - (c) the arbitral tribunal upholds the challenge and no request is made for the Court to decide on the challenge; or
 - (d) the Court, upon request to decide on the challenge, upholds the challenge.
- (5) If the Court upholds the challenge, the Court may set aside the award referred to in subsection (2).

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

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

“Article 14. Failure or impossibility to act

(1) 仲裁员无履行职责的法律行为能力或事实行为能力或者由于其他原因未能毫无不过分迟延地行事的，其若辞职或者当事人约定其委任终止的，其委任即告终止。但对上述任何原因仍有争议的，任何一方当事人可以请求第 6 条规定的法院或其他机构就是否终止委任作出决定，该决定不得上诉。

(2) 依照本条或第 13(2) 条一名仲裁员辞职或者一方当事人同意终止对一名仲裁员的委任的，并不意味着本条或第 12(2) 条所指任何理由的有效性得到承认。”。

28. **《贸法委示范法》第 15 条 (指定替代仲裁员)**
《贸法委示范法》第 15 条具有效力，其文本列出如下——

“第 15 条. 指定替代仲裁员

依照第 13 或 14 条的规定或因为仲裁员由于其他任何原因辞职或因为当事人约定解除仲裁员的委任或在其他任何情况下终止仲裁员的委任的，应当依照指定所被替换的仲裁员时适用的规则指定替代仲裁员。”。

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

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

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

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

“Article 15. *Appointment of substitute arbitrator*

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

29. 仲裁员或委任仲裁员的人的死亡

- (1) 仲裁员的权限属个人的，其任命于其死亡时终止。
- (2) 除非各方另有协议，否则仲裁员的权限，并不因委任他
的人的死亡而撤销。

30. 公断人的委任

除非各方另有协议，否则在仲裁员人数为双数的仲裁中，仲裁员可在本身获委任后，随时委任一名公断人。

31. 公断人在仲裁程序中的职能

- (1) 各方有就公断人的职能为何达成协议的自由，尤其是——
 - (a) 公断人是否须出席仲裁程序；及
 - (b) 公断人于何时及在什么范围内，替代仲裁员作为仲裁庭，并具有作出命令、指示及裁决的权力。
- (2) 如各方没有任何上述协议，或在各方没有任何上述协议的范围内，各仲裁员有就公断人的职能达成协议的自由。
- (3) 除各方或各仲裁员另有协议外，第 (4) 至 (11) 款适用。
- (4) 公断人在获委任后，须出席仲裁程序。
- (5) 如仲裁员获提供文件和其他材料，则公断人须获提供相同的文件和材料。
- (6) 除第 (9) 款另有规定外，除非各仲裁员不能够就关乎提交仲裁的争议的事宜达成协议，否则各命令、指示及裁决均须由仲裁员作出。
- (7) 如各仲裁员不能够就关乎提交仲裁的争议的事宜达成协议，他们须立即以书面通知，将该事实通知各方及公断

29. Death of arbitrator or person appointing arbitrator

- (1) The authority of an arbitrator is personal and the mandate of the arbitrator terminates on the arbitrator's death.
- (2) Unless otherwise agreed by the parties, the death of the person by whom an arbitrator was appointed does not revoke the arbitrator's authority.

30. Appointment of umpire

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

31. Functions of umpire in arbitral proceedings

- (1) The parties are free to agree what the functions of an umpire are to be and, in particular—
 - (a) whether the umpire is to attend the arbitral proceedings; and
 - (b) when, and the extent to which, the umpire is to replace the arbitrators as the arbitral tribunal with the power to make orders, directions and awards.
- (2) If or to the extent that there is no such agreement of the parties, the arbitrators are free to agree on the functions of the umpire.
- (3) Subsections (4) to (11) apply subject to any agreement of the parties or the arbitrators.
- (4) After an umpire is appointed, the umpire must attend the arbitral proceedings.
- (5) The umpire must be supplied with the same documents and other materials as are supplied to the arbitrators.

- 人，而除第 (9)(b) 款另有规定外，在该情况下，公断人须只就该项事宜替代仲裁员作为仲裁庭，并具有作出命令、指示及裁决的权力，犹如该公断人是独任仲裁员一样。
- (8) 如各仲裁员不能够就关乎提交仲裁的争议的事宜达成协议，但 ——
- (a) 他们没有就该事实给予通知；或
- (b) 他们其中任何人没有参与共同给予通知，
- 则任何一方可向原讼法庭申请，而原讼法庭可决定如下公断人只就该项事宜替代仲裁员作为仲裁庭，并具有作出命令、指示及裁决的权力，犹如该公断人是独任仲裁员一样。
- (9) 凡各仲裁员不能够就关乎提交仲裁的争议的事宜达成协议，则尽管由公断人替代作为仲裁庭，仲裁员 ——
- (a) 如认为仍然由他们就关乎该争议的其他事宜作出命令、指示及裁决，会节省费用，则可作出该命令、指示及裁决；或
- (b) 可将整项争议转介给公断人作仲裁。
- (10) 为施行本条，如任何一位仲裁员认为在关乎提交仲裁的争议的某事宜上，他不同意另外的一位仲裁员的意见，或不同意其他仲裁员中任何一位的意见，各仲裁员即属不能够就该项事宜达成协议。
- (11) 任何人不得针对第 (8) 款所指的原讼法庭决定提出上诉。

- (6) Orders, directions and awards are to be made by the arbitrators unless, subject to subsection (9), the arbitrators cannot agree on a matter relating to the dispute submitted to arbitration.
- (7) If the arbitrators cannot agree on a matter relating to the dispute submitted to arbitration, they must forthwith give notice of that fact in writing to the parties and the umpire, in which case the umpire is to replace the arbitrators as the arbitral tribunal with the power to make orders, directions and awards, in respect of that matter only, subject to subsection (9)(b), as if the umpire were the sole arbitrator.
- (8) If the arbitrators cannot agree on a matter relating to the dispute submitted to arbitration but—
- (a) they fail to give notice of that fact; or
- (b) any of them fails to join in the giving of notice,
- any party may apply to the Court which may decide that the umpire is to replace the arbitrators as the arbitral tribunal with the power to make orders, directions and awards, in respect of that matter only, as if the umpire were the sole arbitrator.
- (9) Despite the replacement by the umpire as the arbitral tribunal in respect of a matter, on which the arbitrators cannot agree, relating to the dispute submitted to arbitration, the arbitrators may—
- (a) still make orders, directions and awards in respect of the other matters relating to the dispute if they consider that it would save costs by doing so; or
- (b) refer the entirety of the dispute to the umpire for arbitration.
- (10) For the purposes of this section, the arbitrators cannot agree on a matter relating to the dispute submitted to arbitration if any one of the arbitrators, in that arbitrator's view, disagrees

第 2 分部 —— 调解员**32. 调解员的委任**

- (1) 如 ——
- (a) 任何仲裁协议规定由并非协议一方的人委任调解员；而
 - (b) 该人 ——
 - (i) 拒绝作出该项委任；或
 - (ii) 未有在仲裁协议指明的时间内作出该项委任，或（如协议并无指明时间）未有在任何一方提出作出该项委任的请求后的一段合理时间内作出该项委任，
- 则香港国际仲裁中心可应任何一方的申请，委任调解员。
- (2) 任何人不得针对香港国际仲裁中心根据第 (1) 款作出的委任提出上诉。
- (3) 如任何仲裁协议规定委任调解员，并进一步规定，倘在调解程序中未能够达成各方接受的和解，即由该名获如此委任为调解员的人出任仲裁员 ——
- (a) 则不可仅以该人先前曾在关乎提交仲裁的争议的某些或全部事宜相关连的情况下出任调解员为理由，而反对该人出任仲裁员，或反对由该人进行仲裁程序；或
 - (b) 如该人拒绝出任仲裁员，则除非仲裁协议另有表明，否则任何其他获委任为仲裁员的人无须先行出任调解员。

with the other arbitrator or any of the other arbitrators over that matter.

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

Division 2—Mediators**32. Appointment of mediator**

- (1) If—
- (a) any arbitration agreement provides for the appointment of a mediator by a person who is not one of the parties; and
 - (b) that person—
 - (i) refuses to make the appointment; or
 - (ii) does not make the appointment within the time specified in the arbitration agreement or, if no time is so specified, within a reasonable time after being requested by any party to make the appointment,
- the HKIAC may, on the application of any party, appoint a mediator.
- (2) An appointment made by the HKIAC under subsection (1) is not subject to appeal.
- (3) If any arbitration agreement provides for the appointment of a mediator and further provides that the person so appointed is to act as an arbitrator in the event that no settlement acceptable to the parties can be reached in the mediation proceedings—
- (a) no objection may be made against the person's acting as an arbitrator, or against the person's conduct of the arbitral proceedings, solely on the ground that the person had acted previously as a mediator in connection

33. 仲裁员出任调解员的权力

- (1) 如所有各方以书面同意，仲裁员可在仲裁程序展开之后出任调解员，直至任何一方以书面撤回同意为止。
- (2) 如仲裁员出任调解员，则仲裁程序须予搁置，以利便调解程序进行。
- (3) 出任调解员的仲裁员 ——
 - (a) 可与各方集体或个别通讯；及
 - (b) 须将他从一方取得的资料视为机密处理，但如该方另外同意或第 (4) 款适用，则属例外。
- (4) 如 ——
 - (a) 仲裁员在由他以调解员身分进行的调解程序中，从一方取得机密资料；及
 - (b) 该调解程序在没有达成各方接受的和解下终止，则该仲裁员在恢复进行仲裁程序之前，须向所有其他各方尽量披露该等资料中他认为对仲裁程序具关键性的资料。
- (5) 不可仅以仲裁员先前曾按照本条出任调解员为理由，而反对由他进行仲裁程序。

with some or all of the matters relating to the dispute submitted to arbitration; or

- (b) if the person declines to act as an arbitrator, any other person appointed as an arbitrator is not required first to act as a mediator unless it is otherwise expressed in the arbitration agreement.

33. Power of arbitrator to act as mediator

- (1) If all parties consent in writing, and for so long as no party withdraws the party's consent in writing, an arbitrator may act as a mediator after the arbitral proceedings have commenced.
- (2) If an arbitrator acts as a mediator, the arbitral proceedings must be stayed to facilitate the conduct of the mediation proceedings.
- (3) An arbitrator who is acting as a mediator—
 - (a) may communicate with the parties collectively or separately; and
 - (b) must treat the information obtained by the arbitrator from a party as confidential, unless otherwise agreed by that party or unless subsection (4) applies.
- (4) If—
 - (a) confidential information is obtained by an arbitrator from a party during the mediation proceedings conducted by the arbitrator as a mediator; and
 - (b) those mediation proceedings terminate without reaching a settlement acceptable to the parties,

the arbitrator must, before resuming the arbitral proceedings, disclose to all other parties as much of that information as the arbitrator considers is material to the arbitral proceedings.
- (5) No objection may be made against the conduct of the arbitral proceedings by an arbitrator solely on the ground that the

4-25

第 4 部 —— 第 2 分部

第 609 章

Part 4—Division 2

4-26

Section 33

Cap. 609

arbitrator had acted previously as a mediator in accordance with this section.

第 5 部**仲裁庭的管辖权****34. 《贸法委示范法》第 16 条 (仲裁庭对其管辖权作出裁定的权力)**

- (1) 《贸法委示范法》第 16 条在第 13(5) 条的规限下具有效力，其文本列出如下 ——

“第 16 条. 仲裁庭对其管辖权作出裁定的权力

- (1) 仲裁庭可以对其管辖权，包括对关于仲裁协议的存在或效力的任何异议作出裁定。为此目的，构成合同一部分的仲裁条款应当视为独立于合同其他条款的一项协议。仲裁庭作出关于合同无效的决定，在法律上不导致仲裁条款无效。
- (2) 有关仲裁庭无管辖权的抗辩不得在提出答辩书之后提出。一方当事人指定或参与指定仲裁员的事实，不妨碍其提出此种抗辩。有关仲裁庭超越其权限范围的抗辩，应当在仲裁程序中出现被指称的越权事项时立即提出。在其中任何一种情况下，仲裁庭如认为迟延有正当理由的，可准许推迟提出抗辩。
- (3) 仲裁庭可以根据案情将本条第 (2) 款所指抗辩作为一个初步问题裁定或在实体裁决中裁定。仲裁庭作为一个初步问题裁定其拥有管辖权的，任何一方当事人可在收到裁定通知后三十天内请求第 6 条规定的法院对此事项作出决定，该决定不得上诉；在对该请求未决期间，仲裁庭可以继续进行的仲裁程序和作出裁决。”。
- (2) 仲裁庭根据第 (1) 款对自己的管辖权作出裁定的权力，包括 ——

PART 5**JURISDICTION OF ARBITRAL TRIBUNAL****34. Article 16 of UNCITRAL Model Law (Competence of arbitral tribunal to rule on its jurisdiction)**

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

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

- (1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.
- (2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

5-3
第 609 章

第 5 部
第 34 条

- (a) 决定仲裁庭是否恰当地组成的权力；或
- (b) 决定什么事宜已按照仲裁协议提交仲裁的权力。
- (3) 如按照仲裁协议将争议提交仲裁，而一方——
 - (a) 提出在同一争议中产生的反申索；或
 - (b) 倚据在该争议中产生的申索作为抵销，
 则仲裁庭有管辖权决定该反申索或该被如此倚据的申索，但该管辖权只可在该反申索或申索的标的事宜属同一仲裁协议的范围内行使。
- (4) 如仲裁庭裁定它并无管辖权就某争议作出决定，任何人不得针对该项裁定提出上诉。
- (5) 尽管有第 20 条的规定，如仲裁庭裁定它并无管辖权就某争议作出决定，则如法院具有司法管辖权，法院须就该争议作出决定。

PART 5
Section 34

5-4
Cap. 609

- (3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.”.
- (2) The power of the arbitral tribunal to rule on its own jurisdiction under subsection (1) includes the power to decide as to—
 - (a) whether the tribunal is properly constituted; or
 - (b) what matters have been submitted to arbitration in accordance with the arbitration agreement.
- (3) If a dispute is submitted to arbitration in accordance with an arbitration agreement and a party—
 - (a) makes a counter-claim arising out of the same dispute; or
 - (b) relies on a claim arising out of that dispute for the purposes of a set-off,
 the arbitral tribunal has jurisdiction to decide on the counter-claim or the claim so relied on only to the extent that the subject matter of that counter-claim or that claim falls within the scope of the same arbitration agreement.
- (4) A ruling of the arbitral tribunal that it does not have jurisdiction to decide a dispute is not subject to appeal.

5-5
第 609 章

第 5 部

PART 5
Section 34

5-6
Cap. 609

- (5) Despite section 20, if the arbitral tribunal rules that it does not have jurisdiction to decide a dispute, the court must, if it has jurisdiction, decide that dispute.
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第 6 部

临时措施和初步命令

第 1 分部 —— 临时措施

35. 《贸法委示范法》第 17 条 (仲裁庭下令采取临时措施的权力)
- (1) 《贸法委示范法》第 17 条具有效力, 其文本列出如下 ——

“第 17 条. 仲裁庭下令采取临时措施的权力

- (1) 除非当事人另有约定, 仲裁庭经一方当事人请求, 可以准予采取临时措施。
- (2) 临时措施是以裁决书为形式的或另一种形式的任何短期措施, 仲裁庭在发出最后裁定争议的裁决书之前任何时候, 以这种措施责令一方当事人实施以下任何行为:
- (a) 在争议得以裁定之前维持现状或恢复原状;
 - (b) 采取行动防止目前或即将对仲裁程序发生的危害或损害, 或不采取可能造成这种危害或损害的行动;
 - (c) 提供一种保全资产以执行后继裁决的手段; 或
 - (d) 保全对解决争议可能具有相关性和重要性的证据。”。

(2) 藉第 (1) 款而具有效力的《贸法委示范法》第 17 条所提述的临时措施, 须解释为包括强制令, 但不包括第 56 条所指的命令。

PART 6

INTERIM MEASURES AND PRELIMINARY ORDERS

Division 1—Interim measures

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

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

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

- (1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures.
- (2) An interim measure is any temporary measure, whether in the form of an award or in another form, by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party to:
- (a) Maintain or restore the status quo pending determination of the dispute;
 - (b) Take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;

6-3
第 609 章

第 6 部 —— 第 1 分部
第 36 条

- (3) 如仲裁庭批给临时措施，该仲裁庭可应任何一方的申请，作出与该临时措施具同等效力的裁决。

36. 《贸法委示范法》第 17A 条 (准予采取临时措施的条件)
《贸法委示范法》第 17A 条具有效力，其文本列出如下——

“第 17A 条. 准予采取临时措施的条件

- (1) 一方当事人请求采取第 17(2)(a)、(b) 和 (c) 条所规定的临时措施的，应当使仲裁庭确信：
 - (a) 不下令采取这种措施可能造成损害，这种损害无法通过判给损害赔偿金而充分补偿，而且远远大于准予采取这种措施而可能对其所针对的当事人造成的损害；以及
 - (b) 根据索赔请求所依据的案情，请求方当事人相当有可能胜诉。对这种可能性的判定不影响仲裁庭此后作出任何裁定的自由裁量权。
- (2) 关于对第 17(2)(d) 条所规定的临时措施请求，本条第 (1)(a) 和 (b) 款的要求仅在仲裁庭认为适当的情况下适用。”。

PART 6—Division 1
Section 36

6-4
Cap. 609

- (c) Provide a means of preserving assets out of which a subsequent award may be satisfied; or
- (d) Preserve evidence that may be relevant and material to the resolution of the dispute.”.
- (2) An interim measure referred to in article 17 of the UNCITRAL Model Law, given effect to by subsection (1), is to be construed as including an injunction but not including an order under section 56.
- (3) If an arbitral tribunal has granted an interim measure, the tribunal may, on the application of any party, make an award to the same effect as the interim measure.

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

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

“Article 17A. Conditions for granting interim measures

- (1) The party requesting an interim measure under article 17(2)(a), (b) and (c) shall satisfy the arbitral tribunal that:
 - (a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
 - (b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The

第 2 分部 —— 初步命令

37. 《贸法委示范法》第 17B 条 (初步命令的申请和下达初步命令的条件)

《贸法委示范法》第 17B 条具有效力，其文本列出如下 ——

“第 17B 条. 初步命令的申请和下达初步命令的条件

- (1) 除非各方当事人另有约定，一方当事人可以不通知其他任何当事人而提出临时措施请求，同时一并申请下达初步命令，指令一方当事人不得阻挠所请求的临时措施的目的。
- (2) 当仲裁庭认为事先向临时措施所针对的当事人披露临时措施请求有可能阻挠这种措施目的时，仲裁庭可以下达初步命令。
- (3) 第 17A 条中规定的条件适用于任何初步命令，条件是根据第 17A(1)(a) 条估测的损害是下达命令或不下达命令而有可能造成的损害。”。

determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

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

Division 2—Preliminary orders

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

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

“Article 17B. Applications for preliminary orders and conditions for granting preliminary orders

- (1) Unless otherwise agreed by the parties, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.
- (2) The arbitral tribunal may grant a preliminary order provided it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure.
- (3) The conditions defined under article 17A apply to any preliminary order, provided that the harm to be assessed

38. **《贸法委示范法》第 17C 条 (初步命令的具体制度)**
《贸法委示范法》第 17C 条具有效力，其文本列出如下 ——

“第 17C 条. 初步命令的具体制度

- (1) 仲裁庭就初步命令申请作出判定之后，应当立即通知所有当事人，使之了解临时措施请求、初步命令申请、任何已下达的初步命令以及任何一方当事人与仲裁庭之间与此有关的所有其他通信，包括指明任何口头通信的内容。
- (2) 同时，仲裁庭应当在实际可行的最早时间内给予初步命令所针对的当事人陈述案情的机会。
- (3) 仲裁庭应当迅速就任何针对初步命令的异议作出裁定。
- (4) 初步命令自仲裁庭下达该命令之日起二十天后失效。但在向初步命令所针对的当事人发出通知并为其提供陈述案情的机会之后，仲裁庭可以下达对初步命令加以采纳或修改的临时措施。
- (5) 初步命令对当事人具有约束力，但不由法院执行。这种初步命令不构成仲裁裁决。”。

under article 17A(1)(a), is the harm likely to result from the order being granted or not.”.

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

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

“Article 17C. Specific regime for preliminary orders

- (1) Immediately after the arbitral tribunal has made a determination in respect of an application for a preliminary order, the arbitral tribunal shall give notice to all parties of the request for the interim measure, the application for the preliminary order, the preliminary order, if any, and all other communications, including by indicating the content of any oral communication, between any party and the arbitral tribunal in relation thereto.
- (2) At the same time, the arbitral tribunal shall give an opportunity to any party against whom a preliminary order is directed to present its case at the earliest practicable time.
- (3) The arbitral tribunal shall decide promptly on any objection to the preliminary order.
- (4) A preliminary order shall expire after twenty days from the date on which it was issued by the arbitral tribunal. However, the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order, after the party against whom the preliminary order is

6-9
第 609 章

第 6 部 —— 第 3 分部
第 39 条

PART 6—Division 3
Section 39

6-10
Cap. 609

第 3 分部 —— 适用于临时措施和初步命令的条文

39. **《贸法委示范法》第 17D 条 (修改、中止和终结)**
《贸法委示范法》第 17D 条具有效力，其文本列出如下 ——

“第 17D 条. 修改、中止和终结

仲裁庭可以在任何一方当事人提出申请时修改、中止或终结其已准予采取的临时措施或已下达的初步命令，在非常情况下并事先通知各方当事人后，亦可自行修改、中止或终结其已准予采取的临时措施或已下达的初步命令。”。

40. **《贸法委示范法》第 17E 条 (提供担保)**
《贸法委示范法》第 17E 条具有效力，其文本列出如下 ——

“第 17E 条. 提供担保

- (1) 仲裁庭可以要求请求临时措施的一方当事人提供与这种措施有关的适当担保。

directed has been given notice and an opportunity to present its case.

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

Division 3—Provisions applicable to interim measures and preliminary orders

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

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

“Article 17D. Modification, suspension, termination

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

40. **Article 17E of UNCITRAL Model Law (Provision of security)**
Article 17E of the UNCITRAL Model Law, the text of which is set out below, has effect—

“Article 17E. Provision of security

6-11
第 609 章

第 6 部 —— 第 3 分部
第 41 条

- (2) 仲裁庭应当要求申请初步命令的一方当事人提供与这种命令有关的担保，除非仲裁庭认为这样做不妥当或者没有必要。”。

41. 《贸法委示范法》第 17F 条 (披露)

《贸法委示范法》第 17F 条具有效力，其文本列出如下 ——

“第 17F 条. 披露

- (1) 仲裁庭可以要求任何当事人迅速披露在请求或者准予采取临时措施时而依据的情形所发生的任何重大变化。
- (2) 申请初步命令的一方当事人应当向仲裁庭披露一切可能与仲裁庭判定是否下达或维持该命令有关的情形，这种义务应当持续到该命令所针对的当事人有机会陈述案情之时。在此之后，应当适用本条第 (1) 款。”。

42. 《贸法委示范法》第 17G 条 (费用与损害赔偿)

《贸法委示范法》第 17G 条具有效力，其文本列出如下 ——

“第 17G 条. 费用与损害赔偿

PART 6—Division 3
Section 41

6-12
Cap. 609

- (1) The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.
- (2) The arbitral tribunal shall require the party applying for a preliminary order to provide security in connection with the order unless the arbitral tribunal considers it inappropriate or unnecessary to do so.”.

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

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

“Article 17F. Disclosure

- (1) The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the measure was requested or granted.
- (2) The party applying for a preliminary order shall disclose to the arbitral tribunal all circumstances that are likely to be relevant to the arbitral tribunal’s determination whether to grant or maintain the order, and such obligation shall continue until the party against whom the order has been requested has had an opportunity to present its case. Thereafter, paragraph (1) of this article shall apply.”.

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

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

如果仲裁庭之后裁定根据情形本不应当准予采取临时措施或下达初步命令，则请求临时措施或申请初步命令的一方当事人应当就该措施或命令对其所针对的当事人造成的任何费用和损害承担赔偿责任。仲裁庭可以在仲裁程序的任何时候判给这种费用和损害赔偿金。”。

第 4 分部 —— 临时措施的承认与执行

43. **《贸法委示范法》第 17H 条 (承认和执行)**
第 61 条取代《贸法委示范法》第 17H 条而具有效力。
44. **《贸法委示范法》第 17I 条 (拒绝承认或执行的理由)**
《贸法委示范法》第 17I 条不具效力。

第 5 分部 —— 法院下令采取的临时措施

45. **《贸法委示范法》第 17J 条 (法院下令采取的临时措施)**
- (1) 《贸法委示范法》第 17J 条不具效力。
 - (2) 原讼法庭可应任何一方的申请，就已在或将会在香港或香港以外地方展开的任何仲裁程序，批给临时措施。
 - (3) 本条授予的权力，可由原讼法庭行使，不论仲裁庭是否可根据第 35 条就同一争议行使类似的权力。
 - (4) 原讼法庭可基于以下理由，拒绝根据第 (2) 款批给临时措施 ——

“Article 17G. Costs and damages

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

Division 4—Recognition and enforcement of interim measures

43. **Article 17H of UNCITRAL Model Law (Recognition and enforcement)**
Section 61 has effect in substitution for article 17H of the UNCITRAL Model Law.
44. **Article 17I of UNCITRAL Model Law (Grounds for refusing recognition or enforcement)**
Article 17I of the UNCITRAL Model Law does not have effect.

Division 5—Court-ordered interim measures

45. **Article 17J of UNCITRAL Model Law (Court-ordered interim measures)**
- (1) Article 17J of the UNCITRAL Model Law does not have effect.
 - (2) On the application of any party, the Court may, in relation to any arbitral proceedings which have been or are to be commenced in or outside Hong Kong, grant an interim measure.

- (a) 所寻求的临时措施，在当时是仲裁程序的标的；及
 - (b) 原讼法庭认为，由仲裁庭处理所寻求的临时措施，更为适当。
- (5) 原讼法庭只有在以下情况下，方可根据第 (2) 款，就已在或将会在香港以外地方展开的仲裁程序，批给临时措施——
- (a) 该仲裁程序能引起一项可根据本条例或任何其他条例在香港强制执行的仲裁裁决（不论是临时裁决或最终裁决）；及
 - (b) 所寻求的临时措施，属原讼法庭可就仲裁程序而在香港批给的临时措施的类型或种类。
- (6) 即使有以下情况，第 (5) 款仍适用——
- (a) 若非因该款，仲裁程序的标的事宜不会引起原讼法庭对之具有司法管辖权的诉讼因由；或
 - (b) 所寻求的命令，并非附属于或附带于任何在香港进行的仲裁程序。
- (7) 在根据第 (2) 款就在香港以外地方进行的仲裁程序而行使权力时，原讼法庭须顾及以下事实——
- (a) 该权力是附属于在香港以外地方进行的仲裁程序的；及
 - (b) 该权力的目的，是为便利在香港以外地方的、并对该仲裁程序具有基本司法管辖权的法院的程序，或具有基本管辖权的仲裁庭的程序。
- (8) 为确保就在香港以外地方进行的仲裁程序而批给的临时措施的有效性的目的，原讼法庭具有相同的权力作出任何附带命令或指示，犹如该临时措施是就在香港进行的仲裁程序而批给的一样。
- (9) 第 (2) 款所提述的临时措施，指藉第 35(1) 条而具有效力的《贸法委示范法》第 17(2) 条所提述的临时措施，犹如——

- (3) The powers conferred by this section may be exercised by the Court irrespective of whether or not similar powers may be exercised by an arbitral tribunal under section 35 in relation to the same dispute.
- (4) The Court may decline to grant an interim measure under subsection (2) on the ground that—
 - (a) the interim measure sought is currently the subject of arbitral proceedings; and
 - (b) the Court considers it more appropriate for the interim measure sought to be dealt with by the arbitral tribunal.
- (5) In relation to arbitral proceedings which have been or are to be commenced outside Hong Kong, the Court may grant an interim measure under subsection (2) only if—
 - (a) the arbitral proceedings are capable of giving rise to an arbitral award (whether interim or final) that may be enforced in Hong Kong under this Ordinance or any other Ordinance; and
 - (b) the interim measure sought belongs to a type or description of interim measure that may be granted in Hong Kong in relation to arbitral proceedings by the Court.
- (6) Subsection (5) applies even if—
 - (a) the subject matter of the arbitral proceedings would not, apart from that subsection, give rise to a cause of action over which the Court would have jurisdiction; or
 - (b) the order sought is not ancillary or incidental to any arbitral proceedings in Hong Kong.
- (7) In exercising the power under subsection (2) in relation to arbitral proceedings outside Hong Kong, the Court must have regard to the fact that the power is—

6-17
第 609 章

第 6 部 —— 第 5 分部
第 45 条

- (a) 在该第 17(2) 条中提述仲裁庭，是指法院；及
 - (b) 在该第 17(2) 条中提述仲裁程序，是指法院程序，并须解释为包括强制令，但不包括第 60 条所指的命令。
- (10) 任何人不得针对本条所指的原讼法庭决定、命令或指示提出上诉。
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PART 6—Division 5
Section 45

6-18
Cap. 609

- (a) ancillary to the arbitral proceedings outside Hong Kong; and
 - (b) for the purposes of facilitating the process of a court or arbitral tribunal outside Hong Kong that has primary jurisdiction over the arbitral proceedings.
- (8) The Court has the same power to make any incidental order or direction for the purposes of ensuring the effectiveness of an interim measure granted in relation to arbitral proceedings outside Hong Kong as if the interim measure were granted in relation to arbitral proceedings in Hong Kong.
- (9) An interim measure referred to in subsection (2) means an interim measure referred to in article 17(2) of the UNCITRAL Model Law, given effect to by section 35(1), as if—
- (a) a reference to the arbitral tribunal in that article were the court; and
 - (b) a reference to arbitral proceedings in that article were court proceedings,
- and is to be construed as including an injunction but not including an order under section 60.
- (10) A decision, order or direction of the Court under this section is not subject to appeal.
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第 7 部**仲裁程序的进行****46. 《贸法委示范法》第 18 条 (当事人平等待遇)**

- (1) 第 (2) 及 (3) 款取代《贸法委示范法》第 18 条而具有效力。
- (2) 各方须获平等相待。
- (3) 仲裁庭在进行仲裁程序时，或在行使藉本条例或由任何该等仲裁程序的各方授予该仲裁庭的任何权力时，须——
 - (a) 独立；
 - (b) 在各方之间公平和公正地行事，给予各方合理的机会铺陈其论据和处理其对手的论据；及
 - (c) 采用适合个别个案的程序，避免不必要的拖延或开支，从而提供公平的方法以解决有关仲裁程序所关乎的争议。

47. 《贸法委示范法》第 19 条 (程序规则的确定)

- (1) 《贸法委示范法》第 19(1) 条具有效力，其文本列如下——

“第 19 条. 程序规则的确定

PART 7**CONDUCT OF ARBITRAL PROCEEDINGS****46. Article 18 of UNCITRAL Model Law (Equal treatment of parties)**

- (1) Subsections (2) and (3) have effect in substitution for article 18 of the UNCITRAL Model Law.
- (2) The parties must be treated with equality.
- (3) When conducting arbitral proceedings or exercising any of the powers conferred on an arbitral tribunal by this Ordinance or by the parties to any of those arbitral proceedings, the arbitral tribunal is required—
 - (a) to be independent;
 - (b) to act fairly and impartially as between the parties, giving them a reasonable opportunity to present their cases and to deal with the cases of their opponents; and
 - (c) to use procedures that are appropriate to the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for resolving the dispute to which the arbitral proceedings relate.

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

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

“Article 19. Determination of rules of procedure

7-3
第 609 章

第 7 部
第 48 条

- (1) 在不违背本法规定的情况下，当事人可以自由约定仲裁庭进行仲裁时所应当遵循的程序。
- (2) [不适用。]”。
- (2) 除本条例的条文另有规定外，如各方没有任何上述协议，或在各方没有任何上述协议的范围内，仲裁庭可用它认为适当的方式，进行仲裁。
- (3) 仲裁庭在进行仲裁程序时，不受证据规则所约束，并可收取该仲裁庭认为攸关该仲裁程序的任何证据，但对于在该仲裁程序中援引的证据，该仲裁庭须给予它认为适当的分量。

48. 《贸法委示范法》第 20 条 (仲裁地点)

《贸法委示范法》第 20 条具有效力，其文本列出如下——

“第 20 条. 仲裁地点

- (1) 当事人可以自由约定仲裁的地点。未达成此种约定的，由仲裁庭考虑到案件的情况，包括当事人的便利，确定仲裁地点。
- (2) 虽有本条第 (1) 款的规定，为在仲裁庭成员间进行磋商，为听取证人、专家或当事人的意见，或者为检查货物、其他财产或文件，除非当事人另有约定，仲裁庭可以在其认为适当的任何地点会晤。”。

PART 7
Section 48

7-4
Cap. 609

- (1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.
- (2) [Not applicable]”.
- (2) If or to the extent that there is no such agreement of the parties, the arbitral tribunal may, subject to the provisions of this Ordinance, conduct the arbitration in the manner that it considers appropriate.
- (3) When conducting arbitral proceedings, an arbitral tribunal is not bound by the rules of evidence and may receive any evidence that it considers relevant to the arbitral proceedings, but it must give the weight that it considers appropriate to the evidence adduced in the arbitral proceedings.

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

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

“Article 20. Place of arbitration

- (1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.
- (2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.”.

7-5
第 609 章

第 7 部
第 49 条

PART 7
Section 49

7-6
Cap. 609

49. 《贸法委示范法》第 21 条 (仲裁程序的开始)

(1) 《贸法委示范法》第 21 条具有效力，其文本列出如下 ——

“第 21 条. 仲裁程序的开始

除非当事人另有约定，解决特定争议的仲裁程序，于被申请人收到将该争议提交仲裁的请求之日开始。”。

(2) 藉第 (1) 款而具有效力的《贸法委示范法》第 21 条所提述的请求，须以第 10 条所提述的书面通讯的方式作出。

50. 《贸法委示范法》第 22 条 (语文)

《贸法委示范法》第 22 条具有效力，其文本列出如下 ——

“第 22 条. 语文

- (1) 当事人可以自由约定仲裁程序中拟使用的语文。未达成此种约定的，由仲裁庭确定仲裁程序中拟使用的语文。这种约定或确定除非其中另外指明，适用于一方当事人的任何书面陈述、仲裁庭的任何开庭、裁决、决定或其他通讯。
- (2) 仲裁庭可以命令任何书面证据附具当事人约定的或仲裁庭确定的语文的译本。”。

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

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

“Article 21. Commencement of arbitral proceedings

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

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

50. Article 22 of UNCITRAL Model Law (Language)

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

“Article 22. Language

- (1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

7-7
第 609 章

第 7 部
第 51 条

PART 7
Section 51

7-8
Cap. 609

51. 《贸法委示范法》第 23 条 (申请书和答辩书)

《贸法委示范法》第 23 条具有效力，其文本列出如下 ——

“第 23 条. 申请书和答辩书

- (1) 在当事人约定的或仲裁庭确定的时间期限内，申请人应当申述支持其请求的各种事实、争议点以及所寻求的救济或补救，被申请人应当逐项作出答辩，除非当事人就这种申述和答辩所要求的项目另有约定。当事人可以随同其陈述提交其认为相关的一切文件，也可以附带述及其将要提交的文件或其他证据。
- (2) 除非当事人另有约定，在仲裁程序进行中，任何一方当事人可以修改或补充其请求或答辩，除非仲裁庭考虑到为时已迟，认为不宜允许作此更改。”。

52. 《贸法委示范法》第 24 条 (开庭和书面审理程序)

《贸法委示范法》第 24 条具有效力，其文本列出如下 ——

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

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

“Article 23. Statements of claim and defence

- (1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.
- (2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.”.

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

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

“第 24 条. 开庭和书面审理程序

- (1) 除当事人有任何相反约定外，仲裁庭应当决定是否举行开庭听审，以便出示证据或进行口头辩论，或者是否应当以文件和其他材料为基础进行仲裁程序。但是除非当事人约定不开庭听审，一方当事人请求开庭的，仲裁庭应当在进行仲裁程序的适当阶段举行开庭听审。
- (2) 任何开庭和仲裁庭为了检查货物、其他财产或文件而举行的任何会议，应当充分提前通知当事人。
- (3) 一方当事人向仲裁庭提供的一切陈述书、文件或其他资料应当送交对方当事人。仲裁庭在作出决定时可能依赖的任何专家报告或证据性文件也应当送交各方当事人。”。

53. 《贸法委示范法》第 25 条 (一方当事人的不为)

- (1) 《贸法委示范法》第 25 条具有效力，其文本列出如下——

“第 25 条. 一方当事人的不为

除非当事人另有约定，在不提出充分理由的情况下：

“Article 24. Hearings and written proceedings

- (1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.
- (2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.
- (3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.”.

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

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

“Article 25. Default of a party

7-11
第 609 章

第 7 部
第 53 条

- (a) 申请人未能依照第 23(1) 条的规定提交申请书的，仲裁庭应当终止仲裁程序；
- (b) 被申请人未能依照第 23(1) 条的规定提交答辩书的，仲裁庭应当继续进行仲裁程序，但不将此种缺失行为本身视为认可了申请人的申述；
- (c) 任何一方当事人不出庭或不提供书面证据的，仲裁庭可以继续进行仲裁程序并根据其所收到的证据作出裁决。”。
- (2) 除非各方另有协议，否则除就费用保证的申请外，第 (3) 及 (4) 款适用。
- (3) 如某方在不提出充分理由的情况下，没有遵从仲裁庭的任何命令或指示，则该仲裁庭可作出一项具有同等效力的最后敦促令，订明该仲裁庭认为适当的遵从该命令或指示的时限。
- (4) 如一方没有遵从最后敦促令，则在不影响第 61 条的原则下，仲裁庭可——
 - (a) 指示该方无权倚据属最后敦促令的标的事宜之任何指称或材料；
 - (b) 就该项不遵从，作出在有关情况下属有充分理由支持的任何不利推断；
 - (c) 基于已恰当地提供给该仲裁庭的任何材料，作出裁决；或
 - (d) 就因该项不遵从而招致的仲裁费用的支付，作出该仲裁庭认为合适的任何命令。

PART 7
Section 53

7-12
Cap. 609

- Unless otherwise agreed by the parties, if, without showing sufficient cause,
- (a) the claimant fails to communicate his statement of claim in accordance with article 23(1), the arbitral tribunal shall terminate the proceedings;
 - (b) the respondent fails to communicate his statement of defence in accordance with article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;
 - (c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.”.
 - (2) Unless otherwise agreed by the parties, subsections (3) and (4) apply except in relation to an application for security for costs.
 - (3) If, without showing sufficient cause, a party fails to comply with any order or direction of the arbitral tribunal, the tribunal may make a peremptory order to the same effect, prescribing the time for compliance with it that the arbitral tribunal considers appropriate.
 - (4) If a party fails to comply with a peremptory order, then without affecting section 61, the arbitral tribunal may—
 - (a) direct that the party is not entitled to rely on any allegation or material which was the subject matter of the peremptory order;
 - (b) draw any adverse inferences that the circumstances may justify from the non-compliance;
 - (c) make an award on the basis of any materials which have been properly provided to the arbitral tribunal; or

54. 《贸法委示范法》第 26 条 (仲裁庭指定的专家)

(1) 《贸法委示范法》第 26 条具有效力，其文本列出如下——

“第 26 条. 仲裁庭指定的专家

- (1) 除非当事人另有约定，仲裁庭
 - (a) 可以指定一名或多名专家就仲裁庭待决之特定问题向仲裁庭提出报告；
 - (b) 可以要求一方当事人向专家提供任何相关资料，或出示或让他接触任何相关的文件、货物或其他财产以供检验。
- (2) 除非当事人另有约定，经一方当事人提出请求或仲裁庭认为必要的，专家在提出其书面或口头报告后应当参加开庭，各方当事人可向其提问，专家证人就争议点作证。”
- (2) 在不影响藉第 (1) 款而具有效力的《贸法委示范法》第 26 条的原则下，在根据第 74 条评估仲裁程序的费用 (仲裁庭的收费及开支除外) 的款额时——
 - (a) 仲裁庭可委任评估人员，以在技术事宜上协助该仲裁庭，并可容许任何该等评估人员出席该程序；及
 - (b) 各方须获合理机会，评论任何该等评估人员提供的任何资料、看法或意见。

- (d) make any order that the arbitral tribunal thinks fit as to the payment of the costs of the arbitration incurred in consequence of the non-compliance.

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

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

“Article 26. Expert appointed by arbitral tribunal

- (1) Unless otherwise agreed by the parties, the arbitral tribunal
 - (a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;
 - (b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.
- (2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.”.
- (2) Without affecting article 26 of the UNCITRAL Model Law, given effect to by subsection (1), in assessing the amount of the costs of arbitral proceedings (other than the fees and expenses of the tribunal) under section 74—

7-15
第 609 章

第 7 部
第 55 条

PART 7
Section 55

7-16
Cap. 609

55. 《贸法委示范法》第 27 条 (法院协助取证)

(1) 《贸法委示范法》第 27 条具有效力，其文本列出如下——

“第 27 条. 法院协助取证

仲裁庭或一方当事人在仲裁庭同意之下，可以请求本国内的管辖法院协助取证。法院可以在其权限范围内并按照其关于取证的规则执行上述请求。”。

- (2) 原讼法庭可命令某人出席在仲裁庭席前进行的程序作证、出示文件或出示其他证据。
- (3) 本条授予的权力，可由原讼法庭行使，不论仲裁庭是否可根据第 56 条就同一争议行使类似的权力。
- (4) 如原讼法庭根据本条行使其权力而作出决定或命令，任何人不得针对该决定或命令提出上诉。
- (5) 《证据条例》(第 8 章)第 81 条 (将囚犯带上法庭以提供证据的手令或命令) 适用，犹如在该条中提述任何刑事或民事法律程序，是指任何仲裁程序。

- (a) the arbitral tribunal may appoint assessors to assist it on technical matters, and may allow any of those assessors to attend the proceedings; and
- (b) the parties must be given a reasonable opportunity to comment on any information, opinion or advice offered by any of those assessors.

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

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

“Article 27. Court assistance in taking evidence

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

- (2) The Court may order a person to attend proceedings before an arbitral tribunal to give evidence or to produce documents or other evidence.
- (3) The powers conferred by this section may be exercised by the Court irrespective of whether or not similar powers may be exercised by an arbitral tribunal under section 56 in relation to the same dispute.
- (4) A decision or order of the Court made in the exercise of its power under this section is not subject to appeal.
- (5) Section 81 (Warrant or order to bring up prisoner to give evidence) of the Evidence Ordinance (Cap. 8) applies as if a

reference to any proceedings, either criminal or civil, in that section were any arbitral proceedings.

56. 仲裁庭可行使的一般权力

- (1) 除非各方另有协议，否则仲裁庭在进行仲裁程序时，可作出命令——
 - (a) 要求申索人就仲裁费用提供保证；
 - (b) 指示透露文件或交付质询书；
 - (c) 指示以誓章提出证据；或
 - (d) 就任何有关财产——
 - (i) 指示由仲裁庭、仲裁程序的一方或专家检查、拍摄、保存、保管、扣留或出售该有关财产；或
 - (ii) 指示从该有关财产检走样本，或对该有关财产进行观察或试验。
- (2) 仲裁庭不得仅基于以下理由，而根据第(1)(a)款作出命令——
 - (a) 申索人是通常居于香港以外地方的自然人；
 - (b) 申索人——
 - (i) 是根据香港以外地方的法律成立的法人团体；或
 - (ii) 是一个法人团体，而其中央管理及控制是在香港以外地方行使的；或
 - (c) 申索人——
 - (i) 是根据香港以外地方的法律组成的组织；或
 - (ii) 是一个组织，而其中央管理及控制是在香港以外地方行使的。
- (3) 仲裁庭——

56. General powers exercisable by arbitral tribunal

- (1) Unless otherwise agreed by the parties, when conducting arbitral proceedings, an arbitral tribunal may make an order—
 - (a) requiring a claimant to give security for the costs of the arbitration;
 - (b) directing the discovery of documents or the delivery of interrogatories;
 - (c) directing evidence to be given by affidavit; or
 - (d) in relation to any relevant property—
 - (i) directing the inspection, photographing, preservation, custody, detention or sale of the relevant property by the arbitral tribunal, a party to the arbitral proceedings or an expert; or
 - (ii) directing samples to be taken from, observations to be made of, or experiments to be conducted on the relevant property.
- (2) An arbitral tribunal must not make an order under subsection (1)(a) only on the ground that the claimant is—
 - (a) a natural person who is ordinarily resident outside Hong Kong;
 - (b) a body corporate—
 - (i) incorporated under the law of a place outside Hong Kong; or
 - (ii) the central management and control of which is exercised outside Hong Kong; or
 - (c) an association—

7-19
第 609 章

第 7 部
第 56 条

- (a) 在根据第 (1)(a) 款作出命令时，须指明遵从该命令的限期；及
- (b) 可延长该限期，或延长任何经延长的限期。
- (4) 如仲裁庭已根据第 (1)(a) 款作出命令，但该命令未有在根据第 (3)(a) 款指明或根据第 (3)(b) 款延长的限期内获遵从，则仲裁庭可作出撤销有关申索的裁决，或搁置有关申索。
- (5) 尽管有第 35(2) 条的规定，第 39 至 42 条（如适当的话）适用于第 (1)(d) 款所指的命令，犹如在该等条文中提述临时措施，是指该款所指的命令。
- (6) 为施行第 (1)(d) 款，如任何财产符合以下说明，即属有关财产——
 - (a) 该财产是由仲裁程序的一方拥有或管有的；而
 - (b) 该财产是仲裁程序的标的，或在仲裁程序中产生关乎该财产的任何问题。
- (7) 除非各方另有协议，否则仲裁庭在进行仲裁程序时，可决定本身应否和应在什么程度上采取主动，以确定攸关该仲裁程序的事实及法律。
- (8) 除非各方另有协议，否则仲裁庭——
 - (a) 可为证人及各方监誓；
 - (b) 可在证人及各方宣誓后，予以讯问；或
 - (c) 可指示证人到仲裁庭席前作证、出示文件或出示其他证据。
- (9) 凡在法院的民事法律程序中，不能要求某人出示某文件或其他证据，则该人不得被要求在仲裁程序中出示该文件或证据。

PART 7
Section 56

7-20
Cap. 609

- (i) formed under the law of a place outside Hong Kong; or
- (ii) the central management and control of which is exercised outside Hong Kong.
- (3) An arbitral tribunal—
 - (a) must, when making an order under subsection (1)(a), specify the period within which the order has to be complied with; and
 - (b) may extend that period or an extended period.
- (4) An arbitral tribunal may make an award dismissing a claim or stay a claim if it has made an order under subsection (1)(a) but the order has not been complied with within the period specified under subsection (3)(a) or extended under subsection (3)(b).
- (5) Despite section 35(2), sections 39 to 42 apply, if appropriate, to an order under subsection (1)(d) as if a reference to an interim measure in those sections were an order under that subsection.
- (6) Property is a relevant property for the purposes of subsection (1)(d) if—
 - (a) the property is owned by or is in the possession of a party to the arbitral proceedings; and
 - (b) the property is the subject of the arbitral proceedings, or any question relating to the property has arisen in the arbitral proceedings.
- (7) Unless otherwise agreed by the parties, an arbitral tribunal may, when conducting arbitral proceedings, decide whether and to what extent it should itself take the initiative in ascertaining the facts and the law relevant to those arbitral proceedings.

7-21
第 609 章

第 7 部
第 57 条

PART 7
Section 57

7-22
Cap. 609

57. 仲裁庭可限制可予追讨的费用款额

- (1) 除非各方另有协议，否则仲裁庭可指示在其席前进行的仲裁程序的可予追讨的费用，以某指明款额为限。
- (2) 在第 (3) 款的规限下，仲裁庭可 ——
 - (a) 主动地作出或更改指示；或
 - (b) 应任何一方的申请，作出或更改指示。
- (3) 指示可在有关仲裁程序的任何阶段作出或更改，但为使有关可予追讨的费用的限额能获得考虑，该指示或更改须事先在有充分时间的情况下 ——
 - (a) 在招致该指示或更改所关涉的费用前作出；或
 - (b) 在采取该仲裁程序中可能受到该指示或更改影响的步骤前作出。
- (4) 在本条中 ——
 - (a) 提述费用，须解释为各方自己的费用；及
 - (b) 提述仲裁程序，包括该仲裁程序的任何部分。

- (8) Unless otherwise agreed by the parties, an arbitral tribunal may—
 - (a) administer oaths to, or take the affirmations of, witnesses and parties;
 - (b) examine witnesses and parties on oath or affirmation; or
 - (c) direct the attendance before the arbitral tribunal of witnesses in order to give evidence or to produce documents or other evidence.
- (9) A person is not required to produce in arbitral proceedings any document or other evidence that the person could not be required to produce in civil proceedings before a court.

57. Arbitral tribunal may limit amount of recoverable costs

- (1) Unless otherwise agreed by the parties, an arbitral tribunal may direct that the recoverable costs of arbitral proceedings before it are limited to a specified amount.
- (2) Subject to subsection (3), the arbitral tribunal may make or vary a direction either—
 - (a) on its own initiative; or
 - (b) on the application of any party.
- (3) A direction may be made or varied at any stage of the arbitral proceedings but, for the limit of the recoverable costs to be taken into account, this must be done sufficiently in advance of—
 - (a) the incurring of the costs to which the direction or the variation relates; or
 - (b) the taking of the steps in the arbitral proceedings which may be affected by the direction or the variation.
- (4) In this section—

58. 延长仲裁程序时限的权力

- (1) 本条在以下情况下适用于仲裁协议：该仲裁协议规定，除非申索人在该协议所指明的时限前或所指明的限期内，采取步骤以展开以下程序，否则禁止提出申索，或申索人的权利即告终绝——
 - (a) 仲裁程序；或
 - (b) 须先行穷竭方可展开仲裁程序的任何其他解决争议的程序。
- (2) 仲裁庭可应上述仲裁协议的任何一方的申请，作出命令，延长第 (1) 款所提述的时限或限期。
- (3) 上述申请只可在已有申索产生，并且已穷竭任何可用以获得延长时限的仲裁的程序后，方可提出。
- (4) 仲裁庭只可在以下情况下根据本条作出命令，延长第 (1) 款所提述的时限或限期——
 - (a) 该仲裁庭信纳——
 - (i) 有关情况超乎各方在订立仲裁协议时的合理预期；及
 - (ii) 延长该时限或限期会属公正；或
 - (b) 该仲裁庭信纳由于任何一方的行为举措，以致若按该协议的严格条款约束其他方，即属不公正。
- (5) 仲裁庭可按它认为合适的条款，将第 (1) 款所提述的时限或限期，或将根据第 (4) 款延长的时限或限期，延长一段它认为合适的较长时间，而即使该时限或限期已届满，或该经延长的时限或限期已届满，仲裁庭仍可如此行事。

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

58. Power to extend time for arbitral proceedings

- (1) This section applies to an arbitration agreement that provides for a claim to be barred or for a claimant's right to be extinguished unless the claimant, before the time or within the period specified in the agreement, takes a step—
 - (a) to commence arbitral proceedings; or
 - (b) to commence any other dispute resolution procedure that must be exhausted before arbitral proceedings may be commenced.
- (2) On the application of any party to such an arbitration agreement, an arbitral tribunal may make an order extending the time or period referred to in subsection (1).
- (3) An application may be made only after a claim has arisen and after exhausting any available arbitral procedures for obtaining an extension of time.
- (4) An arbitral tribunal may make an order under this section extending the time or period referred to in subsection (1) only if it is satisfied—
 - (a) that—
 - (i) the circumstances were such as to be outside the reasonable contemplation of the parties when they entered into the arbitration agreement; and
 - (ii) it would be just to extend the time or period; or
 - (b) that the conduct of any party makes it unjust to hold the other party to the strict terms of the agreement.

7-25
第 609 章

第 7 部
第 59 条

- (6) 本条并不影响第 14 条的实施，或任何对展开仲裁程序的限期加以限制的其他成文法则的实施。
- (7) 如在有关时间，并没有能够行使本条授予仲裁庭的权力的仲裁庭存在，则该权力可由原讼法庭行使。
- (8) 如原讼法庭行使第 (7) 款授予它的权力而作出命令，任何人不得针对该命令提出上诉。

59. 在仲裁程序中拖延继续申索的情况下作出命令

- (1) 除非仲裁协议另有表明，否则在仲裁程序展开后，根据该协议而有申索的一方，须继续该申索，不得有不合理的拖延。
- (2) 在不影响藉第 53(1) 条而具有效力的《贸法委示范法》第 25 条的原则下，仲裁庭如信纳某方在仲裁程序中不合理地拖延继续该方的申索，可——
 - (a) 作出裁决，撤销该申索；及
 - (b) 作出命令，禁止该方就该申索展开进一步的仲裁程序。
- (3) 仲裁庭可——
 - (a) 主动地作出裁决或命令；或
 - (b) 应任何其他一方的申请，作出裁决或命令。
- (4) 为施行第 (2) 款，符合以下说明的拖延，即属不合理的拖延——

PART 7
Section 59

7-26
Cap. 609

- (5) An arbitral tribunal may extend the time or period referred to in subsection (1), or the time or period extended under subsection (4), for a further period and on the terms that it thinks fit, and the tribunal may do so even though that time or period or the extended time or period has expired.
- (6) This section does not affect the operation of section 14 or any other enactment that limits the period for commencing arbitral proceedings.
- (7) The power conferred on an arbitral tribunal by this section is exercisable by the Court if at the relevant time there is not in existence an arbitral tribunal that is capable of exercising that power.
- (8) An order of the Court made in exercise of its power conferred by subsection (7) is not subject to appeal.

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

- (1) Unless otherwise expressed in an arbitration agreement, a party who has a claim under the agreement must, after the commencement of the arbitral proceedings, pursue that claim without unreasonable delay.
- (2) Without affecting article 25 of the UNCITRAL Model Law, given effect to by section 53(1), the arbitral tribunal—
 - (a) may make an award dismissing a party's claim; and
 - (b) may make an order prohibiting the party from commencing further arbitral proceedings in respect of the claim,
 if it is satisfied that the party has unreasonably delayed in pursuing the claim in the arbitral proceedings.
- (3) The arbitral tribunal may make an award or order either—
 - (a) on its own initiative; or

7-27
第 609 章

第 7 部
第 60 条

- (a) 引起或相当可能引起申索中的争论点不会得到公平解决的重大风险；或
- (b) 已对或相当可能对任何其他一方造成严重损害。
- (5) 如在有关时间，并没有能够行使本条授予仲裁庭的权力的仲裁庭存在，则该权力可由原讼法庭行使。
- (6) 如原讼法庭行使第 (5) 款授予它的权力而作出裁决或命令，任何人不得针对该裁决或命令提出上诉。

60. 原讼法庭就仲裁程序所具有的特别权力

- (1) 原讼法庭可应任何一方的申请，就已在或将会在香港或香港以外地方展开的任何仲裁程序，作出命令——
 - (a) 指示由仲裁庭、仲裁程序的一方或专家检查、拍摄、保存、保管、扣留或出售任何有关财产；或
 - (b) 指示从任何有关财产检走样本，或对任何有关财产进行观察或试验。
- (2) 为施行第 (1) 款，如任何财产是仲裁程序的标的，或在仲裁程序中产生关乎该财产的任何问题，该财产即属有关财产。
- (3) 本条授予的权力，可由原讼法庭行使，不论仲裁庭是否可根据第 56 条就同一争议行使类似的权力。
- (4) 原讼法庭可基于以下理由，拒绝根据本条就第 (1) 款所述的事宜作出命令——
 - (a) 该事宜当时是仲裁程序的标的；及
 - (b) 原讼法庭认为，由仲裁庭处理该事宜，更为适当。

PART 7
Section 60

7-28
Cap. 609

- (b) on the application of any other party.
- (4) For the purposes of subsection (2), delay is unreasonable if—
 - (a) it gives rise, or is likely to give rise, to a substantial risk that the issues in the claim will not be resolved fairly; or
 - (b) it has caused, or is likely to cause, serious prejudice to any other party.
- (5) The power conferred on an arbitral tribunal by this section is exercisable by the Court if there is not in existence an arbitral tribunal that is capable of exercising that power.
- (6) An award or order made by the Court in exercise of its power conferred by subsection (5) is not subject to appeal.

60. Special powers of Court in relation to arbitral proceedings

- (1) On the application of any party, the Court may, in relation to any arbitral proceedings which have been or are to be commenced in or outside Hong Kong, make an order—
 - (a) directing the inspection, photographing, preservation, custody, detention or sale of any relevant property by the arbitral tribunal, a party to the arbitral proceedings or an expert; or
 - (b) directing samples to be taken from, observations to be made of, or experiments to be conducted on any relevant property.
- (2) Property is a relevant property for the purposes of subsection (1) if the property is the subject of the arbitral proceedings, or any question relating to the property has arisen in the arbitral proceedings.
- (3) The powers conferred by this section may be exercised by the Court irrespective of whether or not similar powers may be exercised by an arbitral tribunal under section 56 in relation to the same dispute.

7-29
第 609 章

第 7 部
第 60 条

- (5) 原讼法庭根据本条作出的命令，可规定该命令在仲裁庭作出使该命令完全或局部停止有效的命令时，如此停止有效。
- (6) 就已在或将会在香港以外地方展开的仲裁程序而言，只有在在该仲裁程序能引起一项可根据本条例或任何其他条例在香港强制执行的仲裁裁决（不论是临时裁决或最终裁决）的情况下，原讼法庭方可根据第(1)款作出命令。
- (7) 即使有以下情况，第(6)款仍适用——
 - (a) 若非因该款，仲裁程序的标的事宜不会引起原讼法庭对之具有司法管辖权的诉讼因由；或
 - (b) 所寻求的命令，并非附属于或附带于任何在香港进行的仲裁程序。
- (8) 在根据第(1)款就在香港以外地方进行的仲裁程序而行使权力时，原讼法庭须顾及以下事实——
 - (a) 该权力是附属于在香港以外地方进行的仲裁程序的；及
 - (b) 该权力的目的，是为利便在香港外地方的、并对该仲裁程序具有基本司法管辖权的法院的程序，或具有基本管辖权的仲裁庭的程序。
- (9) 除第(10)款另有规定外，任何人不得针对本条所指的原讼法庭命令或决定提出上诉。
- (10) 凡原讼法庭根据第(1)款命令出售任何有关财产，则须获原讼法庭许可，方可针对该命令提出上诉。

PART 7
Section 60

7-30
Cap. 609

- (4) The Court may decline to make an order under this section in relation to a matter referred to in subsection (1) on the ground that—
 - (a) the matter is currently the subject of arbitral proceedings; and
 - (b) the Court considers it more appropriate for the matter to be dealt with by the arbitral tribunal.
- (5) An order made by the Court under this section may provide for the cessation of that order, in whole or in part, when the arbitral tribunal makes an order for the cessation.
- (6) In relation to arbitral proceedings which have been or are to be commenced outside Hong Kong, the Court may make an order under subsection (1) only if the arbitral proceedings are capable of giving rise to an arbitral award (whether interim or final) that may be enforced in Hong Kong under this Ordinance or any other Ordinance.
- (7) Subsection (6) applies even if—
 - (a) the subject matter of the arbitral proceedings would not, apart from that subsection, give rise to a cause of action over which the Court would have jurisdiction; or
 - (b) the order sought is not ancillary or incidental to any arbitral proceedings in Hong Kong.
- (8) In exercising the power under subsection (1) in relation to arbitral proceedings outside Hong Kong, the Court must have regard to the fact that the power is—
 - (a) ancillary to the arbitral proceedings outside Hong Kong; and
 - (b) for the purposes of facilitating the process of a court or arbitral tribunal outside Hong Kong that has primary jurisdiction over the arbitral proceedings.

61. 仲裁庭的命令及指示的强制执行

- (1) 仲裁庭就仲裁程序而作出的命令或指示，不论是在香港或香港以外地方作出的，均可犹如具有同等效力的原讼法庭命令或指示般，以同样方式强制执行，但只有在原讼法庭许可下，方可如此强制执行。
- (2) 凡任何一方寻求强制执行在香港以外地方作出的命令或指示，则除非该方能显示，该命令或指示属仲裁庭可就仲裁程序而在香港作出的命令或指示的类型或种类，否则原讼法庭不得批予强制执行该命令或指示的许可。
- (3) 原讼法庭如根据第(1)款批予许可，可按有关命令或指示的条款，登录判决。
- (4) 如原讼法庭决定根据第(1)款批予许可，或决定拒绝根据第(1)款批予许可，任何人不得针对该决定提出上诉。(由 2013 年第 7 号第 6 条修订)
- (5) 本条所提述的命令或指示，包括临时措施。

62. 原讼法庭命令讨回仲裁员费用的权力

- (1) 凡仲裁员的任命，根据藉第 26 条而具有效力的《贸法委示范法》第 13 条终止，或根据藉第 27 条而具有效力的《贸法委示范法》第 14 条终止，则原讼法庭应任何一方的申请，在顾及仲裁员的行为举措及任何其他有关情况，可行使其酌情决定权——
 - (a) 命令仲裁员无权收取其全部或部分的收费或开支；及

- (9) Subject to subsection (10), an order or decision of the Court under this section is not subject to appeal.
- (10) The leave of the Court is required for any appeal from an order of the Court under subsection (1) for the sale of any relevant property.

61. Enforcement of orders and directions of arbitral tribunal

- (1) An order or direction made, whether in or outside Hong Kong, in relation to arbitral proceedings by an arbitral tribunal is enforceable in the same manner as an order or direction of the Court that has the same effect, but only with the leave of the Court.
- (2) Leave to enforce an order or direction made outside Hong Kong is not to be granted, unless the party seeking to enforce it can demonstrate that it belongs to a type or description of order or direction that may be made in Hong Kong in relation to arbitral proceedings by an arbitral tribunal.
- (3) If leave is granted under subsection (1), the Court may enter judgment in terms of the order or direction.
- (4) A decision of the Court to grant or refuse to grant leave under subsection (1) is not subject to appeal.
- (5) An order or direction referred to in this section includes an interim measure.

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

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

7-33
第 609 章

第 7 部
第 63 条

- (b) 命令仲裁员须退还全部或部分已支付给他的收费或开支。
- (2) 任何人不得针对第 (1) 款所指的原讼法庭命令提出上诉。

63. 代表及拟备工作

《法律执业者条例》(第 159 章) 第 44 条 (非法执业为大律师或公证人的罚则)、第 45 条 (不合资格人士不得以律师身分行事) 及第 47 条 (不合资格人士不得拟备某些文书等), 不适用于——

- (a) 仲裁程序;
- (b) 为仲裁程序的目的而提供意见及拟备文件; 或
- (c) 就仲裁程序作出的任何其他事情, 但如该事情是在与以下的法院程序相关连的情况下作出的, 则属例外——
 - (i) 因仲裁协议而产生的法院程序; 或
 - (ii) 在仲裁程序的过程中产生的法院程序, 或是仲裁程序所导致的法院程序。

PART 7
Section 63

7-34
Cap. 609

- (a) may order that the arbitrator is not entitled to receive the whole or part of the arbitrator's fees or expenses; and
 - (b) may order that the arbitrator must repay the whole or part of the fees or expenses already paid to the arbitrator.
- (2) An order of the Court under subsection (1) is not subject to appeal.

63. Representation and preparation work

Section 44 (Penalty for unlawfully practising as a barrister or notary public), section 45 (Unqualified person not to act as solicitor) and section 47 (Unqualified person not to prepare certain instruments, etc.) of the Legal Practitioners Ordinance (Cap. 159) do not apply to—

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

第 8 部

作出裁决和程序终止

64. 《贸法委示范法》第 28 条 (适用于争议实体的规则)
《贸法委示范法》第 28 条具有效力，其文本列出如下——

“第 28 条. 适用于争议实体的规则

- (1) 仲裁庭应当依照当事人选择的适用于争议实体的法律规则对争议作出决定。除非另有表明，指定适用某一国家的法律或法律制度应认为是直接指该国的实体法而不是其法律冲突规范。
- (2) 当事人没有指定任何适用法律的，仲裁庭应当适用其认为适用的法律冲突规范所确定的法律。
- (3) 仲裁庭只有在各方当事人明示授权的情况下，才应当依照公平善意原则或作为友好仲裁员作出决定。
- (4) 在任何情况下，仲裁庭都应当按照合同条款并考虑到适用于该项交易的贸易惯例作出决定。”。

PART 8

MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

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

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

“Article 28. Rules applicable to substance of dispute

- (1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.
- (2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.
- (3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.
- (4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.”.

65. 《贸法委示范法》第 29 条 (仲裁团作出的决定)

《贸法委示范法》第 29 条具有效力，其文本列出如下——

“第 29 条. 仲裁团作出的决定

在有一名以上仲裁员的仲裁程序中，除非当事人另有约定，仲裁庭的任何决定应当按其全体成员的多数作出。但是，经各方当事人或仲裁庭全体成员授权的，首席仲裁员可以就程序问题作出决定。”。

66. 《贸法委示范法》第 30 条 (和解)

(1) 《贸法委示范法》第 30 条具有效力，其文本列出如下——

“第 30 条. 和解

- (1) 在仲裁程序中，当事人就争议达成和解的，仲裁庭应当终止仲裁程序，经各方当事人提出请求而仲裁庭又无异议的，还应当按和解的条件以仲裁裁决的形式记录和解。
- (2) 关于和解的条件裁决应当依照第 31 条的规定作出，并应说明它是一项裁决。此种裁决应当与根据案情作出的其他任何裁决具有同等的地位和效力。”。
- (2) 如在藉第 (1) 款而具有效力的《贸法委示范法》第 30 条所提述的情况以外的情况下，仲裁协议各方就其争议达成和解，并以书面订立包含和解条款的协议 (“和解协议”)，

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

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

“Article 29. Decision-making by panel of arbitrators

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

66. Article 30 of UNCITRAL Model Law (Settlement)

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

“Article 30. Settlement

- (1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.
- (2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.”.

8-5
第 609 章

第 8 部
第 67 条

则为强制执行该和解协议的目的，该和解协议须视为仲裁裁决。

67. 《贸法委示范法》第 31 条 (裁决的形式和内容)

(1) 《贸法委示范法》第 31 条具有效力，其文本列出如下 ——

“第 31 条. 裁决的形式和内容

- (1) 裁决应当以书面作出，并应当由仲裁员签名。在有一名以上仲裁员的仲裁程序中，仲裁庭全体成员的多数签名即可，但须说明缺漏任何签名的理由。
 - (2) 裁决应说明其所依据的理由，除非当事人约定不需说明理由或该裁决是第 30 条所指的和解裁决。
 - (3) 裁决书应具明其日期和依照第 20(1) 条确定的仲裁地点。该裁决应视为是在该地点作出的。
 - (4) 裁决作出后，经仲裁员依照本条第 (1) 款签名的裁决书应送达各方当事人各一份。”。
- (2) 藉第 (1) 款而具有效力的《贸法委示范法》第 31(4) 条，在第 77 条的规限下具有效力。

PART 8
Section 67

8-6
Cap. 609

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

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

(1) Article 31 of the UNCITRAL Model Law, the text of which is set out below, has effect—

“Article 31. Form and contents of award

- (1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.
- (2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.
- (3) The award shall state its date and the place of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at that place.
- (4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.”.

8-7
第 609 章

第 8 部
第 68 条

PART 8
Section 68

8-8
Cap. 609

68. 《贸法委示范法》第 32 条 (程序的终止)

《贸法委示范法》第 32 条具有效力，其文本列出如下——

“第 32 条. 程序的终止

- (1) 仲裁程序依终局裁决或仲裁庭按照本条第 (2) 款发出的裁定宣告终止。
- (2) 仲裁庭在下列情况下应当发出终止仲裁程序的裁定
 - (a) 申请人撤回其申请，但被申请人对此表示反对且仲裁庭承认最终解决争议对其而言具有正当利益的除外；
 - (b) 各方当事人约定程序终止；
 - (c) 仲裁庭认定仲裁程序因其他任何理由均无必要或不可能继续进行。
- (3) 仲裁庭之委任随仲裁程序的终止而终止，但须服从第 33 和 34(4) 条的规定。”。

69. 《贸法委示范法》第 33 条 (裁决的更正和解释；补充裁决)

(1) 《贸法委示范法》第 33 条具有效力，其文本列出如下——

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

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

Article 32 of the UNCITRAL Model Law, the text of which is set out below, has effect—

“Article 32. Termination of proceedings

- (1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.
- (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:
 - (a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;
 - (b) the parties agree on the termination of the proceedings;
 - (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
- (3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34(4).”.

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

“第 33 条. 裁决的更正和解释；补充裁决

- (1) 除非当事人约定了另一期限，在收到裁决书后三十天内
 - (a) 一方当事人可在通知对方当事人后请求仲裁庭更正裁决书中的任何计算错误、任何笔误或打印错误或任何类似性质的错误；
 - (b) 当事人有约定的，一方当事人可以在通知对方当事人后请求仲裁庭对裁决书的具体某一点或某一部分作出解释。

仲裁庭认为此种请求正当合理的，应当在收到请求后三十天内作出更正或解释。解释应构成裁决的一部分。
- (2) 仲裁庭可在作出裁决之日起三十天内主动更正本条第 (1)(a) 款所指类型的任何错误。
- (3) 除非当事人另有约定，一方当事人在收到裁决书后三十天内，可以在通知对方当事人后，请求仲裁庭对已在仲裁程序中提出但在裁决书中遗漏的请求事项作出补充裁决。仲裁庭如果认为此种请求正当合理的，应当在六十天内作出补充裁决。
- (4) 如有必要，仲裁庭可以将依照本条第 (1) 或 (3) 款作出更正、解释或补充裁决的期限，予以延长。
- (5) 第 31 条的规定适用于裁决的更正或解释，并适用于补充裁决。”
- (2) 凡根据藉第 (1) 款而具有效力的《贸法委示范法》第 33 条，就仲裁裁决作出以下任何事宜，则仲裁庭具有权力对该裁决作出因该事宜而需要或相应引致的其他更改——
 - (a) 改正该裁决中的任何错误；或
 - (b) 解释该裁决中的任何一点或部分。

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

“Article 33. Correction and interpretation of award;
additional award

- (1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:
 - (a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;
 - (b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.
- (2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) of this article on its own initiative within thirty days of the date of the award.
- (3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

8-11
第 609 章

第 8 部
第 70 条

- (3) 如仲裁庭在作出判给费用的裁决时，并不知悉它应考虑的和与费用有关的任何资料（包括要约和解），则该仲裁庭可在该裁决的日期的 30 天内，复核该裁决。
- (4) 在进行第 (3) 款所指的复核时，仲裁庭可维持、更改或改正判给费用的裁决。

70. 判给补救或济助的裁决

- (1) 在第 (2) 款的规限下，仲裁庭在决定某争议时，可判给任何假使该争议是原讼法庭民事法律程序的标的便可由原讼法庭命令判给的补救或济助。
- (2) 除非各方另有协议，否则仲裁庭一如原讼法庭般，具有相同的权力命令强制履行任何合约，但关乎土地或任何土地权益的合约除外。

PART 8
Section 70

8-12
Cap. 609

- (4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.
- (5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.”.
- (2) The arbitral tribunal has the power to make other changes to an arbitral award which are necessitated by or consequential on—
 - (a) the correction of any error in the award; or
 - (b) the interpretation of any point or part of the award, under article 33 of the UNCITRAL Model Law, given effect to by subsection (1).
- (3) The arbitral tribunal may review an award of costs within 30 days of the date of the award if, when making the award, the tribunal was not aware of any information relating to costs (including any offer for settlement) which it should have taken into account.
- (4) On a review under subsection (3), the arbitral tribunal may confirm, vary or correct the award of costs.

70. Award of remedy or relief

- (1) Subject to subsection (2), an arbitral tribunal may, in deciding a dispute, award any remedy or relief that could have been ordered by the Court if the dispute had been the subject of civil proceedings in the Court.
- (2) Unless otherwise agreed by the parties, the arbitral tribunal has the same power as the Court to order specific performance of any contract, other than a contract relating to land or any interest in land.

71. 就事宜的不同方面作出裁决

除非各方另有协议，否则仲裁庭可就须裁定的事宜的不同方面，在不同时间，作出多于一项裁决。

72. 作出裁决的时间

- (1) 除非各方另有协议，否则仲裁庭具有权力在任何时间作出裁决。
- (2) 原讼法庭可应任何一方的申请，不时藉命令延长作出裁决的时限（如有的话），不论该时限是否本条例所订，亦不论该时限是否已经届满。
- (3) 任何人不得针对第 (2) 款所指的原讼法庭命令提出上诉。

73. 裁决的效力

- (1) 除非各方另有协议，否则仲裁庭依据仲裁协议作出的裁决，属最终裁决，对以下所有的人均具约束力——
 - (a) 各方；及
 - (b) 透过或藉着任何一方提出申索的任何人。
- (2) 第 (1) 款并不影响任何人作出以下作为的权利——
 - (a) 按第 26 或 81 条、附表 2 第 4 或 5 条、或本条例任何其他条文的规定，质疑裁决；或
 - (b) 在其他情况下，按任何可用的上诉或复核的仲裁程序，质疑裁决。

74. 仲裁庭可作出判给仲裁程序费用的裁决

- (1) 仲裁庭可将对仲裁程序的费用（包括该仲裁庭的收费及

71. Awards on different aspects of matters

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

72. Time for making award

- (1) Unless otherwise agreed by the parties, an arbitral tribunal has the power to make an award at any time.
- (2) The time, if any, limited for making an award, whether under this Ordinance or otherwise, may from time to time be extended by order of the Court on the application of any party, whether that time has expired or not.
- (3) An order of the Court under subsection (2) is not subject to appeal.

73. Effect of award

- (1) Unless otherwise agreed by the parties, an award made by an arbitral tribunal pursuant to an arbitration agreement is final and binding both on—
 - (a) the parties; and
 - (b) any person claiming through or under any of the parties.
- (2) Subsection (1) does not affect the right of a person to challenge the award—
 - (a) as provided for in section 26 or 81, section 4 or 5 of Schedule 2, or any other provision of this Ordinance; or
 - (b) otherwise by any available arbitral process of appeal or review.

74. Arbitral tribunal may award costs of arbitral proceedings

- (1) An arbitral tribunal may include in an award directions with

8-15
第 609 章

第 8 部
第 74 条

- 开支) 方面的指示, 包括在裁决内。
- (2) 仲裁庭在顾及所有有关情况 (如适当的话, 包括已就有争议作出书面要约和解此一事实) 下, 可在第 (1) 款所指的裁决中, 指示费用须支付予谁人、由谁人支付及以何方式支付。
 - (3) 凡任何一方要求作出命令或指示 (包括临时措施), 则仲裁庭亦可就该请求, 行使其酌情决定权, 命令一方支付费用 (包括该仲裁庭的收费及开支)。
 - (4) 仲裁庭可指示, 根据第 (3) 款命令支付的费用须立即支付, 或在该仲裁庭指明的其他时间支付。
 - (5) 除第 75 条另有规定外, 仲裁庭须 ——
 - (a) 评估根据本条判给或命令支付的费用 (该仲裁庭的收费及开支除外) 的款额; 及
 - (b) 判给或命令支付该等费用 (包括该仲裁庭的收费及开支)。
 - (6) 在第 (7) 款的规限下, 仲裁庭根据第 (5) 款评估费用 (该仲裁庭的收费及开支除外) 的款额时, 无须跟随法院在评定讼费时所采用的讼费收费表及常规。
 - (7) 仲裁庭 ——
 - (a) 须只准予在顾及整体情况下属合理的费用; 及
 - (b) 可准予在展开仲裁前为准备仲裁程序而招致的费用, 但如各方另有协议则除外。
 - (8) 如仲裁协议的任何条文, 规定各方或任何一方须就根据该协议产生的仲裁程序, 支付其自己的费用, 该条文属无效。
 - (9) 如第 (8) 款所提述的条文属协议的一部分, 而该协议规定将在该协议订立前已产生的争议提交仲裁, 则该条文并非无效。

PART 8
Section 74

8-16
Cap. 609

- respect to the costs of arbitral proceedings (including the fees and expenses of the tribunal).
- (2) The arbitral tribunal may, having regard to all relevant circumstances (including the fact, if appropriate, that a written offer of settlement of the dispute concerned has been made), direct in the award under subsection (1) to whom and by whom and in what manner the costs are to be paid
 - (3) The arbitral tribunal may also, in its discretion, order costs (including the fees and expenses of the tribunal) to be paid by a party in respect of a request made by any of the parties for an order or direction (including an interim measure).
 - (4) The arbitral tribunal may direct that the costs ordered under subsection (3) are to be paid forthwith or at the time that the tribunal may otherwise specify.
 - (5) Subject to section 75, the arbitral tribunal must—
 - (a) assess the amount of costs to be awarded or ordered to be paid under this section (other than the fees and expenses of the tribunal); and
 - (b) award or order those costs (including the fees and expenses of the tribunal).
 - (6) Subject to subsection (7), the arbitral tribunal is not obliged to follow the scales and practices adopted by the court on taxation when assessing the amount of costs (other than the fees and expenses of the tribunal) under subsection (5).
 - (7) The arbitral tribunal—
 - (a) must only allow costs that are reasonable having regard to all the circumstances; and
 - (b) unless otherwise agreed by the parties, may allow costs incurred in the preparation of the arbitral proceedings prior to the commencement of the arbitration.

8-17
第 609 章

第 8 部
第 75 条

PART 8
Section 75

8-18
Cap. 609

75. 仲裁程序的费用 (仲裁庭的收费及开支除外) 的评定

- (1) 在不影响第 74(1) 及 (2) 条的原则下，如各方已协议仲裁程序的费用由法院评定，则除非仲裁庭在裁决中另有指示，否则该裁决即当作已包括仲裁庭的以下指示 由法院按照《高等法院规则》(第 4 章，附属法例 A) 第 62 号命令第 28(2) 条规则，按诉讼各方对评基准，评定仲裁程序的费用 (仲裁庭的收费及开支除外)。(由 2013 年第 7 号第 7 条修订)
- (2) 经法院作出评定后，仲裁庭须就经评定的费用作出追加裁决，以反映该评定的结果。
- (3) 任何人不得针对法院经评定而作的决定提出上诉。
- (4) 本条不适用于根据第 74(3) 条命令支付的费用。

76. 不合格人士的费用

《法律执业者条例》(第 159 章) 第 50 条 (不得就不合格人士讨回讼费) 不适用于讨回仲裁中的费用。

77. 在有争议下裁定仲裁庭的收费及开支

- (1) 除非仲裁庭的收费及开支已全数支付，否则仲裁庭可拒

- (8) A provision of an arbitration agreement to the effect that the parties, or any of the parties, must pay their own costs in respect of arbitral proceedings arising under the agreement is void.
- (9) A provision referred to in subsection (8) is not void if it is part of an agreement to submit to arbitration a dispute that had arisen before the agreement was made.

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

- (1) Without affecting section 74(1) and (2), if the parties have agreed that the costs of arbitral proceedings are to be taxed by the court, then unless the arbitral tribunal otherwise directs in an award, the award is deemed to have included the tribunal's directions that the costs (other than the fees and expenses of the tribunal) are to be taxed by the court on the party and party basis in accordance with rule 28(2) of Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A). (*Amended 7 of 2013 s. 7*)
- (2) On taxation by the court, the arbitral tribunal must make an additional award of costs reflecting the result of such taxation.
- (3) A decision of the court on taxation is not subject to appeal.
- (4) This section does not apply to costs ordered to be paid under section 74(3).

76. Costs in respect of unqualified person

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

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

- 绝将裁决发送予各方。
- (2) 如仲裁庭根据第 (1) 款拒绝将裁决发送予各方，任何一方
可向原讼法庭申请，而原讼法庭 ——
- (a) 可命令该仲裁庭在申请人将以下款额缴存原讼法庭
后，发送裁决 ——
- (i) 所要求的收费及开支；或
- (ii) 原讼法庭指明的较小款额；
- (b) 可命令以原讼法庭指示的方法，以及按原讼法庭指
示的条款，裁定须向该仲裁庭支付的收费及开支的
款额；及
- (c) 可命令 ——
- (i) 将根据 (b) 段裁定须支付的收费及开支，从缴
存原讼法庭的款项中，拨付该仲裁庭；及
- (ii) 将缴存原讼法庭的款项的余款 (如有的话)，拨
付申请人。
- (3) 为施行第 (2) 款 ——
- (a) 须支付的收费及开支的款额，为申请人根据以下任
何一项有责任支付的款额 ——
- (i) 第 78 条；或
- (ii) 关乎给仲裁员的付费的任何协议；及
- (b) 以下人士的收费及开支，均须视为仲裁庭的收费及
开支 ——
- (i) 根据藉第 54(1) 条而具有效力的《贸法委示范法》
第 26 条委任的专家；或
- (ii) 根据第 54(2) 条委任的评估人员。
- (4) 如有以下情况，第 (2) 款所指的申请不得提出 ——
- (a) 有任何可用以上诉或用以复核所要求的收费或开支
的款额的仲裁程序；或

- (1) An arbitral tribunal may refuse to deliver an award to the
parties unless full payment of the fees and expenses of the
tribunal is made.
- (2) If the arbitral tribunal refuses to deliver an award to the
parties under subsection (1), a party may apply to the Court,
which—
- (a) may order the tribunal to deliver the award on the
payment into the Court by the applicant of—
- (i) the fees and expenses demanded; or
- (ii) a lesser amount that the Court may specify;
- (b) may order that the amount of the fees and expenses
payable to the tribunal is to be determined by the means
and on the terms that the Court may direct; and
- (c) may order that—
- (i) the fees and expenses as determined under
paragraph (b) to be payable are to be paid to the
tribunal out of the money paid into the Court; and
- (ii) the balance of the money paid into the Court, if
any, is to be paid out to the applicant.
- (3) For the purposes of subsection (2)—
- (a) the amount of the fees and expenses payable is the
amount which the applicant is liable to pay—
- (i) under section 78; or
- (ii) under any agreement relating to the payment of the
arbitrators; and
- (b) the fees and expenses of—
- (i) an expert appointed under article 26 of the
UNCITRAL Model Law, given effect to by section
54(1); or

8-21
第 609 章

第 8 部
第 77 条

- (b) 所要求的收费及开支的总款额，已由一方与仲裁员以书面协议订定。
- (5) 凡任何仲裁或其他机构或人士，获各方就发送仲裁庭裁决而赋予权力，则第 (1) 至 (4) 款亦适用于该机构或人士。
- (6) 如根据第 (5) 款，第 (1) 至 (4) 款如此适用，则提述仲裁庭的收费及开支，须解释为包括该机构或人士的收费及开支。
- (7) 如某方根据第 (2) 款向原讼法庭提出申请，则有关裁决 (经发送予各方后) 的强制执行，须只在关乎仲裁庭的收费或开支的范围内搁置，直至该申请已根据本条获得处置为止。
- (8) 在本条所指的裁定作出时，仲裁员有权出席和陈词。
- (9) 如根据第 (2)(b) 款裁定的收费及开支的款额，有别于仲裁庭先前判给的款额，则该仲裁庭须修订先前的有关裁决，以反映该裁定的结果。
- (10) 任何人不得针对本条所指的原讼法庭命令提出上诉。

PART 8
Section 77

8-22
Cap. 609

- (ii) an assessor appointed under section 54(2),
are to be treated as the fees and expenses of the arbitral tribunal.
- (4) No application under subsection (2) may be made if—
- (a) there is any available arbitral process for appeal or review of the amount of the fees or expenses demanded; or
- (b) the total amount of the fees and expenses demanded has been fixed by a written agreement between a party and the arbitrators.
- (5) Subsections (1) to (4) also apply to any arbitral or other institution or person vested by the parties with powers in relation to the delivery of the arbitral tribunal's award.
- (6) If subsections (1) to (4) so apply under subsection (5), the references to the fees and expenses of the arbitral tribunal are to be construed as including the fees and expenses of that institution or person.
- (7) If an application is made to the Court under subsection (2), enforcement of the award (when delivered to the parties), but only in so far as it relates to the fees or expenses of the arbitral tribunal, must be stayed until the application has been disposed of under this section.
- (8) An arbitrator is entitled to appear and be heard on any determination under this section.
- (9) If the amount of the fees and expenses determined under subsection (2)(b) is different from the amount previously awarded by the arbitral tribunal, the tribunal must amend the previous award to reflect the result of the determination.
- (10) An order of the Court under this section is not subject to appeal.

78. 支付仲裁庭的收费及开支的法律责任

- (1) 在仲裁庭席前进行的程序的各方，须负共同及各别的法律责任，向仲裁庭支付在有关情况下属适当的该仲裁庭的合理收费及开支（如有的话）。
- (2) 除原讼法庭根据第 62 条作出的任何命令或本条例的任何其他有关条文另有规定外，第 (1) 款具有效力。
- (3) 本条并不影响——
 - (a) 各方在他们之间的支付有关仲裁程序的费用法律责任；或
 - (b) 关乎支付仲裁庭的收费及开支的任何合约权利或义务。
- (4) 在本条中，提述仲裁庭，包括——
 - (a) 已停任的仲裁庭成员；及
 - (b) 尚未替代该仲裁庭各成员的公断人。

79. 仲裁庭可判给利息

- (1) 除非各方另有协议，否则在第 80 条的规限下，仲裁庭可在其席前进行的仲裁程序中，就——
 - (a) 该仲裁庭在该仲裁程序中判给的款项；
 - (b) 在该仲裁程序展开时仍未支付，但在裁决作出前已支付的在该仲裁程序中申索的款项；或
 - (c) 该仲裁庭在该仲裁程序中判给或命令支付的费用，判给以该仲裁庭认为适当的利率计算的单利息或复利息，计息期为任何在该款项或费用的支付日期或之前结束的期间，而该利息的起计日期及结算期，则按该仲裁庭认为适当者而定。

78. Liability to pay fees and expenses of arbitral tribunal

- (1) The parties to proceedings before an arbitral tribunal are jointly and severally liable to pay to the tribunal reasonable fees and expenses, if any, of the tribunal that are appropriate in the circumstances.
- (2) Subsection (1) has effect subject to any order of the Court made under section 62 or any other relevant provision of this Ordinance.
- (3) This section does not affect—
 - (a) the liability of the parties as among themselves to pay the costs of the arbitral proceedings; or
 - (b) any contractual right or obligation relating to payment of the fees and expenses of the arbitral tribunal.
- (4) In this section, a reference to an arbitral tribunal includes—
 - (a) a member of the tribunal who has ceased to act; and
 - (b) an umpire who has not yet replaced members of the tribunal.

79. Arbitral tribunal may award interest

- (1) Unless otherwise agreed by the parties, an arbitral tribunal may, in the arbitral proceedings before it, award simple or compound interest from the dates, at the rates, and with the rests that the tribunal considers appropriate, subject to section 80, for any period ending not later than the date of payment—
 - (a) on money awarded by the tribunal in the arbitral proceedings;
 - (b) on money claimed in, and outstanding at the commencement of, the arbitral proceedings but paid before the award is made; or

8-25
第 609 章

第 8 部
第 80 条

- (2) 第 (1) 款并不影响仲裁庭判给利息的任何其他权力。
- (3) 在第 (1)(a) 款中，提述仲裁庭判给的款项，包括因该仲裁庭作出属宣布性质的裁决而须支付的款额。

80. 在仲裁程序中判给或命令支付的款项或费用的利息

- (1) 须就仲裁庭判给的款项支付利息，利息由裁决的日期起计，利率则为判定利率，但如该裁决另有规定则除外。
- (2) 须就仲裁庭判给或命令支付的费用支付利息，利息由——
 - (a) 判给费用的裁决或命令的日期起计；或
 - (b) 指示立即支付被命令支付的费用的日期起计，利率则为判定利率，但如该判给费用的裁决或命令另有规定则除外。
- (3) 在本条中，“判定利率”(judgment rate)指根据《高等法院条例》(第 4 章)第 49(1)(b)条(判决的利息)由终审法院首席法官决定的利率。

PART 8
Section 80

8-26
Cap. 609

- (c) on costs awarded or ordered by the tribunal in the arbitral proceedings.
- (2) Subsection (1) does not affect any other power of an arbitral tribunal to award interest.
- (3) A reference in subsection (1)(a) to money awarded by the tribunal includes an amount payable in consequence of a declaratory award by the tribunal.

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

- (1) Interest is payable on money awarded by an arbitral tribunal from the date of the award at the judgment rate, except when the award otherwise provides.
- (2) Interest is payable on costs awarded or ordered by an arbitral tribunal from—
 - (a) the date of the award or order on costs; or
 - (b) the date on which costs ordered are directed to be paid forthwith,
 at the judgment rate, except when the award or order on costs otherwise provides.
- (3) In this section, “judgment rate” (判定利率) means the rate of interest determined by the Chief Justice under section 49(1)(b) (Interest on judgments) of the High Court Ordinance (Cap. 4).

第 9 部**对裁决的追诉****81. 《贸法委示范法》第 34 条 (申请撤销，作为不服仲裁裁决的唯一追诉)**

- (1) 《贸法委示范法》第 34 条在第 13(5) 条的规限下具有效力，其文本列出如下 ——

“第 34 条. 申请撤销，作为不服仲裁裁决的唯一追诉

- (1) 不服仲裁裁决而向法院提出追诉的唯一途径是依照本条第 (2) 和 (3) 款的规定申请撤销。
- (2) 有下列情形之一的，仲裁裁决才可以被第 6 条规定的法院撤销
- (a) 提出申请的当事人提出证据，证明有下列任何情况
- (i) 第 7 条所指仲裁协议的当事人有某种无行为能力情形；或者根据各方当事人所同意遵守的法律或在未指明法律的情况下根据本国法律，该协议是无效的；或
- (ii) 未向提出申请的当事人发出指定仲裁员的适当通知或仲裁程序的适当通知，或因他故致使其不能陈述案情；或
- (iii) 裁决处理的争议不是提交仲裁意图裁定的事项或不在提交仲裁的范围之列，或者裁决书中内含对提交仲裁的范围以外事项的决定；如果对提交仲裁的事项所作的决定可以与对未提交仲裁的事项所作的决定互

PART 9**RECOURSE AGAINST AWARD****81. Article 34 of UNCITRAL Model Law (Application for setting aside as exclusive recourse against arbitral award)**

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

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

- (1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.
- (2) An arbitral award may be set aside by the court specified in article 6 only if:
- (a) the party making the application furnishes proof that:
- (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or
- (ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

为划分，仅可以撤销含有对未提交仲裁的事项所作的决定的那部分裁决；或

- (iv) 仲裁庭的组成或仲裁程序与当事人的约定不一致，除非此种约定与当事人不得背离的本法规定相抵触；无此种约定时，与本法不符；或
- (b) 法院认定有下列任何情形
 - (i) 根据本国的法律，争议事项不能通过仲裁解决；或
 - (ii) 该裁决与本国的公共政策相抵触。
- (3) 当事人在收到裁决书之日起三个月后不得申请撤销裁决；已根据第 33 条提出请求的，从该请求被仲裁庭处理完毕之日起三个月后不得申请撤销。
- (4) 向法院申请撤销裁决时，如果适当而且一方当事人也提出请求，法院可以在其确定的一段时间内暂时停止进行撤销程序，以便仲裁庭有机会重新进行仲裁程序或采取仲裁庭认为能够消除撤销裁决理由的其他行动。”。
- (2) 第 (1) 款并不影响 ——
 - (a) 原讼法庭根据第 26(5) 条撤销仲裁裁决的权力；
 - (b) 根据附表 2 第 4 条 (如适用的话) 质疑仲裁裁决的权利；或
 - (c) 根据附表 2 第 5 条 (如适用的话) 针对仲裁裁决的法律问题而提出上诉的权利。
- (3) 除第 (2)(c) 款另有规定外，原讼法庭并无司法管辖权以仲裁裁决表面有事实或法律上的错误为理由，而撤销或发还该裁决。

- (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
- (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or

(b) the court finds that:

- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or
 - (ii) the award is in conflict with the public policy of this State.
- (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.
 - (4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend

- (4) 凡原讼法庭根据藉第 (1) 款而具有效力的《贸法委示范法》第 34 条作出决定，则须获原讼法庭许可，方可针对该决定提出上诉。
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- the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.”.
- (2) Subsection (1) does not affect—
- (a) the power of the Court to set aside an arbitral award under section 26(5);
 - (b) the right to challenge an arbitral award under section 4 of Schedule 2 (if applicable); or
 - (c) the right to appeal against an arbitral award on a question of law under section 5 of Schedule 2 (if applicable).
- (3) Subject to subsection (2)(c), the Court does not have jurisdiction to set aside or remit an arbitral award on the ground of errors of fact or law on the face of the award.
- (4) The leave of the Court is required for any appeal from a decision of the Court under article 34 of the UNCITRAL Model Law, given effect to by subsection (1).
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第 10 部**裁决的承认和强制执行***(格式变更——2014 年第 2 号编辑修订纪录)***第 1 分部 —— 仲裁裁决的强制执行**

82. **《贸法委示范法》第 35 条 (承认和执行)**
《贸法委示范法》第 35 条不具效力。
83. **《贸法委示范法》第 36 条 (拒绝承认或执行的理由)**
《贸法委示范法》第 36 条不具效力。
84. **仲裁裁决的强制执行**
(1) 在第 26(2) 条的规限下，仲裁庭在仲裁程序中作出的裁决，不论是在香港或香港以外地方作出的，均可犹如具有同等效力的原讼法庭判决般，以同样方式强制执行，但只有在原讼法庭许可下，方可如此强制执行。
(2) 原讼法庭如根据第 (1) 款批予许可，可按有关裁决的条款，登录判决。
(3) 凡原讼法庭决定根据第 (1) 款批予强制执行裁决的许可，或决定拒绝根据第 (1) 款批予该许可，则须获原讼法庭许可，方可针对该决定提出上诉。*(由 2013 年第 7 号第 8 条修订)*
85. **为强制执行仲裁裁决而提供证据**
凡任何一方寻求强制执行仲裁裁决，而该裁决并非公约裁决、内地裁决或澳门裁决，则不论该裁决是在香港或香港以外地方作出的，该方须交出——*(由 2013 年第 7 号第 9 条修订)*

Part 10**Recognition and Enforcement of Awards***(Format changes—E.R. 2 of 2014)***Division 1—Enforcement of arbitral awards**

82. **Article 35 of UNCITRAL Model Law (Recognition and enforcement)**
Article 35 of the UNCITRAL Model Law does not have effect.
83. **Article 36 of UNCITRAL Model Law (Grounds for refusing recognition or enforcement)**
Article 36 of the UNCITRAL Model Law does not have effect.
84. **Enforcement of arbitral awards**
(1) Subject to section 26(2), an award, whether made in or outside Hong Kong, in arbitral proceedings by an arbitral tribunal is enforceable in the same manner as a judgment of the Court that has the same effect, but only with the leave of the Court.
(2) If leave is granted under subsection (1), the Court may enter judgment in terms of the award.
(3) The leave of the Court is required for any appeal from a decision of the Court to grant or refuse leave to enforce an award under subsection (1).
85. **Evidence to be produced for enforcement of arbitral awards**
The party seeking to enforce an arbitral award, whether made in or outside Hong Kong, which is not a Convention award, Mainland award or Macao award, must produce—*(Amended 7 of 2013 s. 9)*

10-3
第 609 章

第 10 部 —— 第 1 分部
第 86 条

- (a) 该裁决的经妥为认证的正本，或该裁决的经妥为认证的副本；
- (b) 有关仲裁协议的正本，或有关仲裁协议的经妥为认证的副本；及
- (c) (如该裁决或协议并非采用一种或两种法定语文) 由官方翻译人员、经宣誓的翻译人员、外交代表或领事代理人核证的一种法定语文的译本。 (由 2013 年第 7 号第 9 条代替)

86. 拒绝强制执行仲裁裁决

- (1) 如某人属强制执行第 85 条所提述的裁决的对象，而该人证明有以下情况，则该裁决的强制执行可遭拒绝 ——
 - (a) 根据适用于有关仲裁协议的一方的法律，该方缺乏某些行为能力；
 - (b) 有关仲裁协议根据以下法律属无效 ——
 - (i) (凡各方使该协议受某法律规限) 该法律；或
 - (ii) (如该协议并无显示规限法律) 作出该裁决所在的国家法律；
 - (c) 该人 ——
 - (i) 并没有获得关于委任仲裁员或关于仲裁程序的恰当通知；或
 - (ii) 因其他理由而未能铺陈其论据；
 - (d) 除第 (3) 款另有规定外 ——
 - (i) 该裁决所处理的分歧，并非提交仲裁的条款所预期者，或该项分歧并不属该等条款所指者；或
 - (ii) 该裁决包含对在提交仲裁范围以外事宜的决定；
 - (e) 有关仲裁当局的组成或仲裁的程序，并非按照 ——

Part 10—Division 1
Section 86

10-4
Cap. 609

- (a) the duly authenticated original award or a duly certified copy of it;
- (b) the original arbitration agreement or a duly certified copy of it; and
- (c) if the award or agreement is not in either or both of the official languages, a translation of it in either official language certified by an official or sworn translator or by a diplomatic or consular agent. (*Replaced 7 of 2013 s. 9*)

86. Refusal of enforcement of arbitral awards

- (1) Enforcement of an award referred to in section 85 may be refused if the person against whom it is invoked proves—
 - (a) that a party to the arbitration agreement was under some incapacity (under the law applicable to that party); (*Replaced 7 of 2013 s. 10*)
 - (b) that the arbitration agreement was not valid—
 - (i) under the law to which the parties subjected it; or
 - (ii) (if there was no indication of the law to which the arbitration agreement was subjected) under the law of the country where the award was made;
 - (c) that the person—
 - (i) was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings; or
 - (ii) was otherwise unable to present the person's case;
 - (d) subject to subsection (3), that the award—
 - (i) deals with a difference not contemplated by or not falling within the terms of the submission to arbitration; or

10-5
第 609 章

第 10 部 —— 第 1 分部
第 86 条

- (i) 各方的协议所订者；或
- (ii) (如没有协议) 进行仲裁所在的国家的法律所订者；或
- (f) 该裁决 ——
 - (i) 对各方尚未具约束力；或
 - (ii) 已遭作出该裁决所在的国家的主管当局撤销或暂时中止，或(如该裁决是根据某国家的法律作出的)已遭该国家的主管当局撤销或暂时中止。
- (2) 如有以下情况，第 85 条所提述的裁决的强制执行亦可遭拒绝 ——
 - (a) 根据香港法律，该裁决所关乎的事宜是不能藉仲裁解决的；
 - (b) 强制执行该裁决，会违反公共政策；或
 - (c) 由于任何其他原因，法院认为予以拒绝是公正的。
- (3) 如第 85 条所提述的裁决除包含对已提交仲裁的事宜作出的决定 (**仲裁决定**) 外，亦包含对未有提交仲裁的事宜作出的决定 (**非相关决定**)，则该裁决只在它关乎能与非相关决定分开的仲裁决定的范围内，可予强制执行。(由 2013 年第 7 号第 10 条代替)
- (4) 如任何人已向第 (1)(f) 款所述的主管当局，申请将第 85 条所提述的裁决撤销或暂时中止，而某方向法院寻求强制执行该裁决，则该法院 ——
 - (a) 如认为合适，可将强制执行该裁决的法律程序押后；及
 - (b) 可应寻求强制执行该裁决的该方的申请，命令属强制执行的对象的人，提供保证。
- (5) 任何人不得针对第 (4) 款所指的法院决定或命令提出上诉。

Part 10—Division 1
Section 86

10-6
Cap. 609

- (ii) contains decisions on matters beyond the scope of the submission to arbitration;
- (e) that the composition of the arbitral authority or the arbitral procedure was not in accordance with—
 - (i) the agreement of the parties; or
 - (ii) (if there was no agreement) the law of the country where the arbitration took place; or
- (f) that the award—
 - (i) has not yet become binding on the parties; or
 - (ii) has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made.
- (2) Enforcement of an award referred to in section 85 may also be refused if—
 - (a) the award is in respect of a matter which is not capable of settlement by arbitration under the law of Hong Kong;
 - (b) it would be contrary to public policy to enforce the award; or
 - (c) for any other reason the court considers it just to do so.
- (3) If an award referred to in section 85 contains, apart from decisions on matters submitted to arbitration (**arbitral decisions**), decisions on matters not submitted to arbitration (**unrelated decisions**), the award may be enforced only in so far as it relates to the arbitral decisions that can be separated from the unrelated decisions. (*Replaced 7 of 2013 s. 10*)
- (4) If an application for setting aside or suspending an award referred to in section 85 has been made to a competent authority as mentioned in subsection (1)(f), the court before

第 2 分部 —— 公约裁决的强制执行**87. 公约裁决的强制执行**

- (1) 在本分部的规限下，公约裁决 ——
 - (a) 可藉原讼法庭诉讼而在香港强制执行；或
 - (b) 可按强制执行第 84 条适用的裁决的同样方式，在香港强制执行，而该条据此而适用于公约裁决，犹如在该条中提述裁决，是指公约裁决。（由 2013 年第 7 号第 11 条修订）
- (2) 可按第 (1) 款所述般强制执行的公约裁决，须就一切目的而言，视为对各方具约束力，而任何一方均可据此于在香港进行的任何法律程序中，倚据该裁决作为抗辩或抵销，或以其他方式倚据该裁决。（由 2013 年第 7 号第 11 条代替）
- (3) 在本分部中，提述强制执行公约裁决，须解释为包括倚据公约裁决。

88. 为强制执行公约裁决而提供证据

寻求强制执行公约裁决的一方，须交出 ——

which enforcement of the award is sought— (*Amended 7 of 2013 s.10*)

- (a) may, if it thinks fit, adjourn the proceedings for the enforcement of the award; and
 - (b) may, on the application of the party seeking to enforce the award, order the person against whom the enforcement is invoked to give security.
- (5) A decision or order of the court under subsection (4) is not subject to appeal.

Division 2—Enforcement of Convention awards**87. Enforcement of Convention awards**

- (1) A Convention award is, subject to this Division, enforceable in Hong Kong either—
 - (a) by action in the Court; or
 - (b) in the same manner as an award to which section 84 applies, and that section applies to a Convention award accordingly as if a reference in that section to an award were a Convention award. (*Amended 7 of 2013 s. 11*)
- (2) A Convention award which is enforceable as mentioned in subsection (1) is to be treated as binding for all purposes on the parties, and may accordingly be relied on by any of them by way of defence, set off or otherwise in any legal proceedings in Hong Kong. (*Replaced 7 of 2013 s. 11*)
- (3) A reference in this Division to enforcement of a Convention award is to be construed as including reliance on a Convention award.

88. Evidence to be produced for enforcement of Convention awards

10-9
第 609 章

第 10 部 —— 第 2 分部
第 89 条

- (a) 该裁决的经妥为认证的正本，或该裁决的经妥为核证的副本；
- (b) 有关仲裁协议的正本，或有关仲裁协议的经妥为核证的副本；及
- (c) (如该裁决或协议并非采用一种或两种法定语文)由官方翻译人员、经宣誓的翻译人员、外交代表或领事代理人核证的一种法定语文的译本。(由 2013 年第 7 号第 12 条代替)

89. 拒绝强制执行公约裁决

- (1) 除按本条所述外，不得拒绝强制执行公约裁决。(由 2013 年第 7 号第 13 条修订)
- (2) 如某人属强制执行公约裁决的对象，而该人证明有以下情况，则该裁决的强制执行可遭拒绝——
 - (a) 根据适用于有关仲裁协议的一方的法律，该方缺乏某些行为能力；
 - (b) 有关仲裁协议根据以下法律属无效——
 - (i) (凡各方使该协议受某法律规限)该法律；或
 - (ii) (如该协议并无显示规限法律)作出该裁决所在的国家法律；
 - (c) 该人——
 - (i) 并没有获得关于委任仲裁员或关于仲裁程序的恰当通知；或
 - (ii) 因其他理由而未能铺陈其论据；
 - (d) 除第 (4) 款另有规定外——
 - (i) 该裁决所处理的分歧，并非提交仲裁的条款所预期者，或该项分歧并不属该等条款所指者；或

Part 10—Division 2
Section 89

10-10
Cap. 609

The party seeking to enforce a Convention award must produce—

- (a) the duly authenticated original award or a duly certified copy of it;
- (b) the original arbitration agreement or a duly certified copy of it; and
- (c) if the award or agreement is not in either or both of the official languages, a translation of it in either official language certified by an official or sworn translator or by a diplomatic or consular agent. *(Replaced 7 of 2013 s. 12)*

89. Refusal of enforcement of Convention awards

- (1) Enforcement of a Convention award may not be refused except as mentioned in this section. *(Amended 7 of 2013 s. 13)*
- (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 some incapacity (under the law applicable to that party); *(Replaced 7 of 2013 s. 13)*
 - (b) that the arbitration agreement was not valid—
 - (i) under the law to which the parties subjected it; or
 - (ii) (if there was no indication of the law to which the arbitration agreement was subjected) under the law of the country where the award was made;
 - (c) that the person—
 - (i) was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings; or
 - (ii) was otherwise unable to present the person's case;
 - (d) subject to subsection (4), that the award—

- (ii) 该裁决包含对在提交仲裁范围以外事宜的决定；
- (e) 有关仲裁当局的组成或仲裁的程序，并非按照 ——
 - (i) 各方的协议所订者；或
 - (ii) (如没有协议) 进行仲裁所在的国家的法律所订者；或
- (f) 该裁决 ——
 - (i) 对各方尚未具约束力；或
 - (ii) 已遭作出该裁决所在的国家的主管当局撤销或暂时中止，或(如该裁决是根据某国家的法律作出的)已遭该国家的主管当局撤销或暂时中止。
- (3) 如有以下情况，公约裁决的强制执行亦可遭拒绝 ——
 - (a) 根据香港法律，该裁决所关乎的事宜是不能藉仲裁解决的；或
 - (b) 强制执行该裁决，会违反公共政策。
- (4) 如公约裁决除包含对已提交仲裁的事宜作出的决定(**仲裁决定**)外，亦包含对未有提交仲裁的事宜作出的决定(**非相关决定**)，则该裁决只在它关乎能与非相关决定分开的仲裁决定的范围内，可予强制执行。(由 2013 年第 7 号第 13 条代替)
- (5) 如任何人已向第 (2)(f) 款所述的主管当局，申请将公约裁决撤销或暂时中止，而某方向法院寻求强制执行该裁决，则该法院 ——
 - (a) 如认为合适，可将强制执行该裁决的法律程序押后；及
 - (b) 可应寻求强制执行该裁决的该方的申请，命令属强制执行的对象的人，提供保证。
- (6) 任何人不得针对第 (5) 款所指的法院决定或命令提出上诉。

- (i) deals with a difference not contemplated by or not falling within the terms of the submission to arbitration; or
- (ii) contains decisions on matters beyond the scope of the submission to arbitration;
- (e) that the composition of the arbitral authority or the arbitral procedure was not in accordance with—
 - (i) the agreement of the parties; or
 - (ii) (if there was no agreement) the law of the country where the arbitration took place; or
- (f) that the award—
 - (i) has not yet become binding on the parties; or
 - (ii) has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made.
- (3) Enforcement of a Convention award may also be refused if—
 - (a) the award is in respect of a matter which is not capable of settlement by arbitration under the law of Hong Kong; or
 - (b) it would be contrary to public policy to enforce the award.
- (4) If a Convention award contains, apart from decisions on matters submitted to arbitration (**arbitral decisions**), decisions on matters not submitted to arbitration (**unrelated decisions**), the award may be enforced only in so far as it relates to the arbitral decisions that can be separated from the unrelated decisions. (*Replaced 7 of 2013 s. 13*)
- (5) If an application for setting aside or suspending a Convention award has been made to a competent authority as mentioned

10-13
第 609 章

第 10 部 —— 第 3 分部
第 92 条

Part 10—Division 3
Section 92

10-14
Cap. 609

90. 宣布《纽约公约》缔约方的命令

- (1) 行政长官会同行政会议可藉于宪报刊登的命令，宣布符合以下说明的任何国家或地区，为《纽约公约》的缔约方——
 - (a) 属该公约的缔约方；及
 - (b) 在该命令内指明。
- (2) 在第 (1) 款所指的命令有效时，该命令即为它所指明的国家或地区属《纽约公约》的缔约方的确证。
- (3) 第 (1) 及 (2) 款并不影响任何其他证明某国家或地区属《纽约公约》的缔约方的方法。

91. 保留强制执行公约裁决的权利

本分部并不影响任何并非根据本分部而强制执行或倚据公约裁决的权利。

第 3 分部 —— 内地裁决的强制执行

92. 内地裁决的强制执行

- (1) 在本分部的规限下，内地裁决 ——

in subsection (2)(f), the court before which enforcement of the award is sought— (*Amended 7 of 2013 s. 13*)

- (a) may, if it thinks fit, adjourn the proceedings for the enforcement of the award; and
 - (b) may, on the application of the party seeking to enforce the award, order the person against whom the enforcement is invoked to give security.
- (6) A decision or order of the court under subsection (5) is not subject to appeal.

90. Order for declaring party to New York Convention

- (1) The Chief Executive in Council may, by order in the Gazette, declare that any State or territory that—
 - (a) is a party to the New York Convention; and
 - (b) is specified in the order,
 is a party to that Convention.
- (2) An order under subsection (1), while in force, is conclusive evidence that the State or territory specified in it is a party to the New York Convention.
- (3) Subsections (1) and (2) do not affect any other method of proving that a State or territory is a party to the New York Convention.

91. Saving of rights to enforce Convention awards

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

Division 3—Enforcement of Mainland awards

92. Enforcement of Mainland awards

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

10-15
第 609 章

第 10 部 —— 第 3 分部
第 93 条

- (a) 可藉原讼法庭诉讼而在香港强制执行；或
 - (b) 可按强制执行第 84 条适用的裁决的同样方式，在香港强制执行，而该条据此而适用于内地裁决，犹如在该条中提述裁决，是指内地裁决。（由 2013 年第 7 号第 14 条修订）
- (2) 可按第 (1) 款所述般强制执行的内地裁决，须就一切目的而言，视为对各方具约束力，而任何一方均可据此于在香港进行的任何法律程序中，倚据该裁决作为抗辩或抵销，或以其他方式倚据该裁决。（由 2013 年第 7 号第 14 条代替）
- (3) 在本分部中，提述强制执行内地裁决，须解释为包括倚据内地裁决。

93. 强制执行内地裁决的限制

- (1) 除第 (2) 款另有规定外，如已有人为强制执行某内地裁决，而在内地提出申请，则该裁决不得根据本分部强制执行。
- (2) 如内地裁决并未藉在内地或任何其他地方（香港除外）进行的强制执行法律程序获完全履行，则该裁决在该程序中未获履行的部分，可根据本分部强制执行。（由 2013 年第 7 号第 15 条代替）

94. 为强制执行内地裁决而提供证据

寻求强制执行内地裁决的一方，须交出 ——

- (a) 该裁决的经妥为认证的正本，或该裁决的经妥为认证的副本；
- (b) 有关仲裁协议的正本，或有关仲裁协议的经妥为认证的副本；及

Part 10—Division 3
Section 93

10-16
Cap. 609

Hong Kong either—

- (a) by action in the Court; or
 - (b) in the same manner as an award to which section 84 applies, and that section applies to a Mainland award accordingly as if a reference in that section to an award were a Mainland award. (*Amended 7 of 2013 s. 14*)
- (2) A Mainland award which is enforceable as mentioned in subsection (1) is to be treated as binding for all purposes on the parties, and may accordingly be relied on by any of them by way of defence, set off or otherwise in any legal proceedings in Hong Kong. (*Replaced 7 of 2013 s. 14*)
- (3) A reference in this Division to enforcement of a Mainland award is to be construed as including reliance on a Mainland award.

93. Restrictions on enforcement of Mainland awards

- (1) A Mainland award is not, subject to subsection (2), enforceable under this Division if an application has been made on the Mainland for enforcement of the award.
- (2) If a Mainland award is not fully satisfied by way of enforcement proceedings taken in the Mainland, or in any other place other than Hong Kong, that part of the award which is not satisfied in those proceedings is enforceable under this Division. (*Replaced 7 of 2013 s. 15*)

94. Evidence to be produced for enforcement of Mainland awards

The party seeking to enforce a Mainland award must produce—

- (a) the duly authenticated original award or a duly certified copy of it;
- (b) the original arbitration agreement or a duly certified copy of it; and

10-17
第 609 章

第 10 部 —— 第 3 分部
第 95 条

- (c) (如该裁决或协议并非采用一种或两种法定语文)由官方翻译人员、经宣誓的翻译人员、外交代表或领事代理人核证的一种法定语文的译本。(由 2013 年第 7 号第 16 条代替)

95. 拒绝强制执行内地裁决

- (1) 除按本条所述外,不得拒绝强制执行内地裁决。(由 2013 年第 7 号第 17 条修订)
- (2) 如某人属强制执行内地裁决的对象,而该人证明有以下情况,则该裁决的强制执行可遭拒绝——
 - (a) 根据适用于有关仲裁协议的一方的法律,该方缺乏某些行为能力;
 - (b) 有关仲裁协议根据以下法律属无效——
 - (i) (凡各方使该协议受某法律规限)该法律;或
 - (ii) (如该协议并无显示规限法律)内地法律;
 - (c) 该人——
 - (i) 并没有获得关于委任仲裁员或关于仲裁程序的恰当通知;或
 - (ii) 因其他理由而未能铺陈其论据;
 - (d) 除第 (4) 款另有规定外——
 - (i) 该裁决所处理的分歧,并非提交仲裁的条款所预期者,或该项分歧并不属该等条款所指者;或
 - (ii) 该裁决包含对在提交仲裁范围以外事宜的决定;
 - (e) 有关仲裁当局的组成或仲裁的程序,并非按照——
 - (i) 各方的协议所订者;或
 - (ii) (如没有协议)内地法律所订者;或
 - (f) 该裁决——

Part 10—Division 3
Section 95

10-18
Cap. 609

- (c) if the award or agreement is not in either or both of the official languages, a translation of it in either official language certified by an official or sworn translator or by a diplomatic or consular agent. (Replaced 7 of 2013 s. 16)

95. Refusal of enforcement of Mainland awards

- (1) Enforcement of a Mainland award may not be refused except as mentioned in this section. (Amended 7 of 2013 s. 17)
- (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 some incapacity (under the law applicable to that party); (Replaced 7 of 2013 s. 17)
 - (b) that the arbitration agreement was not valid—
 - (i) under the law to which the parties subjected it; or
 - (ii) (if there was no indication of the law to which the arbitration agreement was subjected) under the law of the Mainland;
 - (c) that the person—
 - (i) was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings; or
 - (ii) was otherwise unable to present the person's case;
 - (d) subject to subsection (4), that the award—
 - (i) deals with a difference not contemplated by or not falling within the terms of the submission to arbitration; or
 - (ii) contains decisions on matters beyond the scope of the submission to arbitration;

10-19
第 609 章

第 10 部 —— 第 3 分部
第 96 条

- (i) 对各方尚未具约束力；或
- (ii) 已遭内地的主管当局撤销或暂时中止，或已根据内地的法律撤销或暂时中止。
- (3) 如有以下情况，内地裁决的强制执行亦可遭拒绝 ——
 - (a) 根据香港法律，该裁决所关涉的事宜是不能藉仲裁解决的；或
 - (b) 强制执行该裁决，会违反公共政策。
- (4) 如内地裁决除包含对已提交仲裁的事宜作出的决定 (**仲裁决定**) 外，亦包含对未有提交仲裁的事宜作出的决定 (**非相关决定**)，则该裁决只在它关涉能与非相关决定分开的仲裁决定的范围内，可予强制执行。(由 2013 年第 7 号第 17 条代替)

96. 本分部某些条文不适用于内地裁决

- (1) 除第 (2) 款另有规定外，本分部就内地裁决的强制执行具有效力。
- (2) 如 ——
 - (a) 某内地裁决在 1997 年 7 月 1 日前的任何时间，属当时有效的《旧有条例》第 IV 部所指的公约裁决；及

Part 10—Division 3
Section 96

10-20
Cap. 609

- (e) that the composition of the arbitral authority or the arbitral procedure was not in accordance with—
 - (i) the agreement of the parties; or
 - (ii) (if there was no agreement) the law of the Mainland; or
- (f) that the award—
 - (i) has not yet become binding on the parties; or
 - (ii) has been set aside or suspended by a competent authority of the Mainland or under the law of the Mainland.
- (3) Enforcement of a Mainland award may also be refused if—
 - (a) the award is in respect of a matter which is not capable of settlement by arbitration under the law of Hong Kong; or
 - (b) it would be contrary to public policy to enforce the award.
- (4) If a Mainland award contains, apart from decisions on matters submitted to arbitration (**arbitral decisions**), decisions on matters not submitted to arbitration (**unrelated decisions**), the award may be enforced only in so far as it relates to the arbitral decisions that can be separated from the unrelated decisions. (*Replaced 7 of 2013 s. 17*)

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

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

10-21
第 609 章

第 10 部 —— 第 4 分部

- (b) 该裁决曾在《2000年仲裁(修订)条例》(2000年第2号)第5条生效前的任何时间,根据当时有效的《旧有条例》第44条遭拒绝强制执行,则第92至95条并不就该裁决的强制执行具有效力。

97. 认可内地仲裁当局名单的公布

- (1) 律政司司长须藉于宪报刊登的公告,公布由中华人民共和国国务院法制办公室不时透过国务院港澳事务办公室提供予政府的认可内地仲裁当局的名单。
- (2) 根据第(1)款公布的名单并非附属法例。

98. 保留某些内地裁决

尽管某内地裁决曾在1997年7月1日至《2000年仲裁(修订)条例》(2000年第2号)第5条生效的期间内的任何时间,根据当时有效的《旧有条例》在香港遭拒绝强制执行,则除第96(2)条另有规定外,该裁决仍可根据本分部强制执行,犹如该裁决先前未曾如此遭拒绝强制执行一样。

第4分部 —— 澳门裁决的强制执行

(第4分部由2013年第7号第18条增补)

Part 10—Division 4

10-22
Cap. 609

- (a) a Mainland award was at any time before 1 July 1997 a Convention award within the meaning of Part IV of the repealed Ordinance as then in force; and
- (b) the enforcement of that award had been refused at any time before the commencement of section 5 of the Arbitration (Amendment) Ordinance 2000 (2 of 2000) under section 44 of the repealed Ordinance as then in force,

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

97. Publication of list of recognized Mainland arbitral authorities

- (1) The Secretary for Justice must, by notice in the Gazette, publish a list of recognized Mainland arbitral authorities supplied from time to time to the Government by the Legislative Affairs Office of the State Council of the People's Republic of China through the Hong Kong and Macao Affairs Office of the State Council.
- (2) A list published under subsection (1) is not subsidiary legislation.

98. Saving of certain Mainland awards

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

Division 4—Enforcement of Macao Awards

(Division 4 added 7 of 2013 s. 18)

98A. 澳门裁决的强制执行

- (1) 在本分部的规限下，澳门裁决 ——
 - (a) 可藉原讼法庭诉讼而在香港强制执行；或
 - (b) 可按强制执行第 84 条适用的裁决的同样方式，在香港强制执行，而该条据此而适用于澳门裁决，犹如在该条中提述裁决，是指澳门裁决。
- (2) 可按第 (1) 款所述般强制执行的澳门裁决，须就一切目的而言，视为对各方具约束力，而任何一方均可据此于在香港进行的任何法律程序中，倚据该裁决作为抗辩或抵销，或以其他方式倚据该裁决。
- (3) 在本分部中，提述强制执行澳门裁决，须解释为包括倚据澳门裁决。

98B. 已获部分履行的澳门裁决的强制执行

如澳门裁决并未藉在澳门或任何其他地方（香港除外）进行的强制执行法律程序获完全履行，则该裁决在该程序中未获履行的部分，可根据本分部强制执行。

98C. 为强制执行澳门裁决而提供证据

寻求强制执行澳门裁决的一方，须交出 ——

- (a) 该裁决的经妥为认证的正本，或该裁决的经妥为认证的副本；
- (b) 有关仲裁协议的正本，或有关仲裁协议的经妥为认证的副本；及

98A. Enforcement of Macao awards

- (1) A Macao award is, subject to this Division, enforceable in Hong Kong either—
 - (a) by action in the Court; or
 - (b) in the same manner as an award to which section 84 applies, and that section applies to a Macao award accordingly as if a reference in that section to an award were a Macao award.
- (2) A Macao award which is enforceable as mentioned in subsection (1) is to be treated as binding for all purposes on the parties, and may accordingly be relied on by any of them by way of defence, set off or otherwise in any legal proceedings in Hong Kong.
- (3) A reference in this Division to enforcement of a Macao award is to be construed as including reliance on a Macao award.

98B. Enforcement of Macao awards partially satisfied

If a Macao award is not fully satisfied by way of enforcement proceedings taken in Macao, or in any other place other than Hong Kong, that part of the award which is not satisfied in those proceedings is enforceable under this Division.

98C. Evidence to be produced for enforcement of Macao awards

The party seeking to enforce a Macao 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

10-25
第 609 章

第 10 部 —— 第 4 分部
第 98D 条

- (c) (如该裁决或协议并非采用一种或两种法定语文)由官方翻译人员、经宣誓的翻译人员、外交代表或领事代理人核证的一种法定语文的译本。

98D. 拒绝强制执行澳门裁决

- (1) 除按本条所述外，不得拒绝强制执行澳门裁决。
- (2) 如某人属强制执行澳门裁决的对象，而该人证明有以下情况，则该裁决的强制执行可遭拒绝——
 - (a) 根据适用于有关仲裁协议的一方的法律，该方缺乏某些行为能力；
 - (b) 有关仲裁协议根据以下法律属无效——
 - (i) (凡各方使该协议受某法律规限)该法律；或
 - (ii) (如该协议并无显示规限法律)澳门法律；
 - (c) 该人——
 - (i) 并没有获得关于委任仲裁员或关于仲裁程序的恰当通知；或
 - (ii) 因其他理由而未能铺陈其论据；
 - (d) 除第(4)款另有规定外——
 - (i) 该裁决所处理的分歧，并非提交仲裁的条款所预期者，或该项分歧并不属该等条款所指者；或
 - (ii) 该裁决包含对在提交仲裁范围以外事宜的决定；
 - (e) 有关仲裁当局的组成或仲裁的程序，并非按照——
 - (i) 各方的协议所订者；或
 - (ii) (如没有协议)澳门法律所订者；或
 - (f) 该裁决——
 - (i) 对各方尚未具约束力；或

Part 10—Division 4
Section 98D

10-26
Cap. 609

- (c) if the award or agreement is not in either or both of the official languages, a translation of it in either official language certified by an official or sworn translator or by a diplomatic or consular agent.

98D. Refusal of enforcement of Macao awards

- (1) Enforcement of a Macao award may not be refused except as mentioned in this section.
- (2) Enforcement of a Macao award may be refused if the person against whom it is invoked proves—
 - (a) that a party to the arbitration agreement was under some incapacity (under the law applicable to that party);
 - (b) that the arbitration agreement was not valid—
 - (i) under the law to which the parties subjected it; or
 - (ii) (if there was no indication of the law to which the arbitration agreement was subjected) under the law of Macao;
 - (c) that the person—
 - (i) was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings; or
 - (ii) was otherwise unable to present the person's case;
 - (d) subject to subsection (4), that the award—
 - (i) deals with a difference not contemplated by or not falling within the terms of the submission to arbitration; or
 - (ii) contains decisions on matters beyond the scope of the submission to arbitration;
 - (e) that the composition of the arbitral authority or the arbitral procedure was not in accordance with—

10-27
第 609 章

第 10 部 —— 第 4 分部
第 98D 条

- (ii) 已遭澳门的主管当局撤销或暂时中止，或已根据澳门的法律撤销或暂时中止。
- (3) 如有以下情况，澳门裁决的强制执行亦可遭拒绝 ——
- (a) 根据香港法律，该裁决所关乎的事宜是不能藉仲裁解决的；或
- (b) 强制执行该裁决，会违反公共政策。
- (4) 如澳门裁决除包含对已提交仲裁的事宜作出的决定 (**仲裁决定**) 外，亦包含对未有提交仲裁的事宜作出的决定 (**非相关决定**)，则该裁决只在它关乎能与非相关决定分开的仲裁决定的范围内，可予强制执行。
- (5) 如任何人已向第 (2)(f) 款所述的主管当局，申请将澳门裁决撤销或暂时中止，而某方向法院寻求强制执行该裁决，则该法院 ——
- (a) 如认为合适，可将强制执行该裁决的法律程序押后；及
- (b) 可应寻求强制执行该裁决的该方的申请，命令属强制执行的对象的人，提供保证。
- (6) 任何人不得针对第 (5) 款所指的法院决定或命令提出上诉。

Part 10—Division 4
Section 98D

10-28
Cap. 609

- (i) the agreement of the parties; or
- (ii) (if there was no agreement) the law of Macao; or
- (f) that the award—
- (i) has not yet become binding on the parties; or
- (ii) has been set aside or suspended by a competent authority of Macao or under the law of Macao.
- (3) Enforcement of a Macao award may also be refused if—
- (a) the award is in respect of a matter which is not capable of settlement by arbitration under the law of Hong Kong; or
- (b) it would be contrary to public policy to enforce the award.
- (4) If a Macao award contains, apart from decisions on matters submitted to arbitration (**arbitral decisions**), decisions on matters not submitted to arbitration (**unrelated decisions**), the award may be enforced only in so far as it relates to the arbitral decisions that can be separated from the unrelated decisions.
- (5) If an application for setting aside or suspending a Macao award has been made to a competent authority as mentioned in subsection (2)(f), the court before which enforcement of the award is sought—
- (a) may, if it thinks fit, adjourn the proceedings for the enforcement of the award; and
- (b) may, on the application of the party seeking to enforce the award, order the person against whom the enforcement is invoked to give security.
- (6) A decision or order of the court under subsection (5) is not subject to appeal.

第 11 部**可以明文选择或自动适用的条文***(格式变更——2015 年第 3 号编辑修订纪录)***99. 仲裁协议可明文规定供选用的条文**

仲裁协议可明文规定以下任何或全部条文适用——

- (a) 附表 2 第 1 条；
- (b) 附表 2 第 2 条；
- (c) 附表 2 第 3 条；
- (d) 附表 2 第 4 及 7 条；
- (e) 附表 2 第 5、6 及 7 条。

100. 供选用的条文在某些情况下自动适用

除第 102 条另有规定外，附表 2 所有条文适用于符合以下说明的仲裁协议——

- (a) 在本条例生效前订立，并规定该协议所指的仲裁为本地仲裁；或
- (b) 在本条例生效后的 6 年期间的任何时间订立，并规定该协议所指的仲裁为本地仲裁。

101. 根据第 100 条自动适用的供选用的条文当作适用于香港建造分判个案**Part 11****Provisions that may be Expressly Opted for or Automatically Apply***(Format changes—E.R. 3 of 2015)***99. Arbitration agreements may provide expressly for opt-in provisions**

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

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

100. Opt-in provisions automatically apply in certain cases

All the provisions in Schedule 2 apply, subject to section 102, to—

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

101. Opt-in provisions that automatically apply under section 100 deemed to apply to Hong Kong construction subcontracting cases

11-3
第 609 章

第 11 部
第 101 条

- (1) 如 ——
- (a) 某建造合约内包括了第 19 条所提述的任何形式的仲裁协议，而根据第 100(a) 或 (b) 条，附表 2 的所有条文适用于该仲裁协议；
 - (b) 根据该建造合约而进行的建设工程的全部或任何部分 (**有关的工程**)，根据另一建造合约 (**分判合约**) 分判予任何人；及
 - (c) 该分判合约亦包括了第 19 条所提述的任何形式的仲裁协议 (**分判各方的仲裁协议**)，
- 则除第 102 条另有规定外，附表 2 的所有条文亦适用于该分判各方的仲裁协议。
- (2) 除非分判各方的仲裁协议是第 100(a) 或 (b) 条所提述的仲裁协议，否则在以下情况下，第 (1) 款不适用 ——
- (a) 有关的工程的全部或任何部分，根据分判合约而分判予某人，而 ——
 - (i) 该人是通常居于香港以外地方的自然人；
 - (ii) 该人 ——
 - (A) 是根据香港以外地方的法律成立的法人团体；或
 - (B) 是一个法人团体，而其中央管理及控制是在香港以外地方行使的；或
 - (iii) 该人 ——
 - (A) 是根据香港以外地方的法律组成的组织；或
 - (B) 是一个组织，而其中央管理及控制是在香港以外地方行使的；
 - (b) 有关的工程的全部或任何部分，根据分判合约而分判予某人，而该人在香港没有营业地点；或

Part 11
Section 101

11-4
Cap. 609

- (1) If—
- (a) all the provisions in Schedule 2 apply under section 100(a) or (b) to an arbitration agreement, in any form referred to in section 19, included in a construction contract;
 - (b) the whole or any part of the construction operations to be carried out under the construction contract (**relevant operation**) is subcontracted to any person under another construction contract (**subcontract**); and
 - (c) that subcontract also includes an arbitration agreement (**subcontracting parties' arbitration agreement**) in any form referred to in section 19,
- then all the provisions in Schedule 2 also apply, subject to section 102, to the subcontracting parties' arbitration agreement.
- (2) Unless the subcontracting parties' arbitration agreement is an arbitration agreement referred to in section 100(a) or (b), subsection (1) does not apply if—
- (a) the person to whom the whole or any part of the relevant operation is subcontracted under the subcontract is—
 - (i) a natural person who is ordinarily resident outside Hong Kong;
 - (ii) a body corporate—
 - (A) incorporated under the law of a place outside Hong Kong; or
 - (B) the central management and control of which is exercised outside Hong Kong; or
 - (iii) an association—
 - (A) formed under the law of a place outside Hong Kong; or

11-5
第 609 章

第 11 部
第 102 条

- (c) 根据分判合约而分判予某人的有关的工程有相当部分是在香港以外地方履行的。
- (3) 如 ——
- (a) 根据第 (1) 款，附表 2 的所有条文适用于分判各方的仲裁协议；
- (b) 根据有关的分判合约而分判予某人的有关的工程的全部或任何部分，根据另一建造合约 (**再分判合约**) 再分判予另一人；及
- (c) 该再分判合约亦包括了第 19 条所提述的任何形式的仲裁协议，

则在第 (2) 款的规限下，第 (1) 款具有效力，而除第 102 条另有规定外，附表 2 的所有条文适用于如此包括在该再分判合约内的仲裁协议，犹如该再分判合约是第 (1) 款所指的分判合约一样。

- (4) 在本条中 ——

建造工程 (construction operations) 具有《建造业议会条例》(第 587 章) 附表 1 给予该词的涵义；

建造合约 (construction contract) 具有《建造业议会条例》(第 587 章) 第 2(1) 条给予该词的涵义。

102. 供选用的条文不得自动适用的情况

Part 11
Section 102

11-6
Cap. 609

- (B) the central management and control of which is exercised outside Hong Kong;
- (b) the person to whom the whole or any part of the relevant operation is subcontracted under the subcontract has no place of business in Hong Kong; or
- (c) a substantial part of the relevant operation which is subcontracted under the subcontract is to be performed outside Hong Kong.
- (3) If—
- (a) all the provisions in Schedule 2 apply to a subcontracting parties' arbitration agreement under subsection (1);
- (b) the whole or any part of the relevant operation that is subcontracted under the subcontract is further subcontracted to another person under a further construction contract (**further subcontract**); and
- (c) that further subcontract also includes an arbitration agreement in any form referred to in section 19,
- subsection (1) has effect subject to subsection (2), and all the provisions in Schedule 2 apply, subject to section 102, to the arbitration agreement so included in that further subcontract as if that further subcontract were a subcontract under subsection (1).
- (4) In this section—
- construction contract** (建造合约) has the meaning given to it by section 2(1) of the Construction Industry Council Ordinance (Cap. 587);
- construction operations** (建造工程) has the meaning given to it by Schedule 1 to the Construction Industry Council Ordinance (Cap. 587).

102. Circumstances under which opt-in provisions not automatically

11-7
第 609 章

第 11 部
第 103 条

- (1) 如 —— (由 2015 年第 11 号第 4 条修订)
- (a) 有关的仲裁协议的各方，以书面方式协议第 100 条不适用；或
 - (b) 有关的仲裁协议明文规定 ——
 - (i) 第 100 或 101 条不适用；或
 - (ii) 附表 2 第 2、3、4、5、6 或 7 条适用或不适用，
(由 2015 年第 11 号第 4 条修订)
- 则第 100 及 101 条不适用。
- (2) 第 (1)(b)(ii) 款并不减损第 99 条的施行。(由 2015 年第 11 号第 4 条增补)

103. 根据本部适用条文

如根据本部而适用的任何条文，与本条例的任何其他条文之间有矛盾或抵触之处，则在该矛盾或抵触之处的范围内，首述的条文凌驾该其他条文。

Part 11
Section 103

11-8
Cap. 609

apply

- (1) Sections 100 and 101 do not apply if— (*Amended 11 of 2015 s. 4*)
- (a) the parties to the arbitration agreement concerned so agree in writing; or
 - (b) the arbitration agreement concerned has provided expressly that—
 - (i) section 100 or 101 does not apply; or
 - (ii) section 2, 3, 4, 5, 6 or 7 of Schedule 2 applies or does not apply. (*Amended 11 of 2015 s. 4*)
- (2) Subsection (1)(b)(ii) does not derogate from the operation of section 99. (*Added 11 of 2015 s. 4*)

103. Application of provisions under this Part

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

第 12 部

杂项

(格式变更——2015 年第 3 号编辑修订纪录)

104. 仲裁庭或调解员须为某些作为及不作为负上法律责任

- (1) 仲裁庭或调解员在法律上，须为——
 - (a) 该仲裁庭或调解员；或
 - (b) 该仲裁庭的雇员或代理人，或该调解员的雇员或代理人，在行使或执行（或在宣称行使或执行）该仲裁庭的仲裁职能或该调解员的职能方面作出或不作出的作为，负上法律责任，但只有在证明该作为是不诚实地作出或该不作为是不诚实的情况下，该仲裁庭或调解员方须如此负上法律责任。
- (2) 仲裁庭的雇员或代理人，或调解员的雇员或代理人，在法律上，须为其在行使或执行（或在宣称行使或执行）该仲裁庭的仲裁职能或该调解员的职能方面作出或不作出的作为，负上法律责任，但只有在证明该作为是不诚实地作出或该不作为是不诚实的情况下，该雇员或代理人方须如此负上法律责任。
- (3) 在本条中，**调解员** (mediator) 指根据第 32 条委任的或第 33 条所提述的调解员。

105. 委任人及管理人只须为某些作为及不作为负上法律责任

- (1) 凡任何人——
 - (a) 委任任何仲裁庭或调解员；或
 - (b) 行使或执行与仲裁程序或调解程序相关连、并具有行政性质的任何其他职能，

Part 12

Miscellaneous

(Format changes—E.R. 3 of 2015)

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

- (1) An arbitral tribunal or mediator is liable in law for an act done or omitted to be done by—
 - (a) the tribunal or mediator; or
 - (b) an employee or agent of the tribunal or mediator,in relation to the exercise or performance, or the purported exercise or performance, of the tribunal's arbitral functions or the mediator's functions only if it is proved that the act was done or omitted to be done dishonestly.
- (2) An employee or agent of an arbitral tribunal or mediator is liable in law for an act done or omitted to be done by the employee or agent in relation to the exercise or performance, or the purported exercise or performance, of the tribunal's arbitral functions or the mediator's functions only if it is proved that the act was done or omitted to be done dishonestly.
- (3) In this section, **mediator** (调解员) means a mediator appointed under section 32 or referred to in section 33.

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

- (1) A person—
 - (a) who appoints an arbitral tribunal or mediator; or
 - (b) who exercises or performs any other function of an

12-3
第 609 章

第 12 部
第 105 条

则该人在法律上，须为在行使或执行（或在宣称行使或执行）该职能方面作出或不作出的作为所造成的后果，负上法律责任，但只有在证明该作为是不诚实地作出或该不作为是不诚实的情况下，该人方须如此负上法律责任。

(2) 凡任何作为是——

(a) 由仲裁程序或调解程序的一方；或

(b) 由该方的法律代表或顾问，

在行使或执行（或在宣称行使或执行）与该程序相关连、并具有行政性质的任何职能方面作出或不作出的，则第(1)款不适用于该作为。

(3) 凡任何人的雇员或代理人作出或不作出第(1)款所提述的作为，则该雇员或代理人在法律上，须为该作为或该不作为所造成的后果，负上法律责任，但只有在证明有以下情况下，该雇员或代理人方须如此负上法律责任——

(a) 该作为是不诚实地作出的，或该不作为是不诚实的；而

(b) 该雇员或代理人参与该项不诚实的作为或不作为。

(4) 第(1)款所提述的人或该人的雇员或代理人，不得只因他行使或执行该款所提述的任何职能，而在法律上为——

(a) 有关的仲裁庭或调解员；或

(b) 该仲裁庭的雇员或代理人，或该调解员的雇员或代理人，

在行使或执行（或在宣称行使或执行）该仲裁庭的仲裁职能或该调解员的职能方面作出或不作出的作为所造成的后果，负上法律责任。

(5) 在本条中——

委任 (appoint) 包括提名和指定；

调解员 (mediator) 的涵义与第 104 条中该词的涵义相同，而**调解程序** (mediation proceedings) 须据此解释。

Part 12
Section 105

12-4
Cap. 609

administrative nature in connection with arbitral or mediation proceedings,

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

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

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

(b) a legal representative or adviser of the party,

in the exercise or performance, or the purported exercise or performance, of a function of an administrative nature in connection with those proceedings.

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

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

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

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

(a) the arbitral tribunal or mediator concerned; or

(b) an employee or agent of the tribunal or mediator,

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

(5) In this section—

12-5
第 609 章

第 12 部
第 106 条

Part 12
Section 106

12-6
Cap. 609

106. 法院规则

- (1) 根据《高等法院条例》(第 4 章)第 54 条(法院规则)订立法院规则的权力,包括为以下事项订立法院规则的权力——
 - (a) 申请第 45(2) 条所指的临时措施,或申请第 60(1) 条所指的命令;或
 - (b) 在司法管辖权范围外送达该临时措施或命令的申请。
- (2) 任何凭借本条订立的规则,可包括订立规则的机构认为有需要或适宜的附带、补充及相应条文。

107. 根据本条例提出申请等

除非另有表明,否则根据本条例向法院提出的申请、请求或上诉,均须按照《高等法院规则》(第 4 章,附属法例 A)提出。

108. 本条例所指的原讼法庭决定等

本条例所指的原讼法庭决定、裁定、指示或裁决,须为《高等法院条例》(第 4 章)第 14 条(民事事宜的上诉)的目的,视为原讼法庭判决。

appoint (委任) includes nominate and designate;

mediator (调解员) has the same meaning as in section 104, and *mediation proceedings* (调解程序) is to be construed accordingly.

106. Rules of court

- (1) The power to make rules of court under section 54 (Rules of court) of the High Court Ordinance (Cap. 4) includes power to make rules of court for—
 - (a) the making of an application for an interim measure under section 45(2) or an order under section 60(1); or
 - (b) the service out of the jurisdiction of an application for the interim measure or order.
- (2) Any rules made by virtue of this section may include the incidental, supplementary and consequential provisions that the authority making the rules considers necessary or expedient.

107. Making an application, etc. under this Ordinance

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

108. Decision, etc. of Court under this Ordinance

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

第 13 部**废除、保留及过渡性条文***(格式变更——2015 年第 3 号编辑修订纪录)***109.** *(已失时效而略去——2015 年第 3 号编辑修订纪录)***110. 废除附属法例的效果**

任何根据《旧有条例》订立的、在本条例生效时正有效的附属法例，在不与本条例相抵触的范围内继续有效，并就所有目的而言具有效力，犹如该附属法例是根据本条例订立一样。

111. 保留及过渡性条文

- (1) 附表 3 第 1 部订定于本条例生效时即适用或关乎本条例的生效的保留条文及过渡性安排。*(由 2015 年第 11 号第 5 条修订)*
- (2) 附表 3 第 2 部订定于《2015 年仲裁(修订)条例》(2015 年第 11 号)生效*时即适用或关乎该条例的生效*的保留条文及过渡性安排。*(由 2015 年第 11 号第 5 条增补)*

* 生效日期：2015 年 7 月 17 日。

Part 13**Repeal, Savings and Transitional Provisions***(Format changes—E.R. 3 of 2015)***109.** *(Omitted as spent—E.R. 3 of 2015)***110. Effect of repeal on subsidiary legislation**

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

111. Savings and transitional provisions

- (1) Part 1 of Schedule 3 provides for the savings and transitional arrangements that apply on, or relate to, the commencement of this Ordinance. *(Amended 11 of 2015 s. 5)*
- (2) Part 2 of Schedule 3 provides for the savings and transitional arrangements that apply on, or relate to, the commencement* of the Arbitration (Amendment) Ordinance 2015 (11 of 2015). *(Added 11 of 2015 s. 5)*

* Commencement date: 17 July 2015.

14-1
第 609 章

第 14 部
第 112 条

Part 14
Section 112

14-2
Cap. 609

第 14 部

(已失时效而略去——2015 年第 3 号编辑修订纪录)

112. (已失时效而略去——2015 年第 3 号编辑修订纪录)

Part 14

(Omitted as spent—E.R. 3 of 2015)

112. (Omitted as spent—E.R. 3 of 2015)

附表 1

[第 2 条]

《贸易法委员会国际商事仲裁示范法》

(1985 年 6 月 21 日联合国国际贸易法委员会通过，
2006 年 7 月 7 日联合国国际贸易法委员会修订)

第一章．总则

第 1 条． 适用范围*

(1) 本法适用于国际商事** 仲裁，但须服从在本国与其他任何一国或多国之间有效力的任何协定。

(2) 本法之规定，除第 8、9、17H、17I、17J、35 及 36 条外，只适用于仲裁地点在本国领土内的情况。

(第 1(2) 条经由委员会 2006 年第三十九届会议修订)

(3) 有下列情形之一的，仲裁为国际仲裁：

(a) 仲裁协议的各方当事人在缔结协议时，其营业地点位于不同的国家；或

(b) 下列地点之一位于各方当事人营业地点所在国以外：

(i) 仲裁协议中确定的或根据仲裁协议而确定的仲裁地点；

(ii) 履行商事关系的大部分义务的任何地点或与争议事项关系最密切的地点；或

SCHEDULE 1

[s. 2]

UNCITRAL MODEL LAW ON INTERNATIONAL
COMMERCIAL ARBITRATION

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

CHAPTER I. GENERAL PROVISIONS

Article 1. Scope of application*

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

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

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

(3) An arbitration is international if:

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

S1-3

第 609 章

S1-4

Cap. 609

(c) 各方当事人明确同意，仲裁协议的标的与一个以上的国家有关。

(4) 就本条第 (3) 款而言：

(a) 一方当事人有一个以上营业地点的，营业地点为与仲裁协议关系最密切的营业地点；

(b) 一方当事人没有营业地点的，以其惯常住所为准。

(5) 本法不得影响规定某些争议不可交付仲裁或仅根据本法之外的规定才可以交付仲裁的本国其他任何法律。

[注 本条例第 5 条取代本示范法第 1 条而具有效力 —— 参看本条例第 7 条。]

第 2 条. 定义及解释规则

在本法中：

(a) “仲裁”是指无论是否由常设仲裁机构进行的任何仲裁；

(b) “仲裁庭”是指一名独任仲裁员或一个仲裁团；

(c) “法院”是指一国司法系统的一个机构或机关；

(d) 本法的规定，除第 28 条外，允许当事人自由决定某一问题时，这种自由包括当事人授权第三人（包括机构）作出此种决定的权利；

(e) 本法的规定提到当事人已达成协议或可能达成协议的事实时，或在任何其他情况下援引当事人的一项协议时，此种协议包括其所援引之任何仲裁规则；

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

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

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

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

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

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

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

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

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

Article 2. Definitions and rules of interpretation

For the purposes of this Law:

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

S1-5

第 609 章

S1-6

Cap. 609

(f) 本法的规定，除第 25(a) 和 32(2)(a) 条外，提及请求时，也适用于反请求；提及答辩时，也适用于对这种反请求的答辩。

[注 本条例第 2 条取代本示范法第 2 条而具有效力 —— 参看本条例第 8 条。]

第 2A 条. 国际渊源和一般原则
(经由委员会 2006 年第三十九届会议通过)

(1) 在解释本法时，应考虑到其国际渊源和促进其统一适用及遵循诚信原则的必要性。

(2) 与本法所管辖的事项有关的问题，在本法中未予明确解决的，应依照本法所基于的一般原则加以解决。

[注 参看本条例第 9 条。]

第 3 条. 收到书面通讯

(1) 除非当事人另有约定：

(a) 任何书面通讯，经当面递交收件人，或投递到收件人的营业地点、惯常住所或通信地址的，或经合理查询不能找到上述任一地点而以挂号信或能提供作过投递企图的其他任何方式投递到收件人最后一个为人所知的营业地点、惯常住所或通信地址的，视为已经收到；

(b) 通讯视为已于以上述方式投递之日收到。

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

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

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

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

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

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

Article 2A. International origin and general principles

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

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

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

S1-7
第 609 章

S1-8
Cap. 609

(2) 本条规定不适用于法院程序中的通讯。

[注 参看本条例第 10 条。]

第 4 条. 放弃提出异议的权利

一方当事人知道本法中当事人可以背离的任何规定或仲裁协议规定的任何要求未得到遵守，但仍继续进行仲裁而没有不过分迟延地或在为此订有时限的情况下没有在此时限内对此种不遵守情事提出异议的，应视为已放弃其提出异议权利。

[注 参看本条例第 11 条。]

第 5 条. 法院干预的限度

由本法管辖的事情，任何法院不得干预，除非本法有此规定。

[注 参看本条例第 12 条。]

第 6 条. 法院或其他机构对仲裁予以 协助和监督的某种职责

[Note: See section 9.]

Article 3. Receipt of written communications

(1) Unless otherwise agreed by the parties:

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

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

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

[Note: See section 10.]

Article 4. Waiver of right to object

A party who knows that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating

S1-9

附表 1

第 609 章

S1-10

Cap. 609

第 11(3)、11(4)、13(3)、14、16(3) 和 34(2) 条所指的职责，应由 [本示范法每一颁布国具体指明履行这些职责的一个法院或多个法院或其他有管辖权的机构履行。]

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.

[注 本条例第 13(2) 至 (6) 条取代本示范法第 6 条而具有效力 —— 参看本条例第 13 条。]

[Note: See section 11.]

第二章．仲裁协议

Article 5. Extent of court intervention

备选案文一

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

第 7 条． 仲裁协议的定义和形式

[Note: See section 12.]

(经由委员会 2006 年第三十九届会议通过)

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

(1) “ 仲裁协议 ” 是指当事人同意将他们之间一项确定的契约性或非契约性的法律关系中已经发生或可能发生的一切争议或某些争议交付仲裁的协议。仲裁协议可以采取合同中的仲裁条款形式或单独的协议形式。

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.]

(2) 仲裁协议应为书面形式。

(3) 仲裁协议的内容以任何形式记录下来的，即为书面形式，无论该仲裁协议或合同是以口头方式、行为方式还是其他方式订立的。

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

S1-11
第 609 章

附表 1

(4) 电子通信所含信息可以调取以备日后查用的，即满足了仲裁协议的书面形式要求；“电子通信”是指当事人以数据电文方式发出的任何通信；“数据电文”是指经由电子手段、磁化手段、光学手段或类似手段生成、发送、接收或储存的信息，这些手段包括但不限于电子数据交换、电子邮件、电报、电传或传真。

(5) 另外，仲裁协议如载于相互往来的索赔声明和抗辩声明中，且一方当事人声称有协议而另一方当事人不予否认的，即为书面协议。

(6) 在合同中提及载有仲裁条款的任何文件的，只要此种提及可使该仲裁条款成为该合同一部分，即构成书面形式的仲裁协议。

备选案文二

第 7 条. 仲裁协议的定义

(经由委员会 2006 年第三十九届会议通过)

“仲裁协议”是指当事人同意将其之间一项确定的契约性或非契约性的法律关系中已经发生或可能发生的一切争议或某些争议交付仲裁的协议。

[注：参看本条例第 19 条。本条备选案文一获采纳。]

第 8 条. 仲裁协议和向法院提出的实体性申诉

SCHEDULE 1

S1-12
Cap. 609

CHAPTER II. ARBITRATION AGREEMENT

Option I

Article 7. Definition and form of arbitration agreement

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

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

(2) The arbitration agreement shall be in writing.

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

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

S1-13
第 609 章

附表 1

(1) 就仲裁协议的标的向法院提起诉讼时，一方当事人在不迟于其就争议实体提出第一次申述时要求仲裁的，法院应让当事人诉诸仲裁，除非法院认定仲裁协议无效、不能实行或不能履行。

(2) 提起本条第 (1) 款所指诉讼后，在法院对该问题未决期间，仍然可以开始或继续进行仲裁程序，并可作出裁决。

[注：参看本条例第 20 条。]

第 9 条. 仲裁协议和法院的临时措施

在仲裁程序开始前或进行期间，一方当事人请求法院采取临时保全措施和法院准予采取这种措施，并不与仲裁协议相抵触。

[注：参看本条例第 21 条。]

第三章. 仲裁庭的组成

第 10 条. 仲裁员人数

(1) 当事人可以自由确定仲裁员的人数。

(2) 未作此确定的，仲裁员的人数应为三名。

SCHEDULE 1

S1-14
Cap. 609

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

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

Option II

Article 7. Definition of arbitration agreement

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

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

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

Article 8. Arbitration agreement and substantive claim before court

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the

S1-15
第 609 章

SCHEDULE 1

S1-16
Cap. 609

[注：本示范法第 10(2) 条不适用——参看本条例第 23 条。]

第 11 条. 仲裁员的指定

- (1) 除非当事人另有协议，不应以所属国籍为由排除任何人担任仲裁员。
- (2) 当事人可以自由约定指定一名或多名仲裁员的程序，但须遵从本条第 (4) 和 (5) 款的规定。
- (3) 未达成此种约定的，
- (a) 在仲裁员为三名的仲裁中，由一方当事人指定一名仲裁员，并由如此指定的两名仲裁员指定第三名仲裁员；一方当事人在收到对方当事人提出指定仲裁员的要求后三十天内未指定仲裁员的，或两名仲裁员在被指定后三十天内未就第三名仲裁员达成协议的，经一方当事人请求，由第 6 条规定的法院或其他机构加以指定；
- (b) 在独任仲裁员的仲裁中，当事人未就仲裁员达成协议的，经一方当事人请求，由第 6 条规定的法院或其他机构加以指定。
- (4) 根据当事人约定的指定程序，有下列情形之一的，
- (a) 一方当事人未按这种程序规定的要求行事的，或
- (b) 当事人或两名仲裁员未能根据这种程序达成预期的协议的，或
- (c) 第三人（包括机构）未履行根据此种程序所委托的任何职责的，

dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

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

[Note: See section 20.]

Article 9. Arbitration agreement and interim measures by court

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

[Note: See section 21.]

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

Article 10. Number of arbitrators

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

S1-17
第 609 章

S1-18
Cap. 609

任何一方当事人均可请求第 6 条规定的法院或其他机构采取必要措施，除非指定仲裁员程序的协议订有确保能指定仲裁员的其他方法。

(5) 本条第 (3) 或 (4) 款交托由第 6 条规定的法院或其他机构受理的事项一经作出裁定，不得上诉。该法院或其他机构在指定仲裁员时应适当顾及当事人约定的仲裁员所需具备的任何资格，并适当顾及有可能确保指定独立和公正的仲裁员的考虑因素；在指定独任仲裁员或第三名仲裁员时，还应考虑到指定一名非当事人国籍的仲裁员的可取性。

[注：参看本条例第 24 条。]

第 12 条. 回避的理由

(1) 在被询及有关可能被指定为仲裁员之事时，被询问人应该披露可能引起对其公正性或独立性产生正当怀疑的任何情况。仲裁员自被指定之时起并在整个仲裁程序进行期间，应毫不迟延地向各方当事人披露任何此类情况，除非其已将此情况告知各方当事人。

(2) 只有存在引起对仲裁员的公正性或独立性产生正当怀疑的情况或仲裁员不具备当事人约定的资格时，才可以申请仲裁员回避。当事人只有根据其作出指定之后知悉的理由，才可以对其所指定的或其所参与指定的仲裁员提出回避。

[注：参看本条例第 25 条。]

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

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

Article 11. Appointment of arbitrators

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

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

(3) Failing such agreement,

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

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

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

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

S1-19
第 609 章

S1-20
Cap. 609

第 13 条. 申请回避的程序

(1) 当事人可自由约定申请仲裁员回避的程序，但须遵从本条第 (3) 款的规定。

(2) 未达成此种约定的，拟对仲裁员提出回避申请的当事人应在知悉仲裁庭的组成或知悉第 12(2) 条所指的任何情况后十五天内向仲裁庭提出书面陈述，说明提出回避申请的理由。除非被申请回避的仲裁员辞职或对方当事人同意所提出的回避，仲裁庭应就是否回避作出决定。

(3) 根据当事人约定的任何程序或本条第 (2) 款的程序而提出的回避不成立的，提出回避申请的一方当事人可以在收到驳回其所提出的回避申请的决定通知后三十天内，请求第 6 条规定的法院或其他机构就是否回避作出决定，该决定不得上诉；在对该请求未决期间，仲裁庭包括被申请回避的仲裁员可以继续进行的仲裁程序和作出裁决。

[注：参看本条例第 26 条。]

第 14 条. 未行事或不能行事

(1) 仲裁员无履行职责的法律行为能力或事实行为能力或者由于其他原因未能毫无过分迟延地行事的，其若辞职或者当事人约定其委任终止的，其委任即告终止。但对上述任何原因仍有争议的，任何一方当事人可以请求第 6 条规定的法院或其他机构就是否终止委任作出决定，该决定不得上诉。

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

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

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

(5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

[Note: See section 24.]

Article 12. Grounds for challenge

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

S1-21
第 609 章

附表 1

S1-22
Cap. 609

(2) 依照本条或第 13(2) 条一名仲裁员辞职或者一方当事人同意终止对一名仲裁员的委任的，并不意味着本条或第 12(2) 条所指任何理由的有效性得到承认。

[注 参看本条例第 27 条。]

第 15 条. 指定替代仲裁员

依照第 13 或 14 条的规定或因为仲裁员由于其他任何原因辞职或因为当事人约定解除仲裁员的委任或在其他任何情况下终止仲裁员的委任的，应当依照指定所被替换的仲裁员时适用的规则指定替代仲裁员。

[注 参看本条例第 28 条。]

第四章. 仲裁庭的管辖权

第 16 条. 仲裁庭对其管辖权作出裁定的权力

(1) 仲裁庭可以对其管辖权，包括对关于仲裁协议的存在或效力的任何异议作出裁定。为此目的，构成合同一部分的仲裁条款应当视为独立于合同其他条款的一项协议。仲裁庭作出关于合同无效的决定，在法律上不导致仲裁条款无效。

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

[Note: See section 25.]

Article 13. Challenge procedure

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

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

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

S1-23
第 609 章

附表 1

S1-24
Cap. 609

(2) 有关仲裁庭无管辖权的抗辩不得在提出答辩书之后提出。一方当事人指定或参与指定仲裁员的事实，不妨碍其提出此种抗辩。有关仲裁庭超越其权限范围的抗辩，应当在仲裁程序中出现被指称的越权事项时立即提出。在其中任何一种情况下，仲裁庭如认为迟延有正当理由的，可准许推迟提出抗辩。

(3) 仲裁庭可以根据案情将本条第 (2) 款所指抗辩作为一个初步问题裁定或在实体裁决中裁定。仲裁庭作为一个初步问题裁定其拥有管辖权的，任何一方当事人可在收到裁定通知后三十天内请求第 6 条规定的法院对此事项作出决定，该决定不得上诉；在对该请求未决期间，仲裁庭可以继续仲裁程序和作出裁决。

[注 参看本条例第 34 条。]

第四 A 章. 临时措施和初步命令

(经由委员会 2006 年第三十九届会议通过)

第 1 节. 临时措施

第 17 条. 仲裁庭下令采取临时措施的权力

(1) 除非当事人另有约定，仲裁庭经一方当事人请求，可以准予采取临时措施。

including the challenged arbitrator, may continue the arbitral proceedings and make an award.

[Note: See section 26.]

Article 14. Failure or impossibility to act

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

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

[Note: See section 27.]

Article 15. Appointment of substitute arbitrator

S1-25
第 609 章

(2) 临时措施是以裁决书为形式的或另一种形式的任何短期措施，仲裁庭在发出最后裁定争议的裁决书之前任何时候，以这种措施责令一方当事人实施以下任何行为：

- (a) 在争议得以裁定之前维持现状或恢复原状；
- (b) 采取行动防止目前或即将对仲裁程序发生的危害或损害，或不采取可能造成这种危害或损害的行动；
- (c) 提供一种保全资产以执行后继裁决的手段；或
- (d) 保全对解决争议可能具有相关性和重要性的证据。

[注 参看本条例第 35 条。]

第 17A 条. 准予采取临时措施的条件

(1) 一方当事人请求采取第 17(2)(a)、(b) 和 (c) 条所规定的临时措施的，应当使仲裁庭确信：

- (a) 不下令采取这种措施可能造成损害，这种损害无法通过判给损害赔偿金而充分补偿，而且远远大于准予采取这种措施而可能对其所针对的当事人造成的损害；以及
- (b) 根据索赔请求所依据的案情，请求方当事人相当有可能胜诉。对这种可能性的判定不影响仲裁庭此后作出任何裁定的自由裁量权。

(2) 关于对第 17(2)(d) 条所规定的临时措施请求，本条第 (1)(a) 和 (b) 款的要求仅在仲裁庭认为适当的情况下适用。

[注 参看本条例第 36 条。]

SCHEDULE 1

S1-26
Cap. 609

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

[Note: See section 28.]

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

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

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

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

第 2 节. 初步命令**第 17B 条. 初步命令的申请和下达初步命令的条件**

(1) 除非各方当事人另有约定，一方当事人可以不通知其他任何当事人而提出临时措施请求，同时一并申请下达初步命令，指令一方当事人不得阻挠所请求的临时措施的目的。

(2) 当仲裁庭认为事先向临时措施所针对的当事人披露临时措施请求有可能阻挠这种措施目的时，仲裁庭可以下达初步命令。

(3) 第 17A 条中规定的条件适用于任何初步命令，条件是根据第 17A(1)(a) 条估测的损害是下达命令或不下达命令而有可能造成的损害。

[注 参看本条例第 37 条。]

第 17C 条. 初步命令的具体制度

(1) 仲裁庭就初步命令申请作出判定之后，应当立即通知所有当事人，使之了解临时措施请求、初步命令申请、任何已下达的初步命令以及任何一方当事人与仲裁庭之间与此有关的所有其他通信，包括指明任何口头通信的内容。

the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

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

[Note: See section 34.]

CHAPTER IVA. INTERIM MEASURES AND PRELIMINARY ORDERS

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

Section 1. Interim measures***Article 17. Power of arbitral tribunal to order interim measures***

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

(2) An interim measure is any temporary measure, whether in the form of an award or in another form, by which, at any time prior to the issuance

S1-29

第 609 章

S1-30

Cap. 609

(2) 同时，仲裁庭应当在实际可行的最早时间内给予初步命令所针对的当事人陈述案情的机会。

(3) 仲裁庭应当迅速就任何针对初步命令的异议作出裁定。

(4) 初步命令自仲裁庭下达该命令之日起二十天后失效。但在向初步命令所针对的当事人发出通知并为其提供陈述案情的机会之后，仲裁庭可以下达对初步命令加以采纳或修改的临时措施。

(5) 初步命令对当事人具有约束力，但不由法院执行。这种初步命令不构成仲裁裁决。

[注：参看本条例第 38 条。]

第 3 节. 适用于临时措施和初步命令的条文

第 17D 条. 修改、中止和终结

仲裁庭可以在任何一方当事人提出申请时修改、中止或终结其已准予采取的临时措施或已下达的初步命令，在非常情况下并事先通知各方当事人后，亦可自行修改、中止或终结其已准予采取的临时措施或已下达的初步命令。

[注：参看本条例第 39 条。]

of the award by which the dispute is finally decided, the arbitral tribunal orders a party to:

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

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

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

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

[Note: See section 35.]

Article 17A. Conditions for granting interim measures

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

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

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

S1-31
第 609 章

S1-32
Cap. 609

第 17E 条. 提供担保

(1) 仲裁庭可以要求请求临时措施的一方当事人提供与这种措施有关的适当担保。

(2) 仲裁庭应当要求申请初步命令的一方当事人提供与这种命令有关的担保，除非仲裁庭认为这样做不妥当或者没有必要。

[注 参看本条例第 40 条。]

第 17F 条. 披露

(1) 仲裁庭可以要求任何当事人迅速披露在请求或者准予采取临时措施时而依据的情形所发生的任何重大变化。

(2) 申请初步命令的一方当事人应当向仲裁庭披露一切可能与仲裁庭判定是否下达或维持该命令有关的情形，这种义务应当持续到该命令所针对的当事人有机会陈述案情之时。在此之后，应当适用本条第 (1) 款。

[注：参看本条例第 41 条。]

第 17G 条. 费用与损害赔偿

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

[Note: See section 36.]

Section 2. Preliminary orders

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

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

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

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

[Note: See section 37.]

如果仲裁庭之后裁定根据情形本不应当准予采取临时措施或下达初步命令，则请求临时措施或申请初步命令的一方当事人应当就该措施或命令对其所针对的当事人造成的任何费用和损害承担赔偿责任。仲裁庭可以在仲裁程序的任何时候判给这种费用和损害赔偿金。

[注：参看本条例第 42 条。]

第 4 节. 临时措施的承认和执行

第 17H 条. 承认和执行

(1) 仲裁庭发出的临时措施应当被确认为具有约束力，并且除非仲裁庭另有规定，应当在遵从第 17I 条各项规定的前提下，经向有管辖权的法院提出申请后加以执行，不论该措施是在哪一国发出的。

(2) 正在寻求或已经获得对某一项临时措施的承认或执行的当事人，应当将该临时措施的任何终结、中止或修改迅速通知法院。

(3) 受理承认或执行请求的国家的法院如果认为情况适当，在仲裁庭尚未就担保作出决定的情况下，或者在这种决定对于保护第三人的权利是必要的情况下，可以命令请求方当事人提供适当担保。

[注：本条例第 61 条取代本示范法第 17H 条而具有效力——参看本条例第 43 条。]

Article 17C. Specific regime for preliminary orders

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

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

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

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

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

第 17I 条. 拒绝承认或执行的理由 ***

(1) 只有在下列任何情形下，才能拒绝承认或执行临时措施：

(a) 应临时措施所针对的当事人的请求，法院确信：

- (i) 这种拒绝因第 36(1)(a)(i)、(ii)、(iii) 或 (iv) 条中所述的理由而是正当的；或
- (ii) 未遵守仲裁庭关于与仲裁庭发出的临时措施有关的提供担保的决定的；或
- (iii) 该临时措施已被仲裁庭终结或中止，或被已获此项权限的仲裁发生地国法院或依据本国法律准予采取临时措施的国家的法院所终结或中止的；或

(b) 法院认定：

- (i) 临时措施不符合法律赋予法院的权力，除非法院决定对临时措施作必要的重新拟订，使之为了执行该临时措施的目的而适应自己的权力和程序，但并不修改临时措施的实质内容的；或
- (ii) 第 36(1)(b)(i) 或 (ii) 条中所述任何理由适用于对临时措施的承认和执行的。

(2) 法院根据本条第 (1) 款中所述任何理由作出的任何裁定，效力范围仅限于为了申请承认和执行临时措施。受理承认或执行请求的法院不应在作出这一裁定时对临时措施的实质内容进行审查。

[注 本示范法第 17I 条不具效力 —— 参看本条例第 44 条。]

第 5 节. 法院下令采取的临时措施

[Note: See section 38.]

Section 3. Provisions applicable to interim measures and preliminary orders**Article 17D. Modification, suspension, termination**

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

[Note: See section 39.]

Article 17E. Provision of security

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

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

[Note: See section 40.]

第 17J 条. 法院下令采取的临时措施

法院发布与仲裁程序有关的临时措施的权力应当与法院在法院诉讼程序方面的权力相同，不论仲裁程序的进行地是否在本国境内。法院应当根据自己的程序，在考虑到国际仲裁的具体特征的情况下行使这一权力。

[注：本示范法第 17J 条不具效力——参看本条例第 45 条。]

第五章. 仲裁程序的进行**第 18 条. 当事人平等待遇**

当事人应当受到平等待遇，并应当被给予充分的机会陈述其案情。

[注：本条例第 46(2) 及 (3) 条取代本示范法第 18 条而具有效力——参看本条例第 46 条。]

第 19 条. 程序规则的确定

(1) 在不违背本法规定的情况下，当事人可以自由约定仲裁庭进行仲裁时所应当遵循的程序。

Article 17F. Disclosure

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

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

[Note: See section 41.]

Article 17G. Costs and damages

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

S1-39
第 609 章

S1-40
Cap. 609

(2) 未达成此种约定的，仲裁庭可以在不违背本法规定的情况下，按照仲裁庭认为适当的方式进行仲裁。授予仲裁庭的权力包括对任何证据的可采性、相关性、实质性和重要性的决定权。

[注 本示范法第 19(2) 条不适用 —— 参看本条例第 47 条。]

第 20 条. 仲裁地点

(1) 当事人可以自由约定仲裁的地点。未达成此种约定的，由仲裁庭考虑到案件的情况，包括当事人的便利，确定仲裁地点。

(2) 虽有本条第 (1) 款的规定，为在仲裁庭成员间进行磋商，为听取证人、专家或当事人的意见，或者为检查货物、其他财产或文件，除非当事人另有约定，仲裁庭可以在其认为适当的任何地点会晤。

[注：参看本条例第 48 条。]

第 21 条. 仲裁程序的开始

除非当事人另有约定，解决特定争议的仲裁程序，于被申请人收到将该争议提交仲裁的请求之日开始。

[注 参看本条例第 49 条。]

[Note: See section 42.]

Section 4. Recognition and enforcement of interim measures

Article 17H. Recognition and enforcement

(1) An interim measure issued by an arbitral tribunal shall be recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application to the competent court, irrespective of the country in which it was issued, subject to the provisions of article 17I.

(2) The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the court of any termination, suspension or modification of that interim measure.

(3) The court of the State where recognition or enforcement is sought may, if it considers it proper, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or where such a decision is necessary to protect the rights of third parties.

[Note: Section 61 has effect in substitution for article 17H—see section 43.]

Article 17I. Grounds for refusing recognition or enforcement***

第 22 条. 语文

(1) 当事人可以自由约定仲裁程序中拟使用的语文。未达成此种约定的，由仲裁庭确定仲裁程序中拟使用的语文。这种约定或确定除非其中另外指明，适用于一方当事人的任何书面陈述、仲裁庭的任何开庭、裁决、决定或其他通讯。

(2) 仲裁庭可以命令任何书面证据附具当事人约定的或仲裁庭确定的语文的译本。

[注：参看本条例第 50 条。]

第 23 条. 申请书和答辩书

(1) 在当事人约定的或仲裁庭确定的时间期限内，申请人应当陈述支持其请求的各种事实、争议点以及所寻求的救济或补救，被申请人应当逐项作出答辩，除非当事人就这种陈述和答辩所要求的项目另有约定。当事人可以随同其陈述提交其认为相关的一切文件，也可以附带述及其将要提交的文件或其他证据。

(2) 除非当事人另有约定，在仲裁程序进行中，任何一方当事人可以修改或补充其请求或答辩，除非仲裁庭考虑到为时已迟，认为不宜允许作此更改。

[注：参看本条例第 51 条。]

(1) Recognition or enforcement of an interim measure may be refused only:

(a) At the request of the party against whom it is invoked if the court is satisfied that:

(i) Such refusal is warranted on the grounds set forth in article 36(1)(a)(i), (ii), (iii) or (iv); or

(ii) The arbitral tribunal's decision with respect to the provision of security in connection with the interim measure issued by the arbitral tribunal has not been complied with; or

(iii) The interim measure has been terminated or suspended by the arbitral tribunal or, where so empowered, by the court of the State in which the arbitration takes place or under the law of which that interim measure was granted; or

(b) If the court finds that:

(i) The interim measure is incompatible with the powers conferred upon the court unless the court decides to reformulate the interim measure to the extent necessary to adapt it to its own powers and procedures for the purposes of enforcing that interim measure and without modifying its substance; or

(ii) Any of the grounds set forth in article 36(1)(b)(i) or (ii), apply to the recognition and enforcement of the interim measure.

(2) Any determination made by the court on any ground in paragraph (1) of this article shall be effective only for the purposes of the application to recognize and enforce the interim measure. The court where recognition or enforcement is sought shall not, in making that determination, undertake a review of the substance of the interim measure.

第 24 条. 开庭和书面审理程序

- (1) 除当事人有任何相反约定外，仲裁庭应当决定是否举行开庭听审，以便出示证据或进行口头辩论，或者是否应当以文件和其他材料为基础进行仲裁程序。但是除非当事人约定不开庭听审，一方当事人请求开庭的，仲裁庭应当在进行仲裁程序的适当阶段举行开庭听审。
- (2) 任何开庭和仲裁庭为了检查货物、其他财产或文件而举行的任何会议，应当充分提前通知当事人。
- (3) 一方当事人向仲裁庭提供的一切陈述书、文件或其他资料应当送交对方当事人。仲裁庭在作出决定时可能依赖的任何专家报告或证据性文件也应当送交各方当事人。

[注：参看本条例第 52 条。]

第 25 条. 一方当事人的不为

除非当事人另有约定，在不提出充分理由的情况下：

- (a) 申请人未能依照第 23(1) 条的规定提交申请书的，仲裁庭应当终止仲裁程序；
- (b) 被申请人未能依照第 23(1) 条的规定提交答辩书的，仲裁庭应当继续进行仲裁程序，但不将此种缺失行为本身视为认可了申请人的申述；

[Note: Article 17I does not have effect—see section 44.]

Section 5. Court-ordered interim measures**Article 17J. Court-ordered interim measures**

A court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their place is in the territory of this State, as it has in relation to proceedings in courts. The court shall exercise such power in accordance with its own procedures in consideration of the specific features of international arbitration.

[Note: Article 17J does not have effect—see section 45.]

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS**Article 18. Equal treatment of parties**

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

[Note: Section 46(2) and (3) has effect in substitution for article 18—see section 46.]

S1-45
第 609 章

S1-46
Cap. 609

(c) 任何一方当事人不出庭或不提供书面证据的，仲裁庭可以继续进行仲裁程序并根据其所收到的证据作出裁决。

[注 参看本条例第 53 条。]

第 26 条. 仲裁庭指定的专家

(1) 除非当事人另有约定，仲裁庭：

(a) 可以指定一名或多名专家就仲裁庭待决之特定问题向仲裁庭提出报告；

(b) 可以要求一方当事人向专家提供任何相关资料，或出示或让他接触任何相关的文件、货物或其他财产以供检验。

(2) 除非当事人另有约定，经一方当事人提出请求或仲裁庭认为必要的，专家在提出其书面或口头报告后应当参加开庭，各方当事人可向其提问，专家证人就争议点作证。

[注 参看本条例第 54 条。]

第 27 条. 法院协助取证

仲裁庭或一方当事人在仲裁庭同意之下，可以请求本国内的管辖法院协助取证。法院可以在其权限范围内并按照其关于取证的规则执行上述请求。

Article 19. Determination of rules of procedure

(1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

[Note: Article 19(2) is not applicable—see section 47.]

Article 20. Place of arbitration

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

(2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for

S1-47
第 609 章

附表 1

S1-48
Cap. 609

[注：参看本条例第 55 条。]

第六章. 作出裁决和程序终止

第 28 条. 适用于争议实体的规则

(1) 仲裁庭应当依照当事人选择的适用于争议实体的法律规则对争议作出决定。除非另有表明，指定适用某一国家的法律或法律制度应认为是直接指该国的实体法而不是其法律冲突规范。

(2) 当事人没有指定任何适用法律的，仲裁庭应当适用其认为适用的法律冲突规范所确定的法律。

(3) 仲裁庭只有在各方当事人明示授权的情况下，才应当依照公平善意原则或作为友好仲裁员作出决定。

(4) 在任何情况下，仲裁庭都应当按照合同条款并考虑到适用于该项交易的贸易惯例作出决定。

[注：参看本条例第 64 条。]

第 29 条. 仲裁团作出的决定

hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

[Note: See section 48.]

Article 21. Commencement of arbitral proceedings

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

[Note: See section 49.]

Article 22. Language

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

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

在有一名以上仲裁员的仲裁程序中，除非当事人另有约定，仲裁庭的任何决定应当按其全体成员的多数作出。但是，经各方当事人或仲裁庭全体成员授权的，首席仲裁员可以就程序问题作出决定。

[注 参看本条例第 65 条。]

第 30 条. 和解

(1) 在仲裁程序中，当事人就争议达成和解的，仲裁庭应当终止仲裁程序，经各方当事人提出请求而仲裁庭又无异议的，还应当按和解的条件以仲裁裁决的形式记录和解。

(2) 关于和解的条件裁决应当依照第 31 条的规定作出，并应说明它是一项裁决。此种裁决应当与根据案情作出的其他任何裁决具有同等的地位和效力。

[注：参看本条例第 66 条。]

第 31 条. 裁决的形式和内容

(1) 裁决应当以书面作出，并应当由仲裁员签名。在有一名以上仲裁员的仲裁程序中，仲裁庭全体成员的多数签名即可，但须说明缺漏任何签名的理由。

[Note: See section 50.]

Article 23. Statements of claim and defence

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

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

[Note: See section 51.]

Article 24. Hearings and written proceedings

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the

S1-51

第 609 章

S1-52

Cap. 609

(2) 裁决应说明其所依据的理由，除非当事人约定不需说明理由或该裁决是第 30 条所指的和解裁决。

(3) 裁决书应具明其日期和依照第 20(1) 条确定的仲裁地点。该裁决应视为是在该地点作出的。

(4) 裁决作出后，经仲裁员依照本条第 (1) 款签名的裁决书应送达各方当事人各一份。

[注：参看本条例第 67 条。]

第 32 条. 程序的终止

(1) 仲裁程序依终局裁决或仲裁庭按照本条第 (2) 款发出的裁定宣告终止。

(2) 仲裁庭在下列情况下应当发出终止仲裁程序的裁定：

(a) 申请人撤回其申请，但被申请人对此表示反对且仲裁庭承认最终解决争议对其而言具有正当利益的除外；

(b) 各方当事人约定程序终止；

(c) 仲裁庭认定仲裁程序因其他任何理由均无必要或不可能继续进行。

(3) 仲裁庭之委任随仲裁程序的终止而终止，但须服从第 33 和 34(4) 条的规定。

basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

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

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

[Note: See section 52.]

Article 25. Default of a party

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

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

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

[注：参看本条例第 68 条。]

第 33 条. 裁决的更正和解释；补充裁决

(1) 除非当事人约定了另一期限，在收到裁决书后三十天内：

(a) 一方当事人可在通知对方当事人后请求仲裁庭更正裁决书中的任何计算错误、任何笔误或打印错误或任何类似性质的错误；

(b) 当事人有约定的，一方当事人可以在通知对方当事人后请求仲裁庭对裁决书的具体某一点或某一部分作出解释。

仲裁庭认为此种请求正当合理的，应当在收到请求后三十天内作出更正或解释。解释应构成裁决的一部分。

(2) 仲裁庭可在作出裁决之日起三十天内主动更正本条第 (1)(a) 款所指类型的任何错误。

(3) 除非当事人另有约定，一方当事人在收到裁决书后三十天内，可以在通知对方当事人后，请求仲裁庭对已在仲裁程序中提出但在裁决书中遗漏的请求事项作出补充裁决。仲裁庭如果认为此种请求正当合理的，应当在六十天内作出补充裁决。

(4) 如有必要，仲裁庭可以将依照本条第 (1) 或 (3) 款作出更正、解释或补充裁决的期限，予以延长。

(5) 第 31 条的规定适用于裁决的更正或解释，并适用于补充裁决。

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

[Note: See section 53.]

Article 26. Expert appointed by arbitral tribunal

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

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

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

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

[Note: See section 54.]

Article 27. Court assistance in taking evidence

S1-55
第 609 章

附表 1

SCHEDULE 1

S1-56
Cap. 609

[注：参看本条例第 69 条。]

第七章. 不服裁决的追诉权**第 34 条. 申请撤销，作为不服仲裁裁决的
唯一追诉**

(1) 不服仲裁裁决而向法院提出追诉的唯一途径是依照本条第 (2) 和 (3) 款的规定申请撤销。

(2) 有下列情形之一的，仲裁裁决才可以被第 6 条规定的法院撤销：

(a) 提出申请的当事人提出证据，证明有下列任何情况：

- (i) 第 7 条所指仲裁协议的当事人有某种无行为能力情形；或者根据各方当事人所同意遵守的法律或在未指明法律的情况下根据本国法律，该协议是无效的；或
- (ii) 未向提出申请的当事人发出指定仲裁员的适当通知或仲裁程序的适当通知，或因他故致使其不能陈述案情；或
- (iii) 裁决处理的争议不是提交仲裁意图裁定的事项或不在提交仲裁的范围之列，或者裁决书中内含对提交仲裁的范围以外事项的决定；如果对提交仲裁的事项所作的决定可以与对未提交仲裁的事项所作的决定互为划分，仅可以撤销含有对未提交仲裁的事项所作的决定的那部分裁决；或
- (iv) 仲裁庭的组成或仲裁程序与当事人的约定不一致，除非此种约定与当事人不得背离的本法规定相抵触；无此种约定时，与本法不符；或

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

[Note: See section 55.]

**CHAPTER VI. MAKING OF AWARD AND TERMINATION
OF PROCEEDINGS*****Article 28. Rules applicable to substance of dispute***

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

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

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

S1-57
第 609 章

附表 1

S1-58
Cap. 609

(b) 法院认定有下列任何情形：

- (i) 根据本国的法律，争议事项不能通过仲裁解决；或
- (ii) 该裁决与本国的公共政策相抵触。

(3) 当事人在收到裁决书之日起三个月后不得申请撤销裁决；已根据第 33 条提出请求的，从该请求被仲裁庭处理完毕之日起三个月后不得申请撤销。

(4) 向法院申请撤销裁决时，如果适当而且一方当事人也提出请求，法院可以在其确定的一段时间内暂时停止进行撤销程序，以便仲裁庭有机会重新进行仲裁程序或采取仲裁庭认为能够消除撤销裁决理由的其他行动。

[注：参看本条例第 81 条。]

第八章. 裁决的承认和执行

第 35 条. 承认和执行

(1) 仲裁裁决不论在何国境内作出，均应当承认具有约束力，而且经向管辖法院提出书面申请，即应依照本条和第 36 条的规定予以执行。

(2) 援用裁决或申请对其予以执行的一方当事人，应当提供裁决书正本或其副本。裁决书如不是以本国一种正式语文做成的，法院可以要求该方当事人出具该文件译成这种文字的译本。****

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

[Note: See section 64.]

Article 29. Decision-making by panel of arbitrators

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

[Note: See section 65.]

Article 30. Settlement

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

S1-59
第 609 章

S1-60
Cap. 609

(第 35(2) 条经由委员会 2006 年第三十九届会议修订)

[注：本示范法第 35 条不具效力——参看本条例第 82 条。]

第 36 条. 拒绝承认或执行的理由

(1) 仲裁裁决不论在何国境内作出，仅在下述任何情形下才可拒绝予以承认或执行：

(a) 援用的裁决所针对的当事人提出如此请求，并向被请求承认或执行的管辖法院提出证据，证明有下列任何情况：

- (i) 第 7 条所指仲裁协议的当事人有某种无行为能力情形；或者根据各方当事人所同意遵守的法律或在未指明何种法律的情况下根据裁决地所在国法律，该协议是无效的；或
- (ii) 未向援用的裁决所针对的当事人发出指定仲裁员的适当通知或仲裁程序的适当通知，或因他故致使其不能陈述案情；或
- (iii) 裁决处理的争议不是提交仲裁意图裁定的事项或不在提交仲裁的范围之列，或者裁决书中内含对提交仲裁的范围以外事项的决定；如果对提交仲裁的事项所作的决定可以与对未提交仲裁的事项所作的决定互为划分，内含对提交仲裁的事项所作的决定的那部分裁决得予承认和执行；或
- (iv) 仲裁庭的组成或仲裁程序与当事人的约定不一致；无此种约定时，与仲裁地所在国法律不符；或
- (v) 裁决对当事人尚无约束力，或者已经由裁决地所在国或裁决依据的法律的所属国的法院所撤销或中止执行；或

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

[Note: See section 66.]

Article 31. Form and contents of award

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

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

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

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

[Note: See section 67.]

S1-61
第 609 章

S1-62
Cap. 609

(b) 法院认定有下列任何情形：

- (i) 根据本国的法律，争议事项不能通过仲裁解决；或
- (ii) 承认或执行该裁决与本国的公共政策相抵触。

(2) 在已向本条第 (1)(a)(v) 款所指的法院申请撤销或中止执行裁决的情况下，被请求承认或执行的法院如认为适当，可以延缓作出决定，而且经主张承认或执行裁决的一方当事人申请，还可以裁定对方当事人提供妥适的担保。

[注：本示范法第 36 条不具效力——参看本条例第 83 条。]

* 条文标题仅供索引，不作解释条文之用。

** 对“商事”一词应作广义解释，使其包括不论是契约性或非契约性的一切商事性质的关系所引起的事项。商事性质的关系包括但不限于下列交易：供应或交换货物或服务的任何贸易交易；销售协议；商事代表或代理；保理；租赁；建造工厂；谘询；工程；使用许可；投资；筹资；银行；保险；开发协议或特许；合营和其他形式的工业或商业合作；空中、海上、铁路或公路的客货载运。

*** 第 17I 条所载条件的目的是为了限制法院可拒绝执行临时措施的情形。如果一国将采用的可拒绝执行的情形少些，与这些示范条文力求达到的统一程度无相悖之处。

**** 本款所列的条件是意图订出一个最高标准。因而一国如果保留了即使是更为简单的条件，也不至于与示范法所要取得的协调一致相抵触。

Article 32. Termination of proceedings

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

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

- (a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;
- (b) the parties agree on the termination of the proceedings;
- (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

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

[Note: See section 68.]

Article 33. Correction and interpretation of award; additional award

注：本附表载录《贸法委示范法》全文，只供备知。根据本条例不适用的条文，已划上底线。每条条文之后加有附注，以指明直接提述该条文的本条例的条文。但是，使《贸法委示范法》受规限的替代条文及其他增补条文，则没有在本附表内显示。因此，须参阅本条例以知悉它所决定的《贸法委示范法》的适用范围。

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

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

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

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

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

(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

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

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

[Note: See section 69.]

CHAPTER VII. RECOURSE AGAINST AWARD

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

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

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

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

- (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or
- (ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
- (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the

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

- (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or
- (b) the court finds that:
 - (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or
 - (ii) the award is in conflict with the public policy of this State.

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

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

[Note: See section 81.]

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

Article 35. Recognition and enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the original award or a copy thereof. If the award is not made in an official language of this State, the court may request the party to supply a translation thereof into such language.****

(Article 35(2) has been amended by the Commission at its thirty-ninth session, in 2006)

[Note: Article 35 does not have effect—see section 82.]

Article 36. Grounds for refusing recognition or enforcement

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

S1-71
第 609 章

S1-72
Cap. 609

- (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
 - (ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
 - (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
 - (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
 - (v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or
- (b) if the court finds that:
- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or
 - (ii) the recognition or enforcement of the award would be contrary to the public policy of this State.

(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)(a)(v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

[Note: Article 36 does not have effect—see section 83.]

* Article headings are for reference purposes only and are not to be used for purposes of interpretation.

** The term “commercial” should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

*** The conditions set forth in article 17I are intended to limit the number of circumstances in which the court may refuse to enforce an interim measure. It would not be contrary to the level of harmonization sought to be achieved by these model provisions if a State were to adopt fewer circumstances in which enforcement may be refused.

**** The conditions set forth in this paragraph are intended to set maximum standards. It would, thus, not be contrary to the harmonization to be achieved by the model law if a State retained even less onerous conditions.

Note: The full text of the UNCITRAL Model Law is reproduced in this Schedule for information only. Provisions which are not applicable under this Ordinance are underlined. A note is added after each article to indicate the provision in this Ordinance which makes direct reference to that article. However, substituting provisions and other supplemental provisions to which the UNCITRAL Model Law are subject have not been shown in this Schedule. Reference has to be made therefore to this Ordinance which determines the extent to which the UNCITRAL Model Law applies.

S2-1
第 609 章附表 2
第 1 条Schedule 2
Section 1S2-2
Cap. 609**附表 2**[第 2、5、23、73、81、
99、100、101 及 102 条]**可以明文选择或自动适用的条文****1. 独任仲裁员**

如仲裁协议的各方没有就仲裁员人数，达成协议，则在各方之间产生的任何争议，须提交一名独任仲裁员以作仲裁。

(由 2015 年第 11 号第 6 条修订)

2. 仲裁的合并处理

- (1) 如就 2 项或多于 2 项的仲裁程序而言，原讼法庭觉得——
- (a) 在该等仲裁程序中，均有产生共同的法律或事实问题；
 - (b) 在该等仲裁程序中申索的救济的权利，均是关于同一宗或同一系列的交易，或均是在同一宗或同一系列的交易中产生的；或
 - (c) 由于任何其他原因，适宜根据本条作出命令，则原讼法庭可应等仲裁程序任何一方的申请——
 - (d) 命令——
 - (i) 将该等仲裁程序按它认为公正的条款，合并处理；或
 - (ii) 该等仲裁程序同时聆讯，或以一项紧接另一项的方式聆讯；或

Schedule 2[ss. 2, 5, 23, 73, 81, 99, 100,
101 & 102]**Provisions that may be Expressly Opted for or Automatically Apply****1. Sole arbitrator**

If the parties to an arbitration agreement fail to agree on the number of arbitrators, any dispute arising between the parties is to be submitted to a sole arbitrator for arbitration.

(Amended 11 of 2015 s. 6)

2. Consolidation of arbitrations

- (1) If, in relation to 2 or more arbitral proceedings, it appears to the Court—
- (a) that a common question of law or fact arises in both or all of them;
 - (b) that the rights to relief claimed in those arbitral proceedings are in respect of or arise out of the same transaction or series of transactions; or
 - (c) that for any other reason it is desirable to make an order under this section,
- the Court may, on the application of any party to those arbitral proceedings—
- (d) order those arbitral proceedings—
 - (i) to be consolidated on such terms as it thinks just; or

S2-3
第 609 章

附表 2
第 2 条

- (e) 命令搁置任何该等仲裁程序，直至任何其余仲裁程序获裁定为止。
- (2) 如原讼法庭根据第 (1)(d)(i) 款命令将仲裁程序合并处理，或根据第 (1)(d)(ii) 款命令该等仲裁程序同时聆讯，或以一项紧接另一项的方式聆讯，则原讼法庭有权——
 - (a) 就支付该等仲裁程序的费用，作出相应指示；及
 - (b) 作出以下委任——
 - (i) (如该等仲裁程序的所有各方，就该等仲裁程序的仲裁员人选达成协议) 委任该仲裁员；或
 - (ii) (如各方不能够就该等仲裁程序的仲裁员人选达成协议) 就该等仲裁程序委任仲裁员，而如仲裁程序同时聆讯，或以一项紧接另一项的方式聆讯，则就该等仲裁程序委任同一仲裁员。
- (3) 如原讼法庭根据第 (2) 款，就合并处理、同时聆讯或以一项紧接另一项的方式聆讯的仲裁程序委任仲裁员，则已就任何该等仲裁程序作出的任何其他仲裁员的委任，就一切目的而言，在第 (2) 款所指的委任作出时停止有效。
- (4) 凡仲裁程序根据第 (1)(d)(i) 款合并处理，则聆讯该等仲裁程序的仲裁庭，就该等仲裁程序的费用而言，具有第 74 及 75 条所指的权力。
- (5) 如根据第 (1)(d)(ii) 款，2 项或多于 2 项的仲裁程序同时聆讯，或以一项紧接另一项的方式聆讯，则仲裁庭——
 - (a) 只就它聆讯的该等仲裁程序的费用，具有第 74 及 75 条所指的权力；及
 - (b) 据此，就同时聆讯或以一项紧接另一项的方式聆讯的该等仲裁程序而言，并无权力命令该等仲裁程序中任何仲裁程序的一方，支付该等仲裁程序中任何其他仲裁程序的一方的费用，除非该仲裁庭是聆讯所有该等仲裁程序的同一仲裁庭，则属例外。
- (6) 任何人不得针对本条所指的原讼法庭命令、指示或决定提出上诉。

Schedule 2
Section 2

S2-4
Cap. 609

- (ii) to be heard at the same time or one immediately after another; or
- (e) order any of those arbitral proceedings to be stayed until after the determination of any other of them.
- (2) If the Court orders arbitral proceedings to be consolidated under subsection (1)(d)(i) or to be heard at the same time or one immediately after another under subsection (1)(d)(ii), the Court has the power—
 - (a) to make consequential directions as to the payment of costs in those arbitral proceedings; and
 - (b) if—
 - (i) all parties to those arbitral proceedings are in agreement as to the choice of arbitrator for those arbitral proceedings, to appoint that arbitrator; or
 - (ii) the parties cannot agree as to the choice of arbitrator for those arbitral proceedings, to appoint an arbitrator for those arbitral proceedings (and, in the case of arbitral proceedings to be heard at the same time or one immediately after another, to appoint the same arbitrator for those arbitral proceedings).
- (3) If the Court makes an appointment of an arbitrator under subsection (2) for the arbitral proceedings to be consolidated or to be heard at the same time or one immediately after another, any appointment of any other arbitrator that has been made for any of those arbitral proceedings ceases to have effect for all purposes on and from the appointment under subsection (2).
- (4) The arbitral tribunal hearing the arbitral proceedings that are consolidated under subsection (1)(d)(i) has the power under sections 74 and 75 in relation to the costs of those arbitral proceedings.

S2-5
第 609 章

附表 2
第 3 条

Schedule 2
Section 3

S2-6
Cap. 609

3. 原讼法庭对初步法律问题的决定

- (1) 原讼法庭可应仲裁程序的任何一方的申请，对在该仲裁程序的过程中产生的任何法律问题，作出决定。
- (2) 除非得到 ——
 - (a) 有关仲裁程序的所有其他各方的书面同意；或
 - (b) 仲裁庭的书面准许，
 否则不得提出第 (1) 款所指的申请。
- (3) 有关申请须 ——
 - (a) 指出须予决定的法律问题；及
 - (b) 述明基于什么理由，而指出该问题应由原讼法庭决定。
- (4) 原讼法庭除非信纳对有关法律问题作出决定，可大量节省各方的费用，否则不得受理第 (1) 款所指的申请。
- (5) 凡原讼法庭根据第 (1) 款作出决定，则须获原讼法庭或上诉法庭许可，方可针对该决定提出上诉。

- (5) If 2 or more arbitral proceedings are heard at the same time or one immediately after another under subsection (1)(d)(ii), the arbitral tribunal—
 - (a) has the power under sections 74 and 75 only in relation to the costs of those arbitral proceedings that are heard by it; and
 - (b) accordingly, does not have the power to order a party to any of those arbitral proceedings that are heard at the same time or one immediately after another to pay the costs of a party to any other of those proceedings unless the arbitral tribunal is the same tribunal hearing all of those arbitral proceedings.
- (6) An order, direction or decision of the Court under this section is not subject to appeal.

3. Decision of preliminary question of law by Court

- (1) The Court may, on the application of any party to arbitral proceedings, decide any question of law arising in the course of the arbitral proceedings.
- (2) An application under subsection (1) may not be made except—
 - (a) with the agreement in writing of all the other parties to the arbitral proceedings; or
 - (b) with the permission in writing of the arbitral tribunal.
- (3) The application must—
 - (a) identify the question of law to be decided; and
 - (b) state the grounds on which it is said that the question should be decided by the Court.
- (4) The Court must not entertain an application under subsection (1) unless it is satisfied that the decision of the question of law might produce substantial savings in costs to the parties.

S2-7
第 609 章

附表 2
第 4 条

Schedule 2
Section 4

S2-8
Cap. 609

4. 以严重不当事件为理由而质疑仲裁裁决

- (1) 仲裁程序的一方有权以有严重不当事件影响仲裁庭、该仲裁程序或在该仲裁程序中作出的裁决为理由，向原讼法庭提出申请，质疑该裁决。
- (2) 严重不当事件指原讼法庭认为已对或将会对申请人造成严重不公平的属以下一类或多于一类的不当事件——
 - (a) 仲裁庭没有遵守第 46 条；
 - (b) 仲裁庭以超越其管辖权以外的方式，超越权力；
 - (c) 仲裁庭没有按照各方议定的程序进行仲裁程序；
 - (d) 仲裁庭没有处理向它提出的所有争论点；
 - (e) 获各方就仲裁程序或裁决而赋予权力的任何仲裁或其他机构或人士，超越其权力；
 - (f) 仲裁庭没有根据第 69 条，就效力不能确定或含糊的裁决作出解释；
 - (g) 该裁决是以诈骗手段获得的，或该裁决或获取该裁决的方法违反公共政策；
 - (h) 作出裁决的形式，不符合规定；或
 - (i) 仲裁庭或获各方就仲裁程序或裁决而赋予权力的任何仲裁或其他机构或人士，承认在进行该仲裁程序中或在该裁决中有任何不当事件。
- (3) 如证明有严重不当事件影响仲裁庭、有关仲裁程序或裁决，原讼法庭可藉命令——
 - (a) 将整项裁决或裁决的某部分，发还给仲裁庭重新考虑；
 - (b) 撤销整项裁决或裁决的某部分；或
 - (c) 宣布整项裁决或裁决的某部分无效。

- (5) The leave of the Court or the Court of Appeal is required for any appeal from a decision of the Court under subsection (1).

4. Challenging arbitral award on ground of serious irregularity

- (1) A party to arbitral proceedings may apply to the Court challenging an award in the arbitral proceedings on the ground of serious irregularity affecting the tribunal, the arbitral proceedings or the award.
- (2) Serious irregularity means an irregularity of one or more of the following kinds which the Court considers has caused or will cause substantial injustice to the applicant—
 - (a) failure by the arbitral tribunal to comply with section 46;
 - (b) the arbitral tribunal exceeding its powers (otherwise than by exceeding its jurisdiction);
 - (c) failure by the arbitral tribunal to conduct the arbitral proceedings in accordance with the procedure agreed by the parties;
 - (d) failure by the arbitral tribunal to deal with all the issues that were put to it;
 - (e) any arbitral or other institution or person vested by the parties with powers in relation to the arbitral proceedings or the award exceeding its powers;
 - (f) failure by the arbitral tribunal to give, under section 69, an interpretation of the award the effect of which is uncertain or ambiguous;
 - (g) the award being obtained by fraud, or the award or the way in which it was procured being contrary to public policy;
 - (h) failure to comply with the requirements as to the form of the award; or

S2-9
第 609 章

附表 2
第 5 条

- (4) 如整项裁决或裁决的某部分发还给仲裁庭重新考虑，该仲裁庭须在——
 - (a) 自发还命令的日期起计 3 个月内；或
 - (b) 原讼法庭指示的较长或较短的限期内，
就该等被发还的事宜作出新的裁决。
- (5) 除非原讼法庭信纳，将有关的事宜发还给仲裁庭重新考虑属不适当，否则原讼法庭不得行使其权力撤销整项裁决或裁决的某部分，或宣布整项裁决或裁决的某部分无效。
- (6) 凡原讼法庭根据本条作出决定、命令或指示，则须获原讼法庭或上诉法庭许可，方可针对该决定、命令或指示提出上诉。
- (7) 本附表第 7 条亦适用于本条所指的申请或上诉。

5. 就法律问题而针对仲裁裁决提出上诉

- (1) 在本附表第 6 条的规限下，仲裁程序的一方可就在该仲

Schedule 2
Section 5

S2-10
Cap. 609

- (i) any irregularity in the conduct of the arbitral proceedings, or in the award which is admitted by the arbitral tribunal or by any arbitral or other institution or person vested by the parties with powers in relation to the arbitral proceedings or the award.
- (3) If there is shown to be serious irregularity affecting the arbitral tribunal, the arbitral proceedings or the award, the Court may by order—
 - (a) remit the award to the arbitral tribunal, in whole or in part, for reconsideration;
 - (b) set aside the award, in whole or in part; or
 - (c) declare the award to be of no effect, in whole or in part.
- (4) If the award is remitted to the arbitral tribunal, in whole or in part, for reconsideration, the tribunal must make a fresh award in respect of the matters remitted—
 - (a) within 3 months of the date of the order for remission; or
 - (b) within a longer or shorter period that the Court may direct.
- (5) The Court must not exercise its power to set aside an award or to declare an award to be of no effect, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the arbitral tribunal for reconsideration.
- (6) The leave of the Court or the Court of Appeal is required for any appeal from a decision, order or direction of the Court under this section.
- (7) Section 7 of this Schedule also applies to an application or appeal under this section.

5. Appeal against arbitral award on question of law

- (1) Subject to section 6 of this Schedule, a party to arbitral

S2-11
第 609 章

附表 2
第 5 条

- 裁程序中作出的裁决所产生的法律问题，向原讼法庭提出上诉。
- (2) 议定无需就仲裁庭作出的裁决给予原因的协议，须视为排除本条所指的原讼法庭的司法管辖权的协议。
 - (3) 原讼法庭须基于裁决中对事实的裁断，对属上诉的标的之法律问题，作出决定。
 - (4) 原讼法庭在根据第 (3) 款对法律问题作出决定时，不得考虑本附表第 6(4)(c)(i) 或 (ii) 条所列的任何准则。
 - (5) 原讼法庭在聆讯本条所指的上诉时，可藉命令——
 - (a) 维持裁决；
 - (b) 更改裁决；
 - (c) 将整项裁决或裁决的某部分，发还给仲裁庭，以供仲裁庭因应原讼法庭的决定重新考虑；或
 - (d) 撤销整项裁决或裁决的某部分。
 - (6) 如整项裁决或裁决的某部分发还给仲裁庭重新考虑，该仲裁庭须在——
 - (a) 自发还命令的日期起计 3 个月内；或
 - (b) 原讼法庭指示的较长或较短的限期内，
 就该等被发还的事宜作出新的裁决。
 - (7) 除非原讼法庭信纳，将有关的事宜发还给仲裁庭重新考虑属不适当，否则原讼法庭不得行使其权力撤销整项裁决或裁决的某部分。
 - (8) 凡原讼法庭根据第 (5) 款作出命令，则须获原讼法庭或上诉法庭许可，方可针对该命令提出再上诉。
 - (9) 除非有关问题——
 - (a) 有广泛的重要性；或
 - (b) 由于其他特殊原因，应由上诉法庭考虑，
 否则不得批予再上诉的许可。

Schedule 2
Section 5

S2-12
Cap. 609

- proceedings may appeal to the Court on a question of law arising out of an award made in the arbitral proceedings.
- (2) An agreement to dispense with the reasons for an arbitral tribunal's award is to be treated as an agreement to exclude the Court's jurisdiction under this section.
 - (3) The Court must decide the question of law which is the subject of the appeal on the basis of the findings of fact in the award.
 - (4) The Court must not consider any of the criteria set out in section 6(4)(c)(i) or (ii) of this Schedule when it decides the question of law under subsection (3).
 - (5) On hearing an appeal under this section, the Court may by order—
 - (a) confirm the award;
 - (b) vary the award;
 - (c) remit the award to the arbitral tribunal, in whole or in part, for reconsideration in the light of the Court's decision; or
 - (d) set aside the award, in whole or in part.
 - (6) If the award is remitted to the arbitral tribunal, in whole or in part, for reconsideration, the tribunal must make a fresh award in respect of the matters remitted—
 - (a) within 3 months of the date of the order for remission; or
 - (b) within a longer or shorter period that the Court may direct.
 - (7) The Court must not exercise its power to set aside an award, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the arbitral tribunal for reconsideration.

S2-13
第 609 章

附表 2
第 6 条

(10) 本附表第 6 及 7 条亦适用于本条所指的上诉或再上诉。

6. 就法律问题而针对仲裁裁决提出上诉的许可的申请

- (1) 仲裁程序的一方除非得到 ——
 - (a) 仲裁程序的所有其他各方同意；或
 - (b) 原讼法庭许可，
 否则不得就法律问题而提出本附表第 5 条所指的上诉。
- (2) 上诉许可的申请须 ——
 - (a) 指出须予决定的法律问题；及
 - (b) 述明基于什么理由，而指出应批予上诉许可。
- (3) 除非原讼法庭觉得有需要作出聆讯，否则原讼法庭须在
没有聆讯的情况下，裁定上诉许可的申请。
- (4) 原讼法庭在信纳以下各项情况下，方可批予上诉许可 ——
 - (a) 有关问题的决定，会对一方或多于一方的权利，造成重大影响；
 - (b) 有关问题是仲裁庭被要求决定的问题；及
 - (c) 基于裁决中对事实的裁断 ——
 - (i) 仲裁庭对该问题的决定，是明显地错误的；或

Schedule 2
Section 6

S2-14
Cap. 609

- (8) The leave of the Court or the Court of Appeal is required for any further appeal from an order of the Court under subsection (5).
- (9) Leave to further appeal must not be granted unless—
 - (a) the question is one of general importance; or
 - (b) the question is one which, for some other special reason, should be considered by the Court of Appeal.
- (10) Sections 6 and 7 of this Schedule also apply to an appeal or further appeal under this section.

6. Application for leave to appeal against arbitral award on question of law

- (1) An appeal under section 5 of this Schedule on a question of law may not be brought by a party to arbitral proceedings except—
 - (a) with the agreement of all the other parties to the arbitral proceedings; or
 - (b) with the leave of the Court.
- (2) An application for leave to appeal must—
 - (a) identify the question of law to be decided; and
 - (b) state the grounds on which it is said that leave to appeal should be granted.
- (3) The Court must determine an application for leave to appeal without a hearing unless it appears to the Court that a hearing is required.
- (4) Leave to appeal is to be granted only if the Court is satisfied—
 - (a) that the decision of the question will substantially affect the rights of one or more of the parties;

S2-15
第 609 章

附表 2
第 7 条

- (ii) 该问题有广泛的重要性，而仲裁庭的决定最起码令人有重大疑问。
- (5) 凡原讼法庭决定批予或拒绝批予上诉许可，则须获原讼法庭或上诉法庭许可，方可针对该决定提出上诉。
- (6) 除非有关问题——
 - (a) 有广泛的重要性；或
 - (b) 由于其他特殊原因，应由原讼法庭考虑，否则不得批予针对原讼法庭的上述决定而提出上诉的许可。

7. 有关对仲裁裁决提出质疑或针对仲裁裁决提出上诉的增补条文

- (1) 如拟提出本附表第 4、5 或 6 条所指的申请或上诉的申请人或上诉人，并未首先穷竭——
 - (a) 第 69 条所指的任何可用的追诉；及
 - (b) 任何可用的上诉或复核的仲裁程序，则该申请人或上诉人不可提出该申请或上诉。
- (2) 如有任何申请或上诉提出，而原讼法庭觉得有关裁决——
 - (a) 并没有包含仲裁庭作出该裁决的原因；或
 - (b) 并没有充分详细地列出仲裁庭作出该裁决的原因，使原讼法庭能恰当地考虑该申请或上诉，

Schedule 2
Section 7

S2-16
Cap. 609

- (b) that the question is one which the arbitral tribunal was asked to decide; and
- (c) that, on the basis of the findings of fact in the award—
 - (i) the decision of the arbitral tribunal on the question is obviously wrong; or
 - (ii) the question is one of general importance and the decision of the arbitral tribunal is at least open to serious doubt.
- (5) The leave of the Court or the Court of Appeal is required for any appeal from a decision of the Court to grant or refuse leave to appeal.
- (6) Leave to appeal from such a decision of the Court must not be granted unless—
 - (a) the question is one of general importance; or
 - (b) the question is one which, for some other special reason, should be considered by the Court.

7. Supplementary provisions on challenge to or appeal against arbitral award

- (1) An application or appeal under section 4, 5 or 6 of this Schedule may not be brought if the applicant or appellant has not first exhausted—
 - (a) any available recourse under section 69; and
 - (b) any available arbitral process of appeal or review.
- (2) If, on an application or appeal, it appears to the Court that the award—
 - (a) does not contain the arbitral tribunal's reasons for the award; or

S2-17
第 609 章

附表 2
第 7 条

- 则原讼法庭可命令仲裁庭为该目的而充分详细地述明作出该裁决的原因。
- (3) 如原讼法庭根据第 (2) 款作出命令，它可对任何由其命令而引致的额外仲裁费用，作出它认为合适的进一步命令。
- (4) 原讼法庭 ——
- (a) 可命令申请人或上诉人，就申请或上诉的费用提供保证；及
- (b) 在该命令不获遵从的情况下，可指示撤销该申请或上诉。
- (5) 原讼法庭不得仅基于以下理由，而行使权力命令就费用提供保证 ——
- (a) 申请人或上诉人是通常居于香港以外地方的自然人；
- (b) 申请人或上诉人 ——
- (i) 是根据香港以外地方的法律成立的法人团体；或
- (ii) 是一个法人团体，而其中央管理及控制是在香港以外地方行使的；或
- (c) 申请人或上诉人 ——
- (i) 是根据香港以外地方的法律组成的组织；或
- (ii) 是一个组织，而其中央管理及控制是在香港以外地方行使的。
- (6) 原讼法庭 ——
- (a) 可命令在申请或上诉仍有待裁定时，任何根据裁决须支付的款项，须缴存原讼法庭，或以其他方式保障；及
- (b) 在该命令不获遵从的情况下，可指示撤销该申请或上诉。

Schedule 2
Section 7

S2-18
Cap. 609

- (b) does not set out the arbitral tribunal's reasons for the award in sufficient detail to enable the Court properly to consider the application or appeal,
- the Court may order the tribunal to state the reasons for the award in sufficient detail for that purpose.
- (3) If the Court makes an order under subsection (2), it may make a further order that it thinks fit with respect to any additional costs of the arbitration resulting from its order.
- (4) The Court—
- (a) may order the applicant or appellant to give security for the costs of the application or appeal; and
- (b) may, if the order is not complied with, direct that the application or appeal is to be dismissed.
- (5) The power to order security for costs must not be exercised only on the ground that the applicant or appellant is—
- (a) a natural person who is ordinarily resident outside Hong Kong;
- (b) a body corporate—
- (i) incorporated under the law of a place outside Hong Kong; or
- (ii) the central management and control of which is exercised outside Hong Kong; or
- (c) an association—
- (i) formed under the law of a place outside Hong Kong; or
- (ii) the central management and control of which is exercised outside Hong Kong.
- (6) The Court—

S2-19
第 609 章

附表 2
第 7 条

- (7) 原讼法庭或上诉法庭在批予本附表第 4、5 或 6 条所指的上诉许可时，可施加与第 (4) 或 (6) 款所指的命令具同等或类似效力的条件。
- (8) 第 (7) 款并不影响原讼法庭或上诉法庭批予附带条件的许可的一般酌情决定权。
- (9) 任何人不得针对本条所指的原讼法庭或上诉法庭命令、指示或决定提出上诉。

(格式变更——2015 年第 3 号编辑修订纪录)

Schedule 2
Section 7

S2-20
Cap. 609

- (a) may order that any money payable under the award is to be paid into the Court or otherwise secured pending the determination of the application or appeal; and
- (b) may, if the order is not complied with, direct that the application or appeal is to be dismissed.
- (7) The Court or the Court of Appeal may impose conditions to the same or similar effect as an order under subsection (4) or (6) on granting leave to appeal under section 4, 5 or 6 of this Schedule.
- (8) Subsection (7) does not affect the general discretion of the Court or the Court of Appeal to grant leave subject to conditions.
- (9) An order, direction or decision of the Court or the Court of Appeal under this section is not subject to appeal.

(Format changes—E.R. 3 of 2015)

附表 3

[第 111 条]

保留及过渡性条文**第 1 部****关乎本条例生效的保留及过渡性条文***(由 2015 年第 11 号第 7 条增补)***1. 仲裁程序及相关程序的进行****(1) 如仲裁 ——**

- (a) 在本条例生效前，已根据《旧有条例》第 2(1) 条所界定的联合国国际贸易法委员会示范法第 21 条展开；或
- (b) 在本条例生效前，已根据《旧有条例》第 31(1) 条当作展开，

则该仲裁及所有相关程序，包括（凡在该仲裁中作出的裁决被撤销）在该裁决被撤销后恢复进行的仲裁程序，须受《旧有条例》所管限，犹如本条例未曾制定一样。

- (2) 如仲裁在本条例生效前，已根据任何经本条例修订的其他条例展开，则该仲裁及所有相关程序，包括（凡在该仲裁中作出的裁决被撤销）在该裁决被撤销后恢复进行的仲裁程序，须受在紧接本条例生效前有效的该其他条例所管限，犹如本条例未曾制定一样。

Schedule 3

[s. 111]

Savings and Transitional Provisions**Part 1****Savings and Transitional Provisions Relating to
Commencement of this Ordinance***(Added 11 of 2015 s. 7)***1. Conduct of arbitral and related proceedings****(1) If an arbitration—**

- (a) has commenced under article 21 of the UNCITRAL Model Law as defined in section 2(1) of the repealed Ordinance before the commencement of this Ordinance; or
- (b) has been deemed to be commenced under section 31(1) of the repealed Ordinance before the commencement of this Ordinance,

that arbitration and all related proceedings, including (where the award made in that arbitration has been set aside) arbitral proceedings resumed after the setting aside of the award, are to be governed by the repealed Ordinance as if this Ordinance had not been enacted.

- (2) If an arbitration has commenced under any other Ordinance amended by this Ordinance before the commencement of this Ordinance, that arbitration and all related proceedings, including (where the award made in that arbitration has been set aside) arbitral proceedings resumed after the setting aside

2. 仲裁员的委任

- (1) 在第 (2) 款的规限下，在本条例生效前已作出的仲裁员的委任，须在本条例生效后，继续有效，犹如本条例未曾制定一样。
- (2) 如任何仲裁员的任命，已在本条例生效前终止，则本条例的制定，并不会令该仲裁员的委任获得恢复。

3. 和解协议

如仲裁协议各方在本条例生效前，已根据《旧有条例》第 2C 条订立和解协议，则该和解协议可按照该条强制执行，犹如本条例未曾制定一样。

4. 委任咨询委员会成员的委任

在本条例生效前作出的根据《仲裁（仲裁员及公断人的委任）规则》（第 341 章，附属法例 B）* 第 3 条而设立的委任咨询委员会的成员的委任，须在本条例生效后，继续有效，直至该项委任的任期届满为止，犹如本条例未曾制定一样。

第 2 部

* 现为第 609 章，附属法例 B

of the award, are to be governed by that other Ordinance in force immediately before the commencement of this Ordinance as if this Ordinance had not been enacted.

2. Appointment of arbitrators

- (1) Subject to subsection (2), the appointment of an arbitrator made before the commencement of this Ordinance is, after the commencement of this Ordinance, to continue to have effect as if this Ordinance had not been enacted.
- (2) The enactment of this Ordinance does not revive the appointment of any arbitrator whose mandate has terminated before the commencement of this Ordinance.

3. Settlement agreements

If the parties to an arbitration agreement have entered into a settlement agreement under section 2C of the repealed Ordinance before the commencement of this Ordinance, that settlement agreement may be enforced in accordance with that section as if this Ordinance had not been enacted.

4. Appointment of members of the Appointment Advisory Board

The appointment of a member of the Appointment Advisory Board established under rule 3 of the Arbitration (Appointment of Arbitrators and Umpires) Rules (Cap. 341 sub. leg. B)* made before the commencement of this Ordinance is, after the commencement of this Ordinance, to continue to have effect until the expiry of the term of that appointment as if this Ordinance had not been enacted.

Part 2

*Now Cap. 609 sub. leg. B

S3-5
第 609 章附表 3 —— 第 2 部
第 1 条

关乎《2015 年仲裁 (修订) 条例》生效的保留及过渡性条文

1. 仲裁程序及相关程序的进行

- (1) 如仲裁在生效日期前，已根据《贸法委示范法》第 21 条展开，则该仲裁及所有相关程序，须受《原本条例》所管限，犹如《2015 年仲裁 (修订) 条例》(2015 年第 11 号) 未曾制定一样。

- (2) 在第 (1) 款中 ——

生效日期 (commencement date) 指《2015 年仲裁 (修订) 条例》(2015 年第 11 号) 开始实施的日期；

所有相关程序 (all related proceedings) 包括在有关仲裁中作出的裁决被撤销后恢复进行的仲裁程序；

《原本条例》 (pre-amended Ordinance) 指在紧接生效日期前有效的本条例；

《贸法委示范法》第 21 条 (article 21 of the UNCITRAL Model Law) 指藉第 49(1) 条而具有效力的《贸法委示范法》第 21 条。

(第 2 部由 2015 年第 11 号第 7 条增补)

(格式变更 —— 2015 年第 3 号编辑修订纪录)

生效日期：2015 年 7 月 17 日。

Schedule 3—Part 2
Section 1S3-6
Cap. 609

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

1. Conduct of arbitral and related proceedings

- (1) If an arbitration has commenced under article 21 of the UNCITRAL Model Law before the commencement date, that arbitration and all related proceedings are to be governed by the pre-amended Ordinance as if the Arbitration (Amendment) Ordinance 2015 (11 of 2015) had not been enacted.

- (2) In subsection (1)—

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

article 21 of the UNCITRAL Model Law (《贸法委示范法》第 21 条) means article 21 of the UNCITRAL Model Law as given effect to by section 49(1);

commencement date (生效日期) means the day on which the Arbitration (Amendment) Ordinance 2015 (11 of 2015) comes into operation;

pre-amended Ordinance (《原本条例》) means this Ordinance as in force immediately before the commencement date.

(Part 2 added 11 of 2015 s. 7)

(Format changes—E.R. 3 of 2015)

Commencement date: 17 July 2015.

S4-1
第 609 章

附表 4

Schedule 4

S4-2
Cap. 609

附表 4

(已失时效而略去——2015 年第 3 号编辑修订纪录)

Schedule 4

(Omitted as spent—E.R. 3 of 2015)