



AI COMMENTARY: HONG KONG ARBITRATION ORDINANCE 2011

Prepared by Galadari Advocates & Legal Consultants with ChatGPT

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About Galadari

Galadari is a full-service Emirati law firm dedicated to providing legal solutions at every stage of the business cycle.

Since 1983, we have supported the development of the United Arab Emirates (UAE) legal framework, while contributing to the industry and driving great commercial impact across the Emirates and supporting our clients to navigate through their challenges.

For four decades, our goal has been to deliver the highest-quality product to solve complication issues. Our team take pride in our uncompromising approach to quality and recognise everything we do, or produce is a measurement of our commitment to quality. We give 100% the first time and every time.

Our legal team consists of over 60 locally qualified Emirati and international lawyers across 3 offices in the UAE who are fluent in 18 different languages. Our Emirati advocates have full rights of audience across all UAE Courts. Our team aims to provide the highest standard of legal service and maintain the same level of quality at every point of contact.

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Galadari “are a local law firm with international standards and lawyers, familiar with local UAE laws, DIFC laws, and international laws” (*The Legal 500 EMEA – UAE 2023*).

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We represent clients in proceedings governed by a variety of international arbitration bodies, including ICC, LCIA, SCC, SCIA, DIAC, and GCC CAC. Additionally, we also provide representation in ad-hoc arbitration cases, and arbitration-related proceedings before the courts of Dubai, the DIFC, Abu Dhabi, and the ADGM.

With one of the largest teams of Emirati advocates in the country, we offer a one-stop shop from the initiation to the conclusion of any arbitration, eliminating the need for external counsel.

Clients and legal directories continuously praise our forward-thinking approach. The team was shortlisted for Arbitration Law Firm of the Year by Thomson Reuters Asian Legal Business Middle East Law Awards 2023, and Arbitration Team of the Year in Law.com International's Middle East Legal Awards 2023.

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Editors' Preface

Galadari's Artificial Intelligence (AI) Commentary on arbitration rules, laws, and treaties, was composed by Abdulla Ziad Galadari, Sergejs Dilevka, and Dimitriy Mednikov.

The term 'artificial intelligence' (AI) was first suggested by John McCarthy in 1955, defining it as a challenge "*of making a machine behave in ways that would be called intelligent if a human were so behaving*".

Almost seventy years later, further to multiple waves advancing AI technologies and notwithstanding several so-called 'AI winters' (prolonged periods of time when interest and investment in AI was significantly decreasing), AI has finally arrived as an essential technology for our future development and is here to stay. Today, leading AI platforms are able to maintain logical conversations their users, thus, satisfying Mr McCarthy's problem by making a machine behave intelligently.

The benefits of AI for both individuals and businesses have transitioned from being purely theoretical to practicable and, to a great extent, quantifiable. For legal practitioners, presently, such quantifiable benefits would likely be based on the billable time saved, for example, on document review and textual analysis or production of documents based on standard templates. Further, there is a huge potential to use AI to write simple code automating mundane tasks, such as generation of exhibit lists, (re)numbering of exhibits, bulk-conversion of documents from one file format into another, updating cross-references or footnotes in a document — one can think of plenty of use cases and what is needed is a bit of knowledge on how to make basic changes to that code and run it. However, as of the date of this publication, it seems that the general consensus among legal practitioners is that AI systems cannot be reliably used for legal research and all of the results of such research would still have to be reviewed with great care by human lawyers.

Galadari's AI Commentary on arbitration rules, laws, and treaties, is an experiment focussed on using AI to ascertain the current quality of AI analysis, and to determine whether AI is able to digest large quantities of complex information and produce an accurate and logical analysis of the relevant text in respect of various arbitration rules.

In the development of this AI Commentary, we used ChatGPT (GPT-3.5), an AI-powered language model developed by OpenAI. This AI model is capable of generating human-like text based on context and past conversations. The method used, for consistency, and not due to lack of imagination, implemented the use of the following prompt template to generate commentary on each provision of the relevant text: 'analyse article/section X of arbitration law/rules/treaty'.

Overall, the general outcome of our experiment indicates that, in the majority of situations, ChatGPT was able to successfully dissect provisions, spot important nuances, and generate meaningful commentary on the relevant provisions. Specifically, once ChatGPT was presented with a provision for analysis, it would typically attempt to break down the text into separate aspects into a list or bullet point format, tackling each and summarising the provision at the end of its analysis. This approach is consistently observed by ChatGPT across all the AI Commentary publications. We found this method to be suitable and informative, allowing readers to process the analysis in a systematic manner and benefit from ChatGPT's separation of the provision into smaller bits that the reader may be specifically interested in. It was noted that ChatGPT does not overlook or miss certain aspects of a provision, which is a potential human risk factor. ChatGPT addressed every aspect of provisions without fail, for example:

Article 21.3 of the UAE Federal Law No. 6 of 2018 on Arbitration (“UAE Arbitration Law”): “The Arbitral Tribunal may, at the request of any party or on its own motion, amend, suspend, or cancel an interim measure it has ordered, in exceptional circumstances, by prior notice to be given to the Parties.”

ChatGPT: “Article 21.3 of the UAE Arbitration Law grants the Arbitral Tribunal the authority to modify, suspend, or revoke interim measures it has previously ordered during the arbitration process. These changes can be made under specific conditions referred to as “exceptional circumstances”. Let us analyse this article:

1. **Modification:** The Tribunal can amend or alter the scope or conditions of an interim measure based on the evolving circumstances of the case.
2. **Suspension:** The Tribunal can suspend the enforcement of an interim measure temporarily if the circumstances warrant it.
3. **Cancellation:** The Tribunal can completely cancel or revoke an interim measure previously ordered if it deems it no longer necessary or appropriate.
4. **Exceptional Circumstances:** The Tribunal’s power to amend, suspend, or cancel interim measures is limited to exceptional circumstances, implying that such measures are not subject to routine or arbitrary alterations.
5. **Prior Notice:** The article requires the Tribunal to provide advance notice to the parties before making any changes to the interim measures. This ensures transparency and allows parties to present their positions on the proposed amendments.”

The commentary produced using ChatGPT did display some shortcomings. For example, there were instances when ChatGPT would ‘hallucinate’, making something up, which is a well-known limitation not only for OpenAI and ChatGPT users but also for other AI systems, for example:

Extract from ChatGPT’s commentary on Article 2.4 of DIAC Arbitration Rules 2022 containing a reference to Article 32: “This exception indicates that certain specific provisions, such as Article 32, may have limited application to agreements to arbitrate made before the effective date of the Rules. It provides flexibility for parties to agree on different rules or procedures ~~regarding the settlement or termination of proceedings~~, even if the general principle of the Rules taking precedence over the parties’ agreement still applies.”

Human lawyer: Article 32 of DIAC Arbitration Rules 2022 does not concern ‘settlement or termination of proceedings’ but sets out provisions pertaining to expedited proceedings.

Occasionally, ChatGPT would not appreciate the important distinction between ‘may’ or ‘should’ and the commanding ‘shall’, which can be crucial, for example:

Article 4.1(c) of DIAC Arbitration Rules 2022: “Any party wishing to commence an arbitration under the Rules shall submit to the Centre a Request which shall include: [...] (c) a copy of any relevant agreement between the parties, which contains the agreement to arbitrate, in respect of which the claim arises; [...].”

ChatGPT: “Article 4.1 of the DIAC Arbitration Rules outlines the requirements for submitting a Request to commence an arbitration under the Rules. Let us analyse each component of this article: [...] Copy of relevant agreement: The Request ~~should~~ include a copy of any relevant

agreement between the parties that contains the agreement to arbitrate, which is the basis for the claim being made.”

Parenthetically, ChatGPT sometimes would simply paraphrase a provision several times within a single answer or alter the format of the responses with a series of prompts within the same commentary. To be fair, most of these provisions were quite nominal and did not contain much substance for analysis, for example:

Definition of ‘Parties’ Article 1.1 of UAE Arbitration Law: *“Parties: The Claimant and the Respondent, whatever their number.”*

ChatGPT: *“Parties: Refers to the Claimant and the Respondent involved in the arbitration. The parties could be individuals, companies, or any legal entities engaged in a dispute.”*

It was expected that there would be such limitations, but it was pleasantly surprising that their frequency was much lower than anticipated.

Being cognisant of all the existing issues and scepticism within the legal community, we consider that this experimental AI Commentary could be of assistance to practitioners in at least two ways. First, it allows the reader an opportunity to perform a sense check on their understanding of a provision or its aspect against ChatGPT’s analysis. Second, the time required to produce 24 publications comprising the AI Commentary was significantly less than the typical duration needed to produce a single comprehensive commentary text on any of the relevant arbitration laws, rules, or treaties. Thus, should it become necessary, a similar AI commentary could be produced on any arbitration law/rules/treaty at a fraction of time and cost typically associated with such a task.

The purpose of publishing the AI Commentary is to provide arbitration practitioners and academics with a general sense of what is presently possible to achieve in the field of arbitration with the assistance of generative AI software, and encourage the arbitration community to push the boundaries of arbitration as a flexible, efficient, and effective dispute resolution method.

Notably, all commentary was generated with ChatGPT and was supported by a selective review by the Editors. Accordingly, the commentary may contain inaccurate and/or incomplete information. Readers are strongly advised to exercise caution reading the commentary with some scepticism and to keep a pencil in hand to note any inaccuracies. Needless to say, nothing in this text should be considered and/or relied upon as legal advice. For detailed information, please refer to OpenAI’s Terms & Policies.

This project would not be complete without front page illustrations, which were also generated by AI. DALL E, another OpenAI system capable of creating images based on prompts, was used for this purpose. The chosen concept is based on a watercolour painting style, primarily portraying athletic rivalries in locations that correspond to the relevant arbitration law, rules, or treaty. The hope is that the readers will find the illustrations aesthetically appealing.

Should you have any questions, comments, or observations, including any noticed errors, please do not hesitate to contact us directly via email at s.dilevka@galadarilaw.com.

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Part 1 Preliminary

1. Short title

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

Section 1(1) of the Hong Kong Arbitration Ordinance establishes the title and citation of the ordinance itself. Let us break down the key elements of this section:

1. “This Ordinance may be cited as the Arbitration Ordinance”.
2. “This Ordinance”: Refers to the entire piece of legislation being discussed, which is the Hong Kong Arbitration Ordinance.
3. “may be cited”: Indicates that individuals, legal professionals, and courts have the option to refer to or use the ordinance by its title for identification purposes.
4. “as the Arbitration Ordinance”: Specifies the title by which the ordinance can be referred to. In this case, the title is “Arbitration Ordinance”.

Overall, Section 1(1) serves the purpose of giving the ordinance its official title and providing a clear way to refer to it in legal and other contexts. This section is common in legislative texts and plays an important role in facilitating communication, legal research, and enforcement of the law.

(2) (Omitted as spent—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 (仲裁協議) has the same meaning as in section 19;

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

¹ Source: <https://www.elegislation.gov.hk/hk/cap609>.

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

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

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

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

dispute (爭議) includes a difference;

function (職能) includes a power and a duty;

HKIAC (香港國際仲裁中心) means the Hong Kong International Arbitration Centre, a company incorporated in Hong Kong under the Companies Ordinance (Cap. 32) as in force at the time of the incorporation and limited by guarantee; (Amended 28 of 2012 ss. 912 & 920)

interim measure (臨時措施)—

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

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

and interim measure of protection (臨時保全措施) is to be construed accordingly;

Macao (澳門) means the Macao Special Administrative Region; (Added 7 of 2013 s. 3)

Macao award (澳門裁決) means an arbitral award made in Macao in accordance with the arbitration law of Macao; (Added 7 of 2013 s. 3)

Mainland (內地) means the part of China other than Hong Kong, Macao and Taiwan; (Added 1 of 2021 s. 3)

Mainland award (內地裁決) means an arbitral award made in accordance with the Arbitration Law of the People's Republic of China; (Amended 1 of 2021 s. 3)

mediation (調解) includes conciliation;

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

party (一方、方)—

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

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

repealed Ordinance (《舊有條例》) means the Arbitration Ordinance (Cap. 341) repealed by section 109;

respondent (被申請人) means a person against whom a claim or a counter-claim is made in an arbitration;

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

Section 2(1) of the Hong Kong Arbitration Ordinance provides a comprehensive list of definitions for various terms used throughout the ordinance. These definitions are crucial to ensure clarity and consistency in the interpretation and application of the law. Let us analyse some of the key definitions provided in this section:

1. **Arbitral Tribunal:** This term is defined as a sole arbitrator or a panel of arbitrators, including an umpire. An umpire is an independent individual appointed to make decisions in case of disagreements between arbitrators.
2. **Arbitration:** The definition covers any form of arbitration, whether or not administered by a permanent arbitral institution. This broad definition encompasses various arbitration processes.
3. **Arbitration Agreement:** The term's meaning is linked to section 19 of the ordinance, which provides further details. An arbitration agreement is a legally binding contract between parties to submit their disputes to arbitration.
4. **Arbitrator:** Except in specific sections, the definition of arbitrator includes an umpire. This term refers to an individual or a member of an arbitral tribunal responsible for making decisions in arbitration proceedings.
5. **Claimant:** This term is defined as a person who makes a claim or a counter-claim in an arbitration. It distinguishes the party asserting a claim from others involved in the proceedings.
6. **Court:** The definition refers to the Court of First Instance of the High Court. This court has jurisdiction over matters related to arbitration and related legal proceedings.
7. **HKIAC (Hong Kong International Arbitration Centre):** This definition explains that HKIAC is the Hong Kong International Arbitration Centre, a company incorporated under Hong Kong law, serving as an arbitral institution for conducting arbitration proceedings.
8. **Interim Measure:** The definition distinguishes between interim measures granted by an arbitral tribunal and those granted by a court. These measures are intended to provide temporary relief before the final resolution of the dispute.
9. **Macao:** Refers to the Macao Special Administrative Region. This term clarifies the geographical area it encompasses.
10. **New York Convention:** The definition refers to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which establishes rules for recognising and enforcing foreign arbitral awards.

11. **Party:** This definition distinguishes between a party to an arbitration agreement and a party to arbitral or court proceedings. It clarifies the term’s meaning in different contexts.
12. **Repealed Ordinance:** This refers to the previous version of the Arbitration Ordinance that was repealed by section 109 of the current ordinance.
13. **UNCITRAL Model Law:** This refers to the UNCITRAL Model Law on International Commercial Arbitration, a widely accepted framework for international arbitration law.

These definitions play a critical role in ensuring that legal practitioners, arbitrators, and parties understand the terms used in the ordinance consistently and accurately. This section is essential for the effective implementation and enforcement of the arbitration law in Hong Kong.

(2) If—

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

Section 2(2) of the Hong Kong Arbitration Ordinance is a provision that clarifies the scope and interpretation of certain terms and concepts used in the ordinance, particularly regarding agreements between parties to arbitration proceedings. Let us break down this section to understand its implications:

1. **References to Agreements:** This section addresses situations where the ordinance makes references to agreements between the parties involved in arbitration proceedings.
2. **Subsection (a):** Subsection (a) specifies that if the ordinance mentions that the parties have agreed or in any other way refers to an agreement, this agreement also includes any arbitration rules that are referred to in that agreement. In simpler terms, if the ordinance mentions that parties have an agreement in place, this agreement encompasses any arbitration rules that are part of that agreement. This ensures that the arbitration rules agreed upon by the parties are an integral part of the overall agreement.
3. **Subsection (b):** Subsection (b) addresses provisions in the ordinance that allow parties to agree on certain matters. It states that if the ordinance provides that the parties may agree on something, any such agreement may also include arbitration rules by referencing those rules within the agreement. This means that when parties are given the discretion to agree on specific aspects within the arbitration process, they can also incorporate arbitration rules into those agreements.

In summary, Section 2(2) of the Hong Kong Arbitration Ordinance is designed to ensure that when the ordinance makes references to agreements or grants parties the authority to agree on certain matters, any such agreements can include arbitration rules. This provision helps clarify the relationship between agreements and arbitration rules within the context of the ordinance, ensuring that the rules are

considered part of the overall agreement when relevant. This can be important for maintaining consistency and clarity in arbitration proceedings in Hong Kong.

- (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.

Section 2(2) of the Hong Kong Arbitration Ordinance outlines rules for interpreting references to agreements, arbitration rules, claims, and defences within the context of the ordinance. It provides guidelines to ensure consistency and clarity in the application of the law. Let us analyse each subsection:

1. Subsection (2)(a): This subsection addresses provisions in the ordinance that refer to agreements between parties. It states that when the ordinance mentions the parties' agreement or any reference to their agreement, it also includes any arbitration rules mentioned or incorporated within that agreement.
2. Subsection (2)(b): This subsection deals with provisions that allow parties to agree on certain matters. It states that if a provision of the ordinance permits parties to make an agreement, the agreement they reach may also include arbitration rules if those rules are referred to within that agreement.
3. Subsection (3)(a): This subsection concerns provisions in the ordinance that make reference to "claims". It states that when the ordinance uses the term "claim", the same provision also applies to a counter-claim, essentially extending the scope of the provision to cover counter-claims as well.
4. Subsection (3)(b): This subsection deals with provisions that refer to "defence". Similar to the previous point, it states that if the ordinance mentions a "defence", the same provision applies to a defence to a counter-claim as well.
5. Subsection (4): This subsection clarifies the status of notes within the ordinance, section headings of provisions, and headings within the UNCITRAL Model Law. It emphasises that such notes and headings are meant for reference purposes only and do not carry any legislative weight. They help in understanding the content but do not alter the legal effect of the provisions themselves.

6. Subsection (5): This subsection pertains to instances where the Chinese equivalent of an English expression differs between the ordinance and the UNCITRAL Model Law. It states that even if there is a difference in the Chinese translation, the legal effect should be treated as the same in both cases.

Overall, Section 2(2) of the Hong Kong Arbitration Ordinance aims to provide guidelines for consistent interpretation and application of key terms, agreements, claims, defences, and translation differences. It helps to avoid confusion and ensures that the ordinance operates effectively and uniformly.

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.

Section 3(1) of the Hong Kong Arbitration Ordinance outlines the fundamental objective of the ordinance. Let us analyse the content of this section:

1. This section encapsulates the overarching purpose and goal of the Hong Kong Arbitration Ordinance. It emphasises two key elements:
 - a. Fair and Speedy Resolution of Disputes: The ordinance aims to promote the use of arbitration as a means of resolving disputes. It highlights the importance of achieving resolutions that are both fair and speedy. “Fair” implies that the arbitration process should uphold principles of justice, impartiality, and equity. “Speedy” refers to the efficient and timely resolution of disputes, avoiding prolonged legal proceedings that can occur in traditional court litigation.
 - b. Without Unnecessary Expense: The ordinance also seeks to minimise the financial burden associated with resolving disputes. It underscores the goal of reducing unnecessary costs and expenses that parties might incur in the arbitration process. This is in line with the broader principle of making arbitration a cost-effective alternative to traditional litigation.

Overall, Section 3(1) sets out the core mission of the Hong Kong Arbitration Ordinance: to establish a legal framework that encourages and facilitates arbitration as a method for resolving disputes. By prioritising fairness, speed, and cost-effectiveness, the ordinance aims to provide a viable alternative for parties seeking to resolve their conflicts outside of the court system.

(2) This Ordinance is based on the principles—

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

Section 3(2) of the Hong Kong Arbitration Ordinance outlines the guiding principles upon which the ordinance is based. Let us analyse the content of this section:

1. “(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”: This subsection reflects the principle of party autonomy in arbitration. It conveys that parties involved in a dispute should have the freedom to mutually determine the methods and procedures by which their dispute will be resolved. The ordinance recognises that parties are best situated to understand their dispute and its nuances, and thus, they should be allowed to craft their own agreement on how to resolve it. However, this autonomy is subject to certain safeguards that are deemed necessary to protect public interests. These safeguards could include ensuring that fundamental legal rights are not violated and that the arbitration process is conducted fairly.
2. “(b) that the court should interfere in the arbitration of a dispute only as expressly provided for in this Ordinance”: This subsection addresses the concept of minimal judicial intervention in arbitration proceedings. It states that the court’s involvement in arbitration should be limited to instances explicitly outlined in the ordinance. This principle aligns with the idea that arbitration is intended to be a private and autonomous process, where the role of the court is generally secondary. The court’s intervention is warranted only when the ordinance specifically allows it, ensuring that the arbitration process is not unnecessarily encumbered by court proceedings.

Overall, Section 3(2) outlines the foundational principles that guide the Hong Kong Arbitration Ordinance:

1. **Party Autonomy:** This principle recognises the importance of allowing parties to shape their arbitration agreements and procedures based on their mutual understanding and preferences. It promotes flexibility and tailored dispute resolution.
2. **Minimal Judicial Intervention:** This principle emphasises that court intervention in arbitration should be limited and exceptional. Courts should step in only when explicitly provided for in the ordinance, respecting the private nature of arbitration proceedings.

Together, these principles underscore the balance that the Hong Kong Arbitration Ordinance seeks to achieve between respecting parties’ autonomy and ensuring appropriate legal oversight in the arbitration process.

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.

Section 4 of the Hong Kong Arbitration Ordinance addresses the incorporation of provisions from the UNCITRAL Model Law into the ordinance. Let us break down the content of this section:

1. The UNCITRAL Model Law is a widely recognised framework for international commercial arbitration, developed by the United Nations Commission on International Trade Law (UNCITRAL). Many jurisdictions, including Hong Kong, have adopted or adapted the Model Law to govern their domestic arbitration regimes.
2. In the context of the Hong Kong Arbitration Ordinance: “The provisions of the UNCITRAL Model Law that are expressly stated in this Ordinance as having effect”: This part of the section refers to specific provisions of the UNCITRAL Model Law that are mentioned or incorporated into the Hong Kong Arbitration Ordinance. These are the provisions from the Model Law that are intended to be applicable in Hong Kong’s domestic arbitration regime.
3. “have the force of law in Hong Kong”: This phrase indicates that the provisions of the UNCITRAL Model Law that are explicitly referred to in the Hong Kong Arbitration Ordinance are legally binding and enforceable in Hong Kong. They carry the same legal weight as any other provisions of the local law.
4. “subject to the modifications and supplements as expressly provided for in this Ordinance”: This part of the section acknowledges that while the UNCITRAL Model Law is being adopted, the Hong Kong Arbitration Ordinance might make certain modifications or add supplementary provisions to better align with the local legal context and requirements. In other words, the Model Law’s provisions might be tailored or adapted to fit Hong Kong’s legal framework while still adhering to its underlying principles.

Overall, Section 4 acknowledges the incorporation of the UNCITRAL Model Law provisions into the Hong Kong Arbitration Ordinance, clarifies their legal status, and highlights the potential for modifications or supplements in order to harmonise the Model Law with Hong Kong’s domestic legal system. This approach allows Hong Kong to benefit from the established international standards of the Model Law while addressing any unique legal considerations specific to the jurisdiction.

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.

Section 5(1) of the Hong Kong Arbitration Ordinance sets out the scope and jurisdiction of the Hong Kong Arbitration Ordinance in relation to arbitration agreements. Here is the analysis:

1. Subject to subsection (2): This introductory phrase indicates that the application of the ordinance to the specific situation mentioned in this section is subject to any conditions or exceptions outlined in subsection (2) of the same section.
2. This Ordinance applies to an arbitration under an arbitration agreement: This clause establishes the scenario to which the ordinance applies. It specifies that the Hong Kong Arbitration Ordinance governs arbitrations conducted under an arbitration agreement.
3. Whether or not the agreement is entered into in Hong Kong: This clause emphasises that the ordinance's application is not restricted to arbitration agreements that are solely entered into within Hong Kong. It extends its reach to agreements made outside of Hong Kong as well.
4. If the place of arbitration is in Hong Kong: This is the key condition that determines the application of the ordinance. The ordinance applies if the place where the arbitration proceedings are conducted (the "place of arbitration") is located in Hong Kong. In other words, if the arbitration is being administered in Hong Kong, then the Hong Kong Arbitration Ordinance applies.

Overall, Section 5(1) clarifies that the Hong Kong Arbitration Ordinance is applicable to arbitration agreements regardless of where they were entered into, as long as the arbitration itself takes place in Hong Kong. This provision ensures that Hong Kong's legal framework for arbitration governs arbitrations occurring within its jurisdiction, irrespective of the geographical origin of the arbitration agreement.

(2) If the place of arbitration is outside Hong Kong, only this Part, sections 20 and 21, Part 3A, sections 45, 60 and 61, Part 10 and sections 103A, 103B, 103C, 103D, 103G and 103H apply to the arbitration.

Section 5(2) of the Hong Kong Arbitration Ordinance outlines the extent of the Hong Kong Arbitration Ordinance's application to arbitrations when the place of arbitration is outside Hong Kong. Here is the analysis:

1. If the place of arbitration is outside Hong Kong: This condition specifies the scenario under which the subsequent provisions apply. If the arbitration proceedings are set to take place in a location outside of Hong Kong, this provision becomes relevant.
2. Only this Part, sections 20 and 21, Part 3A, sections 45, 60 and 61, Part 10 and sections 103A, 103B, 103C, 103D, 103G and 103H apply to the arbitration: This clause enumerates the specific parts and sections of the Hong Kong Arbitration Ordinance that are applicable to arbitrations conducted outside Hong Kong. These provisions are outlined as follows:
 - a. "this Part": Refers to the part of the ordinance containing ~~Sections 5(1) to 7(9), which establish the general principles and scope of the ordinance.~~²

² Incorrect guess by ChatGPT.

- b. ~~“sections 20 and 21”: These sections pertain to the definitions and interpretation provisions within the ordinance.~~³
- c. ~~“Part 3A”: Refers to the part of the ordinance concerning arbitration agreements and their validity.~~⁴
- d. ~~“sections 45, 60 and 61”: These sections relate to interim measures and court assistance in the context of arbitration.~~
- e. ~~“Part 10”: This part covers enforcement of arbitral awards.~~⁵
- f. ~~“sections 103A, 103B, 103C, 103D, 103G and 103H”: These sections deal with the incorporation of the UNCITRAL Model Law provisions, and their application to arbitrations outside Hong Kong.~~⁶

In summary, Section 5(2) of the Hong Kong Arbitration Ordinance specifies the limited scope of the ordinance’s application to arbitrations conducted outside of Hong Kong. It lists the specific sections and parts of the ordinance that are relevant in such cases, highlighting the provisions that focus on key aspects like definitions, arbitration agreements, interim measures, court assistance, and the enforcement of arbitral awards.

- (3) If any other Ordinance provides that this Ordinance applies to an arbitration under that other Ordinance, this Ordinance (other than sections 20(2), (3) and (4), 22(1), 58 and 74(8) and (9)) applies to an arbitration under that other Ordinance, subject to the following—**
- (a) a reference in article 16(1) of the UNCITRAL Model Law, given effect to by section 34, to any objections with respect to the existence or validity of the arbitration agreement is to be construed as any objections with respect to the application of that other Ordinance to the dispute in question;**
 - (b) that other Ordinance is deemed to have expressly provided that, subject to paragraph (c), all the provisions in Schedule 2 apply; and**
 - (c) section 2 of Schedule 2 (if applicable) only applies so as to authorize 2 or more arbitral proceedings under the same Ordinance to be consolidated or to be heard at the same time or one immediately after another.**

Section 5(3) of the Hong Kong Arbitration Ordinance outlines the interaction between the Hong Kong Arbitration Ordinance and any other ordinance that mandates the application of the Arbitration Ordinance. Here is the analysis:

1. “If any other Ordinance provides that this Ordinance applies to an arbitration under that other Ordinance”: This introductory phrase establishes the context in which the

³ Incorrect guess by ChatGPT.

⁴ Incorrect guess by ChatGPT.

⁵ Incorrect guess by ChatGPT.

⁶ Incorrect guess by ChatGPT.

provisions will apply. It addresses situations where another ordinance specifically requires the application of the Hong Kong Arbitration Ordinance to arbitrations conducted under that other ordinance.

2. “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”: This clause specifies that, except for the mentioned sections, the Hong Kong Arbitration Ordinance applies to arbitrations under the other ordinance. The sections excluded are 20(2), (3), and (4), 22(1), 58, and 74(8) and (9).
3. “(a) a reference in article 16(1) of the UNCITRAL Model Law... as any objections with respect to the application of that other Ordinance to the dispute in question”: This subparagraph clarifies how a reference in the UNCITRAL Model Law, specifically in Article 16(1), should be understood in the context of the other ordinance. It indicates that objections concerning the existence or validity of the arbitration agreement are interpreted as objections about the application of the other ordinance to the specific dispute.
4. “(b) that other Ordinance is deemed to have expressly provided that, subject to paragraph (c), all the provisions in Schedule 2 apply”: This subparagraph deems that the other ordinance has explicitly provided that all the provisions in Schedule 2 of the Hong Kong Arbitration Ordinance apply. It is essentially incorporating Schedule 2 into the application of the other ordinance.
5. “(c) section 2 of Schedule 2 (if applicable) only applies so as to authorise 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”: This subparagraph deals with the applicability of section 2 of Schedule 2. It specifies that if relevant, this section only serves to authorise the consolidation of two or more arbitral proceedings under the same ordinance, allowing them to be heard together or in succession.

In essence, Section 5(3) clarifies how the Hong Kong Arbitration Ordinance interacts with other ordinances that require its application and outlines specific adjustments to accommodate this interaction, including interpretation of objections and the application of certain provisions.

- (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.**

Section 5(4) of the Hong Kong Arbitration Ordinance clarifies the scope of Section 5(3) in relation to arbitrations conducted under other ordinances. Here is the analysis:

1. “Subsection (3) has effect, in relation to an arbitration under any other Ordinance, only in so far as this Ordinance is consistent with—”: This introductory phrase explains the application of Section 5(3) in the context of arbitrations under other ordinances. It

indicates that Section 5(3) applies to such arbitrations but only to the extent that the provisions of the Hong Kong Arbitration Ordinance align with certain conditions.

2. “(a) that other Ordinance;”: This clause stipulates that the provisions of the Hong Kong Arbitration Ordinance (as outlined in Section 5(3)) must be consistent with the other ordinance under which the arbitration is being conducted. In other words, the provisions of the Hong Kong Arbitration Ordinance will be applicable if they do not contradict or conflict with the provisions of the other ordinance.
3. “(b) any rules or procedures authorised or recognised by that other Ordinance”: This clause extends the requirement of consistency to any rules or procedures that are authorised or recognised by the other ordinance. It ensures that the provisions of the Hong Kong Arbitration Ordinance can be applied only if they align with the rules and procedures established by the other ordinance for that particular arbitration.

In summary, Section 5(4) of the Hong Kong Arbitration Ordinance specifies that the application of Section 5(3) is limited to situations where the provisions of the Hong Kong Arbitration Ordinance are consistent with the other ordinance under which the arbitration is conducted, as well as with any rules or procedures authorised or recognised by that other ordinance. This ensures a harmonious application of the Hong Kong Arbitration Ordinance alongside other relevant legal frameworks and procedures.

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.

Section 6 of the Hong Kong Arbitration Ordinance: addresses the application of the Hong Kong Arbitration Ordinance to certain entities within the jurisdiction. Here is the analysis:

1. “This Ordinance applies to the Government and the Offices set up by the Central People’s Government in the Hong Kong Special Administrative Region”: This clause states that the provisions of the Hong Kong Arbitration Ordinance are applicable to two specific entities:
 - a. The Government: This refers to the government of the Hong Kong Special Administrative Region (HKSAR), which is responsible for governing the region. The ordinance’s provisions apply to the government in matters related to arbitration.
 - b. Offices set up by the Central People’s Government in the Hong Kong Special Administrative Region: This refers to the various branches, representative offices, or bodies established by the Central People’s Government of the People’s Republic of China within the HKSAR. These offices represent the interests and functions of the Central Government in the region.

In summary, Section 6 of the Hong Kong Arbitration Ordinance specifies that the ordinance’s provisions extend to the HKSAR Government and the Central Government’s offices located within the HKSAR. This indicates that these entities are subject to the rules and regulations outlined in the ordinance when dealing with arbitration matters.

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)

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”..

Please refer to the commentary on Article 2A of the UNCITRAL Model Law 2006.

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

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

“Article 3. Receipt of written communications

(1) Unless otherwise agreed by the parties:

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

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

Please refer to the commentary on Article 3 of the UNCITRAL Model Law 2006.

(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.

Section 10(2) of the Hong Kong Arbitration Ordinance pertains to the receipt of written communications in the context of arbitration proceedings. Let us analyze this section to understand its implications:

1. **Communication in Writing:** This section deals with written communications exchanged between parties involved in arbitration proceedings. Written communications are a fundamental aspect of arbitration, as they include notices, statements of claim, counterclaims, responses, and other documents used to conduct the arbitration process.
2. **Timing of Receipt:** Section 10(2) specifies that when a written communication is sent by any means that allows information to be recorded and transmitted to the recipient (excluding communications in court proceedings), it is deemed to have been received on the day it is sent. In other words, the date of receipt is determined based on the date of sending, and this rule applies regardless of the means of transmission used, such as email, fax, or postal mail.
3. **Exclusion of Court Proceedings:** The provision explicitly excludes communications in court proceedings from this rule. This means that the rule in Section 10(2) applies specifically to written communications related to arbitration proceedings, not to communications within the context of court proceedings.

4. Effect on Subsection (1): The provision states that it does not affect subsection (1), indicating that this rule regarding the deemed date of receipt operates in conjunction with any other applicable rules or provisions in the ordinance. Subsection (1) of Section 10 likely deals with other aspects of the timing and methods of communication.
5. Purpose: The purpose of this provision is to establish a clear and practical rule for determining the date of receipt of written communications in arbitration. It provides certainty to parties by eliminating disputes over when a communication is deemed to have been received, which can be important in meeting deadlines and procedural requirements during arbitration.

In summary, Section 10(2) of the Hong Kong Arbitration Ordinance sets a default rule for determining the date of receipt of written communications in arbitration proceedings. It ensures that parties can rely on the date of sending as the date of receipt, which is a crucial aspect of managing the arbitration process efficiently and effectively. However, it is essential to note that parties can still agree to different rules regarding the timing of receipt in their arbitration agreements if they wish to do so.

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

Section 10(3) of the Hong Kong Arbitration Ordinance places a condition on the application of subsection (2) regarding the deemed date of receipt of written communications in arbitration proceedings. Let us analyze this section to understand its implications:

1. Condition for Application: Section 10(3) imposes a condition for the application of subsection (2). It specifies that subsection (2), which determines the date of receipt based on the date of sending, applies only if there is a record of receipt of the communication by the addressee.
2. Record of Receipt: The condition requires that there must be evidence or a record demonstrating that the addressee received the communication. This record could be in the form of an acknowledgment of receipt, a delivery confirmation, or any other reliable means of verifying that the communication reached the intended recipient.
3. Purpose: The purpose of this provision is to introduce an element of reliability and verification into the timing of receipt of written communications. While subsection (2) simplifies the determination of the date of receipt by linking it to the date of sending, subsection (3) ensures that there is a level of certainty regarding whether the communication was actually received by the intended party.
4. Balancing Efficiency and Reliability: These provisions strike a balance between efficiency and reliability in arbitration proceedings. Subsection (2) promotes efficiency by allowing parties to rely on the date of sending, which can be crucial in meeting deadlines. However, subsection (3) ensures that this efficiency is not achieved at the expense of reliability, as there must be a record of receipt to apply the rule.
5. Importance of Records: Parties involved in arbitration are encouraged to maintain records of receipt for written communications to benefit from the rule in subsection (2). These

records can help resolve disputes over the timing of receipt and provide transparency and accountability in the arbitration process.

In summary, Section 10(3) of the Hong Kong Arbitration Ordinance introduces a condition that must be met for the application of the rule in subsection (2) regarding the date of receipt of written communications. This condition requires the existence of a record of receipt by the addressee, adding a level of reliability to the timing of receipt while still promoting efficiency in arbitration proceedings.

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.”

Please refer to the commentary on Article 4 of the UNCITRAL Model Law 2006.

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

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

“Article 5. Extent of court intervention

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

Please refer to the commentary on Article 5 of the UNCITRAL Model Law 2006.

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
 - (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.**

Section 14(1) of the Hong Kong Arbitration Ordinance outlines the application of the Limitation Ordinance and other ordinances related to the limitation of actions to arbitrations. Here is the analysis:

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”: This clause specifies that two types of ordinances apply to arbitrations in the same manner as they do to actions conducted in court:
 - a. The Limitation Ordinance (Cap. 347): This is a separate ordinance in Hong Kong that establishes time limits within which legal actions must be brought forward. The ordinance outlines the time frames within which legal claims must be initiated, failing which the claim might become time-barred. This section states that the provisions of the Limitation Ordinance are equally applicable to arbitrations as they are to court proceedings.

- b. “Any other Ordinance relating to the limitation of actions (limitation enactments)”: This broader phrase includes any other ordinances apart from the Limitation Ordinance that pertain to setting time limits for the initiation of legal actions. The section affirms that these ordinances also apply to arbitrations in a manner consistent with their application to court actions.

In summary, Section 14(1) of the Hong Kong Arbitration Ordinance ensures that the provisions regarding the limitation of actions, as outlined in the Limitation Ordinance and any other related ordinances, apply to arbitrations in the same way they apply to legal actions conducted in court. This helps maintain consistency in how time limits are enforced across both arbitration and court proceedings.

(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.

Section 14(2) of the Hong Kong Arbitration Ordinance provides an interpretation of a specific term used in the context of applying limitation enactments to arbitrations. Here is the analysis:

- 1. “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”: This clause explains how a certain term is to be understood in the context of applying limitation enactments to arbitrations:
 - a. “For the purposes of subsection (1)”: This phrase specifies that the interpretation provided in this section is relevant for understanding the application of limitation enactments in the context of Section 14(1) of the Hong Kong Arbitration Ordinance.
 - b. “A reference in a limitation enactment to bringing an action is to be construed as, in relation to an arbitration, commencing the arbitral proceedings”: This section provides an interpretation for the term “bringing an action” as used in a limitation enactment. It states that when such a term is used in a limitation enactment and is applied to arbitrations, it should be understood to mean “commencing the arbitral proceedings”.

In summary, Section 14(2) of the Hong Kong Arbitration Ordinance clarifies how the term “bringing an action” in a limitation enactment should be understood when applied to arbitrations. It asserts that in the context of arbitrations, the term refers to the act of “commencing the arbitral proceedings”. This interpretation ensures that the time limits set out in limitation enactments are appropriately adapted to the arbitration context.

(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.

Section 14(3) of the Hong Kong Arbitration Ordinance addresses the timing of when a cause of action accrues in relation to an arbitration agreement and its interaction with limitation enactments. Here is the analysis:

1. “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”: This introductory clause establishes the context for the provision. It indicates that the section applies even if an arbitration agreement includes a clause that postpones the accrual of a cause of action until an arbitral award is issued under that agreement. This clause might be present in arbitration agreements to delay the starting point of any legal claims related to the matters submitted to arbitration.
2. “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”: This clause outlines the legal principle that despite the mentioned clause in the arbitration agreement, the cause of action is considered to have accrued for the purposes of the limitation enactments as if the postponement clause were not present. In other words:
 - a. The section considers the cause of action to have arisen when it would have ordinarily arisen under general legal principles, regardless of the delay clause in the arbitration agreement.
 - b. This interpretation applies both to the application of limitation enactments in relation to arbitrations and to their application in other legal proceedings (non-arbitration-related).

In summary, Section 14(3) of the Hong Kong Arbitration Ordinance establishes that, regardless of any clauses in an arbitration agreement that delay the accrual of a cause of action until an arbitral award is made, the cause of action is treated as having accrued when it would have normally accrued under general legal principles. This ensures consistency in the application of limitation periods in relation to arbitration agreements and other legal proceedings.

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

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

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

Section 14(4) of the Hong Kong Arbitration Ordinance addresses the impact of a court order setting aside an arbitral award on the computation of time prescribed by limitation enactments. Here is the analysis:

1. “If a court orders that an award is to be set aside”: This introductory phrase sets the condition under which the subsequent provisions of this section will apply. It refers to a situation where a court issues an order to nullify or invalidate an arbitral award.
2. “(a) the commencement of the arbitral proceedings; and (b) the date of the order of the court setting aside the award”: These subclauses establish the two relevant time points for measuring the period to be excluded:
 - a. the commencement of the arbitral proceedings: This refers to the point in time when the arbitration proceedings were formally initiated.
 - b. the date of the order of the court setting aside the award: This refers to the date when the court officially issues an order declaring the arbitral award to be set aside.
3. “must be excluded in computing the time prescribed by a limitation enactment for the commencement of proceedings (including arbitral proceedings) with respect to the matter submitted to arbitration”: This clause states that the period of time between the commencement of the arbitral proceedings and the date when the court orders the award to be set aside must be excluded when calculating the time prescribed by a limitation enactment. The exclusion of this period applies not only to legal proceedings in general but also specifically to arbitral proceedings concerning the matter that was submitted to arbitration.

In summary, Section 14(4) of the Hong Kong Arbitration Ordinance establishes that if a court orders that an arbitral award is to be set aside, the time period between the commencement of the arbitral proceedings and the date of the court’s order must be excluded when calculating the time prescribed by a limitation enactment for commencing proceedings related to the matter submitted to arbitration. This provision takes into account the time during which the validity of the award was under challenge and ensures that the relevant limitation period is not unduly affected by the process of setting aside the award.

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.

Section 15(1) of the Hong Kong Arbitration Ordinance deals with the interaction between interpleader proceedings, arbitration agreements, and the direction by a court in such scenarios. Here is the analysis:

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”: These subclauses establish the conditions that need to be met for the subsequent provisions of the section to apply:
 - a. relief by way of interpleader is granted by a court: This refers to the situation where a court issues an order granting relief through the legal process of interpleader. Interpleader is a legal procedure in which a third party who holds property claimed by two or more parties asks the court to determine the rightful owner.
 - b. there is an arbitration agreement between the claimants in the interpleader proceedings in respect of any issue between those claimants: This refers to the presence of an arbitration agreement between the parties making claims in the interpleader proceedings. The arbitration agreement is relevant to any issue that arises between these claimants.
2. “the court granting the relief must, subject to subsection (2), direct that the issue is to be determined in accordance with the agreement”: This clause outlines the court’s action that needs to be taken when the specified conditions are met:
 - a. The court that granted the relief by way of interpleader must issue a directive.
 - b. The directive is that any issue between the claimants that is subject to the arbitration agreement must be determined in accordance with that agreement.
 - c. The application of this directive is subject to the conditions outlined in subsection (2), which are not specified in this portion of the ordinance.

In summary, Section 15(1) of the Hong Kong Arbitration Ordinance establishes that when relief by way of interpleader is granted by a court, and there is an arbitration agreement between the claimants in those proceedings regarding any issue between them, the court must direct that the issue be determined in accordance with the arbitration agreement, subject to the conditions of subsection (2). This provision aligns the resolution of such issues with the parties’ agreement to arbitrate and promotes consistency in addressing disputes between the claimants.

(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.

Section 15(2) of the Hong Kong Arbitration Ordinance provides the court with discretion to refuse to issue a directive under Section 15(1) in specific circumstances. Here is the analysis:

1. “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”: This clause outlines the court’s discretionary power to decline issuing the directive specified in Section 15(1) under certain conditions.
2. “The court may refuse to make a direction under subsection (1)”: This part establishes that the court has the authority to decide whether or not to issue the directive mentioned in Section 15(1).
3. “if the circumstances are such that legal proceedings brought by a claimant in respect of the issue would not be stayed”: This clarifies the basis on which the court’s refusal may occur. The court can choose not to issue the directive if it determines that the circumstances surrounding the case are such that if the issue were pursued through legal proceedings (rather than arbitration), those legal proceedings would not be stayed. In other words, if there is a compelling reason why the case should proceed in court, the court has the discretion to withhold the directive that would have otherwise directed the issue to arbitration.

In summary, Section 15(2) of the Hong Kong Arbitration Ordinance gives the court the authority to refuse issuing the directive specified in Section 15(1) under certain conditions. Specifically, if the circumstances suggest that legal proceedings brought by a claimant regarding the issue at hand would not be halted or stayed, the court can choose not to direct the issue to arbitration despite the presence of an arbitration agreement between the claimants. This provision maintains the court’s discretion to determine the most appropriate course of action based on the specific circumstances of the case.

(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.

Section 15(3) of the Hong Kong Arbitration Ordinance addresses the impact of the court’s refusal to issue a directive under Section 15(1) on the provisions of the arbitration agreement and the determination of the issue in court. Here is the analysis:

1. “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”: This clause outlines the consequences of the court’s refusal to issue the directive under Section 15(1) and the interaction with provisions of the arbitration agreement:
2. “If the court refuses to make a direction under subsection (1)”: This part specifies the triggering event for the conditions explained in the rest of the clause.

3. “any provision of the arbitration agreement that an award is a condition precedent to the bringing of legal proceedings in respect of the issue”: This refers to a provision in the arbitration agreement that states that an arbitral award must be obtained before legal proceedings can be initiated regarding the issue in question.
4. “does not affect the determination of the issue by the court”: This part clarifies that if the court declines to issue the directive specified in Section 15(1) and the arbitration agreement contains the mentioned provision about requiring an award as a condition precedent, that provision will not prevent the court from determining the issue in question.

In summary, Section 15(3) of the Hong Kong Arbitration Ordinance states that if the court refuses to issue the directive under Section 15(1) regarding the determination of an issue through arbitration, and if the arbitration agreement contains a provision that requires an award as a condition precedent before initiating legal proceedings, that provision will not prevent the court from determining the issue. In other words, the court retains the authority to address the matter even if an arbitral award is not obtained as per the agreement’s condition.

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

Section 15(4) of the Hong Kong Arbitration Ordinance clarifies the status of a court’s direction issued under Section 15(1) in terms of its appealability. Here is the analysis:

1. “A direction of the court under subsection (1)”: This refers to the directive that the court issues in accordance with the conditions specified in Section 15(1).
2. “is not subject to appeal”: This part indicates that the court’s directive under Section 15(1) cannot be challenged or appealed. In other words, if the court decides to direct the issue to arbitration as outlined in Section 15(1), that decision cannot be brought to an appellate court for review or reconsideration.

In summary, Section 15(4) of the Hong Kong Arbitration Ordinance establishes that a directive issued by the court under Section 15(1) regarding the determination of an issue through arbitration is not open to appeal. Once the court issues such a directive, it remains final and cannot be contested through an appeal process. This provision helps ensure the efficiency and finality of the court’s decision in this regard.

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

Section 15(5) of the Hong Kong Arbitration Ordinance addresses the requirement for obtaining permission from the court in order to appeal a decision made under Section 15(2). Here is the analysis:

1. “The leave of the court making a decision under subsection (2)”: This refers to the permission or approval of the court that initially made the decision in accordance with Section 15(2).

2. “is required for any appeal from that decision”: This part emphasises that before a party can appeal a decision made under Section 15(2), they must obtain permission from the court that issued the original decision. In other words, a party cannot automatically appeal the decision but needs to seek the court’s permission to do so.

In summary, Section 15(5) of the Hong Kong Arbitration Ordinance stipulates that if a party intends to appeal a decision made under Section 15(2) (which relates to the court’s discretion to refuse a direction under Section 15(1)), they need to seek and obtain the court’s permission to initiate the appeal. This requirement for seeking leave from the same court helps regulate and manage the appeal process in matters related to arbitration agreements and interpleader proceedings.

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.

Section 16(1) of the Hong Kong Arbitration Ordinance outlines the default approach to conducting proceedings related to the Hong Kong Arbitration Ordinance in the court. Here is the analysis:

1. “Subject to subsection (2)”: This phrase indicates that the subsequent statement is subject to the conditions outlined in subsection (2) of this section.
2. “proceedings under this Ordinance in the court are to be heard otherwise than in open court”: This part specifies that by default, proceedings that are related to the Hong Kong Arbitration Ordinance and take place in the court should be conducted in a manner that is not open to the public. This means that the proceedings are not open for public viewing or attendance and are generally treated with confidentiality.

In summary, Section 16(1) of the Hong Kong Arbitration Ordinance establishes that, with certain exceptions, proceedings conducted in the court under this ordinance are to be held in a manner that is not open to the public. This provision aims to maintain a level of confidentiality in arbitration-related proceedings while allowing for appropriate exceptions as outlined in subsection (2) of the same section.

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

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

Section 16(2) of the Hong Kong Arbitration Ordinance outlines the circumstances under which the court has the authority to order proceedings under the Hong Kong Arbitration Ordinance to be conducted in open court. Here is the analysis:

1. “The court may order those proceedings to be heard in open court— (a) on the application of any party; or” This clause states that any party involved in the proceedings

has the option to make an application to the court requesting that the proceedings be conducted in open court. If a party chooses to make such an application, the court can consider whether to grant it.

2. (b) if, in any particular case, the court is satisfied that those proceedings ought to be heard in open court: This part emphasises the court’s discretion to order proceedings to be conducted in open court in specific cases. If, after considering the circumstances of a particular case, the court believes that it is appropriate for the proceedings to be open to the public, it can issue an order to that effect.

In summary, Section 16(2) of the Hong Kong Arbitration Ordinance gives the court the discretion to order that proceedings under the ordinance be conducted in open court. This discretion can be exercised either upon the application of any party involved in the proceedings or if the court, based on the specific circumstances of a case, determines that an open court hearing is warranted. This provision balances the general principle of confidentiality in arbitration with the potential need for transparency and openness in certain situations.

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

Section 16(3) of the Hong Kong Arbitration Ordinance clarifies the status of an order issued by the court under Section 16(2) in terms of its appealability. Here is the analysis:

1. “An order of the court under subsection (2)”: This refers to an order issued by the court to allow proceedings under the Hong Kong Arbitration Ordinance to be conducted in open court, as specified in Section 16(2).
2. “is not subject to appeal”: This part indicates that the order issued by the court under Section 16(2) cannot be challenged or appealed. In other words, once the court makes a decision to allow proceedings to be heard in open court, that decision is final and cannot be contested through an appeal process.

In summary, Section 16(3) of the Hong Kong Arbitration Ordinance establishes that an order issued by the court under Section 16(2) to allow proceedings under the ordinance to be conducted in open court is not open to appeal. This provision maintains the finality of the court’s decision in this regard and ensures that parties cannot challenge the court’s discretion in granting such an order through an appeal process.

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).

Section 17(1) of the Hong Kong Arbitration Ordinance provides context about the scope of the section and its application to certain types of proceedings under the Hong Kong Arbitration Ordinance. Here is the analysis:

1. “This section applies to proceedings under this Ordinance in the court heard otherwise than in open court”: This indicates that the following provisions within this section are specifically relevant to proceedings that are conducted in a manner that is not open to the public, which are referred to as “closed court proceedings”: These are proceedings where the public is excluded from attending or viewing the proceedings, maintaining confidentiality.
2. “(closed court proceedings)”: This term clarifies that the section pertains to proceedings conducted in closed court, where the public is excluded from participating or observing the proceedings.

In summary, Section 17(1) of the Hong Kong Arbitration Ordinance outlines the applicability of the section to proceedings conducted in closed court, meaning proceedings that are not open to the public. The section likely contains provisions that address the specific procedural and legal considerations relevant to such closed court proceedings conducted under the ordinance.

(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.

Section 17(2) of the Hong Kong Arbitration Ordinance outlines the requirement for a court conducting closed court proceedings under the Hong Kong Arbitration Ordinance to make a direction about the publication of information related to those proceedings. Here is the analysis:

1. “A court in which closed court proceedings are being heard”: This refers to the court where the closed court proceedings are being conducted. Closed court proceedings are proceedings that are not open to the public.
2. “must, on the application of any party, make a direction as to what information, if any, relating to the proceedings may be published”: This part outlines the action that the court is required to take. If any party involved in the closed court proceedings makes an application to the court, the court must issue a direction specifying what information, if any, related to the proceedings can be published. In other words, the court will determine what information can be shared with the public or the media.

In summary, Section 17(2) of the Hong Kong Arbitration Ordinance mandates that a court conducting closed court proceedings must issue a direction regarding the publication of information related to those proceedings upon the application of any party involved. This provision helps balance the need for transparency with the confidentiality of closed court proceedings, allowing the court to control what information becomes public while considering the circumstances of the case.

- (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.**

Section 17(3) of the Hong Kong Arbitration Ordinance sets the conditions under which a court can issue a direction allowing information related to closed court proceedings to be published. Here is the analysis:

1. “A court must not make a direction permitting information to be published unless— (a) all parties agree that the information may be published”: This clause specifies that the court can permit information to be published if all parties involved in the proceedings agree to the publication. If all parties provide their consent, the court can proceed with the direction to allow the information to be shared.
2. “(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”: This part outlines an alternative condition for the court to consider. If any party involved in the proceedings wishes to keep certain matters, including their identity, confidential, the court can only allow the publication of information if it is confident that doing so will not reveal any confidential matters.

In summary, Section 17(3) of the Hong Kong Arbitration Ordinance lays out the conditions that must be met for a court to issue a direction permitting the publication of information related to closed court proceedings. The court can do so if either all parties agree to the publication or if the court determines that publishing the information will not compromise any matter that a party wishes to keep confidential, including their identity. This provision aims to strike a balance between transparency and confidentiality in closed court proceedings.

- (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.**

Section 17(4) of the Hong Kong Arbitration Ordinance provides an exception to the conditions outlined in Section 17(3) for permitting the publication of information related to closed court proceedings. Here is the analysis:

1. “Despite subsection (3), if—(a) a court gives a judgment in respect of closed court proceedings”: This clause states that the exception applies if a court issues a judgment as a result of closed court proceedings. This judgment pertains to the matters addressed in the closed court proceedings.

2. “(b) the court considers that judgment to be of major legal interest”: This part outlines the criterion for the exception to apply. The court must determine that the judgment is of significant legal interest, indicating that it has broader legal implications or significance beyond the immediate case.
3. “the court must direct that reports of the judgment may be published in law reports and professional publications”: If the court satisfies the conditions outlined in the previous clauses (a judgment is given in closed court proceedings and the court considers it of major legal interest), the court must issue a direction allowing reports of the judgment to be published in law reports and professional publications. This means that the court permits the dissemination of the judgment to a wider audience through recognised legal and professional channels.

In summary, Section 17(4) of the Hong Kong Arbitration Ordinance provides an exception to the conditions of Section 17(3) for permitting the publication of information related to closed court proceedings. If a court gives a judgment resulting from closed court proceedings and deems that judgment to be of significant legal interest, the court must direct that reports of the judgment can be published in law reports and professional publications. This exception allows for the dissemination of important legal judgments while still maintaining confidentiality in most cases.

- (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.**

Section 17(5) of the Hong Kong Arbitration Ordinance outlines the process and conditions for concealing certain matters in reports of a judgment that the court has permitted to be published under Section 17(4). Here is the analysis:

1. “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”: This clause addresses the situation where a party involved in the closed court proceedings wishes to hide specific matters, even if the court has permitted the publication of the judgment under Section 17(4). In such cases, the party can apply to the court for a direction on how to conceal those matters in the reports of the judgment. The court will issue a direction to ensure the confidentiality of the requested matters.
2. “(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”: This part pertains to situations where the court determines that concealing certain matters as directed in paragraph (a) might not fully prevent those matters from being revealed in the published report. If the court believes that the report, even with concealed matters, might still reveal confidential details, it can direct that the report should not be published for a specified period. This period should not exceed 10 years, as determined by the court.

In summary, Section 17(5) of the Hong Kong Arbitration Ordinance addresses situations where a party involved in closed court proceedings wishes to conceal specific matters in reports of a judgment permitted for publication under Section 17(4). If such concealment is requested, the court will issue directions for concealment. If the court believes that even concealed matters might still be revealed in the published report, it can further direct that the report should not be published for a limited period, not exceeding 10 years. This provision seeks to accommodate parties’ wishes for confidentiality while also allowing for the dissemination of important legal judgments.

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

Section 17(6) of the Hong Kong Arbitration Ordinance establishes the finality of a court’s direction issued under Section 17 regarding the publication and concealment of information related to closed court proceedings. Here is the analysis:

1. “A direction of the court under this section”: This refers to any direction issued by the court in accordance with the provisions of Section 17, which pertain to the publication and concealment of information in closed court proceedings.
2. “is not subject to appeal”: This part states that any direction issued by the court under Section 17 cannot be challenged or appealed. In other words, once the court issues a direction regarding the publication or concealment of information in closed court proceedings, that direction is final and cannot be contested or appealed through an appeal process.

In summary, Section 17(6) of the Hong Kong Arbitration Ordinance establishes that a court’s direction issued under Section 17 regarding the publication and concealment of information in closed court proceedings is not open to appeal. This provision maintains the finality of the court’s direction in this regard and ensures that parties cannot challenge the court’s discretion in issuing such directions through an appeal process.

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.**

Section 18(1) of the Hong Kong Arbitration Ordinance outlines restrictions on the publication, disclosure, or communication of information related to arbitral proceedings and awards, unless otherwise agreed upon by the parties involved. Here is the analysis:

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”: This clause specifies that no party involved in the arbitral proceedings may publish, disclose, or communicate any information related to the proceedings that are conducted based on the arbitration agreement. This is the agreement between the parties to resolve their dispute through arbitration rather than litigation.
2. “(b) an award made in those arbitral proceedings”: This part extends the prohibition to any information related to an award that is rendered as a result of the arbitral proceedings. An award is the decision reached by the arbitrator(s) or arbitral tribunal on the dispute brought before them.
3. The combination of (a) and (b) indicates that this prohibition applies to both the process of arbitration and the outcome in the form of the award.
4. The phrase “Unless otherwise agreed by the parties” indicates that if the parties mutually consent, they can decide to permit the publication, disclosure, or communication of such information, essentially allowing for flexibility.

In summary, Section 18(1) of the Hong Kong Arbitration Ordinance establishes a default rule that restricts parties from publishing, disclosing, or communicating any information related to arbitral proceedings and awards, unless the parties have agreed otherwise. This provision promotes confidentiality in arbitration unless the involved parties decide otherwise.

(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

(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.

Section 18(2) of the Hong Kong Arbitration Ordinance provides exceptions to the restrictions outlined in Section 18(1) regarding the publication, disclosure, or communication of information related to arbitral proceedings and awards. Here is the analysis:

1. “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 (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”: This clause outlines the first exception. It permits a party to publish, disclose, or communicate information related to arbitral proceedings or an award if doing so is necessary to protect or pursue their legal rights or interests, or to enforce or challenge the award, in legal proceedings before a court or judicial authority. This exception recognises the importance of providing relevant information to a court when legal actions are being taken.
2. “(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”: This part outlines the second exception. If a party is legally required to publish, disclose, or communicate information related to arbitral proceedings or an award to a government body, regulatory body, court, or tribunal, then they are not prevented from doing so by Section 18(1).
3. “(c) if the publication, disclosure or communication is made to a professional or any other adviser of any of the parties”: This clause outlines the third exception. Parties are allowed to share information related to arbitral proceedings or an award with their professional or other advisers. This recognises the need for parties to seek legal advice or assistance.

In summary, Section 18(2) of the Hong Kong Arbitration Ordinance provides exceptions to the restrictions on the publication, disclosure, or communication of information related to arbitral proceedings and awards, as outlined in Section 18(1). These exceptions allow parties to share such information in legal proceedings, when legally obliged, and with their professional advisers, ensuring a balance between confidentiality and practical legal needs.

Part 3 Arbitration Agreement

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

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

“Option I

Article 7. Definition and form of arbitration agreement

- (1) “Arbitration agreement” is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- (2) The arbitration agreement shall be in writing.
- (3) An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means.
- (4) The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference; “electronic communication” means any communication that the parties make by means of data messages; “data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.
- (5) Furthermore, an arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.
- (6) The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.”

Please refer to the commentary on Article 7 of the UNCITRAL Model Law 2006.

(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.**

Section 19(2) of the Hong Kong Arbitration Ordinance elaborates on what constitutes a written arbitration agreement, offering alternative criteria to those outlined in Section 19(1). Here is the analysis:

1. “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”: This clause introduces the first criterion. It states that an arbitration agreement can be considered “in writing” if it is present in a document, regardless of whether the document is signed by the parties involved in the agreement. This acknowledges that a written agreement does not necessarily require signatures, as long as it is documented.
2. “(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”: This part provides an alternative scenario. Even if the agreement was initially made orally or through non-written means, it can still be considered “in writing” if it is recorded by one of the parties or by a third party, with the consent of all parties involved. This recognises the validity of agreements that are later documented for clarity and reference.

In summary, Section 19(2) of the Hong Kong Arbitration Ordinance defines additional conditions under which an arbitration agreement can be considered “in writing”, beyond what is stated in Section 19(1). An agreement can be considered in writing if it is documented in a written form, regardless of signatures, or if an initially non-written agreement is later recorded with the authorisation of all parties involved. This provision allows for flexibility in recognising written arbitration agreements that may not strictly adhere to traditional written and signed formats.

(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.

Section 19(3) of the Hong Kong Arbitration Ordinance addresses the circumstances under which a reference to a written form of an arbitration clause within an agreement can be considered a valid arbitration agreement. Here is the analysis:

1. “A reference in an agreement to a written form of arbitration clause constitutes an arbitration agreement”: This part establishes the principle that if an agreement refers to a written form of an arbitration clause, this reference itself is considered to be an arbitration agreement.

2. “if the reference is such as to make that clause part of the agreement”: This condition further specifies that the reference to the written arbitration clause must be made in a way that incorporates that clause as an integral part of the overall agreement. In other words, the reference should indicate the intention of the parties to include the arbitration clause as a binding provision within the agreement.

In summary, Section 19(3) of the Hong Kong Arbitration Ordinance explains that if an agreement contains a reference to a written form of an arbitration clause, and the reference indicates that the clause is meant to be an integral part of the agreement, then the reference itself constitutes a valid arbitration agreement. This provision recognises the validity of arbitration agreements based on references to written arbitration clauses that are intended to be binding within the broader agreement.

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

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

“Article 8. Arbitration agreement and substantive claim before court

- (1) **A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.**
- (2) **Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.”**

Please refer to the commentary on Article 8 of the UNCITRAL Model Law 2006.

- (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.**

Section 20(2) of the Hong Kong Arbitration Ordinance discusses the circumstances under which the court, when dealing with a dispute involving a claim or dispute that falls within the jurisdiction of the Labour Tribunal, can refer the parties to arbitration if requested. Here is the analysis:

1. “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)”: This part specifies that the dispute under consideration is one that pertains to claims or disputes falling within the jurisdiction of the Labour Tribunal, as defined by the relevant ordinance.
2. “the court before which an action has been brought may, if a party so requests, refer the parties to arbitration”: This clause explains that the court handling the ongoing action can decide to refer the involved parties to arbitration upon the request of a party.
3. “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”: These two criteria must be met for the court to decide to refer the parties to arbitration:
 - a. “(a) there is no sufficient reason why the parties should not be referred to arbitration in accordance with the arbitration agreement”: The court should be convinced that there is no compelling reason that prevents the parties from being referred to arbitration based on the terms of the arbitration agreement.
 - b. “(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”: The party requesting arbitration must have been prepared and willing to comply with all requirements needed for a proper arbitration process, both when the action was initiated and continuing until the court’s consideration.

In summary, Section 20(2) of the Hong Kong Arbitration Ordinance outlines the circumstances under which the court can refer parties involved in a dispute within the jurisdiction of the Labour Tribunal to arbitration, upon the request of a party. The court must be satisfied that there are no significant reasons preventing the referral and that the requesting party has been prepared and willing to engage in the arbitration process.

(3) Subsection (1) has effect subject to section 15 (Arbitration agreements) of the Control of Exemption Clauses Ordinance (Cap. 71).

Section 20(3) of the Hong Kong Arbitration Ordinance refers to the interplay between Section 20(1) of the Hong Kong Arbitration Ordinance and Section 15 of the Control of Exemption Clauses Ordinance (Cap. 71). Here is the analysis:

1. “Subsection (1) has effect”: This refers to the content of Subsection (1) of Section 20, which deals with the court’s authority to refer parties to arbitration if the dispute involves claims within the jurisdiction of the Labour Tribunal and is covered by an arbitration agreement.
2. “subject to section 15 (Arbitration agreements) of the Control of Exemption Clauses Ordinance (Cap. 71)”: This part highlights that while Subsection (1) of Section 20 is

operative, it is also influenced by the provisions of Section 15 of the Control of Exemption Clauses Ordinance (Cap. 71).

In summary, Section 20(3) of the Hong Kong Arbitration Ordinance clarifies that the application of Subsection (1) of Section 20 is influenced by the provisions outlined in Section 15 of the Control of Exemption Clauses Ordinance (Cap. 71). This reference indicates that there might be considerations and limitations imposed by the Control of Exemption Clauses Ordinance when applying the authority to refer parties to arbitration as described in Subsection (1) of Section 20.

(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.

Section 20(4) of the Hong Kong Arbitration Ordinance addresses the impact of a court’s decision to not refer parties to arbitration on a specific provision within the arbitration agreement. Here is the analysis:

1. “If the court refuses to refer the parties to arbitration”: This condition specifies that the court has decided not to refer the parties involved in the dispute to arbitration, as described in Section 20(1) of the ordinance. This means that the dispute will proceed through the court process rather than arbitration.
2. “any provision of the arbitration agreement that an award is a condition precedent to the bringing of legal proceedings in respect of any matter”: This refers to a provision in the arbitration agreement that makes obtaining an award a requirement before legal proceedings can be initiated for a particular matter.
3. “is of no effect in relation to those proceedings”: This phrase indicates that the provision requiring an award as a condition precedent will not apply to the legal proceedings that are not referred to arbitration. In other words, the requirement for an award before legal action can be taken is disregarded, and the parties can initiate legal proceedings without waiting for an arbitration award.

In summary, Section 20(4) of the Hong Kong Arbitration Ordinance states that if the court decides not to refer parties to arbitration and the dispute proceeds through the court, any provision in the arbitration agreement that mandates an award as a condition precedent for initiating legal proceedings will not have any effect in those legal proceedings. This allows parties to pursue legal action without waiting for an arbitration award if the court has determined that arbitration is not appropriate for the specific matter.

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

Section 20(5) of the Hong Kong Arbitration Ordinance addresses the court’s obligation when it decides to refer parties involved in an action to arbitration. Here is the analysis:

1. “If the court refers the parties in an action to arbitration”: This condition specifies that the court has chosen to refer the parties involved in an ongoing action to arbitration, in accordance with the provisions discussed in previous sections.
2. “it must make an order staying the legal proceedings in that action”: This part outlines the action that the court must take once it decides to refer the parties to arbitration.
3. “it must make an order staying the legal proceedings in that action”: This indicates that the court is required to issue an official order to halt or suspend the ongoing legal proceedings associated with the action that is being referred to arbitration. The purpose of this stay order is to give effect to the court’s decision to refer the parties to arbitration, allowing the arbitration process to proceed without concurrent legal proceedings.

In summary, Section 20(5) of the Hong Kong Arbitration Ordinance stipulates that if the court decides to refer parties involved in an action to arbitration, it must issue an order to stay the legal proceedings associated with that action. This stay order ensures that the arbitration process can occur without simultaneous legal proceedings, and it aligns with the court’s decision to refer the matter to arbitration.

(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.**

Section 20(6) of the Hong Kong Arbitration Ordinance deals with the unique circumstances of Admiralty proceedings and outlines provisions regarding the possibility of requiring security for the satisfaction of arbitration awards. Here is the analysis:

1. “In the case of Admiralty proceedings—”: This introduces the context that the following provisions apply specifically to Admiralty proceedings, which involve maritime and shipping-related matters.
2. “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”: This clause indicates that despite the general provisions of subsections (1) and (5), in Admiralty proceedings, the court can conditionally refer the parties to arbitration and order a stay on the proceedings based on the requirement that the parties provide security to ensure the satisfaction of any arbitration award that might be issued.
3. “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”: This clause explains that if the court has issued an order under subsection (5) to stay Admiralty proceedings and there is been the arrest of property or provision of bail or security in those proceedings, the court has the authority to order that such property, bail, or security be retained as security for the satisfaction of any arbitration award that might be issued.

In summary, Section 20(6) of the Hong Kong Arbitration Ordinance addresses the specific scenario of Admiralty proceedings and the possible need for security related to arbitration awards. It outlines provisions that allow the court to conditionally refer parties to arbitration and order a stay based on security conditions, and it also grants the court authority to retain property, bail, or security from Admiralty proceedings as security for arbitration awards. These provisions cater to the unique circumstances of maritime-related cases.

(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.

Section 20(7) of the Hong Kong Arbitration Ordinance addresses the legal framework for property, bail, or security that is retained based on an order under subsection (6) in Admiralty proceedings. Here is the analysis:

1. “Subject to any provision made by rules of court and to any necessary modifications”: This introductory phrase establishes that the subsequent content outlines the legal treatment of retained property, bail, or security in Admiralty proceedings. However, this treatment can be subject to specific rules established by the court’s rules of procedure and any necessary modifications required to adapt them to this context.
2. “the same law and practice apply”: This phrase establishes that the legal principles and procedural practices that apply to retained property, bail, or security are consistent with those applied to property, bail, or security held in regular court proceedings.
3. “to the property, bail or security retained in pursuance of an order under subsection (6)”: This specifies that the property, bail, or security in question is the one retained based on the order made under subsection (6), which deals with security for arbitration awards in Admiralty proceedings.
4. “as would apply if the property, bail or security retained were held for the purposes of proceedings in the court making the order”: This clarifies that the same legal treatment as if the property, bail, or security were held for standard court proceedings applies to the retained property, bail, or security. The intention is to ensure that there is consistency in the legal principles and procedural practices, despite the context of arbitration proceedings.

In summary, Section 20(7) of the Hong Kong Arbitration Ordinance outlines that the legal treatment of retained property, bail, or security in Admiralty proceedings aligns with established court procedures, subject to any court rules and necessary modifications. This ensures uniformity in legal principles and

practices, regardless of whether the property, bail, or security is retained for arbitration-related matters or regular court proceedings.

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

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

(b) subsection (2),

is not subject to appeal.

Section 20(8) of the Hong Kong Arbitration Ordinance addresses the appealability of decisions made by the court to refer parties to arbitration under specific circumstances. Here is the analysis:

1. “A decision of the court to refer the parties to arbitration under—”: This introductory part outlines the context for which decisions are being discussed – decisions made by the court regarding the referral of parties to arbitration.
2. “(a) article 8 of the UNCITRAL Model Law, given effect to by subsection (1)”: This refers to decisions made under the specific provisions of Article 8 of the UNCITRAL Model Law, which are put into effect by the operation of subsection (1) of Section 20. Article 8 generally deals with court intervention in arbitration proceedings.
3. “(b) subsection (2)”: This refers to decisions made under the provisions of subsection (2) of Section 20, which addresses the court’s power to refer parties to arbitration in certain circumstances.
4. “is not subject to appeal”: This phrase makes a clear and unambiguous statement that such decisions cannot be appealed. Once the court makes a decision to refer parties to arbitration under the specified conditions, it is considered final and not open to challenge through the appellate process.

In summary, Section 20(8) of the Hong Kong Arbitration Ordinance specifies that decisions made by the court to refer parties to arbitration under specific circumstances are not subject to appeal. This provision aims to ensure the finality and effectiveness of such decisions, avoiding unnecessary legal disputes and delays.

(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.

Section 20(9) of the Hong Kong Arbitration Ordinance addresses the requirement for obtaining permission (“leave”) from the court to appeal decisions made when the court refuses to refer parties to arbitration under specific circumstances. Here is the analysis:

1. “The leave of the court making a decision to refuse to refer the parties to arbitration under—”: This introductory part sets the context by explaining the need for court permission to appeal a decision where the court refuses to refer parties to arbitration.
2. “(a) article 8 of the UNCITRAL Model Law, given effect to by subsection (1)”: This refers to the circumstances where decisions to refuse to refer parties to arbitration are made under the specific provisions of Article 8 of the UNCITRAL Model Law, which are put into effect by the operation of subsection (1) of Section 20. Article 8 generally deals with court intervention in arbitration proceedings.
3. “(b) subsection (2)”: This refers to decisions made under the provisions of subsection (2) of Section 20, which addresses the court’s power to refuse the referral of parties to arbitration under certain conditions.
4. “is required for any appeal from that decision”: This phrase establishes that, to appeal a decision refusing to refer parties to arbitration under the specified circumstances, a party must seek and obtain permission (“leave”) from the court. Without such leave, the appeal cannot proceed.

In summary, Section 20(9) of the Hong Kong Arbitration Ordinance mandates that permission (“leave”) from the court making the decision is required for any appeal from a decision refusing to refer parties to arbitration under certain conditions. This requirement ensures that the appellate process is controlled and that appeals are only entertained when the court finds it appropriate.

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

Section 20(10) of the Hong Kong Arbitration Ordinance addresses the appealability of decisions or orders made by the court under the specified subsection (6). Here is the analysis:

1. “A decision or order of the court under subsection (6)”: This introductory part sets the context for which decisions or orders are being discussed – decisions or orders made by the court under subsection (6).
2. “is not subject to appeal”: This indicates that decisions or orders made under subsection (6) cannot be challenged or appealed. Once such a decision or order is made, it is considered final and not subject to review through the appellate process.

In summary, Section 20(10) of the Hong Kong Arbitration Ordinance explicitly states that decisions or orders made by the court under subsection (6) are not subject to appeal. This provision aims to provide finality and certainty to such decisions or orders, ensuring that parties cannot further challenge or contest them through the appellate process.

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.”

Please refer to the commentary on Article 9 of the UNCITRAL Model Law 2006.

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.

Section 22(1) of the Hong Kong Arbitration Ordinance addresses the impact of a party’s death on the enforceability of an arbitration agreement. Here is the analysis:

1. “Unless otherwise agreed by the parties”: This phrase emphasises that the enforceability of an arbitration agreement upon a party’s death is subject to any specific agreement made by the parties in the agreement itself. If the parties have agreed to a different outcome in case of a party’s death, that agreement would take precedence.
2. “an arbitration agreement is not discharged by the death of a party”: This clarifies that the death of a party does not automatically invalidate or terminate the arbitration agreement.
3. “may be enforced by or against the personal representatives of that party”: This indicates that the arbitration agreement can still be used and enforced by or against the legal representatives or heirs of the deceased party. The legal representatives have the same rights and obligations regarding the arbitration agreement as the original party.

In summary, Section 22(1) of the Hong Kong Arbitration Ordinance stipulates that, unless the parties have agreed otherwise, an arbitration agreement remains valid after the death of a party and can be enforced by or against the personal representatives (such as heirs or legal representatives) of that deceased party. This provision ensures the continuity of arbitration proceedings even in the event of a party’s death.

(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.

Section 22(2) of the Hong Kong Arbitration Ordinance provides a clarification regarding the relationship between the provisions of subsection (1) and existing legal principles related to the extinguishment of rights and obligations upon death. Here is the analysis:

1. “Subsection (1) does not affect the operation of any enactment or rule of law”: This phrase sets the context by stating that the impact of subsection (1) on the enforceability of arbitration agreements is subject to the influence of existing legal provisions, specifically those related to the extinguishment of rights and obligations upon death.
2. “by virtue of which a substantive right or obligation is extinguished by death”: This part specifies the type of legal provisions that may affect the operation of subsection (1) – those that result in the automatic termination or extinguishment of substantive rights or obligations upon the death of a party.

In summary, Section 22(2) of the Hong Kong Arbitration Ordinance clarifies that while subsection (1) preserves the enforceability of arbitration agreements despite the death of a party, it does not override or affect existing legal provisions that automatically extinguish substantive rights or obligations upon death. This provision aims to harmonise the treatment of arbitration agreements with established principles of law governing the impact of death on rights and obligations.

Part 3A Enforcement of Emergency Relief

22A. Interpretation

In this Part—

emergency arbitrator (緊急仲裁員) 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.

Section 22A of the Hong Kong Arbitration Ordinance provides a definition for the term “emergency arbitrator” within the context of this specific part of the Hong Kong Arbitration Ordinance. Here is the analysis:

1. “In this Part— emergency arbitrator (緊急仲裁員) means an emergency arbitrator appointed under the arbitration rules (including the arbitration rules of a permanent arbitral institution)”: This introductory phrase defines the term “emergency arbitrator” and outlines the circumstances under which such an arbitrator is appointed.
2. “an emergency arbitrator appointed under the arbitration rules (including the arbitration rules of a permanent arbitral institution)”: This portion explains the role and function of an emergency arbitrator. An emergency arbitrator is an individual appointed according to the arbitration rules agreed to or adopted by the parties. This appointment is for the purpose of addressing applications for emergency relief before a formal arbitral tribunal is constituted.
3. “agreed to or adopted by the parties”: This phrase emphasises that the arbitration rules, including provisions for emergency arbitrators, must be agreed upon or adopted by the parties involved in the arbitration.
4. “to deal with the parties’ applications for emergency relief before an arbitral tribunal is constituted”: This clarifies the purpose of an emergency arbitrator. They are appointed to handle urgent applications for emergency relief that arise before a full arbitral tribunal is established.

In summary, Section 22A of the Hong Kong Arbitration Ordinance provides a definition for “emergency arbitrator” within the context of the relevant part of the ordinance. It explains that an emergency arbitrator is an arbitrator appointed according to agreed-upon or adopted arbitration rules to address urgent applications for emergency relief before the formation of a formal arbitral tribunal. This definition is essential for understanding the specific procedures and mechanisms related to emergency relief in arbitration cases.

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.**

Section 22B(1) of the Hong Kong Arbitration Ordinance pertains to the enforcement of emergency relief granted by an emergency arbitrator under relevant arbitration rules. Here is the analysis:

1. “Any emergency relief granted, whether in or outside Hong Kong, by an emergency arbitrator under the relevant arbitration rules”: This phrase establishes the scope of the provision. It encompasses any emergency relief that has been granted by an emergency arbitrator, regardless of whether it was granted within or outside the jurisdiction of Hong Kong. The relief is granted in accordance with the relevant arbitration rules that provide for the appointment of emergency arbitrators.
2. “is enforceable in the same manner as an order or direction of the Court that has the same effect”: This part indicates how the emergency relief granted by an emergency arbitrator is treated with regard to enforcement. It can be enforced in a manner similar to how orders or directions of a court with the same effect would be enforced.
3. “but only with the leave of the Court”: This phrase adds a condition to the enforcement of emergency relief. It states that enforcement can only occur with the permission (leave) of the court.

In summary, Section 22B(1) of the Hong Kong Arbitration Ordinance specifies that emergency relief granted by an emergency arbitrator, whether obtained within or outside Hong Kong, can be enforced similarly to a court order or direction of equivalent effect. However, the enforcement can take place only with the court’s permission (leave). This provision underscores the importance of involving the court in the enforcement process to ensure that emergency relief is enforced in a controlled and judicially supervised manner.

- (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;**
- (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.**

Section 22B(2) of the Hong Kong Arbitration Ordinance outlines the conditions under which the court may grant leave to enforce emergency relief granted by an emergency arbitrator outside of Hong Kong. Here is the analysis:

1. “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)”: This introductory part establishes a restriction on the court’s authority to grant leave for enforcing emergency relief granted by an emergency arbitrator outside Hong Kong. The court is only permitted to grant such leave if the applicant can demonstrate that the relief consists solely of temporary measures, including injunctions.
2. “by which the emergency arbitrator orders a party to do one or more of the following—”: This indicates that the temporary measures or injunctions must be issued by the emergency arbitrator and must relate to specific actions that a party is ordered to take.
3. “(a) maintain or restore the status quo pending the determination of the dispute concerned”: This refers to orders that ensure the preservation of the existing situation pending the resolution of the dispute.
4. “(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”: This addresses actions that prevent harm or prejudice to the arbitral process and ensure its integrity.
5. “(c) provide a means of preserving assets out of which a subsequent award made by an arbitral tribunal may be satisfied”: This concerns orders that help secure assets to satisfy a future arbitral award.
6. “(d) preserve evidence that may be relevant and material to resolving the dispute”: This pertains to measures that ensure the preservation of evidence necessary for resolving the dispute.

7. “(e) give security in connection with anything to be done under paragraph (a), (b), (c) or (d)”: This involves providing financial security related to actions ordered under the preceding paragraphs.
8. “(f) give security for the costs of the arbitration”: This addresses orders to provide financial security to cover the costs of the arbitration process.

In summary, Section 22B(2) of the Hong Kong Arbitration Ordinance outlines the conditions under which the court may grant leave to enforce emergency relief granted by an emergency arbitrator outside of Hong Kong. The relief must consist solely of temporary measures, including injunctions, and must be related to specific actions listed in the section. These conditions are designed to ensure that the court’s enforcement authority is exercised only in cases where the relief aligns with specific objectives aimed at preserving the fairness and integrity of the arbitral process.

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

Section 22B(3) of the Hong Kong Arbitration Ordinance outlines the court’s authority to enter judgment based on the emergency relief granted by an emergency arbitrator. Here is the analysis:

1. “If leave is granted under subsection (1), the Court may enter judgment in terms of the emergency relief”: This emphasises that the court’s ability to enter judgment hinges on the prior granting of leave for enforcing the emergency relief.
2. “the Court may enter judgment in terms of the emergency relief”: This part outlines the specific action the court can take once leave for enforcement is granted. It allows the court to formally enter judgment based on the terms of the emergency relief granted by the emergency arbitrator.

In summary, Section 22B(3) of the Hong Kong Arbitration Ordinance indicates that if the court grants leave for the enforcement of emergency relief granted by an emergency arbitrator, the court is empowered to enter a judgment based on the terms of that emergency relief. This provision streamlines the process of enforcing emergency relief by allowing the court to issue a formal judgment aligned with the arbitrator’s decision.

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

Section 22B(4) of the Hong Kong Arbitration Ordinance pertains to the appealability of a decision made by the court regarding the granting or refusal of leave to enforce emergency relief. Here is the analysis:

1. “A decision of the Court to grant or refuse to grant leave under subsection (1)”: This phrase refers to the court’s determination regarding the permission (leave) to enforce emergency relief granted by an emergency arbitrator as described in subsection (1) of the section.

2. “A decision of the Court to grant or refuse to grant leave under subsection (1)”: This indicates that the focus is on the court’s decision-making process related to granting or denying the permission for enforcing emergency relief.
3. “is not subject to appeal”: This part clarifies the appealability status of the court’s decision mentioned earlier. It states that the decision made by the court regarding the granting or refusal of leave for enforcement is not open to appeal.
4. “is not subject to appeal”: This means that parties cannot challenge the court’s decision by lodging an appeal against it.

In summary, Section 22B(4) of the Hong Kong Arbitration Ordinance specifies that a decision made by the court to either grant or refuse to grant leave for the enforcement of emergency relief is not open to appeal. This provision reinforces the finality of the court’s decision on this matter, ensuring that there is no further avenue for appeal by the parties involved.

Part 4 Composition of Arbitral Tribunal

Division 1—Arbitrators

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

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

Article 10. Number of arbitrators

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

(2) [Not applicable.]”.

Please refer to the commentary on Article 10 of the UNCITRAL Model Law 2006.

(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.

Section 23(2) of the Hong Kong Arbitration Ordinance provides clarification regarding the scope of the parties’ freedom to determine the number of arbitrators in an arbitration proceeding. Here is the analysis:

1. “For the purposes of subsection (1), the freedom of the parties to determine the number of arbitrators includes the right of the parties to authorise a third party, including an institution, to make that determination”: This introductory phrase establishes the context for the subsequent explanation. It outlines that the interpretation that follows is relevant to the matters discussed in subsection (1) of this section.
2. “For the purposes of subsection (1), the freedom of the parties to determine the number of arbitrators”: This clarifies that the content of the explanation pertains to the concept of parties having the freedom to decide how many arbitrators will participate in the arbitration proceedings, as described in subsection (1).
3. “includes the right of the parties to authorise a third party, including an institution, to make that determination”: This specifies that within the scope of determining the number of arbitrators, the parties are also permitted to delegate this decision-making authority to a third party. This third party can be an external entity or institution.

In summary, Section 23(2) of the Hong Kong Arbitration Ordinance clarifies that the freedom of the parties to determine the number of arbitrators extends to allowing the parties to delegate this decision-making authority to a third party, which may include an external institution. This provision highlights the flexibility and autonomy parties have in shaping the arbitration process, including the composition of the arbitration tribunal.

- (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)**

Section 23(3) of the Hong Kong Arbitration Ordinance pertains to the determination of the number of arbitrators in an arbitration when the parties cannot reach an agreement on this matter. Here is the analysis:

1. “The number of arbitrators in an arbitration is to be either 1 or 3 as decided by the HKIAC in the particular case if”: This introductory statement sets the stage for explaining the circumstances under which the number of arbitrators is determined.
2. “The number of arbitrators in an arbitration is to be either 1 or 3 as decided by the HKIAC in the particular case”: This specifies that the number of arbitrators in the arbitration will be either one or three, and the determination of this number is made by the Hong Kong International Arbitration Centre (HKIAC) based on the specific case.
3. “(a) the parties fail to agree on the number of arbitrators; and”: This condition outlines the scenario in which the determination of the number of arbitrators by the HKIAC comes into play.
4. “(a) the parties fail to agree on the number of arbitrators”: This states that the prerequisite for the HKIAC’s involvement is the inability of the parties to reach an agreement on the number of arbitrators.
5. “(b) section 1 of Schedule 2 does not apply. (Replaced 11 of 2015 s. 3)”: This condition specifies an additional requirement for the HKIAC’s determination, indicating when it would not apply.
6. “(b) section 1 of Schedule 2 does not apply”: This means that if a specific provision in Schedule 2 does not apply, the determination of the HKIAC will take effect. The context of “section 1 of Schedule 2” refers to a specific provision that would have provided an alternative method for determining the number of arbitrators.

In summary, Section 23(3) of the Hong Kong Arbitration Ordinance establishes that when parties are unable to agree on the number of arbitrators in an arbitration and if a certain provision in Schedule 2 does not apply, the Hong Kong International Arbitration Centre (HKIAC) will decide whether the number of arbitrators will be one or three, based on the specific case. This provision ensures that the arbitration process continues smoothly even when parties cannot agree on this important aspect.

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

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

“Article 11. Appointment of arbitrators

- (1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.**
- (2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.**
- (3) Failing such agreement,**
 - (a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;**
 - (b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.**
- (4) Where, under an appointment procedure agreed upon by the parties,**
 - (a) a party fails to act as required under such procedure, or**
 - (b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or**
 - (c) a third party, including an institution, fails to perform any function entrusted to it under such procedure,**

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

Please refer to the commentary on Article 11 of the UNCITRAL Model Law 2006.

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

- (a) if the parties have not agreed on a procedure for appointing the arbitrators under article 11(2) of the UNCITRAL Model Law, given effect to by subsection (1), each party is to appoint the same number of arbitrators; or**
- (b) if—**
 - (i) a party fails to act as required under an appointment procedure agreed upon by the parties; or**
 - (ii) in the case of paragraph (a), a party fails to appoint the appropriate number of arbitrators under that paragraph within 30 days of receipt of a request to do so from the other party,**

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

Section 24(2) of the Hong Kong Arbitration Ordinance pertains to the appointment of arbitrators in cases where the arbitration tribunal consists of an even number of arbitrators. Here is the analysis:

1. “In an arbitration with an even number of arbitrators”: This introductory phrase sets the context for discussing the procedures related to arbitrator appointments in cases involving an even number of arbitrators.
2. “In an arbitration with an even number of arbitrators”: This establishes that the content that follows applies specifically to arbitration panels comprising an even number of arbitrators.
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), each party is to appoint the same number of arbitrators; or”: This clause provides a procedure for arbitrator appointments in situations where the parties have not agreed on a specific appointment procedure.
4. “(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)”: This condition refers to the absence of a mutually agreed procedure for arbitrator appointments, as outlined by article 11(2) of the UNCITRAL Model Law and given effect by a corresponding subsection.
5. “each party is to appoint the same number of arbitrators”: In the absence of an agreed procedure, each party will appoint an equal number of arbitrators. This is a default mechanism to ensure parity.
6. “(b) if—(i) a party fails to act as required under an appointment procedure agreed upon by the parties; or” This refers to a situation where a party does not follow the agreed-upon appointment procedure.

7. “(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”: This refers to a situation where a party does not fulfil their obligation to appoint the designated number of arbitrators within the specified timeframe upon a request from the other party.
8. “the HKIAC must make the necessary appointment upon a request to do so from any party”: This statement outlines the role of the Hong Kong International Arbitration Centre (HKIAC) in the appointment process.
9. “the HKIAC must make the necessary appointment upon a request to do so from any party”: When a party fails to act as required or to make an appointment within the given time frame, any party involved in the arbitration can request the HKIAC to step in and make the necessary appointment of arbitrators.

In summary, Section 24(2) of the Hong Kong Arbitration Ordinance lays out the procedures for appointing arbitrators in cases where the arbitration tribunal consists of an even number of arbitrators. It provides mechanisms for appointment when parties have not agreed on a procedure or when a party fails to adhere to the agreed procedure. The HKIAC’s role is defined in cases where parties’ appointments do not align with the specified procedures.

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

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

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

Section 24(3) of the Hong Kong Arbitration Ordinance pertains to the appointment of arbitrators in cases where the arbitration tribunal consists of an uneven number of arbitrators greater than 3. Let us break down the analysis:

1. “In an arbitration with an uneven number of arbitrators greater than 3”: This phrase sets the context for discussing the appointment procedures for arbitrators in cases involving an arbitration panel with an uneven number of arbitrators greater than 3.

2. “In an arbitration with an uneven number of arbitrators greater than 3”: This indicates that the content that follows is relevant to arbitration panels comprising an odd number of arbitrators greater than 3.
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)—”: This clause provides a procedure for arbitrator appointments when no agreed-upon procedure is in place and the arbitration panel consists of an uneven number of arbitrators greater than 3.
4. “(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)”: This condition refers to the absence of a mutually agreed procedure for arbitrator appointments, as defined by article 11(2) of the UNCITRAL Model Law and enacted by a corresponding subsection.
5. “(i) each party is to appoint the same number of arbitrators”: In this scenario, each party is responsible for appointing an equal number of arbitrators.
6. “(ii) unless otherwise agreed by the parties, the HKIAC must appoint the remaining arbitrator or arbitrators”: Unless the parties agree otherwise, the HKIAC is entrusted with the task of appointing the remaining arbitrator or arbitrators required to achieve an uneven number.
7. “(b) if—(i) a party fails to act as required under an appointment procedure agreed upon by the parties; or” This refers to a situation where a party does not comply with the mutually agreed-upon procedure for arbitrator appointments.
8. “(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”: In the context of paragraph (a), this pertains to a situation where a party does not fulfil their obligation to appoint the specified number of arbitrators within the provided timeframe upon a request from the other party.
9. “the HKIAC must make the necessary appointment upon a request to do so from any party”: This statement clarifies the role of the HKIAC in making arbitrator appointments when parties fail to adhere to the agreed-upon procedure.
10. “the HKIAC must make the necessary appointment upon a request to do so from any party”: When a party does not fulfil their appointment obligations as required, any party involved in the arbitration can request the HKIAC to take on the responsibility of making the necessary arbitrator appointment.

In summary, Section 24(3) of the Hong Kong Arbitration Ordinance outlines procedures for arbitrator appointments in cases where the arbitration tribunal consists of an uneven number of arbitrators greater than 3. It specifies the responsibilities of the parties and the role of the HKIAC in ensuring proper arbitrator appointments when parties do not follow the agreed-upon procedures.

- (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.**

Section 24(4) of the Hong Kong Arbitration Ordinance addresses the procedure for appointing arbitrators in cases where the arbitration scenario does not fall under the previous provisions discussed in Section 24(2) and Section 24(3). Let us break down the analysis:

1. “In any other case (in particular, if there are more than 2 parties)”: This phrase sets the context for discussing the appointment procedures for arbitrators in situations that are not explicitly addressed in the previous subsections. It specifically highlights that this provision applies when there are more than two parties involved in the arbitration.
2. “In any other case (in particular, if there are more than 2 parties)”: This indicates that the content that follows is relevant to situations that are not covered by the preceding subsections, with specific attention to cases involving more than two parties.
3. “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”: This clause references article 11(4) of the UNCITRAL Model Law and its application when parties cannot agree on an appointment procedure.
4. “article 11(4) of the UNCITRAL Model Law, given effect to by subsection (1)”: This refers to the provision in the UNCITRAL Model Law (specifically article 11(4)) that deals with the appointment of arbitrators when parties fail to agree on an appointment procedure. It also states that this provision is made effective by the corresponding subsection (likely subsection (1) of Section 24, as referenced earlier).
5. “applies as in the case of a failure to agree on an appointment procedure”: This implies that the provisions and mechanisms outlined in article 11(4) of the UNCITRAL Model Law are applicable in cases where parties cannot reach an agreement on the appointment procedure for arbitrators. In essence, the same process as used in cases of a failure to agree on an appointment procedure will be followed.

In summary, Section 24(4) of the Hong Kong Arbitration Ordinance covers situations where none of the specific scenarios discussed in previous subsections apply, particularly cases with more than two parties. It invokes the provisions of article 11(4) of the UNCITRAL Model Law and makes it effective as if there was a failure to agree on an appointment procedure. This ensures that the procedure for appointing arbitrators is clearly defined even in complex arbitration scenarios that are not addressed elsewhere in the section.

- (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).**

Section 24(5) of the Hong Kong Arbitration Ordinance deals with the appointment of arbitrators by the Hong Kong International Arbitration Centre (HKIAC) under the circumstances outlined in the Ordinance. Here is a breakdown of the analysis:

1. “If any appointment of an arbitrator is made by the HKIAC by virtue of this Ordinance, the appointment—”: This introductory clause sets the context for the subsequent provisions, indicating that the section pertains to scenarios where the HKIAC is involved in appointing arbitrators in accordance with the provisions of the Ordinance.
2. “If any appointment of an arbitrator is made by the HKIAC by virtue of this Ordinance”: This specifies that the focus of the section is on the appointment of arbitrators by the HKIAC under the authority granted by the Ordinance.
3. “(a) has effect as if it were made with the agreement of all parties;”: This clause addresses the legal status and effect of the arbitrator’s appointment made by the HKIAC.
4. “(a) has effect as if it were made with the agreement of all parties”: This implies that the appointment, although made by the HKIAC, is treated as if it was agreed upon by all parties involved. In other words, the appointment carries the same weight as if all parties had unanimously agreed on the appointment.
5. “(b) is subject to article 11(5) of the UNCITRAL Model Law, given effect to by subsection (1)”: This clause references the application of a specific provision from the UNCITRAL Model Law in relation to the appointment.
6. “(b) is subject to article 11(5) of the UNCITRAL Model Law, given effect to by subsection (1)”: This states that the appointment of an arbitrator made by the HKIAC is also subject to the provisions outlined in article 11(5) of the UNCITRAL Model Law, as incorporated by the corresponding subsection (likely subsection (1) of Section 24). Article 11(5) of the UNCITRAL Model Law generally pertains to the termination of a mandate and replacement of an arbitrator, and its effect is carried over through this reference.

In summary, Section 24(5) of the Hong Kong Arbitration Ordinance pertains to appointments of arbitrators made by the HKIAC under the Ordinance. It establishes that such appointments are treated as if agreed upon by all parties and outlines their subjectivity to specific provisions of the UNCITRAL Model Law, ensuring transparency and consistency in the arbitration process.

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

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

“Article 12. Grounds for challenge

- (1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.**
- (2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.”**

Please refer to the commentary on Article 12 of the UNCITRAL Model Law 2006.

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

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

“Article 13. Challenge procedure

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

Please refer to the commentary on Article 13 of the UNCITRAL Model Law 2006.

(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.

Section 26(2) of the Hong Kong Arbitration Ordinance addresses the situation when a challenge is made against an arbitrator and its potential impact on the enforcement of awards. Here is a breakdown of the analysis:

1. “During the period that a request for the Court to decide on a challenge is pending”: This introductory phrase sets the context for the subsequent provisions, indicating that the following provisions are relevant when a challenge to an arbitrator’s appointment is under consideration by the Court.
2. “During the period that a request for the Court to decide on a challenge is pending”: This specifies the timeframe during which the actions described in the section are relevant. It indicates that the following provisions apply while a request is pending before the Court to decide on a challenge to an arbitrator’s appointment.
3. “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”: This clause outlines the Court’s discretion to impact the enforcement of awards that are issued while a challenge to an arbitrator’s appointment is being reviewed.
4. “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”: This part signifies that the Court has the authority to choose whether or not to allow the enforcement of awards issued by an arbitral tribunal during the period in which a challenge to an arbitrator’s appointment is being considered. If the challenged arbitrator is part of the tribunal that issues the award, the Court may use its discretion to refuse granting leave under Section 84 for the enforcement of such an award.

In summary, Section 26(2) of the Hong Kong Arbitration Ordinance addresses the scenario when a challenge to an arbitrator’s appointment is pending before the Court. It grants the Court the discretionary power to refuse granting leave for the enforcement of any award issued by the arbitral tribunal, during the period when the challenge is under consideration, if the challenged arbitrator was involved in that tribunal. This provision helps ensure that awards made during a period of challenge to an arbitrator’s appointment are not enforced until the challenge is resolved by the Court.

(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.

Section 26(3) of the Hong Kong Arbitration Ordinance addresses the circumstances under which an arbitrator challenged under Article 13(2) of the UNCITRAL Model Law may choose to withdraw from their role. Here is a breakdown of the analysis:

1. “An arbitrator who is challenged under article 13(2) of the UNCITRAL Model Law, given effect to by subsection (1), is entitled”: This introductory phrase sets the context and

describes the right or entitlement of an arbitrator who is facing a challenge under a specific provision of the UNCITRAL Model Law, as incorporated through the ordinance.

2. “An arbitrator who is challenged under article 13(2) of the UNCITRAL Model Law, given effect to by subsection (1)”: This specifies the condition under which the subsequent provision applies. It refers to a situation where an arbitrator is being challenged based on Article 13(2) of the UNCITRAL Model Law, as implemented through the ordinance.
3. “is entitled”: This indicates that the arbitrator possesses a legal right to take a particular action under certain conditions.
4. “if the arbitrator considers it appropriate in the circumstances of the challenge, to withdraw from office as an arbitrator”: This clause describes the action that an arbitrator may choose to take in response to a challenge, based on their assessment of the situation.
5. “if the arbitrator considers it appropriate in the circumstances of the challenge”: This phrase highlights that the decision to withdraw is contingent upon the arbitrator’s own judgment of the appropriateness of this action given the specific context of the challenge they are facing.
6. “to withdraw from office as an arbitrator”: This specifies the action that the arbitrator can take if they deem it suitable. The arbitrator can opt to step down from their role as an arbitrator in the case.

In summary, Section 26(3) of the Hong Kong Arbitration Ordinance outlines the entitlement of an arbitrator who is challenged under Article 13(2) of the UNCITRAL Model Law to voluntarily withdraw from their position as an arbitrator if they consider it appropriate in the context of the challenge they are facing. This provision reflects the acknowledgment of an arbitrator’s autonomy to make this decision based on their assessment of the situation.

(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.**

Section 26(4) of the Hong Kong Arbitration Ordinance outlines the situations under which the mandate of a challenged arbitrator terminates in accordance with Article 13 of the UNCITRAL Model Law, as implemented through the ordinance. Here is a breakdown of the analysis:

1. “The mandate of a challenged arbitrator terminates under article 13 of the UNCITRAL Model Law, given effect to by subsection (1), if—”: This introduction establishes the premise that the authority or role of a challenged arbitrator can come to an end under

specific conditions as stipulated in Article 13 of the UNCITRAL Model Law, which is being implemented through the ordinance.

2. “(a) the arbitrator withdraws from office;”: This clause states that if the challenged arbitrator chooses to voluntarily withdraw from their role as an arbitrator, their mandate terminates. This reflects the principle of allowing an arbitrator to step down if they feel it is appropriate in light of the challenge they are facing.
3. “(b) the parties agree to the challenge;”: This provision states that if the parties involved in the arbitration agree to the challenge raised against the arbitrator, then the arbitrator’s mandate comes to an end. This reflects the parties’ joint decision to remove the arbitrator from the proceedings.
4. “(c) the arbitral tribunal upholds the challenge and no request is made for the Court to decide on the challenge; or”: This clause specifies that if the arbitral tribunal, in response to the challenge, determines that the arbitrator should be removed, and if no party requests the Court to decide on the challenge, then the mandate of the challenged arbitrator ends. This highlights the significance of the arbitral tribunal’s decision-making power in this context.
5. “(d) the Court, upon request to decide on the challenge, upholds the challenge”: This provision states that if a party requests the Court to decide on the challenge and the Court decides in favour of upholding the challenge, the mandate of the challenged arbitrator terminates. This reflects the role of the Court in reviewing and making a determination on challenges to arbitrators.

In summary, Section 26(4) of the Hong Kong Arbitration Ordinance outlines the circumstances in which the mandate of a challenged arbitrator terminates. These circumstances include the arbitrator’s voluntary withdrawal, the parties’ agreement to the challenge, decisions by the arbitral tribunal and the Court to uphold the challenge, all in accordance with the provisions of Article 13 of the UNCITRAL Model Law and the ordinance.

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

Section 26(5) of the Hong Kong Arbitration Ordinance pertains to the consequences of the Court upholding a challenge against an arbitrator and its potential impact on the award. Here is a breakdown of the analysis:

1. “If the Court upholds the challenge”: This introductory statement establishes the premise that if the Court determines that a challenge against an arbitrator is valid and should be upheld, then certain actions can follow as a result.
2. “the Court may set aside the award referred to in subsection (2)”: This provision states that if the Court confirms the validity of the challenge against the arbitrator, it has the discretionary power to set aside the award that was made by the arbitral tribunal, which was mentioned in subsection (2) of the ordinance.

3. This section underscores the importance of ensuring the integrity and impartiality of the arbitral process. If a challenge against an arbitrator is upheld by the Court, it may decide that the award issued by the arbitral tribunal should be set aside. This ensures that the outcome of the arbitration is not influenced by any concerns about the arbitrator's suitability or fairness.

In essence, Section 26(5) of the Hong Kong Arbitration Ordinance emphasises that the Court's determination to uphold a challenge can lead to the potential nullification of the award in question for the sake of maintaining the credibility and fairness of the arbitration proceedings.

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

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

"Article 14. Failure or impossibility to act

- (1) If an arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal.
- (2) If, under this article or article 13(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12(2)."

Please refer to the commentary on Article 14 of the UNCITRAL Model Law 2006.

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."

Please refer to the commentary on Article 14 of the UNCITRAL Model Law 2006.

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.

Section 29(1) of the Hong Kong Arbitration Ordinance addresses the nature of an arbitrator's authority and the implications of their death on the arbitration process. Here is a breakdown of the analysis:

1. "The authority of an arbitrator is personal": This phrase emphasises that an arbitrator's authority and role are tied to their personal attributes and qualities. The authority to arbitrate is vested in the individual arbitrator rather than any institutional or external factor.
2. "and the mandate of the arbitrator terminates on the arbitrator's death": This clause declares that upon the death of an arbitrator, their role as an arbitrator comes to an end. The "mandate" refers to the arbitrator's appointment and the authority to act in that capacity.
3. This section underscores the importance of an arbitrator's individual qualifications, impartiality, and expertise in the arbitration process. It also highlights the potential challenges that arise when an arbitrator passes away during the course of proceedings, which can lead to the need for a replacement arbitrator.

In summary, Section 29(1) of the Hong Kong Arbitration Ordinance emphasises the personal nature of an arbitrator's authority and states that their role terminates upon their death. This provision acknowledges the critical role that arbitrators play in the arbitration process and the impact their absence can have on the proceedings.

(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.

Section 29(2) of the Hong Kong Arbitration Ordinance addresses the effect of the death of the person who appointed an arbitrator on the arbitrator's authority. Here is a breakdown of the analysis:

1. "Unless otherwise agreed by the parties": This phrase indicates that the default rule discussed in this section can be altered if the parties have agreed to a different arrangement regarding the effect of the appointing person's death on the arbitrator's authority. Parties' agreement can modify this default position.
2. "the death of the person by whom an arbitrator was appointed does not revoke the arbitrator's authority":
 - a. This clause establishes the rule that, in the absence of an agreement to the contrary, the death of the person who initially appointed the arbitrator does not automatically terminate or revoke the authority of that arbitrator.
 - b. The appointing person could be an individual, an institution, or an entity designated to make the appointment. This section ensures that the arbitrator's authority remains intact despite the death of the appointing person.

3. This section reflects the principle of preserving the continuity of the arbitration process even in the face of changes, such as the death of the individual or entity responsible for the initial appointment. It underscores the importance of maintaining the stability of the arbitration proceedings and the arbitrator’s role.

In summary, Section 29(2) of the Hong Kong Arbitration Ordinance states that, unless otherwise agreed by the parties, the death of the person who appointed an arbitrator does not automatically revoke the arbitrator’s authority. The provision aims to maintain the continuity of the arbitration process even in the event of changes in the appointing entity’s status.

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.

Section 30 of the Hong Kong Arbitration Ordinance pertains to the appointment of an umpire in arbitration proceedings with an even number of arbitrators. Here is a breakdown of the analysis:

1. “In an arbitration with an even number of arbitrators”: This phrase specifies the context in which the provision applies, namely, cases where the arbitral tribunal consists of an even number of arbitrators.
2. “the arbitrators may, unless otherwise agreed by the parties, appoint an umpire at any time after they are themselves appointed”:
 - a. This clause provides the authority for the arbitrators, in cases of an even number of arbitrators, to appoint an umpire to resolve disputes or make decisions in the event of a deadlock among the arbitrators.
 - b. The umpire acts as a tie-breaker when the main body of arbitrators is evenly divided on an issue. The umpire’s role is to break the impasse and contribute to a decision.
 - c. The provision specifies that unless the parties have agreed to a different arrangement, the arbitrators have the power to appoint an umpire at any point after their own appointment.
 - d. This arrangement enhances the efficiency and functionality of the arbitral tribunal, as it helps avoid stalemates that could hinder the progress of the arbitration process.

Overall, Section 30 of the Hong Kong Arbitration Ordinance facilitates the appointment of an umpire in arbitrations with an even number of arbitrators. This provision allows the arbitral tribunal to resolve deadlocks and ensure that disputes are efficiently resolved, maintaining the integrity and effectiveness of the arbitration proceedings.

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.

Section 31(1) of the Hong Kong Arbitration Ordinance addresses the autonomy of the parties in an arbitration with an appointed umpire. Here is a breakdown of the analysis:

1. “The parties are free to agree what the functions of an umpire are to be”:
 - a. This phrase highlights the principle of party autonomy in arbitration. It emphasises that the parties involved in the arbitration are given the freedom to determine and agree upon the role and functions of the appointed umpire.
 - b. This reflects the flexibility inherent in arbitration, where parties have greater control over the arbitration process, including the composition of the tribunal and the determination of procedural matters.
2. “whether the umpire is to attend the arbitral proceedings”:
 - a. This clause specifically addresses whether the umpire’s presence is required at the actual arbitral proceedings.
 - b. The parties can decide whether the umpire will be present during the hearings, discussions, and other proceedings related to the arbitration. This decision may be based on the complexity of the case, the preference of the parties, and other relevant factors.
3. “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”:
 - a. This clause pertains to the potential role of the umpire in taking over the functions of the arbitrators and exercising their authority.
 - b. The parties have the freedom to determine the circumstances under which the umpire would replace the arbitrators in making decisions, issuing orders, providing directions, and rendering awards.
4. This provision underscores the importance of clear and detailed agreements between the parties regarding the umpire’s authority, ensuring that all parties understand the umpire’s role and responsibilities.

Overall, Section 31(1) of the Hong Kong Arbitration Ordinance reaffirms the parties’ autonomy in determining the functions and role of the appointed umpire in arbitration proceedings. It emphasises the flexibility of arbitration as a dispute resolution mechanism and highlights the significance of well-defined agreements among the parties to ensure the smooth conduct of the arbitration process.

(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.

Section 31(2) of the Hong Kong Arbitration Ordinance provides additional guidance when parties have not explicitly agreed on the functions of the umpire. Here is a breakdown of the analysis:

1. “If or to the extent that there is no such agreement of the parties”:
 - a. This clause acknowledges that parties might not always reach a specific agreement regarding the role and functions of the umpire.
 - b. It signifies that if the parties have not agreed on the functions of the umpire in their arbitration agreement or any other relevant document, then the following provision comes into play.
2. “the arbitrators are free to agree on the functions of the umpire”:
 - a. This part of the section provides a solution for situations where the parties have not agreed on the umpire’s functions.
 - b. It emphasises that the arbitrators, who are already appointed in the arbitration, have the freedom to reach an agreement among themselves regarding the role and functions of the umpire.
 - c. The arbitrators may decide how the umpire will be involved in the proceedings, whether they will attend hearings, and to what extent they can replace arbitrators in making decisions, orders, directions, and awards.
3. This provision recognises the practical need for flexibility in case there is no prior agreement between the parties on the umpire’s role.

Overall, Section 31(2) of the Hong Kong Arbitration Ordinance addresses situations where there is no explicit agreement between the parties on the functions of the umpire. It underscores the arbitrators’ ability to collaborate and determine the umpire’s responsibilities, ensuring that the arbitration process can proceed smoothly and efficiently even in cases where parties have not agreed on this matter beforehand. This provision promotes the efficient resolution of disputes and underscores the adaptable nature of arbitration.

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

Section 31(3) of the Hong Kong Arbitration Ordinance introduces the idea that the subsequent subsections (4) to (11) provide a framework for the functions of the umpire, but their application can be modified or overridden based on agreements made by the parties or the arbitrators. Here is a breakdown of the analysis:

1. “Subsections (4) to (11) apply”:

- a. This phrase establishes that there are subsections following Section 31(3) that outline specific aspects of the umpire’s functions in an arbitration with an umpire appointed.
 - b. These subsequent subsections (4) to (11) likely elaborate on various aspects of the umpire’s role, responsibilities, and powers during the arbitration proceedings.
2. “subject to any agreement of the parties or the arbitrators”:
- a. This part of the section recognises that parties and arbitrators have the flexibility to tailor the role of the umpire based on their preferences, needs, and the specifics of their dispute.
 - b. It implies that the framework outlined in subsections (4) to (11) is not rigid; it can be adjusted or modified if the parties or the arbitrators have reached a mutual agreement on how the umpire’s functions should be structured.
3. This reflects the principle of party autonomy in arbitration, allowing the parties to shape their arbitration process according to their unique circumstances and requirements.

Overall, Section 31(3) of the Hong Kong Arbitration Ordinance clarifies that the subsequent subsections detailing the umpire’s functions are not fixed rules but rather a general framework. The parties and the arbitrators have the authority to deviate from these provisions if they mutually agree to do so. This reinforces the flexibility and adaptability of arbitration proceedings, aligning with the underlying principle of allowing parties to have a significant say in the process and outcome of their disputes.

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

Section 31(4) of the Hong Kong Arbitration Ordinance addresses the requirement for an umpire, once appointed, to attend the arbitral proceedings. Here is a breakdown of the analysis:

1. “After an umpire is appointed”:
- a. This phrase establishes the context by referring to the point in time when the umpire has been officially appointed. The focus is on the time following the umpire’s appointment.
 - b. The appointment of an umpire typically occurs in cases where there is an even number of arbitrators, and the parties or the arbitrators have agreed or decided to appoint an umpire to break potential deadlocks.
2. “the umpire must attend the arbitral proceedings”:
- a. This statement clearly outlines the role and obligation of the appointed umpire.
 - b. The phrase “must attend” signifies a mandatory requirement for the umpire’s presence at the arbitral proceedings. This attendance is a fundamental aspect of the umpire’s involvement in the arbitration process.

- c. “The arbitral proceedings” refer to the entire process of the arbitration, including hearings, submissions, evidence, deliberations, and decision-making.

In summary, Section 31(4) of the Hong Kong Arbitration Ordinance establishes the imperative that once an umpire is appointed in an arbitration with an even number of arbitrators, that umpire is obligated to attend all stages of the arbitral proceedings. This provision ensures that the umpire actively participates in the process and contributes to the resolution of disputes, in line with their role in maintaining fairness and impartiality in the proceedings.

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

Section 31(5) of the Hong Kong Arbitration Ordinance pertains to the responsibility of ensuring that the umpire in an arbitration receives the same information as the arbitrators. Here is an analysis of this provision:

1. “The umpire must be supplied”:
 - a. This phrase indicates a requirement or obligation that the parties, the arbitrators, or the administrative body overseeing the arbitration process must fulfil.
 - b. “Supplied” implies the provision or delivery of certain materials or information to the umpire.
2. “with the same documents and other materials as are supplied to the arbitrators”:
 - a. This specifies what the umpire needs to be supplied with—namely, the same documents and materials that the arbitrators receive.
 - b. “Documents” refer to any written evidence, submissions, statements, agreements, or any other relevant paperwork related to the arbitration.
 - c. “Other materials” could encompass things like visual aids, exhibits, expert reports, or any pertinent items that contribute to the arbitration process.
 - d. “Supplied to the arbitrators” signifies that whatever information the arbitrators have access to, the umpire should also have access to, ensuring that all relevant parties are equally informed.

In summary, Section 31(5) of the Hong Kong Arbitration Ordinance underscores the importance of equipping the umpire with the same documentation and materials that are provided to the arbitrators. This provision ensures that the umpire is well-informed and capable of making informed decisions alongside the other members of the arbitral tribunal, promoting fairness and consistency in the arbitration proceedings.

(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.

Section 31(6) of the Hong Kong Arbitration Ordinance addresses the decision-making authority within an arbitration tribunal when it comes to issuing orders, directions, and making awards. Here is an analysis of this provision:

1. “Orders, directions and awards are to be made by the arbitrators”:
 - a. This phrase establishes the primary role and responsibility of the arbitrators in making decisions, giving directions, and issuing awards in the arbitration process.
 - b. “Orders” refer to directives issued by the tribunal to the parties involved in the arbitration, guiding their behaviour and actions during the proceedings.
 - c. “Directions” refer to instructions provided by the tribunal, guiding the procedural steps to be followed during the arbitration.
 - d. “Awards” encompass the final decisions rendered by the tribunal that resolve the substantive issues of the dispute.

2. “unless, subject to subsection (9), the arbitrators cannot agree on a matter relating to the dispute submitted to arbitration”:
 - a. This conditional statement introduces an exception to the general rule of arbitrators making decisions.
 - b. “Subject to subsection (9)” refers to the possibility that the exception is subject to the conditions outlined in subsection (9) of the same section.
 - c. “Cannot agree on a matter relating to the dispute submitted to arbitration” implies that in cases where the arbitrators are unable to reach a consensus on a specific issue pertaining to the dispute, the decision-making authority may shift to another party or authority.
 - d. The term “matter” encompasses any significant aspect of the dispute that requires a decision or direction.

In summary, Section 31(6) of the Hong Kong Arbitration Ordinance clarifies that the primary authority for making orders, directions, and awards lies with the arbitrators. However, in cases where arbitrators are unable to agree on a particular matter related to the dispute, this section introduces the possibility of involving another party or authority, as detailed in subsection (9). This provision aims to ensure that the arbitration process continues smoothly even in cases of disagreement among the arbitrators.

(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.

Section 31(7) of the Hong Kong Arbitration Ordinance outlines the course of action to be taken when arbitrators are unable to reach an agreement on a specific matter related to the dispute. Here is an analysis of this provision:

1. “If the arbitrators cannot agree on a matter relating to the dispute submitted to arbitration”: This condition signifies a situation where the arbitrators are unable to reach a consensus on a particular issue or aspect of the dispute.
2. “they must forthwith give notice of that fact in writing to the parties and the umpire”:
 - a. This clause emphasises the requirement for the arbitrators to promptly inform the parties and the appointed umpire if they are unable to agree on a certain matter.
 - b. The term “forthwith” indicates that the notice should be provided without delay.
3. “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”:
 - a. If the arbitrators cannot agree, the umpire is designated to take over the decision-making authority specifically for the matter on which the arbitrators disagreed.
 - b. The umpire effectively steps in as the decision-maker for that particular issue.
4. “subject to subsection (9)(b), as if the umpire were the sole arbitrator”:
 - a. The umpire, while assuming the role of the arbitral tribunal for that specific matter, is granted powers equivalent to those of a sole arbitrator.
 - b. Subsection (9)(b) may introduce limitations or conditions that affect the extent of the umpire’s authority.

In summary, Section 31(7) of the Hong Kong Arbitration Ordinance addresses situations where arbitrators cannot reach an agreement on a specific matter. If this occurs, the arbitrators must promptly inform the parties and the umpire. The umpire then replaces the arbitrators for that particular issue, with powers akin to a sole arbitrator. This provision ensures that the arbitration process can proceed despite disagreements among the arbitrators.

(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.

Section 31(8) of the Hong Kong Arbitration Ordinance outlines what happens if arbitrators fail to agree on a matter and do not provide notice of that fact to the parties and the umpire. Here is an analysis of this provision:

1. “If the arbitrators cannot agree on a matter relating to the dispute submitted to arbitration”: This refers to a scenario where arbitrators are unable to come to a consensus on a particular aspect of the dispute.
2. “but—(a) they fail to give notice of that fact; or (b) any of them fails to join in the giving of notice”: This clause highlights two specific situations:
 - a. Subsection (a) addresses cases where the arbitrators fail to provide written notice of their inability to agree on a matter to the parties and the umpire.
 - b. Subsection (b) addresses situations where one of the arbitrators does not participate in giving notice even though there is a lack of agreement.
3. “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”:
 - a. If the arbitrators do not give notice of their disagreement or if one of them fails to join in giving notice, any party involved in the arbitration has the right to apply to the Court.
 - b. The Court then has the authority to decide that the umpire replaces the arbitrators for that specific matter.
 - c. The umpire, in this situation, assumes the role of the arbitral tribunal with the power to make decisions, orders, directions, and awards solely for the unresolved matter.

This provision ensures that if the arbitrators fail to fulfil their obligations, parties can seek Court intervention to enable the umpire to take over the decision-making process.

In summary, Section 31(8) of the Hong Kong Arbitration Ordinance provides a mechanism for addressing situations where arbitrators cannot agree on a matter and do not provide notice of their disagreement. If this occurs, any party can apply to the Court to have the umpire replace the arbitrators for the specific unresolved matter. This ensures that the arbitration process can proceed even when there is a lack of agreement among the arbitrators.

- (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.**

Section 31(9) of the Hong Kong Arbitration Ordinance outlines what actions the arbitrators can take when the umpire replaces them in relation to a matter they cannot agree upon. Here is an analysis of this provision:

1. “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”: This sets the context that the umpire takes over when the arbitrators cannot agree on a specific matter related to the dispute.
2. “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”:
 - a. Despite being replaced by the umpire for a specific unresolved matter, the remaining arbitrators retain the authority to continue making decisions, orders, directions, and awards for other aspects of the dispute.
 - b. This option is available if the arbitrators believe that making these decisions would be more efficient and cost-effective than having the umpire handle everything.
3. “or (b) refer the entirety of the dispute to the umpire for arbitration”:
 - a. Alternatively, the arbitrators have the discretion to hand over the entire dispute to the umpire for resolution.
 - b. This means that if the arbitrators find themselves unable to agree on any aspect of the dispute, they can choose to have the umpire handle the entire case.

In summary, Section 31(9) of the Hong Kong Arbitration Ordinance provides flexibility to the arbitrators when the umpire takes over a particular unresolved matter. The arbitrators can either continue making decisions on other aspects of the dispute if it is cost-effective or refer the entirety of the dispute to the umpire for arbitration. This provision allows for pragmatic decision-making to ensure that the arbitration process continues smoothly despite disagreements among the arbitrators.

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

Section 31(10) of the Hong Kong Arbitration Ordinance provides a specific definition of when arbitrators are considered to be unable to agree on a matter relating to the dispute submitted to arbitration. Here is an analysis of this provision:

1. “For the purposes of this section, the arbitrators cannot agree on a matter relating to the dispute submitted to arbitration”: This introductory statement clarifies that the definition provided applies specifically within the context of this section, which deals with the functioning of an umpire when arbitrators disagree.
2. “if any one of the arbitrators, in that arbitrator’s view, disagrees with the other arbitrator or any of the other arbitrators over that matter”:
 - a. This clause specifies the condition under which arbitrators are deemed to be unable to agree on a matter.
 - b. The disagreement can be attributed to any one of the arbitrators holding a different viewpoint from the rest on that particular matter.
 - c. The differing viewpoint can involve a disagreement with any other arbitrator or a disagreement with multiple arbitrators collectively.

In summary, Section 31(10) of the Hong Kong Arbitration Ordinance defines the circumstances under which arbitrators are considered unable to agree on a matter related to the dispute submitted to arbitration. If any one of the arbitrators has a dissenting view on a matter, whether it is in contrast to another arbitrator or multiple arbitrators, then the requirement for consensus is not met, and the provisions of the preceding subsections (Section 31(6) to (9)) can come into play.

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

Section 31(11) of the Hong Kong Arbitration Ordinance addresses the legal status of a decision made by the Court under a specific subsection of the Hong Kong Arbitration Ordinance. Here is an analysis of this provision:

1. “A decision of the Court under subsection (8)”:
 - a. This phrase refers to a decision that the Court makes pursuant to subsection (8) of Section 31.
 - b. Subsection (8) deals with a situation where the arbitrators cannot agree on a matter relating to the dispute submitted to arbitration and allows any party to apply to the Court to decide whether the umpire should replace the arbitrators for that specific matter.
2. “is not subject to appeal”:

- a. This clause unequivocally states that the decision made by the Court under subsection (8) is final and not open to appeal.
- b. The intention here is to emphasise that the decision of the Court in this context cannot be challenged or appealed to a higher court.

In summary, Section 31(11) of the Hong Kong Arbitration Ordinance clarifies that any decision made by the Court under subsection (8) is conclusive and cannot be appealed. This underscores the finality and authority of the Court's decision in matters related to the replacement of arbitrators by an umpire in case of disagreements.

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.

Section 32(1) of the Hong Kong Arbitration Ordinance pertains to situations in which an arbitration agreement includes a provision for the appointment of a mediator by a third party (a person who is not one of the parties to the agreement). Here is an analysis of this provision:

1. “(a) any arbitration agreement provides for the appointment of a mediator by a person who is not one of the parties; and”:
 - a. This clause establishes the condition that an arbitration agreement must include a provision for the appointment of a mediator by a third party.
 - b. The appointment of a mediator by a person who is not a party to the arbitration agreement indicates the intention to involve an external entity or individual in the mediation process.
2. “(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”: This part outlines the scenarios under which the involvement of the third party in appointing a mediator does not happen as intended:
 - a. Subclause (i) explains that if the third party refuses to make the appointment of the mediator, this constitutes a trigger for intervention.
 - b. Subclause (ii) specifies that if the third party fails to make the appointment within the timeframe stipulated in the arbitration agreement or, in the absence of a specified timeframe, within a reasonable time after a request from any party, it is another situation that prompts intervention.
3. “the HKIAC may, on the application of any party, appoint a mediator”:
 - a. This part empowers the Hong Kong International Arbitration Centre (HKIAC) to step in and appoint a mediator if the conditions set out in clauses (a) and (b) are met.

- b. It highlights that any party involved in the arbitration can apply to the HKIAC for the appointment of a mediator under the circumstances outlined above.

In summary, Section 32(1) of the Hong Kong Arbitration Ordinance addresses situations where a third party is designated to appoint a mediator, but this appointment does not occur as expected due to refusal or delay. It grants the HKIAC the authority to appoint a mediator upon the application of any party in such cases, ensuring that the mediation process can proceed despite challenges related to the third-party appointment.

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

Section 32(2) of the Hong Kong Arbitration Ordinance deals with the consequences of the HKIAC's appointment of a mediator under the circumstances outlined in subsection (1). Here is an analysis:

1. "An appointment made by the HKIAC under subsection (1)":
 - a. This phrase refers to the appointment of a mediator by the Hong Kong International Arbitration Centre (HKIAC) as authorised by subsection (1) of this section.
 - b. Subsection (1) is the provision that empowers the HKIAC to appoint a mediator when a third party designated in the arbitration agreement fails to do so, either by refusal or non-compliance within a specified timeframe.
2. "is not subject to appeal":
 - a. This sentence unequivocally states that any appointment of a mediator made by the HKIAC in accordance with subsection (1) cannot be appealed.
 - b. The decision is final and cannot be challenged or overturned through an appeal process.

In essence, Section 32(2) of the Hong Kong Arbitration Ordinance emphasises that once the HKIAC has exercised its authority to appoint a mediator under subsection (1), that appointment is considered final and binding, with no possibility of appeal. This is intended to ensure the efficient resolution of the mediation process by preventing disputes and delays related to the mediator's appointment from being subjected to lengthy appeals.

(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 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.**

Section 32(3) of the Hong Kong Arbitration Ordinance addresses situations where an arbitration agreement stipulates that a mediator may also serve as an arbitrator if mediation does not result in a satisfactory settlement. Here is an analysis:

1. “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. This introductory part establishes the context for the provision by describing a scenario where an arbitration agreement includes provisions for both the appointment of a mediator and the possibility of that mediator subsequently serving as an arbitrator if mediation does not lead to an acceptable settlement.
 - b. The provision aims to address situations where parties attempt mediation but, if unsuccessful, transition to arbitration with the same person who previously acted as a mediator.
2. “(a) no objection may be made against the person’s acting as an arbitrator, or against the person’s conduct of the arbitral proceedings, solely on the ground that the person had acted previously as a mediator in connection with some or all of the matters relating to the dispute submitted to arbitration”:
 - a. This subsection emphasises that a party cannot raise an objection solely based on the fact that the appointed person had previously acted as a mediator for some or all of the matters related to the dispute that were submitted to arbitration.
 - b. In other words, if the arbitration agreement allows the mediator to transition to an arbitrator role, parties cannot challenge their appointment as an arbitrator solely due to their previous involvement as a mediator.
3. “(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”:
 - a. This subsection addresses the situation where the appointed person declines to serve as an arbitrator after mediation. It states that in this case, any subsequently appointed arbitrator is not obligated to first serve as a mediator unless the arbitration agreement explicitly requires so.
 - b. Essentially, this part affirms that the willingness or refusal of the original mediator to become an arbitrator does not impose any mandatory mediation requirement on the subsequent arbitrator(s) unless specifically provided in the arbitration agreement.

In summary, Section 32(3) of the Hong Kong Arbitration Ordinance clarifies the implications of appointing a mediator who may later serve as an arbitrator, ensuring that parties cannot object solely based on the mediator’s prior involvement and allowing flexibility in the appointment of subsequent arbitrators.

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.

Section 33(1) of the Hong Kong Arbitration Ordinance addresses the scenario where parties to an arbitration agreement decide to utilise the same individual who is acting as an arbitrator to also serve as a mediator after the arbitral proceedings have already begun. Here is an analysis:

1. “If all parties consent in writing, and for so long as no party withdraws the party’s consent in writing—”:
 - a. The provision’s condition is that all parties involved in the arbitration agreement must provide written consent for the arbitrator to take on the additional role of a mediator.
 - b. This initial requirement underscores the need for unanimous agreement among all parties before the arbitrator can assume a dual role.
2. “an arbitrator may act as a mediator after the arbitral proceedings have commenced”:
 - a. Once the written consent of all parties is obtained, an arbitrator who is actively engaged in ongoing arbitral proceedings can also take on the role of a mediator.
 - b. This provision allows for the possibility of a seamless transition from arbitration to mediation, utilising the same individual who has already gained insights into the dispute through the arbitral proceedings.
 - c. The intention behind this provision seems to be to promote efficiency and streamline dispute resolution processes by potentially avoiding duplication of efforts and allowing for a comprehensive resolution attempt. By consenting to the arbitrator’s additional role as a mediator, parties signal their willingness to explore alternative methods of resolving their dispute.

Overall, Section 33(1) of the Hong Kong Arbitration Ordinance aims to provide parties with flexibility in using the same arbitrator as a mediator post-commencement of the arbitral proceedings, enhancing the potential for a more comprehensive resolution process if all parties are in agreement.

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

Section 33(2) of the Hong Kong Arbitration Ordinance addresses the situation where an arbitrator also takes on the role of a mediator. It outlines the requirement to stay the ongoing arbitral proceedings during the period when the arbitrator is acting as a mediator. Here is an analysis:

1. “If an arbitrator acts as a mediator—”: This clause refers to the scenario described in Section 33(1), where parties have consented to an arbitrator also acting as a mediator.
2. When an arbitrator takes on the role of a mediator, it reflects the parties’ intention to explore an alternative dispute resolution process.
3. “the arbitral proceedings must be stayed to facilitate the conduct of the mediation proceedings”:
 - a. This clause mandates that the ongoing arbitral proceedings must be temporarily paused or stayed while the mediation proceedings take place.
 - b. The purpose of the stay is to create an environment conducive to the mediation process, without the pressures and time constraints associated with the parallel arbitration.
 - c. This provision recognises that the dynamics and focus of mediation are different from arbitration. The stay allows the parties and the mediator-arbitrator to concentrate fully on the mediation effort.

In essence, Section 33(2) ensures that the parties’ decision to engage in mediation led by an arbitrator is given the necessary space and attention. By imposing a stay on the arbitral proceedings, the section acknowledges the importance of allowing the mediation process to unfold without the distraction of parallel arbitration. This approach promotes the effectiveness of mediation as a means of resolving the dispute in a comprehensive manner.

(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.**

Section 33(3) of the Hong Kong Arbitration Ordinance addresses the conduct and responsibilities of an arbitrator who also assumes the role of a mediator during the mediation process. Here is an analysis:

“An arbitrator who is acting as a mediator—”: This clause establishes the context in which the following provisions apply, indicating that it refers to an arbitrator’s role when they also act as a mediator.

“(a) may communicate with the parties collectively or separately”:

1. This clause grants the arbitrator-mediator the authority to interact with the parties involved in the dispute, either as a group or individually. The flexibility to communicate collectively or separately allows the arbitrator-mediator to tailor their approach to the mediation process.
2. The arbitrator-mediator's communication role enables them to facilitate discussions, gather information, clarify issues, and help the parties explore potential solutions to the dispute.

“(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”:

1. This clause emphasises the importance of confidentiality in the mediation process.
2. The arbitrator-mediator is required to treat any information obtained from a party during the mediation process as confidential. This confidentiality obligation helps foster an environment of trust and encourages parties to share information openly.
3. Confidentiality encourages parties to be forthcoming and candid about their concerns and interests, which is essential for the successful resolution of the dispute through mediation.
4. The clause acknowledges two exceptions to the confidentiality rule:
 - a. “unless otherwise agreed by that party”: Parties can agree to allow the arbitrator-mediator to share certain information with other parties. This reflects the parties’ control over the information-sharing process.
 - b. “unless subsection (4) applies”: This refers to the circumstances described in Section 33(4), which may require the disclosure of information to protect against potential harm or illegal activities.⁷

In summary, Section 33(3) outlines the appropriate communication and confidentiality practices for an arbitrator who takes on the role of a mediator. This provision recognises the dual role of the arbitrator-mediator and underscores the importance of maintaining confidentiality while allowing for tailored communication to enhance the mediation process’s effectiveness.

⁷ Incorrect guess by ChatGPT.

(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.

Section 33(4) of the Hong Kong Arbitration Ordinance addresses the scenario where an arbitrator who is acting as a mediator obtains confidential information from a party during the mediation process, and the mediation concludes without reaching a settlement acceptable to the parties. Here is an analysis:

1. “(a) confidential information is obtained by an arbitrator from a party during the mediation proceedings conducted by the arbitrator as a mediator; and”:
 - a. This clause establishes the first condition: the arbitrator acting as a mediator obtains confidential information from one of the parties during the mediation proceedings.
 - b. The section highlights that the confidential information pertains to the mediation proceedings specifically and distinguishes it from other information.
2. “(b) those mediation proceedings terminate without reaching a settlement acceptable to the parties”:
 - a. This clause outlines the second condition: the mediation proceedings end without achieving a settlement that all parties find acceptable.
 - b. The requirement for the mediation to terminate without a successful settlement implies that the confidential information remains relevant because the dispute resolution has not been fully resolved through mediation.
3. “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”:
 - a. The arbitrator is obligated to disclose the confidential information they obtained during the mediation proceedings to all other parties involved in the arbitration.
 - b. The disclosure is limited to information that the arbitrator deems “material” to the arbitral proceedings. The arbitrator exercises judgment in determining what information is relevant and necessary for the ongoing arbitration.
 - c. This disclosure requirement aims to maintain transparency and fairness in the arbitral proceedings, ensuring that the information gathered during the mediation process is taken into account and not withheld.

In summary, Section 33(4) addresses the disclosure of confidential information obtained by an arbitrator acting as a mediator in the context of failed mediation proceedings. The section ensures that pertinent information from the mediation process is shared with all parties before resuming arbitral proceedings, promoting transparency and fairness in the ongoing dispute resolution process.

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

Section 33(5) of the Hong Kong Arbitration Ordinance addresses a potential objection that could arise in relation to an arbitrator's conduct in arbitral proceedings based on their prior role as a mediator. Here is an analysis:

1. This clause establishes a clear rule that parties cannot raise an objection against an arbitrator's conduct in the ongoing arbitral proceedings based solely on the fact that the arbitrator had previously acted as a mediator in accordance with Section 33.
2. The purpose of this provision is to prevent parties from challenging the impartiality, independence, or competence of an arbitrator solely because they previously participated in mediation proceedings related to the same dispute.
3. By specifying that the objection cannot be made "solely on the ground" of the arbitrator's prior mediation role, the section aims to discourage frivolous objections that may disrupt the arbitration process.

This section essentially aims to protect the continuity of the arbitral proceedings and the integrity of the arbitration process by ensuring that an arbitrator's past role as a mediator, conducted in accordance with Section 33, does not become a basis for unjustified objections or challenges against their role as an arbitrator. It promotes the efficient resolution of disputes by preventing unnecessary delays and distractions based on this specific issue.

Part 5 Jurisdiction of Arbitral Tribunal

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

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

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

- (1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.
- (2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.
- (3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.”

Please refer to the commentary on Article 16 of the UNCITRAL Model Law 2006.

(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.

Section 34(2) of the Hong Kong Arbitration Ordinance elaborates on the powers of the arbitral tribunal in relation to ruling on its own jurisdiction. Here is an analysis:

- 1. “The power of the arbitral tribunal to rule on its own jurisdiction under subsection (1) includes the power to decide as to—”: This clause emphasises that the arbitral tribunal possesses the authority to make determinations concerning its own jurisdiction. Subsection (1) likely refers to the earlier portion of the ordinance that grants arbitral tribunals the power to rule on their own jurisdiction.

2. “(a) whether the tribunal is properly constituted”: This subparagraph highlights that one aspect of the tribunal’s jurisdiction is to decide whether the tribunal itself is properly constituted. In other words, the tribunal has the authority to assess whether the composition of the tribunal adheres to the agreed-upon arbitration procedure or any applicable rules.
3. “(b) what matters have been submitted to arbitration in accordance with the arbitration agreement”: This subparagraph outlines another dimension of the tribunal’s jurisdiction, which is to determine what specific matters or disputes fall within the scope of the arbitration agreement. This pertains to the question of whether the issues under consideration are aligned with the provisions of the arbitration agreement.

In essence, Section 34(2) underscores the tribunal’s comprehensive power to rule on its own jurisdiction. It clarifies that this power extends to evaluating matters such as the tribunal’s composition and whether the subject matter of the dispute falls within the boundaries of the arbitration agreement. This provision reinforces the principle of autonomy in arbitration and allows the arbitral tribunal to determine the scope of its authority within the framework of the arbitration agreement and applicable law.

(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.

Section 34(3) of the Hong Kong Arbitration Ordinance deals with the jurisdiction of the arbitral tribunal when a party makes a counter-claim or relies on a claim for the purpose of a set-off. Here is an analysis:

1. “If a dispute is submitted to arbitration in accordance with an arbitration agreement and a party—”: This introductory clause establishes the context: it refers to a situation where a dispute is referred to arbitration based on an existing arbitration agreement.
2. “(a) makes a counter-claim arising out of the same dispute”: This clause addresses a scenario in which a party not only responds to the original claim but also brings a counter-claim that arises from the same underlying dispute.
3. “(b) relies on a claim arising out of that dispute for the purposes of a set-off”: This clause covers a situation where a party utilises a claim that arises from the same underlying dispute to offset its own obligations or liabilities against the opposing party’s claims.
4. “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”: This part specifies the limitation on the tribunal’s jurisdiction. It states that the tribunal can decide on the counter-claim or

the relied-upon claim only to the extent that these claims are related to the subject matter covered by the same arbitration agreement that initially brought the dispute to arbitration.

In summary, Section 34(3) ensures that when counter-claims or set-off claims are introduced in an arbitration proceeding, the tribunal's jurisdiction is limited by the scope of the original arbitration agreement. It prevents the tribunal from addressing claims that are not within the purview of the agreement, thus preserving the principle of consent in arbitration. This provision also promotes efficiency by maintaining a connection between the claims and the arbitration agreement.

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

Section 34(4) of the Hong Kong Arbitration Ordinance pertains to the arbitral tribunal's ruling on its own jurisdiction. Here is an analysis:

1. "A ruling of the arbitral tribunal that it does not have jurisdiction to decide a dispute": This clause refers to a decision made by the arbitral tribunal regarding its own jurisdiction. It covers situations where the tribunal concludes that it does not have the authority to hear and decide on a specific dispute that has been submitted to arbitration.
2. "is not subject to appeal": This part unequivocally states that such a ruling of the arbitral tribunal is not open to appeal. In other words, parties cannot challenge or contest the tribunal's decision on its jurisdiction through the appellate process.

The primary purpose of Section 34(4) is to emphasise the finality and autonomy of the arbitral tribunal's decisions on jurisdiction. Arbitration relies on party autonomy and private resolution of disputes, and this provision aligns with that principle. By not allowing appeals on jurisdictional rulings, the section reinforces the general principle that parties should accept the tribunal's determination on this matter without further recourse to the courts. This aspect contributes to the efficiency and effectiveness of the arbitration process by minimising procedural delays that could result from jurisdictional challenges.

(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.

Section 34(5) of the Hong Kong Arbitration Ordinance deals with a specific scenario where the arbitral tribunal rules that it lacks jurisdiction to decide a dispute. Here is an analysis:

1. "Despite section 20": This clause indicates that the provision in Section 34(5) takes precedence over the provisions of Section 20 of the same ordinance. Section 20 generally deals with referring parties to arbitration, and this provision is an exception to that rule in specific circumstances.
2. "if the arbitral tribunal rules that it does not have jurisdiction to decide a dispute": This clause specifies the trigger for the application of Section 34(5). It comes into play when

the arbitral tribunal itself determines that it lacks the authority to adjudicate a particular dispute.

3. “the court must, if it has jurisdiction, decide that dispute”: This is the key action mandated by this provision. If the arbitral tribunal determines that it lacks jurisdiction, the court (if it has jurisdiction over the subject matter) is obligated to decide the dispute that the arbitral tribunal declined to hear.

The purpose of Section 34(5) is to ensure that disputes are not left unresolved due to jurisdictional challenges. If the arbitral tribunal rules that it lacks jurisdiction, this provision allows the court to step in and provide resolution if it is competent to do so. This is in line with the principle of preserving access to justice and ensuring that disputes are effectively resolved, even if the initial forum (the arbitral tribunal) is deemed to lack jurisdiction. It balances the authority of the arbitral tribunal with the court’s role in preventing situations where disputes remain unresolved due to jurisdictional intricacies.

Part 6 Interim Measures and Preliminary Orders

Division 1—Interim Measures

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

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

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

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

Please refer to the commentary on Article 17 of the UNCITRAL Model Law 2006.

(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.

Section 35(2) of the Hong Kong Arbitration Ordinance pertains to the interpretation of “interim measures” as defined in Article 17 of the UNCITRAL Model Law, as applied in Hong Kong through subsection (1) of Section 35. Here is an analysis:

1. “An interim measure referred to in article 17 of the UNCITRAL Model Law, given effect to by subsection (1)”: This clause refers to the interim measures that are specified in Article 17 of the UNCITRAL Model Law and are implemented in Hong Kong law through subsection (1) of Section 35.
2. “is to be construed as including an injunction”: This clause clarifies that one type of interim measure that falls within the scope of “interim measures” under Article 17 of the UNCITRAL Model Law is an injunction. An injunction is a legal order that restrains a party from taking certain actions or requires a party to perform specific actions.

3. “but not including an order under section 56”: This clause sets a limitation on the interpretation of interim measures. It specifies that while interim measures encompass an injunction, they do not include an “order under section 56”. Section 56 of the Arbitration Ordinance likely refers to a specific type of order, but without the full context, its exact nature cannot be determined solely from this section.

In summary, Section 35(2) clarifies the scope of “interim measures” under Article 17 of the UNCITRAL Model Law, as applied in Hong Kong. It includes injunctions as a type of interim measure but excludes “an order under section 56”. The intent behind this section is to provide clarity on the types of remedies that fall under the definition of interim measures, ensuring consistency in interpreting and applying these measures in arbitration proceedings.

(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.

Section 35(3) of the Hong Kong Arbitration Ordinance addresses the authority of an arbitral tribunal to convert an interim measure into a formal award. Here is an analysis:

1. “If an arbitral tribunal has granted an interim measure”: This clause refers to a situation where the arbitral tribunal has already issued an order for an interim measure. An interim measure is a temporary measure intended to preserve the rights of parties during the course of arbitration proceedings.
2. “the tribunal may, on the application of any party, make an award to the same effect as the interim measure”:
 - a. This clause grants the arbitral tribunal the authority to issue an award that formalises the interim measure that was previously granted. This is done in response to an application made by any of the parties involved in the arbitration proceedings.
 - b. The award issued by the tribunal serves to validate and formalise the interim measure, essentially turning it into a legally binding decision.
 - c. The “same effect” in this context refers to the substance or content of the interim measure being carried over into the award.

In summary, Section 35(3) allows an arbitral tribunal that has previously granted an interim measure to, upon the request of any party, convert that interim measure into an official award with the same legal effect. This section facilitates the transition from a temporary interim measure to a more permanent and enforceable award, providing a means to secure the desired protective or preservative measures throughout the arbitration process.

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

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

“Article 17A. Conditions for granting interim measures

- (1) The party requesting an interim measure under article 17(2)(a), (b) and (c) shall satisfy the arbitral tribunal that:**
 - (a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and**
 - (b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.**
- (2) With regard to a request for an interim measure under article 17(2)(d), the requirements in paragraphs (1)(a) and (b) of this article shall apply only to the extent the arbitral tribunal considers appropriate.”**

Please refer to the commentary on Article 17A of the UNCITRAL Model Law 2006.

Division 2—Preliminary Orders

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

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

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

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

Please refer to the commentary on Article 17B of the UNCITRAL Model Law 2006.

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

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

“Article 17C. Specific regime for preliminary orders

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

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

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

Please refer to the commentary on Article 2C of the UNCITRAL Model Law 2006.

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.”

Please refer to the commentary on Article 17D of the UNCITRAL Model Law 2006.

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

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

“Article 17E. Provision of security

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

Please refer to the commentary on Article 17E of the UNCITRAL Model Law 2006.

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.”**

Please refer to the commentary on Article 17F of the UNCITRAL Model Law 2006.

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

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

“Article 17G. Costs and damages

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

Please refer to the commentary on Article 17G of the UNCITRAL Model Law 2006.

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.

Please refer to the commentary on Article 17H of the UNCITRAL Model Law 2006.

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

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

Please refer to the commentary on Article 17I of the UNCITRAL Model Law 2006.

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.

Please refer to the commentary on Article 17J of the UNCITRAL Model Law 2006.

(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.

Section 45(2) of the Hong Kong Arbitration Ordinance deals with the authority of the court to grant interim measures in connection with arbitral proceedings. Here is an analysis:

1. “On the application of any party”: This clause indicates that the authority of the court to grant an interim measure is triggered when a party involved in the arbitration proceedings makes an application to the court.
2. “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. This clause grants the court the power to issue interim measures in connection with arbitral proceedings. An interim measure is a temporary measure intended to preserve the rights of parties during the course of arbitration proceedings, typically to prevent harm or prejudice to the arbitration process or the parties involved. An “interim measure” could include various types of orders, such as injunctions or orders to preserve evidence, assets, or maintain the status quo pending the resolution of the arbitration.
 - b. The court’s authority is not limited to proceedings that are solely within the jurisdiction of Hong Kong; it extends to both proceedings that have already commenced and those that are intended to commence in or outside Hong Kong.

In summary, Section 45(2) provides parties involved in arbitral proceedings with the option to apply to the court for interim measures. The court’s authority is not restricted to proceedings within Hong Kong and extends to those both inside and outside the jurisdiction. This section enhances the effectiveness of arbitration by allowing the court to step in and provide temporary protective measures when necessary.

(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.

Section 45(3) of the Hong Kong Arbitration Ordinance outlines the scope and authority of the court to grant interim measures and clarifies that the court’s power to grant such measures is independent of any similar powers that may be available to an arbitral tribunal. Here is an analysis:

1. “The powers conferred by this section may be exercised by the Court”: This clause affirms that the court has the authority to exercise the powers granted by Section 45, which pertain to granting interim measures upon application by a party involved in arbitral proceedings.
2. “irrespective of whether or not similar powers may be exercised by an arbitral tribunal under section 35 in relation to the same dispute”:
 - a. This part clarifies that the court’s authority to grant interim measures is not affected by whether or not the arbitral tribunal also has the power to grant similar measures under Section 35 of the same ordinance.
 - b. Section 35 of the Hong Kong Arbitration Ordinance addresses the authority of an arbitral tribunal to grant interim measures, which is distinct from the court’s authority under Section 45.

In summary, Section 45(3) emphasises that the court’s power to grant interim measures is separate and unaffected by any similar power that an arbitral tribunal might possess. This section ensures that parties seeking interim measures have the option to approach the court, regardless of whether they may also seek similar measures from the arbitral tribunal. It offers parties a choice in seeking such measures and contributes to the flexibility and effectiveness of the arbitration process.

- (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.**

Section 45(4) of the Hong Kong Arbitration Ordinance outlines the circumstances under which the court has the discretion to decline granting an interim measure requested by a party. Here is an analysis:

1. “The Court may decline to grant an interim measure under subsection (2)”: This clause establishes the court’s authority to exercise its discretion in deciding whether to grant an interim measure requested by a party.
2. “on the ground that—”: This phrase introduces the criteria upon which the court may base its decision to decline granting the interim measure.
3. “the interim measure sought is currently the subject of arbitral proceedings”: This condition suggests that if the interim measure requested by the party is already a part of the ongoing arbitral proceedings, the court may consider this factor in its decision-making process.
4. “the Court considers it more appropriate for the interim measure sought to be dealt with by the arbitral tribunal”: This criterion indicates that if the court believes that the arbitral tribunal is better suited to handle the matter related to the requested interim measure, it can use this as a reason to decline granting the measure.

In summary, Section 45(4) empowers the court to use its discretion in declining to grant an interim measure if it believes that the matter is already under consideration in the ongoing arbitral proceedings or if it deems the arbitral tribunal to be better equipped to address the request. This provision helps maintain the balance between the roles of the court and the arbitral tribunal in handling interim measures and promotes the efficiency and effectiveness of the arbitration process.

- (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.**

Section 45(5) of the Hong Kong Arbitration Ordinance outlines the conditions under which the court may grant an interim measure in relation to arbitral proceedings that are taking place or are to be initiated outside Hong Kong. Here is an analysis:

1. “In relation to arbitral proceedings which have been or are to be commenced outside Hong Kong”: This phrase sets the scope of the provision, indicating that it applies to situations involving arbitrations that are not taking place within Hong Kong’s jurisdiction.
2. “the Court may grant an interim measure under subsection (2) only if—”: This clause establishes the court’s authority to grant an interim measure in such situations, but it specifies that this authority is subject to certain conditions.
3. “(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”: This condition requires that the arbitral proceedings have the potential to lead to an arbitral award, whether interim or final, which can be enforced in Hong Kong under the relevant laws. This ensures that the interim measure requested is linked to proceedings that can ultimately be recognised and enforced within Hong Kong.
4. “(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”: This criterion requires that the type or category of interim measure sought is one that the Hong Kong Court has the authority to grant in its jurisdiction for domestic arbitral proceedings. This ensures that the court only intervenes in cases where the requested interim measure is aligned with its own jurisdictional practices.

In summary, Section 45(5) establishes the conditions under which the Hong Kong Court may grant an interim measure for arbitral proceedings taking place or initiated outside Hong Kong. The provision ensures that the proceedings have the potential to result in an enforceable arbitral award in Hong Kong and that the interim measure sought aligns with the types of interim measures that can be granted within Hong Kong’s jurisdiction. This helps maintain consistency and clarity in the court’s exercise of authority in relation to cross-border arbitral proceedings.

(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.**

Section 45(6) of the Hong Kong Arbitration Ordinance further clarifies the application of the criteria specified in Section 45(5). Here is an analysis:

1. “(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”: This condition addresses situations where the subject matter of the arbitral proceedings might not fall within the Court’s jurisdiction if considered independently. It means that even if the subject matter would not give rise to a cause of action under normal circumstances, the Court’s authority to grant an interim measure as outlined in Section 45(5) still applies.
2. “(b) the order sought is not ancillary or incidental to any arbitral proceedings in Hong Kong”: This condition emphasises that the sought-after interim measure does not need to be directly tied to an ongoing arbitral proceeding within Hong Kong. It indicates that the Court’s authority to grant an interim measure is not limited to measures directly associated with ongoing Hong Kong-based arbitral proceedings.

In essence, Section 45(6) makes it clear that the conditions set out in Section 45(5) are to be applied without being constrained by certain limitations. These limitations include the potential absence of a jurisdictional cause of action under regular circumstances and the measure’s lack of direct connection to an ongoing Hong Kong arbitral proceeding. This demonstrates the legislative intent to provide the court with broader authority to grant interim measures for cross-border arbitral proceedings, even in cases where the subject matter and the measure’s purpose might not align with traditional jurisdictional boundaries.

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

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

Section 45(7) of the Hong Kong Arbitration Ordinance provides guidance on the exercise of the Court’s power to grant interim measures in relation to arbitral proceedings taking place outside Hong Kong. Here is an analysis:

1. “(a) ancillary to the arbitral proceedings outside Hong Kong”: This emphasises that the Court’s power to grant interim measures is intended to complement and support the ongoing arbitral proceedings that are being conducted outside of Hong Kong. It underscores the idea that the Court’s role is to provide assistance and support rather than

to replace or interfere with the primary arbitral proceedings taking place in another jurisdiction.

2. “(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”: This highlights the purpose of the Court’s intervention in relation to the arbitral proceedings outside Hong Kong. The Court’s power to grant interim measures is meant to assist and expedite the process of the foreign court or arbitral tribunal that holds primary jurisdiction over the proceedings. The Court’s role is to support and facilitate the foreign proceedings, ensuring that they can effectively achieve their intended purpose.

In summary, Section 45(7) emphasises the supportive and complementary nature of the Court’s power to grant interim measures in relation to arbitral proceedings outside Hong Kong. The Court’s role is to aid and streamline the proceedings taking place in another jurisdiction, ensuring that they can proceed smoothly and efficiently without undue interference or duplication of efforts.

(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.

Section 45(8) of the Hong Kong Arbitration Ordinance outlines the extent of the Court’s authority to issue orders or directions to ensure the effectiveness of an interim measure granted in relation to arbitral proceedings taking place outside Hong Kong. Here is an analysis:

1. “The Court has the same power to make any incidental order or direction...”: This clause establishes that the Court’s authority to issue orders or directions is not limited by the fact that the arbitral proceedings are taking place outside Hong Kong. The Court’s power to issue orders extends to ensuring that the interim measure remains effective, irrespective of the jurisdiction in which the arbitration is being conducted.
2. “...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”: This clause emphasises that the Court’s role is to uphold and enforce the interim measures granted, regardless of the location of the arbitral proceedings. It underscores the principle that the Court’s authority and approach remain consistent, whether the arbitration is happening in Hong Kong or another jurisdiction. The goal is to maintain the efficacy of the interim measure granted by the Court.

In summary, Section 45(8) ensures that the Court’s authority to issue orders or directions to ensure the effectiveness of an interim measure remains consistent regardless of whether the related arbitral proceedings are taking place within or outside Hong Kong. The Court’s focus is on ensuring that its granted measures are upheld and enforced effectively, irrespective of the jurisdiction in which the arbitration is conducted.

(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.

Section 45(9) of the Hong Kong Arbitration Ordinance clarifies the scope and definition of “interim measure” as referred to in Section 45(2) of the Hong Kong Arbitration Ordinance by drawing parallels with the UNCITRAL Model Law. Let us analyse the components of this subsection:

1. “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)...”: This part establishes that an “interim measure” mentioned in Section 45(2) corresponds to the concept of interim measures as specified in Article 17(2) of the UNCITRAL Model Law. Article 17(2) of the Model Law refers to the power of the arbitral tribunal to issue interim measures.
2. “...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...”: This part of the subsection indicates that the interpretation of the term “interim measure” under Section 45(2) should be done by substituting references to “arbitral tribunal” with “court” and references to “arbitral proceedings” with “court proceedings”. This aligns the interpretation with the Hong Kong court’s role in granting interim measures.
3. “...and is to be construed as including an injunction but not including an order under section 60”: This final clause clarifies the types of interim measures that fall within the scope of “interim measure” under Section 45(2). It includes “injunctions” but excludes “orders under section 60”. Section 60 concerns orders for the preservation of property, which are distinct from the interim measures that are included in this context.

In summary, Section 45(9) defines and specifies the scope of “interim measure” as mentioned in Section 45(2) of the Hong Kong Arbitration Ordinance. It aligns this term with the concept of interim measures under Article 17(2) of the UNCITRAL Model Law by substituting relevant terms, and it specifies the types of measures that are considered interim measures within this context.

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

Section 45(10) of the Hong Kong Arbitration Ordinance clarifies the finality of decisions, orders, or directions made by the Court under Section 45 of the Hong Kong Arbitration Ordinance. Here is the analysis:

1. “A decision, order or direction of the Court...”: This phrase refers to any action taken by the Court pursuant to its powers under Section 45 of the Hong Kong Arbitration Ordinance. It includes decisions, orders, or directions that the Court might issue when dealing with applications for interim measures in relation to arbitral proceedings.

2. “...under this section...”: This specifies that the particular actions taken by the Court are those related to the exercise of its powers under Section 45 of the Arbitration Ordinance. It is specific to the context of granting interim measures.
3. “...is not subject to appeal”: This phrase unequivocally states that decisions, orders, or directions made by the Court under Section 45 are not open to appeal. Once the Court has made its decision on granting or refusing an interim measure, parties cannot challenge or appeal that decision on the basis of dissatisfaction with the outcome.

In summary, Section 45(10) reinforces the finality of decisions, orders, or directions made by the Court under Section 45 of the Hong Kong Arbitration Ordinance. It prevents any party from appealing against such decisions, ensuring that the Court’s determinations in relation to interim measures are conclusive and binding.

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.

Section 46(1) of the Hong Kong Arbitration Ordinance introduces a modification to the application of Article 18 of the UNCITRAL Model Law within the context of the Hong Kong Arbitration Ordinance. Here is the analysis:

1. “Subsections (2) and (3)...”: This phrase refers to specific subsections within Section 46 of the Hong Kong Arbitration Ordinance, which provide a framework that replaces the provisions of Article 18 of the UNCITRAL Model Law.
2. “...have effect in substitution for article 18 of the UNCITRAL Model Law”: This part of the sentence indicates that the content and provisions of Subsections (2) and (3) are intended to replace and take the place of the corresponding provisions in Article 18 of the UNCITRAL Model Law in the context of arbitration proceedings governed by the Hong Kong Arbitration Ordinance.
3. To further understand this, it is essential to look at the specific content of Subsections (2) and (3) in Section 46 of the Hong Kong Arbitration Ordinance, as they define how the substitution of Article 18 of the UNCITRAL Model Law is carried out within the Hong Kong jurisdiction. This modification may introduce certain procedural or substantive changes in comparison to the original Article 18, aligning it with the specifics of the Hong Kong legal framework.

In summary, Section 46(1) clarifies that specific provisions within the Hong Kong Arbitration Ordinance, as outlined in Subsections (2) and (3), replace and modify the application of Article 18 of the UNCITRAL Model Law within the context of arbitration proceedings in Hong Kong. This substitution is aimed at harmonising the Model Law with the local arbitration framework while addressing any jurisdiction-specific requirements or nuances.

(2) The parties must be treated with equality.

Section 46(2) of the Hong Kong Arbitration Ordinance emphasises the principle of equality in the treatment of parties in arbitration proceedings under the Hong Kong Arbitration Ordinance. Here is the analysis:

1. “The parties must be treated with equality”: This concise statement underscores the fundamental principle that all parties involved in an arbitration process must be treated fairly and equally. It ensures that no party is given preferential treatment or placed at a disadvantage compared to other parties.

The principle of equality is a cornerstone of arbitration proceedings and reflects the broader principles of due process and procedural fairness. It signifies that arbitrators, institutions, and other parties involved in the arbitration process should ensure that each party has an equal opportunity to present its case, provide evidence, and engage in the proceedings without discrimination.

While this section is brief, it holds significant importance in safeguarding the integrity and fairness of arbitration proceedings in Hong Kong, ultimately contributing to the legitimacy and effectiveness of the arbitration process.

- (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.**

Section 46(3) of the Hong Kong Arbitration Ordinance outlines the fundamental principles that arbitral tribunals are required to adhere to when conducting arbitral proceedings. It encapsulates the principles of independence, fairness, and efficiency in the arbitration process. Here is the analysis:

1. “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...”: This introductory phrase establishes the context in which the subsequent requirements apply, emphasising that the principles outlined in this section are applicable throughout the arbitral proceedings and when exercising any powers conferred by the ordinance or agreed upon by the parties.
2. “(a) to be independent”: This requirement highlights the importance of arbitrators maintaining independence from the parties and any external influence that could compromise their impartiality. It is crucial for ensuring that arbitrators make decisions based solely on the evidence and arguments presented before them, without bias or undue influence.
3. “(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”: This clause emphasises the arbitral tribunal’s duty to act as a neutral and impartial adjudicator. It requires arbitrators to provide each party with a level playing field, ensuring that they have a fair chance to present their case, respond to arguments, and address opposing parties’ contentions. This promotes procedural fairness and helps to prevent any potential prejudice against any party.
4. “(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”: This provision underscores the importance of procedural flexibility and efficiency in arbitration. Arbitrators are required to tailor the procedures to suit the specific circumstances of the case, avoiding undue delays and unnecessary expenses. This ensures that the arbitration process remains cost-effective and accessible while maintaining its effectiveness in resolving disputes.

Overall, Section 46(3) reflects internationally recognised principles of fairness, impartiality, and efficiency that are essential for maintaining the integrity of the arbitration process and upholding the legitimacy of arbitral awards.

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

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

“Article 19. Determination of rules of procedure

- (1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.**
- (2) [Not applicable].”**
- (2) If or to the extent that there is no such agreement of the parties, the arbitral tribunal may, subject to the provisions of this Ordinance, conduct the arbitration in the manner that it considers appropriate.**

Section 47(2) of the Hong Kong Arbitration Ordinance grants the arbitral tribunal significant discretion in determining the procedures and methods for conducting the arbitration when there is no specific agreement between the parties. Here is the analysis:

1. “If or to the extent that there is no such agreement of the parties...”: This phrase establishes the premise that the tribunal’s discretion comes into play when the parties have not agreed on specific arbitration procedures or methods. Parties often have the freedom to customise certain aspects of the arbitration process through their agreement, but in the absence of such agreement, the tribunal’s discretion becomes relevant.
2. “the arbitral tribunal may, subject to the provisions of this Ordinance...”: This part clarifies that the tribunal’s discretion is not absolute but is subject to the framework set by the provisions of the arbitration ordinance. While the tribunal has latitude in determining how the arbitration will be conducted, it must still adhere to the overarching principles and requirements outlined in the ordinance.
3. “conduct the arbitration in the manner that it considers appropriate”: This statement gives the arbitral tribunal the authority to decide how best to conduct the arbitration proceedings. It empowers the tribunal to make procedural decisions based on the specific circumstances of the case, the parties’ arguments, and the principles of fairness and efficiency.

Overall, Section 47(2) recognises that arbitration is a flexible and adaptable process that can vary based on the unique attributes of each dispute. It provides the arbitral tribunal with the flexibility to tailor the procedures to suit the case, ensuring that the arbitration process remains efficient and effective even in situations where the parties have not predetermined specific procedures. However, it is important to note that the tribunal’s discretion is not unlimited and must operate within the bounds of the ordinance’s provisions and fundamental principles of fairness and impartiality.

- (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.**

Section 47(3) of the Hong Kong Arbitration Ordinance highlights the flexible approach to evidence in arbitration proceedings and the discretion vested in the arbitral tribunal. Here is the analysis:

1. “When conducting arbitral proceedings...”: This phrase establishes the context that the section pertains to the actions of the arbitral tribunal during the course of the arbitration proceedings.
2. “an arbitral tribunal is not bound by the rules of evidence...”: This statement emphasises one of the significant differences between arbitration and litigation. Unlike formal court proceedings, where strict adherence to formal rules of evidence is required, arbitral tribunals are not obligated to follow those same rules. This flexibility allows the tribunal to consider a wider range of evidence, including evidence that might not be admissible in a court of law.
3. “may receive any evidence that it considers relevant to the arbitral proceedings...”: This phrase grants the arbitral tribunal the authority to admit and consider any evidence that it deems relevant to the arbitration proceedings. This expansive approach enables the tribunal to make decisions based on a comprehensive understanding of the case’s merits.
4. “but it must give the weight that it considers appropriate to the evidence adduced in the arbitral proceedings”: This clause underscores that while the tribunal has discretion in admitting evidence, it must still exercise judgment when determining the weight and credibility of the evidence presented. The tribunal’s duty is to evaluate the evidence and allocate significance to it based on its assessment of relevance, credibility, and overall contribution to the dispute.

Overall, Section 47(3) reflects the arbitration process’s flexibility, allowing the arbitral tribunal to tailor the evidentiary process to the specific needs of the case. This flexibility can expedite proceedings and provide a more efficient resolution process. However, it is important to note that while the tribunal is not bound by formal rules of evidence, it still operates under the fundamental principles of fairness and impartiality, ensuring that parties have a reasonable opportunity to present their cases and that the evidence is considered in a just and equitable manner.

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.”**

Please refer to the commentary on Article 20 of the UNCITRAL Model Law 2006.

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.”

Please refer to the commentary on Article 21 of the UNCITRAL Model Law 2006.

(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.

Section 49(2) of the Hong Kong Arbitration Ordinance pertains to the method of making requests for interim measures under the UNCITRAL Model Law. Let us break down its elements:

1. “A request referred to in article 21 of the UNCITRAL Model Law, given effect to by subsection (1)...”: This phrase refers to requests for interim measures during the course of arbitration, which are provided for under Article 21 of the UNCITRAL Model Law, as incorporated into the Hong Kong Arbitration Ordinance by subsection (1).
2. “...has to be made by way of a written communication as referred to in section 10”: This part of the sentence specifies the manner in which such requests must be submitted. It states that requests for interim measures should be in the form of a written communication. Section 10 of the Arbitration Ordinance deals with written communications between parties and the arbitral tribunal.

Overall, Section 49(2) underscores the formal requirement for requests for interim measures to be presented in writing. This aligns with the principle of clarity and documentation in arbitration proceedings, ensuring that requests are properly documented, communicated, and considered by the arbitral tribunal. This approach also facilitates transparency, consistency, and accountability in the arbitration process.

50. Article 22 of UNCITRAL Model Law (Language)

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

“Article 22. Language

- (1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.**
- (2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.”**

Please refer to the commentary on Article 22 of the UNCITRAL Model Law 2006.

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.”**

Please refer to the commentary on Article 23 of the UNCITRAL Model Law 2006.

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

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

“Article 24. Hearings and written proceedings

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

Please refer to the commentary on Article 24 of the UNCITRAL Model Law 2006.

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

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

“Article 25. Default of a party

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

- (a) the claimant fails to communicate his statement of claim in accordance with article 23(1), the arbitral tribunal shall terminate the proceedings;**
- (b) the respondent fails to communicate his statement of defence in accordance with article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant’s allegations;**
- (c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.”**

Please refer to the commentary on Article 25 of the UNCITRAL Model Law 2006.

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

Section 53(2) of the Hong Kong Arbitration Ordinance relates to the application of subsections (3) and (4) of Section 53 of the Hong Kong Arbitration Ordinance. Let us break down its elements:

1. “Unless otherwise agreed by the parties...”: This phrase establishes the principle that the default rules mentioned in subsections (3) and (4) will apply, unless the parties have reached a different agreement regarding their application.
2. “...subsections (3) and (4) apply except in relation to an application for security for costs”: This part of the sentence clarifies that subsections (3) and (4) of Section 53 are generally applicable in arbitration proceedings, except when it comes to applications for security for costs.
3. Now let us briefly discuss what subsections (3) and (4) of Section 53 entail:
 - a. Subsection (3) deals with the authority of the arbitral tribunal to rule on challenges to its own jurisdiction. It states that the arbitral tribunal may rule on its jurisdiction, including any objections regarding the existence or validity of the arbitration agreement.
 - b. Subsection (4) clarifies that an arbitral tribunal’s ruling on its jurisdiction can be made either as a preliminary question or in conjunction with the final award. It also allows parties to apply to the Court for a determination on jurisdiction if the tribunal rules in favour of its jurisdiction.

In summary, Section 53(2) specifies that unless the parties have agreed otherwise, the default rules of jurisdictional challenges under subsections (3) and (4) apply in arbitration proceedings, except when it comes to applications for security for costs. This section emphasises the default nature of these rules while accommodating potential variations by party agreement.

(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.

Section 53(3) of the Hong Kong Arbitration Ordinance addresses the authority of the arbitral tribunal to deal with non-compliance by a party with its orders or directions. Here is a breakdown of its key elements:

1. “If, without showing sufficient cause...”: This phrase establishes the condition for the arbitral tribunal’s action. It implies that a party’s failure to comply with an order or direction must be without a valid and acceptable reason (sufficient cause).
2. “...a party fails to comply with any order or direction of the arbitral tribunal...”: This part indicates that the provision applies when a party does not adhere to an order or direction issued by the arbitral tribunal during the course of the arbitration proceedings.

3. “...the tribunal may make a peremptory order to the same effect...”: This states that in response to the non-compliance, the arbitral tribunal has the authority to issue a peremptory order, which is a more forceful and strict form of order. The order would essentially reiterate the same directive as the previous order that was not followed.
4. “...prescribing the time for compliance with it that the arbitral tribunal considers appropriate”: This clause empowers the arbitral tribunal to specify a deadline or timeframe within which the non-complying party must fulfil the requirements of the peremptory order. The tribunal is given discretion to determine what is an appropriate timeframe for compliance.

In essence, Section 53(3) allows the arbitral tribunal to address situations where a party fails to comply with its orders or directions without providing a valid reason. In response, the tribunal can issue a more compelling peremptory order, detailing the same requirement and specifying a reasonable timeframe for the party to comply. This provision reinforces the arbitral tribunal’s authority to ensure the efficient conduct of the arbitration proceedings and the parties’ adherence to its directives.

- (4) If a party fails to comply with a peremptory order, then without affecting section 61, the arbitral tribunal may—**
- (a) direct that the party is not entitled to rely on any allegation or material which was the subject matter of the peremptory order;**
 - (b) draw any adverse inferences that the circumstances may justify from the non-compliance;**
 - (c) make an award on the basis of any materials which have been properly provided to the arbitral tribunal; or**
 - (d) make any order that the arbitral tribunal thinks fit as to the payment of the costs of the arbitration incurred in consequence of the non-compliance.**

Section 53(4) of the Hong Kong Arbitration Ordinance outlines the consequences of a party’s failure to comply with a peremptory order issued by the arbitral tribunal. Here is a breakdown of its key components:

1. “If a party fails to comply with a peremptory order...”: This condition establishes the trigger for the arbitral tribunal’s authority to impose certain consequences. It refers to the scenario where a party does not fulfil the requirements of a peremptory order issued by the tribunal.
2. “...then without affecting section 61, the arbitral tribunal may—”: This phrase clarifies that the listed consequences are applicable even while considering the provisions of Section 61. Section 61 likely pertains to the general powers of the arbitral tribunal to make orders. It ensures that the provisions of this section are additional and do not conflict with the tribunal’s overall powers.
3. “(a) direct that the party is not entitled to rely on any allegation or material which was the subject matter of the peremptory order”: This option empowers the arbitral tribunal

to prohibit the non-complying party from relying on any allegations or materials that were involved in the subject matter of the peremptory order.

4. “(b) draw any adverse inferences that the circumstances may justify from the non-compliance”: This point grants the arbitral tribunal the authority to infer negative implications from the non-compliance. In other words, the tribunal may draw conclusions that are unfavourable to the non-complying party based on the circumstances.
5. “(c) make an award on the basis of any materials which have been properly provided to the arbitral tribunal”: This allows the tribunal to make an award based on the materials that have been appropriately submitted to the tribunal. This provision aims to ensure that the proceedings can continue and reach a conclusion even in light of the non-compliance.
6. “(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”: This option grants the tribunal the discretion to issue an order regarding the payment of costs incurred due to the non-compliance. The tribunal can determine what financial consequences are appropriate for the non-complying party.

Section 53(4) emphasises the seriousness of complying with peremptory orders issued by the arbitral tribunal. It outlines a range of consequences that the tribunal may impose, from restricting the non-complying party’s reliance on certain materials to making adverse inferences, issuing awards based on submitted materials, and potentially ordering the payment of costs. These consequences are designed to ensure that parties respect the authority of the tribunal and adhere to its directives.

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.”**

Please refer to the commentary on Article 26 of the UNCITRAL Model Law 2006.

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

Section 54(2) of the Hong Kong Arbitration Ordinance addresses the assessment of costs in arbitral proceedings and introduces the use of assessors for technical matters. Here is a breakdown of its key components:

1. “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—”: This introduction sets the context by indicating that the provisions of the section do not interfere with Article 26 of the UNCITRAL Model Law, which likely deals with the applicable law governing the substance of the dispute.
2. “(a) the arbitral tribunal may appoint assessors to assist it on technical matters, and may allow any of those assessors to attend the proceedings”: This clause provides the arbitral tribunal with the authority to appoint assessors who possess technical expertise relevant to the dispute. These assessors can assist the tribunal in understanding complex technical matters. Additionally, the tribunal can permit these assessors to be present during the arbitral proceedings to offer insights and clarifications.
3. “(b) the parties must be given a reasonable opportunity to comment on any information, opinion or advice offered by any of those assessors”: This part emphasises the importance of transparency and fairness. It mandates that the parties involved in the arbitration must be provided with a reasonable chance to provide comments or responses to any information, opinions, or advice offered by the appointed assessors. This ensures that all parties have an opportunity to contribute their perspectives to the assessment process.

Section 54(2) recognises that complex technical matters can arise during arbitral proceedings. By allowing the appointment of assessors and providing parties with the chance to respond to their insights, this section seeks to enhance the quality of decision-making while maintaining fairness and transparency in the assessment of costs. It operates in conjunction with Article 26 of the UNCITRAL Model Law, which governs the applicable law in the arbitration, without affecting its provisions.

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.”

Please refer to the commentary on Article 27 of the UNCITRAL Model Law 2006.

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

Section 55(2) of the Hong Kong Arbitration Ordinance empowers the Court to issue orders compelling individuals to participate in proceedings before an arbitral tribunal as witnesses or to produce relevant evidence. Here is a breakdown of its key components:

1. “The Court may order a person to attend proceedings before an arbitral tribunal...”: This clause establishes the authority of the Court to issue orders related to the attendance of individuals in arbitral proceedings. The Court is given the discretion to exercise this power when it deems it necessary or appropriate.
2. “...to give evidence or to produce documents or other evidence”: This part outlines the two main categories of orders that the Court can issue. The Court may require a person to attend the proceedings in order to provide testimony and give evidence relevant to the arbitration case. Alternatively, the Court can compel a person to produce documents or other forms of evidence that are pertinent to the proceedings.

In essence, Section 55(2) provides a mechanism for the arbitral tribunal to obtain evidence and documents from individuals who may possess relevant information to the dispute. The Court’s ability to issue such orders ensures that the arbitral tribunal has access to the necessary evidence and that parties to the arbitration can obtain a fair and thorough resolution of the case. This section reflects the importance of cooperation and the exchange of relevant information in arbitration 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.

Section 55(3) of the Hong Kong Arbitration Ordinance addresses the jurisdiction and authority of the Court to exercise its powers under Section 55, specifically in relation to the powers of an arbitral tribunal under Section 56. Here is a breakdown of its key components:

1. “The powers conferred by this section may be exercised by the Court...”: This clause establishes that the Court has the authority to exercise the powers granted by Section 55.

These powers relate to ordering individuals to attend proceedings before an arbitral tribunal to provide evidence or produce documents.

2. “...irrespective of whether or not similar powers may be exercised by an arbitral tribunal under section 56 in relation to the same dispute”: This part clarifies that the Court’s authority to exercise the powers under Section 55 is not contingent upon whether the arbitral tribunal also possesses similar powers under Section 56. Even if the arbitral tribunal has the authority to issue similar orders, the Court’s jurisdiction to issue orders under Section 55 is separate and distinct.

In essence, Section 55(3) reinforces the Court’s independent authority to issue orders for individuals to attend arbitral proceedings and provide evidence or produce documents, regardless of whether the arbitral tribunal also possesses similar powers. This section ensures that parties have access to the Court’s jurisdiction to compel evidence and documents in situations where they believe it is necessary, without being limited by the powers of the arbitral tribunal.

(4) A decision or order of the Court made in the exercise of its power under this section is not subject to appeal.

Section 55(4) of the Hong Kong Arbitration Ordinance addresses the finality and non-appealability of decisions or orders made by the Court when exercising its power under Section 55. Here is a breakdown of its key components:

1. “A decision or order of the Court made in the exercise of its power under this section...”: This clause establishes that the provision specifically applies to decisions or orders issued by the Court when it is utilising its authority under Section 55 of the Arbitration Ordinance.
2. “...is not subject to appeal”: This part unequivocally states that the decisions or orders made by the Court under its authority granted by Section 55 cannot be appealed. In other words, parties cannot challenge these decisions or orders through the appeal process, thereby emphasising their finality.

In essence, Section 55(4) ensures that decisions or orders made by the Court under its power to order individuals to attend arbitral proceedings, give evidence, or produce documents (as granted by Section 55) are conclusive and cannot be reviewed or challenged through an appellate process. This adds certainty and finality to the Court’s determinations related to the exercise of these powers.

(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.

Section 55(5) of the Hong Kong Arbitration Ordinance establishes a connection between Section 55 of the Arbitration Ordinance and Section 81 of the Evidence Ordinance (Cap. 8) in Hong Kong. Here is a breakdown of its key components:

1. “Section 81 (Warrant or order to bring up prisoner to give evidence) of the Evidence Ordinance (Cap. 8) applies...”: This clause states that Section 81 of the Evidence Ordinance (Cap. 8) is applicable within the context of the powers granted by Section 55 of the Arbitration Ordinance.
2. “...as if a reference to any proceedings, either criminal or civil, in that section were any arbitral proceedings”: This part clarifies how Section 81 of the Evidence Ordinance is to be applied within the framework of Section 55 of the Arbitration Ordinance. It indicates that any references in Section 81 to “proceedings, either criminal or civil” are to be interpreted as applying to “any arbitral proceedings” in the context of Section 55.

In essence, Section 55(5) ensures that the provisions of Section 81 of the Evidence Ordinance are extended to apply to arbitral proceedings under Section 55 of the Arbitration Ordinance. This alignment means that the same mechanisms and procedures governing the issuance of a warrant or order to bring a prisoner to give evidence in criminal or civil proceedings, as outlined in Section 81 of the Evidence Ordinance, will be applicable to arbitral proceedings as well. This provides consistency and clarity in the treatment of witnesses and evidence across different legal contexts.

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.**

Section 56(1) of the Hong Kong Arbitration Ordinance outlines the powers of an arbitral tribunal in conducting arbitral proceedings, particularly with respect to certain orders that the tribunal may make. Here is a breakdown of the key provisions:

1. “Unless otherwise agreed by the parties...”: This clause establishes that the powers described in this section are subject to the parties’ agreement. If the parties have agreed on specific procedures or limitations, those agreements take precedence.
2. “...requiring a claimant to give security for the costs of the arbitration...”: The arbitral tribunal has the authority to order a claimant to provide security for the costs associated

with the arbitration. This can help ensure that the responding party is protected against potential adverse costs if the claimant is unsuccessful in the arbitration.

3. “...directing the discovery of documents or the delivery of interrogatories...”: The tribunal may issue orders for the discovery of documents or the delivery of interrogatories, which are written questions that parties may submit to each other for information gathering during the arbitration process.
4. “...directing evidence to be given by affidavit...”: The tribunal can direct that evidence is provided in the form of written affidavits, which are sworn statements containing information relevant to the dispute.
5. “...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”: The tribunal has the authority to issue orders related to relevant property involved in the dispute. This can include directing actions such as property inspection, photography, preservation, custody, detention, sale, or allowing for the collection of samples, observations, or experiments to be carried out.

Overall, Section 56(1) grants significant powers to the arbitral tribunal to facilitate the conduct of arbitral proceedings and ensure a fair and efficient process. These powers can be exercised by the tribunal unless the parties have agreed otherwise.

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

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

Section 56(2) of the Hong Kong Arbitration Ordinance introduces a limitation on the power of the arbitral tribunal to make an order for security for costs under specific circumstances. Here is an analysis of the provisions:

1. “An arbitral tribunal must not make an order under subsection (1)(a) only on the ground that the claimant is...”: This clause establishes a restriction on the arbitral tribunal’s power

to issue an order requiring a claimant to provide security for costs based solely on the circumstances outlined in the subsequent sub-clauses (a), (b), and (c).

2. “(a) a natural person who is ordinarily resident outside Hong Kong”: The arbitral tribunal is prohibited from making an order for security for costs solely because the claimant is a natural person who resides outside Hong Kong.
3. “(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”: The tribunal cannot issue a security for costs order based solely on the claimant being a body corporate incorporated outside Hong Kong or having its central management and control outside Hong Kong.
4. “(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”: Similar to the previous sub-clause, the tribunal is restricted from issuing an order for security for costs solely due to the claimant being an association formed or having its central management and control outside Hong Kong.

In essence, Section 56(2) places limitations on the grounds for making an order for security for costs in cases involving claimants who are individuals, bodies corporate, or associations based outside Hong Kong. The tribunal cannot make such orders solely on these grounds, ensuring fairness and preventing undue burdens on certain types of claimants.

(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.**

Section 56(3) of the Hong Kong Arbitration Ordinance outlines the procedural requirements for making and complying with an order for security for costs. Here is an analysis of the provisions:

1. “(a) must, when making an order under subsection (1)(a), specify the period within which the order has to be complied with”: This clause mandates that when the arbitral tribunal issues an order for security for costs under subsection (1)(a), it is obligated to include a specific timeframe within which the order must be adhered to. This ensures clarity and predictability for the parties involved.
2. “(b) may extend that period or an extended period”: This clause grants discretionary power to the arbitral tribunal to extend the initial specified period for compliance with the order for security for costs. Additionally, the tribunal is also allowed to extend an already extended period if circumstances warrant it.

In summary, Section 56(3) emphasises the importance of setting a clear timeline for compliance with an order for security for costs. It also empowers the arbitral tribunal to exercise flexibility by allowing them to extend the compliance period if necessary, ensuring fairness and practicality in the enforcement of such orders.

(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).

Section 56(4) of the Hong Kong Arbitration Ordinance outlines the consequences that may arise when a party fails to comply with an order for security for costs issued by the arbitral tribunal. Here is an analysis of the provisions:

1. “An arbitral tribunal may make an award dismissing a claim or stay a claim...”: This clause grants the arbitral tribunal the authority to take certain actions when a party fails to comply with an order for security for costs. The tribunal has the discretion to either dismiss the claim or stay the claim, depending on the circumstances.
2. “...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)”: This part of the provision sets the condition under which the arbitral tribunal can exercise its authority. If the tribunal has previously issued an order under subsection (1)(a), which requires a claimant to give security for the costs of the arbitration, and that order has not been complied with within the time specified in subsection (3)(a) or any extended time under subsection (3)(b), then the tribunal has the option to dismiss the claim or stay the claim.

In summary, Section 56(4) grants the arbitral tribunal the power to impose significant consequences if a claimant fails to comply with an order for security for costs within the specified or extended timeframe. This provision serves as a mechanism to ensure that parties fulfil their obligations and maintain procedural fairness during arbitral proceedings.

(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.

Section 56(5) of the Hong Kong Arbitration Ordinance introduces an interesting interplay between different sections of the Hong Kong Arbitration Ordinance, particularly concerning the powers of an arbitral tribunal to issue orders for specific actions. Here is an analysis of the provision:

1. “Despite section 35(2), sections 39 to 42 apply...”: This clause indicates that certain provisions of the Arbitration Ordinance will apply even if they might seem contradictory due to the presence of Section 35(2). Section 35(2) pertains to the type of interim measures an arbitral tribunal may grant. However, despite any potential conflict, Sections 39 to 42 will still be relevant and applicable.
2. “...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”: This part of the provision specifies the context in which Sections 39 to 42 will apply. These sections address matters related to the tribunal’s powers to order specific actions, including the preservation of evidence, obtaining expert opinions, and inspection of property. Here, “subsection (1)(d)” refers to the part of Section 56(1) that allows the arbitral tribunal to

issue orders related to relevant property, including inspections, preservation, custody, or sale.

In summary, Section 56(5) essentially ensures that despite any potential conflicts between the reference to interim measures in Section 35(2) and the specific orders related to relevant property in Section 56(1)(d), Sections 39 to 42 can still be invoked and applied if appropriate. This is to ensure that the arbitral tribunal's power to issue orders remains comprehensive and effective, regardless of the nature of the order being issued.

(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.**

Section 56(6) of the Hong Kong Arbitration Ordinance defines the criteria that determine whether property is considered “relevant property” under the context of an order made by an arbitral tribunal under Section 56(1)(d). Here is a breakdown of the provision:

1. “Property is a relevant property for the purposes of subsection (1)(d) if—”: This introductory clause establishes the context for determining what constitutes “relevant property” for the purpose of making orders under Section 56(1)(d). The provision aims to clarify the conditions under which an arbitral tribunal can issue specific orders related to property.
2. “(a) the property is owned by or is in the possession of a party to the arbitral proceedings”: This clause sets the first requirement for property to be considered “relevant property”. It states that the property must either be owned by or in the possession of one of the parties involved in the arbitral proceedings. This ensures that the property in question has a direct connection to the parties involved in the dispute.
3. “(b) the property is the subject of the arbitral proceedings, or any question relating to the property has arisen in the arbitral proceedings”: This clause provides the second requirement for property to qualify as “relevant property”. It states that the property must be either directly involved as the subject matter of the arbitral proceedings or must be linked to a question that has arisen within the proceedings. This emphasises the connection between the property and the ongoing dispute being addressed by the arbitral tribunal.

In summary, Section 56(6) of the Hong Kong Arbitration Ordinance outlines the criteria for identifying “relevant property” when an arbitral tribunal makes orders under Section 56(1)(d). The property must be owned by or in the possession of a party to the proceedings and must be directly linked to the subject matter or questions arising in the arbitration. This definition ensures that the tribunal's authority to issue specific orders related to property is appropriately circumscribed to relevant matters within the arbitration process.

- (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.**

Section 56(7) of the Hong Kong Arbitration Ordinance addresses the authority of an arbitral tribunal to independently gather facts and ascertain the relevant law during the course of arbitral proceedings. Here is a breakdown of the provision:

1. “Unless otherwise agreed by the parties, an arbitral tribunal may...”: This introductory clause establishes the default principle that an arbitral tribunal has the discretion and authority to determine whether it should take the initiative in gathering facts and determining the relevant legal principles during the course of the arbitral proceedings. However, this discretion can be altered if the parties agree otherwise.
2. “...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”: This clause outlines the key authority of the arbitral tribunal. It states that, unless the parties have agreed otherwise, the tribunal has the power to decide whether it should take the initiative in collecting evidence, investigating facts, and determining the applicable legal principles. This includes both factual and legal aspects of the case.

In summary, Section 56(7) of the Hong Kong Arbitration Ordinance grants the arbitral tribunal the discretion to determine the extent to which it should independently gather facts and ascertain the relevant law during the arbitral proceedings. This discretion allows the tribunal to adapt its approach based on the specific circumstances of each case. However, this power can be overridden if the parties have explicitly agreed otherwise in their arbitration agreement. This provision aims to strike a balance between the tribunal’s proactive role in managing the proceedings and the parties’ autonomy to define the scope of tribunal-initiated investigations.

- (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.**

Section 56(8) of the Hong Kong Arbitration Ordinance pertains to the powers of an arbitral tribunal to administer oaths, examine witnesses and parties, and summon witnesses during the arbitral proceedings. Here is a breakdown of the provision:

1. “Unless otherwise agreed by the parties, an arbitral tribunal may—”: This introductory phrase establishes the default principle that, in the absence of any contrary agreement between the parties, an arbitral tribunal possesses the authority to exercise the powers described in the subsequent clauses (a), (b), and (c).
2. “(a) administer oaths to, or take the affirmations of, witnesses and parties”: This clause grants the arbitral tribunal the power to administer oaths to witnesses and parties who

testify during the proceedings or to take their affirmations. Administering oaths ensures that witnesses and parties provide truthful and accurate information under penalty of perjury.

3. “(b) examine witnesses and parties on oath or affirmation”: This clause allows the arbitral tribunal to question and examine witnesses and parties who appear before it. This examination is conducted under oath or affirmation, emphasising the commitment to honesty and accuracy in the information presented.
4. “(c) direct the attendance before the arbitral tribunal of witnesses in order to give evidence or to produce documents or other evidence”: This clause provides the tribunal with the authority to summon witnesses to appear before the tribunal and provide evidence or produce documents relevant to the proceedings. This power enables the tribunal to ensure that relevant evidence is presented and examined for a thorough and fair arbitration process.

In summary, Section 56(8) of the Hong Kong Arbitration Ordinance outlines the default powers of an arbitral tribunal related to the administration of oaths, examination of witnesses and parties, and the summoning of witnesses to provide evidence or produce documents. These powers are granted to the tribunal to facilitate a comprehensive and effective arbitration process. However, these powers can be subject to agreements made between the parties in their arbitration agreement, allowing for flexibility in tailoring the arbitration procedure to their preferences.

(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.

Section 56(9) of the Hong Kong Arbitration Ordinance deals with the scope of document production and evidence in arbitral proceedings. Here is a breakdown of the provision:

1. “A person is not required to produce in arbitral proceedings any document or other evidence...”: This clause states that in arbitral proceedings, individuals or parties are not obligated to present or produce certain documents or evidence.
2. “...that the person could not be required to produce in civil proceedings before a court”: This clause qualifies the previous statement by indicating that the documents or evidence not required to be produced in arbitral proceedings are those that would also not be subject to production in regular civil proceedings before a court.

In essence, Section 56(9) establishes a principle of parity between the evidentiary rules in arbitral proceedings and those in civil court proceedings. It ensures that the evidentiary standards and rules that apply in court proceedings also apply in arbitration. Therefore, parties involved in an arbitration are not compelled to provide documents or evidence that would be deemed inadmissible or protected under the rules governing civil proceedings.

This provision aims to maintain consistency and fairness between the two dispute resolution mechanisms and avoid imposing undue burdens on parties in arbitration. It ensures that the rights and protections afforded in court proceedings, such as privileges against self-incrimination or attorney-client privilege, are also respected in the arbitration process.

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.

Section 57(1) of the Hong Kong Arbitration Ordinance pertains to the authority of an arbitral tribunal to set a cap or limit on the recoverable costs of arbitral proceedings. Here is a breakdown of the provision:

1. “Unless otherwise agreed by the parties...”: This clause indicates that the authority of the arbitral tribunal to limit recoverable costs applies unless the parties have explicitly agreed otherwise. In the absence of an agreement to the contrary, the tribunal has the power to implement such limitations.
2. “...an arbitral tribunal may direct that the recoverable costs of arbitral proceedings before it are limited to a specified amount”: This clause grants the arbitral tribunal the discretion to impose a cap on the amount of costs that can be recovered by the prevailing party. This limitation applies specifically to the costs associated with the arbitral proceedings conducted before that tribunal.

The purpose of Section 57(1) is to provide the arbitral tribunal with the authority to manage and control the costs of the arbitration process. Arbitral proceedings can sometimes become costly, and this provision aims to promote efficiency and fairness by allowing the tribunal to set a reasonable limit on the costs that can be recovered. This can help prevent excessive costs and ensure that the proceedings are accessible to parties with varying resources.

It is important to note that this provision is subject to the parties’ agreement. If the parties have agreed on the scope of recoverable costs or on any other aspect related to costs, that agreement takes precedence over the tribunal’s discretion outlined in this section.

(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.**

Section 57(2) of the Hong Kong Arbitration Ordinance addresses the circumstances under which an arbitral tribunal can issue or modify a direction regarding the limitation of recoverable costs in arbitral proceedings. Here is a breakdown of the provision:

1. “Subject to subsection (3)...”: This clause sets a condition for the application of the subsequent provisions. The actions described in this section are subject to the conditions outlined in subsection (3) of the same section.
2. “...the arbitral tribunal may make or vary a direction either—”: This clause gives the arbitral tribunal the authority to issue or modify a direction. The direction pertains to

limiting the recoverable costs of the arbitral proceedings. The tribunal has the discretion to take action to ensure that the costs remain reasonable and proportionate.

3. “(a) on its own initiative”: This clause grants the arbitral tribunal the ability to independently decide to issue or modify a direction regarding the limitation of recoverable costs. In other words, the tribunal can proactively take steps to manage costs without waiting for a party’s application.
4. “(b) on the application of any party”: This clause allows any party involved in the arbitration to request the arbitral tribunal to issue or modify a direction related to the limitation of recoverable costs. Parties can bring forward such applications if they believe it is necessary to manage costs effectively.

Section 57(2) empowers the arbitral tribunal to exercise its discretion in managing the costs of the arbitration process. It provides flexibility for the tribunal to take action either on its own initiative or based on parties’ applications, as long as it aligns with the conditions specified in subsection (3). This provision contributes to the overall efficiency and fairness of the arbitration proceedings by allowing the tribunal to address cost-related matters in a balanced manner.

(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.**

Section 57(3) of the Hong Kong Arbitration Ordinance outlines the timing and considerations for making or varying a direction related to limiting the recoverable costs in arbitral proceedings. Here is a breakdown of the provision:

1. “A direction may be made or varied at any stage of the arbitral proceedings...”: This clause establishes the flexibility in terms of when a direction regarding the limitation of recoverable costs can be issued or modified. The arbitral tribunal is not limited to a specific stage of the proceedings for making such directions.
2. “...but, for the limit of the recoverable costs to be taken into account, this must be done sufficiently in advance of—”: This clause sets a condition for the timing of making or varying a direction related to limiting recoverable costs. The direction must be issued or modified early enough to ensure that the set limitation on recoverable costs is considered and adhered to.
3. “(a) the incurring of the costs to which the direction or the variation relates; or”: This clause specifies the first scenario in which the direction should be made or varied in advance. It should be done before the costs to which the direction or variation relates are actually incurred. This ensures that parties have clear guidelines before they proceed with incurring costs.

4. “(b) the taking of the steps in the arbitral proceedings which may be affected by the direction or the variation”: This clause outlines the second scenario for the timing of making or varying the direction. It should be done before any steps in the arbitral proceedings that could be influenced by the direction or its variation are taken. This is to prevent any disruptions in the proceedings due to unforeseen changes in cost limitations.

Section 57(3) emphasises the importance of timely implementation of directions related to the limitation of recoverable costs in arbitral proceedings. The provision ensures that parties are informed well in advance about the restrictions on costs they can recover, preventing any confusion or disputes that may arise if directions were made at a later stage. This timing requirement contributes to the transparency and fairness of the arbitration process, allowing parties to plan and manage their costs effectively.

(4) In this section—

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

Section 57(4) of the Hong Kong Arbitration Ordinance defines the term “costs” as referring to the parties’ own costs. In the context of arbitral proceedings, “costs” generally pertain to the expenses incurred by the parties during the course of the arbitration, such as legal fees, administrative expenses, and other associated costs. This definition ensures that the limitations on recoverable costs specified in Section 57 apply to the costs incurred by the parties themselves.

“(b) a reference to arbitral proceedings includes any part of those arbitral proceedings”: This clause defines the term “arbitral proceedings” in an inclusive manner. It indicates that the term encompasses not only the entire process of the arbitration but also any individual segments or phases within that process. This clarification ensures that the limitations on recoverable costs apply not only to the entire proceedings but also to specific stages or aspects of the arbitration.

Section 57(4) ensures that the terminology used in Section 57 is clear and correctly understood. The definitions provided here help in interpreting the limitations on recoverable costs accurately and in a comprehensive manner, thereby contributing to the transparency and effectiveness of the arbitration process.

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.**

Section 58(1) of the Hong Kong Arbitration Ordinance introduces a provision that addresses arbitration agreements which include conditions for the initiation of arbitration or other dispute resolution procedures. Here is a breakdown of the provision:

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—”: This introductory clause sets the context for the entire section. It indicates that the section’s provisions are relevant to arbitration agreements that contain specific conditions or requirements that a claimant must fulfil within a stipulated timeframe in order to avoid their claim being barred or their right extinguished.
2. “(a) to commence arbitral proceedings”: This subparagraph states that one of the steps a claimant may need to take is to initiate arbitral proceedings. In some arbitration agreements, claimants are required to commence the arbitration process within a prescribed timeframe to prevent their claim from becoming time-barred.
3. “(b) to commence any other dispute resolution procedure that must be exhausted before arbitral proceedings may be commenced”: This subparagraph encompasses situations where the arbitration agreement requires the claimant to engage in an alternative dispute resolution (ADR) procedure before initiating arbitral proceedings. In some cases, parties are required to exhaust such alternative methods before they are allowed to commence arbitration.

Section 58(1) addresses a specific scenario in arbitration agreements where a claimant’s failure to take the specified step within the stipulated timeframe could lead to the barment of their claim or the extinguishment of their right. The provision acknowledges the diversity of dispute resolution mechanisms and the need for claimants to adhere to agreed-upon processes before being permitted to commence arbitration. It seeks to ensure that parties comply with the agreed-upon terms of dispute resolution and respect the procedural requirements outlined in the arbitration agreement.

- (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).**

Section 58(2) of the Hong Kong Arbitration Ordinance provides a mechanism by which parties to an arbitration agreement with the conditions described in subsection (1) can request an extension of the stipulated time or period within which the claimant is required to take a step to commence arbitral

proceedings or an alternative dispute resolution (ADR) procedure. Here is a breakdown of the provision:

1. “On the application of any party to such an arbitration agreement...”: This introductory phrase highlights that any party involved in the arbitration agreement can initiate the process outlined in this section. Parties may seek an extension of the time or period specified in the arbitration agreement to fulfil the required step before their claim is barred or their rights extinguished.
2. “...an arbitral tribunal may make an order extending the time or period referred to in subsection (1)”: This part states that the arbitral tribunal, upon receiving an application from a party, is authorised to issue an order granting an extension of the time or period as defined in subsection (1). This order would effectively extend the deadline within which the claimant must take the prescribed step to commence arbitral proceedings or exhaust an ADR procedure.

Section 58(2) introduces a mechanism for parties to seek an extension of the time or period specified in an arbitration agreement that triggers the requirement for a claimant to initiate arbitral proceedings or an ADR procedure. This provision acknowledges the need for flexibility in adhering to timeframes, taking into consideration potential complexities or circumstances that could hinder a party’s ability to fulfil the prescribed step within the specified period. It empowers the arbitral tribunal to grant such extensions upon application by a party, promoting fairness and procedural integrity within the arbitration process.

(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.

Section 58(3) of the Hong Kong Arbitration Ordinance adds a condition and procedural requirement to the application process for obtaining an extension of time as outlined in Section 58(2). Here is an analysis of the provision:

1. “An application may be made only after a claim has arisen...”: This phrase establishes a prerequisite for making an application for an extension of time under Section 58(2). The application can only be submitted after a claim has come into existence. A claim refers to a demand or assertion of legal rights made by one party against another. This condition ensures that applications for extensions are relevant to actual disputes rather than hypothetical or pre-emptive matters.
2. “...and after exhausting any available arbitral procedures for obtaining an extension of time”: This part of the section imposes a requirement that parties must exhaust any available internal arbitration procedures for seeking an extension of time before making an application to the arbitral tribunal. This implies that the arbitration agreement itself may provide a mechanism for parties to request an extension of the time period outlined in the agreement, and parties must use that internal procedure before seeking the tribunal’s intervention.

Section 58(3) reinforces the notion that an application for an extension of time, as permitted under Section 58(2), must be made under specific conditions. Parties are required to have a valid claim and must have attempted to exhaust any internal arbitral procedures for extending the specified time

period before resorting to the tribunal for relief. This approach aims to encourage parties to utilise the dispute resolution mechanisms available within the arbitration process before seeking external assistance from the arbitral tribunal.

- (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.**

Section 58(4) of the Hong Kong Arbitration Ordinance outlines the criteria and conditions that an arbitral tribunal must consider when deciding whether to make an order to extend the time or period specified in the arbitration agreement. Here is an analysis of the provision:

1. “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...”: This introductory statement establishes the threshold that the arbitral tribunal must meet before making an order to extend the time or period outlined in the arbitration agreement. The tribunal’s decision-making process is guided by the conditions and considerations presented in the subsequent paragraphs (a) and (b).
2. “...that— (i) the circumstances were such as to be outside the reasonable contemplation of the parties when they entered into the arbitration agreement; and”: This subsection (a)(i) sets the first condition for extending the time or period. The tribunal must determine whether the circumstances that necessitate the extension were unforeseeable and beyond the reasonable anticipation of the parties when they initially agreed to the arbitration terms. This condition acknowledges that unforeseen events or situations might arise that require flexibility in adhering to the strict terms of the arbitration agreement.
3. “...(ii) it would be just to extend the time or period; or”: This subsection (a)(ii) establishes the second condition for extending the time or period. Even if the circumstances were unforeseen, the tribunal must further assess whether it would be fair and just to grant an extension. This condition ensures that any extension granted aligns with the principles of fairness and equity and is not prejudicial to any party involved.
4. “...or (b) that the conduct of any party makes it unjust to hold the other party to the strict terms of the agreement”: This subsection (b) presents an alternative condition for extending the time or period. The tribunal may consider whether the conduct of one party is such that it would be unfair or unjust to enforce the strict terms of the arbitration agreement. If one party’s actions have contributed to the need for an extension, the tribunal may intervene to ensure that the other party is not unfairly disadvantaged.

Section 58(4) outlines the considerations and conditions that an arbitral tribunal should take into account when deciding whether to extend the time or period specified in the arbitration agreement. The provision aims to strike a balance between the original terms of the agreement and the need for flexibility and fairness when unforeseen circumstances or party conduct warrant an extension.

(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.

Section 58(5) of the Hong Kong Arbitration Ordinance empowers an arbitral tribunal to grant further extensions of the time or period specified in the arbitration agreement, even if the original time or any previous extension has already expired. Here is an analysis of the provision:

1. “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...”: This opening statement establishes the tribunal’s authority to grant additional extensions of time or periods, building upon the provisions outlined in subsections (1) and (4). It emphasises the tribunal’s discretionary power to determine the length of the extension and the conditions under which it will be granted.
2. “...and the tribunal may do so even though that time or period or the extended time or period has expired”: This statement underscores the tribunal’s wide-ranging authority. It clarifies that the tribunal can still exercise its power to grant extensions, even if the initial time or period specified in the agreement or any previous extension has already passed. This provision recognises that unforeseen circumstances or complexities may arise, making it necessary for the tribunal to intervene after the expiration of a timeframe.

Overall, Section 58(5) grants the arbitral tribunal considerable discretion to address situations where further extensions are required to achieve fairness and justice, even after time limits have lapsed. This provision allows the tribunal to adapt and respond to evolving circumstances during the arbitration proceedings, ensuring a balanced approach between adhering to timelines and accommodating unforeseen challenges.

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

Section 58(6) of the Hong Kong Arbitration Ordinance provides clarity on the scope and limitations of Section 58 in relation to other provisions within the Arbitration Ordinance:

1. “This section does not affect the operation of section 14...”: Section 14 of the Arbitration Ordinance likely pertains to the general time limit within which arbitral proceedings must be commenced. This clause states that the operation of Section 58, which deals with extensions of time for initiating arbitral proceedings, does not influence or alter the impact of Section 14. In essence, Section 14’s time limitations for initiating proceedings still apply, and the provision in Section 58 does not override or negate those limitations.

2. “...or any other enactment that limits the period for commencing arbitral proceedings”: This part of the clause extends the clarification beyond Section 14 to encompass any other laws or regulations that impose time limits for the commencement of arbitral proceedings. It ensures that Section 58’s provisions do not interfere with or modify time limitations set forth in other relevant laws or enactments, maintaining the overall consistency and coherence of the legal framework.

In essence, Section 58(6) serves as a safeguard to avoid potential conflicts between Section 58 and other provisions that establish strict time limits for initiating arbitral proceedings. It confirms that while Section 58 allows for extensions in certain circumstances, these extensions do not supersede the established time constraints set by Section 14 or any other applicable statutes.

(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.

Section 58(7) of the Hong Kong Arbitration Ordinance addresses the situation where the power granted to an arbitral tribunal by Section 58 needs to be exercised, but at that particular point, there is no active or functional arbitral tribunal available. It outlines the following key points:

1. Power conferred on an arbitral tribunal: This refers to the authority provided by Section 58 to the arbitral tribunal to extend the time or period for commencing arbitral proceedings in specific circumstances.
2. Exercisable by the Court: If, at the relevant time, there is no functioning arbitral tribunal capable of exercising the power described in Section 58, then the power to extend time or periods as outlined in Section 58 can be exercised by the Court. This means that the Court assumes the authority that the arbitral tribunal would have had under normal circumstances.
3. Relevant time: This refers to the time when the power to extend time or periods is needed. It is the time when an extension request is made or when it becomes apparent that the relevant time limits are not going to be met.
4. Arbitral tribunal not in existence or capable: If there is no active arbitral tribunal available or if the tribunal in existence is not capable of performing the action specified in Section 58, then the Court steps in to fulfil that role. This might occur if the tribunal has not yet been formed, is unable to convene, or if the specific arbitral proceedings fall outside the tribunal’s scope.

In summary, Section 58(7) ensures that the power granted to an arbitral tribunal under Section 58 can still be exercised, even if, for some reason, there is no arbitral tribunal capable of exercising that power at the relevant time. In such cases, the Court assumes the role and authority to make decisions regarding extending time or periods for commencing arbitral proceedings.

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

Section 58(8) of the Hong Kong Arbitration Ordinance addresses the legal status of an order issued by the Court when it exercises the power granted to it under Section 58(7). Here are the key points to consider:

1. **Order of the Court:** This refers to a decision or directive issued by the Court when it exercises the authority granted by subsection (7) of Section 58.
2. **Exercise of Power under Subsection (7):** Subsection (7) of Section 58 empowers the Court to exercise the authority to extend the time or period for commencing arbitral proceedings when there is no capable arbitral tribunal available.
3. **Not Subject to Appeal:** This part of the section clearly states that any order issued by the Court when it exercises its power under subsection (7) is not open to appeal. This means that the decision of the Court in such circumstances is final and cannot be challenged through an appeal process.

In summary, Section 58(8) establishes that any order made by the Court when it exercises its authority under Section 58(7) cannot be appealed. This provision contributes to the finality and certainty of the decisions made by the Court in these specific situations, emphasising that the Court's determination stands without the option of appeal by the parties involved.

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.

Section 59(1) of the Hong Kong Arbitration Ordinance deals with the obligation of a party to diligently pursue its claims under an arbitration agreement after the commencement of arbitral proceedings. Here are the key points to consider:

1. **Duty to Pursue Claims:** The section establishes a duty for a party who has a claim under an arbitration agreement to actively and diligently pursue that claim.
2. **Commencement of Arbitral Proceedings:** The duty to pursue claims without unreasonable delay applies after the arbitral proceedings have been formally commenced. This indicates that the responsibility to proceed diligently arises once the process is formally initiated.
3. **Unreasonable Delay:** The requirement is that the party must not engage in "unreasonable delay". This implies that parties are expected to handle their claims promptly and efficiently, without causing undue delays that could hinder the arbitration process.
4. **Arbitration Agreement:** The section specifies that this duty applies unless the arbitration agreement itself expresses a different arrangement. In other words, if the agreement

between the parties includes specific provisions about the timeline for pursuing claims, those provisions will take precedence over the general duty established in this section.

In summary, Section 59(1) establishes the general principle that a party with a claim under an arbitration agreement has an obligation to actively and promptly pursue that claim once the arbitral proceedings have commenced. This duty underscores the importance of efficiency and diligence in the arbitration process while recognising that the arbitration agreement's terms could modify this obligation if expressly stated.

(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.

Section 59(2) of the Hong Kong Arbitration Ordinance introduces a mechanism through which the arbitral tribunal can address cases of unreasonable delay by parties in pursuing their claims during arbitral proceedings. Here are the key points to consider:

1. **Harmonisation with UNCITRAL Model Law:** The section clarifies that its provisions do not affect Article 25 of the UNCITRAL Model Law, which is given effect to by Section 53(1) of the Hong Kong Arbitration Ordinance. This means that Section 59(2) operates in conjunction with Article 25 and does not undermine its application.
2. **Dismissal of Claim:** Under this section, the arbitral tribunal has the authority to make an award dismissing a party's claim if it is satisfied that the party has unreasonably delayed in pursuing the claim. This power allows the tribunal to take action against parties who fail to meet their obligation to pursue claims without unreasonable delay, ensuring the efficient progression of the arbitration process.
3. **Prohibition on Further Proceedings:** In addition to dismissing the claim, the tribunal can also make an order prohibiting the party from commencing further arbitral proceedings in respect of the same claim. This serves as a deterrent against repeated unreasonable delays and encourages parties to adhere to their obligation to proceed diligently.
4. **Unreasonable Delay:** The central premise of this provision is that unreasonably delayed claims can hinder the efficiency and effectiveness of arbitral proceedings. The tribunal's authority to dismiss claims and prohibit further proceedings serves as a tool to maintain the timeliness of the arbitration process.

In summary, Section 59(2) of the Hong Kong Arbitration Ordinance empowers the arbitral tribunal to take corrective actions when a party unreasonably delays in pursuing its claim during arbitral proceedings. This provision aims to ensure that parties fulfil their obligation to proceed without undue delay, thereby contributing to the overall efficiency and effectiveness of the arbitration process.

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

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

Section 59(3) of the Hong Kong Arbitration Ordinance outlines the circumstances under which the arbitral tribunal is authorised to make an award or order regarding unreasonable delay in pursuing a claim during arbitral proceedings. Here are the key points to consider:

1. **Initiation of Award or Order:** Section 59(3) grants the arbitral tribunal the authority to initiate and make an award or order related to unreasonable delay in pursuing a claim. This means that the tribunal can proactively address cases of unreasonable delay without relying solely on a party’s application.
2. **Party Application:** The section also allows any other party to apply to the arbitral tribunal for an award or order in cases of unreasonable delay. This means that parties who believe that another party is unreasonably delaying in pursuing a claim can request the tribunal to take appropriate action.
3. **Flexibility in Decision-Making:** By allowing the tribunal to initiate awards or orders on its own initiative and also responding to party applications, Section 59(3) provides flexibility in addressing cases of unreasonable delay. This approach acknowledges that the tribunal is in the best position to assess the overall progress of the proceedings and identify instances of delay that may impact the arbitration process.
4. **Efficiency and Fairness:** This provision contributes to the efficient and fair management of arbitral proceedings. It prevents unnecessary delays caused by parties who fail to diligently pursue their claims, which can lead to delays in the resolution of disputes.

In summary, Section 59(3) of the Hong Kong Arbitration Ordinance grants the arbitral tribunal the authority to make an award or order related to unreasonable delay in pursuing a claim during arbitral proceedings. The tribunal can initiate such action on its own initiative or in response to an application by any other party. This provision ensures that cases of unreasonable delay are addressed promptly and efficiently, contributing to the overall effectiveness of the arbitration process.

(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.**

Section 59(4) of the Hong Kong Arbitration Ordinance provides a definition and criteria for what constitutes “unreasonable delay” as referred to in Section 59(2) of the Hong Kong Arbitration Ordinance. Here is an analysis of the key elements of this provision:

1. **Definition of Unreasonable Delay:** Section 59(4) specifies that delay is considered unreasonable in the context of Section 59(2). It establishes two distinct criteria that determine the unreasonableness of delay based on the potential impacts of such delay on the arbitration process.
2. **Substantial Risk of Unfair Resolution:** The first criterion (a) states that delay is unreasonable if it gives rise to a substantial risk that the issues in the claim will not be resolved fairly. This criterion emphasises the importance of timely dispute resolution and aims to prevent situations where undue delay could compromise the fairness of the arbitration process.
3. **Serious Prejudice to Other Party:** The second criterion (b) asserts that delay is unreasonable if it has caused or is likely to cause serious prejudice to any other party involved in the arbitration. This recognises that excessive delay can harm the interests of other parties by affecting their ability to present evidence, build their case, or respond to arguments.
4. **Balancing Fairness and Timeliness:** Section 59(4) seeks to strike a balance between the need for fair and thorough resolution of issues and the importance of maintaining a reasonable pace in the arbitration proceedings. It acknowledges that unreasonable delays can undermine both the fairness of the process and the rights of other parties.
5. **Objective Criteria:** The criteria provided in Section 59(4) are objective in nature. They focus on the potential consequences of the delay rather than subjective reasons for the delay. This objective approach helps ensure consistent application of the provisions.

In summary, Section 59(4) of the Hong Kong Arbitration Ordinance establishes the criteria by which delay is deemed unreasonable under Section 59(2). The section considers both the potential risk to fair resolution and the potential serious prejudice to other parties resulting from the delay. By defining these criteria, the provision aims to ensure that unreasonable delays are addressed appropriately within the arbitration process, contributing to the overall efficiency and fairness of the proceedings.

(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.

Section 59(5) of the Hong Kong Arbitration Ordinance provides an alternative mechanism for the exercise of the power granted to the arbitral tribunal under Section 59 of the Hong Kong Arbitration Ordinance. Here is an analysis of the key elements of this provision:

1. **Alternative Authority:** Section 59(5) establishes that the power conferred on the arbitral tribunal by Section 59 of the ordinance can also be exercised by the Court. This means that if, for some reason, there is no arbitral tribunal in existence or the existing tribunal is unable to exercise the power, the Court steps in to fulfil that role.
2. **Ensuring Access to Remedy:** By allowing the Court to exercise the power in the absence of a capable arbitral tribunal, this provision ensures that parties have access to a mechanism for addressing unreasonable delay as outlined in Section 59(2)-(4). This is important to safeguard the interests of parties who may encounter delay-related issues.

3. **Continuity and Efficiency:** This provision contributes to the continuity and efficiency of the arbitration process. In situations where the original arbitral tribunal may not be functioning or accessible, the Court can step in to address issues of unreasonable delay, ensuring that proceedings are not unduly hindered.
4. **Balancing Judicial Authority:** The provision maintains a balance between the authority of the arbitral tribunal and the jurisdiction of the Court. It outlines a specific circumstance under which the Court can exercise powers that would typically belong to the arbitral tribunal.
5. **Safeguarding Parties' Rights:** By allowing the Court to step in when there is no functioning arbitral tribunal, Section 59(5) ensures that parties are not left without a recourse to address unreasonable delays, which could prejudice their rights and interests.
6. **Avoiding Paralysis:** This provision prevents the potential paralysis of the arbitration process due to the absence or inability of the arbitral tribunal. It ensures that issues related to unreasonable delay can still be addressed, promoting the overall effectiveness of the dispute resolution mechanism.

In summary, Section 59(5) of the Hong Kong Arbitration Ordinance provides a mechanism for the Court to exercise the power granted to the arbitral tribunal under Section 59 in cases where there is no capable arbitral tribunal available. This provision aims to ensure the availability of a remedy for unreasonable delay, maintain the efficiency of the arbitration process, and safeguard parties' rights even in situations where the original arbitral tribunal is unavailable or unable to act.

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

Section 59(6) of the Hong Kong Arbitration Ordinance establishes a crucial principle regarding the finality of awards or orders made by the Court in the exercise of its authority under Section 59(5) of the Hong Kong Arbitration Ordinance. Here is an analysis of the key elements of this provision:

1. **Finality of Decision:** Section 59(6) emphasises that an award or order made by the Court under the authority granted by Section 59(5) is not subject to appeal. This means that once the Court has exercised its power to address unreasonable delay in arbitral proceedings, the decision it makes cannot be challenged or overturned through an appeal process.
2. **Certainty and Closure:** This provision contributes to the finality and certainty of decisions related to addressing unreasonable delay. Parties involved in arbitration proceedings can rely on the Court's decision without the possibility of further legal challenges that might prolong the dispute resolution process.
3. **Judicial Efficiency:** By stipulating that these decisions are not appealable, the provision promotes judicial efficiency. It prevents unnecessary legal battles over the Court's decisions on delay-related matters, allowing the focus to remain on resolving the core issues of the arbitration.

4. Encouraging Compliance: The non-appealability of these decisions serves as an incentive for parties to comply with the Court's orders or awards. Knowing that the decision is final and not open to challenge encourages prompt compliance and respect for the arbitration process.
5. Promoting Arbitration as an Effective Mechanism: This provision reinforces the idea that arbitration is an efficient and expedited method of dispute resolution. By limiting the avenues for appeal, it encourages parties to address issues in a timely manner, contributing to the overall effectiveness of arbitration proceedings.
6. Balancing Interests: While promoting finality, this provision also balances the interests of parties involved in the arbitration. It ensures that parties have a means to address unreasonable delay and have their disputes resolved in a timely manner while also avoiding unnecessary legal battles that can hinder the process.

In summary, Section 59(6) of the Hong Kong Arbitration Ordinance solidifies the non-appealability of awards or orders made by the Court in the exercise of its authority under Section 59(5). This provision reinforces the efficiency and effectiveness of the arbitration process, ensures timely resolution of disputes, and promotes a sense of finality in decisions related to addressing unreasonable delay.

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.**

Section 60(1) of the Hong Kong Arbitration Ordinance grants the Court the authority to issue orders pertaining to the inspection, preservation, custody, or experimentation with relevant property in relation to arbitral proceedings. Here is a detailed analysis of this provision:

1. Court's Jurisdiction: The section outlines the Court's power to issue specific orders at the request of any party involved in arbitral proceedings. This jurisdiction extends to arbitral proceedings both within and outside Hong Kong, demonstrating the international scope of its application.
2. Scope of Orders (a): Section 60(1)(a) provides a range of potential orders the Court can make, including directing the inspection, photographing, preservation, custody, detention, or sale of relevant property. This aims to ensure the integrity of evidence and prevent the destruction, alteration, or loss of important property that is relevant to the arbitration.
3. Scope of Orders (b): Section 60(1)(b) empowers the Court to issue orders related to experiments, samples, and observations on relevant property. This may be especially

useful when the physical attributes or conditions of the property are crucial to the resolution of the dispute.

4. **Preservation of Evidence:** This section serves to preserve the evidence, including physical property, that may be central to the arbitral proceedings. Preserving the integrity of evidence is essential for a fair and informed resolution of the dispute.
5. **Balancing Interests:** The provision balances the interests of the parties by providing a mechanism for the Court to ensure that relevant property is appropriately handled and safeguarded. It prevents potential misuse or manipulation of evidence.
6. **Flexibility in Remedies:** The section offers a variety of remedies that can be tailored to the specific circumstances of the case. Parties can request different forms of intervention, such as inspection, photography, or preservation, depending on the nature of the evidence involved.
7. **Expert Involvement:** The provision allows for the involvement of experts in carrying out the orders, enhancing the accuracy and reliability of any observations, experiments, or inspections conducted.
8. **International Applicability:** The provision's applicability to arbitral proceedings outside Hong Kong underscores the importance of facilitating cross-border arbitration by providing mechanisms for securing and preserving evidence.
9. **Protection Against Destruction:** This section helps prevent parties from taking actions that could potentially destroy or alter evidence, promoting transparency and fairness in the arbitration process.

In summary, Section 60(1) of the Hong Kong Arbitration Ordinance empowers the Court to issue orders for inspection, preservation, custody, detention, sale, or experimentation on relevant property in relation to arbitral proceedings. This provision reflects the importance of maintaining the integrity of evidence and ensuring a fair resolution of disputes, both domestically and internationally.

(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.

Section 60(2) of the Hong Kong Arbitration Ordinance clarifies the criteria for determining what constitutes “relevant property” in the context of the orders issued under Section 60(1). Here is a detailed analysis of this provision:

1. **Defining Relevant Property:** Section 60(2) provides a clear definition of “relevant property” that is eligible for the orders specified in Section 60(1). It defines two scenarios where property becomes relevant:
 - a. **Property Subject to Arbitral Proceedings:** Property that forms the subject matter of the arbitral proceedings is inherently relevant and qualifies for the orders mentioned in Section 60(1). This includes property that is central to the dispute being arbitrated.

- b. Property Question Arises: Even if the property itself is not directly the subject of the arbitral proceedings, any dispute, claim, or question relating to the property that arises within the context of the arbitration also qualifies as “relevant property”.
2. Broad Interpretation: This definition is broad and comprehensive, encompassing both the property that is directly in contention and any property that becomes tangentially relevant due to questions or disputes arising during the arbitral proceedings.
3. Ensuring Comprehensive Authority: By defining “relevant property” in this manner, the provision ensures that the Court’s authority to issue orders under Section 60(1) extends to situations where property’s relevance might not be immediately obvious but is connected to the proceedings in some way.
4. Flexibility in Application: The definition allows for a flexible interpretation that accommodates a wide range of scenarios. This is crucial given the diversity of disputes that may arise in arbitration and the various forms of property that might be involved.
5. Comprehensive Approach to Evidence: By extending the definition of relevant property to encompass any property that is linked to questions or disputes within the arbitration, the section promotes a comprehensive approach to collecting and safeguarding evidence.
6. Balance of Interests: The provision maintains a balance between the parties’ rights and interests by ensuring that the Court’s authority can extend to property that may indirectly impact the proceedings.

In summary, Section 60(2) of the Hong Kong Arbitration Ordinance provides a clear definition of “relevant property” for the purposes of Section 60(1). This definition encompasses both property that is directly the subject of the arbitral proceedings and property that becomes relevant due to questions or disputes arising within the arbitration. This approach ensures a comprehensive scope for the Court’s authority to issue orders related to property inspection, preservation, custody, and experimentation in relation to 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.

Section 60(3) of the Hong Kong Arbitration Ordinance clarifies the jurisdiction and authority of the Court in relation to the powers granted by Section 60, particularly in comparison to the powers granted to an arbitral tribunal under Section 56. Here is a detailed analysis of this provision:

1. Court’s Jurisdiction: Section 60(3) explicitly confirms that the powers given to the Court under Section 60 are not restricted by the fact that similar powers may also be exercised by an arbitral tribunal under Section 56.
2. Independent Authority: The provision underscores the separate and independent authority of the Court in matters related to property inspection, preservation, custody, and experimentation. It reaffirms that the Court retains jurisdiction even when the arbitral tribunal has the power to issue similar orders.

3. **Flexibility and Choices:** By allowing both the Court and the arbitral tribunal to exercise these powers, the law provides parties with flexibility and options. This recognises that certain circumstances may warrant the intervention of the Court, while in others, parties might prefer that the arbitral tribunal handles these matters.
4. **Diverse Disputes:** Different disputes may have varying complexities, legal questions, and considerations related to property. Allowing both the Court and the arbitral tribunal to exercise these powers acknowledges the diverse nature of disputes and the need for tailored solutions.
5. **Comprehensive Approach:** The provision promotes a comprehensive approach to resolving disputes and managing evidence. Parties can choose the appropriate forum for seeking orders related to property, whether from the arbitral tribunal or the Court.
6. **Ensuring Fairness:** Parties' access to both the arbitral tribunal and the Court for property-related orders ensures that they have a fair opportunity to seek necessary measures to protect their rights, preserve evidence, and ensure a fair and just arbitral process.
7. **Avoiding Duplication:** While both the Court and the arbitral tribunal have these powers, they should work in harmony to avoid duplicative orders. The provision encourages coordination between the two forums to prevent conflicting or redundant decisions.

In summary, Section 60(3) of the Hong Kong Arbitration Ordinance confirms that the Court's powers granted under Section 60 can be exercised independently, irrespective of whether the arbitral tribunal also possesses similar powers under Section 56. This provision ensures a balanced and flexible approach to addressing property-related issues in arbitral proceedings, allowing parties to choose the appropriate forum for seeking necessary orders while promoting a comprehensive and fair resolution of disputes.

- (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.**

Section 60(4) of the Hong Kong Arbitration Ordinance outlines the circumstances under which the Court has the discretion to decline making an order under Section 60. Here is a detailed analysis of this provision:

1. **Respect for Arbitral Process:** Section 60(4) acknowledges the importance of respecting ongoing arbitral proceedings and the authority of the arbitral tribunal to manage certain matters within the scope of its powers.
2. **Efficiency and Specialisation:** By allowing the Court to decline making an order, the law recognises that arbitral tribunals are often well-suited to handle specific issues related to the arbitral proceedings, including matters outlined in subsection (1) of Section 60. This contributes to efficiency and specialisation in dispute resolution.

3. **Avoiding Duplicative Proceedings:** Declining to make an order under Section 60(4) helps avoid the possibility of parallel proceedings or conflicting orders from both the Court and the arbitral tribunal. This can help prevent confusion and ensure consistency in the resolution of disputes.
4. **Promoting Party Autonomy:** This provision aligns with the principle of party autonomy in arbitration. If parties have agreed to arbitrate their disputes, it may be more appropriate for the arbitral tribunal to handle issues arising within that process.
5. **Case-by-Case Assessment:** The Court's discretion to decline making an order is exercised on a case-by-case basis. This allows for a nuanced assessment of the specific circumstances surrounding the dispute and the appropriateness of Court intervention.
6. **Balancing Interests:** This provision strikes a balance between the Court's role in providing support and the arbitral tribunal's authority to manage proceedings. It takes into consideration the best interests of the parties and the overall effectiveness of the arbitration process.
7. **Judicial Restraint:** By giving the Court the discretion to decline making an order, the provision embodies a principle of judicial restraint, ensuring that the Court only intervenes when necessary and where its intervention adds value to the proceedings.

In summary, Section 60(4) of the Hong Kong Arbitration Ordinance grants the Court the discretion to decline making an order under Section 60(1) if the matter in question is currently being addressed in arbitral proceedings and the Court deems it more appropriate for the arbitral tribunal to handle the matter. This provision upholds the efficiency and specialisation of the arbitral process while allowing the Court to exercise careful discretion in matters where its intervention is warranted.

(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.

Section 60(5) of the Hong Kong Arbitration Ordinance introduces a mechanism that allows an order made by the Court under Section 60 to be subject to cessation based on the arbitral tribunal's subsequent decision. Here is a detailed analysis of this provision:

1. **Coordinated Decision-Making:** Section 60(5) aims to ensure coordination and harmonisation between the Court and the arbitral tribunal. It provides a way for both judicial and arbitral bodies to work together in addressing the same matter and modifying or lifting orders as needed.
2. **Respect for Tribunal's Role:** By allowing the arbitral tribunal to issue orders for cessation, this provision acknowledges the authority of the arbitral tribunal over the arbitration process. It reflects the principle that the arbitral tribunal is best suited to manage the ongoing proceedings.
3. **Flexibility in Modification:** The provision gives the Court flexibility to include a provision for the cessation of the order it issues, in whole or in part. This allows for adjustments to be made based on subsequent developments in the arbitration process.

4. **Avoiding Duplication:** The mechanism outlined in Section 60(5) helps prevent conflicting orders by allowing the arbitral tribunal to decide whether the order issued by the Court should continue or cease. This minimises confusion and promotes consistency.
5. **Efficiency in Dispute Resolution:** Allowing the arbitral tribunal to take control of the cessation decision can expedite the process and avoid the need for parties to seek separate modifications from the Court.
6. **Maintaining Equilibrium:** Section 60(5) balances the Court’s initial involvement with the subsequent decisions of the arbitral tribunal. It recognises that the needs and dynamics of the arbitration process may change over time.
7. **Preserving Party Autonomy:** By allowing the arbitral tribunal to determine the cessation of an order, the provision aligns with the principle of party autonomy, as parties may want the arbitral tribunal to handle procedural matters arising within the arbitration.

In summary, Section 60(5) of the Hong Kong Arbitration Ordinance establishes a mechanism that enables the Court’s orders made under Section 60 to be subject to cessation or modification by the arbitral tribunal. This approach supports coordinated decision-making, respects the authority of the arbitral tribunal, and promotes efficiency and consistency in the dispute resolution process.

(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.

Section 60(6) of the Hong Kong Arbitration Ordinance introduces a limitation on the Court’s power to make orders under Section 60(1) concerning arbitral proceedings conducted outside of Hong Kong. Here is a detailed analysis of this provision:

1. **Jurisdictional Limitation:** Section 60(6) establishes a jurisdictional criterion that the Court must consider before making an order under Section 60(1). It emphasises that the Court’s power to make such orders is restricted to cases where the arbitral proceedings outside Hong Kong are capable of leading to an arbitral award that can be enforced within the jurisdiction of Hong Kong.
2. **Enforcement Compatibility:** This provision aligns with the principle of enforcement of arbitral awards. It ensures that the Court’s intervention in the form of orders for inspection, preservation, or other actions is relevant and meaningful in the context of potential enforcement within Hong Kong.
3. **Harmonisation of Jurisdiction and Enforcement:** Section 60(6) reflects a policy of ensuring that orders made by the Court have a direct impact on proceedings that are subject to enforcement within Hong Kong. This avoids creating situations where orders issued by the Court have limited enforceability within its own jurisdiction.
4. **Supporting Effective Dispute Resolution:** By linking the Court’s power to enforceability, the provision contributes to the effectiveness of arbitration as a dispute resolution

mechanism. It discourages parties from seeking orders in jurisdictions where the ultimate enforcement of awards would be challenging.

5. **Promotion of Predictability:** Section 60(6) provides clarity to parties involved in arbitral proceedings outside Hong Kong. It helps them understand the circumstances under which they can seek the Court's assistance for orders related to relevant property.
6. **Balancing Sovereign Interests:** The provision acknowledges that the Court's authority is limited to matters that are consistent with Hong Kong's legal framework and jurisdictional reach. This maintains a balance between the interests of the arbitration process and the sovereignty of different jurisdictions.

In summary, Section 60(6) of the Hong Kong Arbitration Ordinance establishes a condition that the Court may make orders under Section 60(1) only if the relevant arbitral proceedings, conducted outside Hong Kong, are capable of leading to an arbitral award enforceable within Hong Kong. This provision ensures a coherent relationship between the Court's intervention, the location of the arbitral proceedings, and the enforceability of eventual awards.

(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.**

Section 60(7) of the Hong Kong Arbitration Ordinance provides further clarification and extends the applicability of Section 60(6) in cases where certain conditions might suggest a limitation on the Court's jurisdiction or ancillary authority. Here is a detailed analysis of this provision:

1. **Non-Jurisdictional Concerns:** Subsection (7)(a) addresses the scenario where the subject matter of the arbitral proceedings might not typically fall within the Court's jurisdiction to hear a cause of action. It indicates that even if the Court might not otherwise have jurisdiction over the underlying dispute, Section 60(6) can still be invoked to grant orders related to the arbitral proceedings outside Hong Kong.
2. **Expanding Ancillary Authority:** Subsection (7)(b) extends the reach of Section 60(6) to include cases where the order sought is not directly connected to any ongoing arbitral proceedings within Hong Kong. This suggests that the Court's power to grant orders is not limited only to proceedings that are taking place within its own jurisdiction.
3. **Flexibility and Support for Arbitration:** By allowing Section 60(6) to apply even when the order sought might not fall within the Court's traditional jurisdiction or might not be directly linked to local arbitral proceedings, this provision underscores the broader support for international arbitration.
4. **Avoiding Jurisdictional Technicalities:** This provision prevents jurisdictional technicalities from obstructing the ability of the Court to provide assistance in cases where such assistance is crucial for effective arbitral proceedings.

5. Recognising International Nature of Arbitration: Section 60(7) aligns with the principle that international arbitration often involves cross-border elements. It reflects the Ordinance’s intent to facilitate the arbitration process regardless of jurisdictional boundaries.
6. Ensuring Enforcement Relevance: Both (a) and (b) of Subsection (7) emphasise that the focus of the Court’s power is on matters related to the effectiveness of arbitral proceedings and their potential enforceability, rather than solely on traditional notions of jurisdiction.

In summary, Section 60(7) of the Hong Kong Arbitration Ordinance clarifies that the provisions of Section 60(6) apply even in situations where the subject matter of the arbitral proceedings might not ordinarily give rise to a cause of action within the Court’s jurisdiction, or where the order sought is not directly ancillary to Hong Kong-based arbitral proceedings. This provision underscores the Ordinance’s commitment to facilitating international arbitration and the enforceability of arbitral awards across jurisdictions.

(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.**

Section 60(8) of the Hong Kong Arbitration Ordinance provides guidance on how the Court should exercise its power under Section 60(1) concerning arbitral proceedings that are taking place outside Hong Kong. It emphasises the relationship between the Court’s power and the primary jurisdiction of other courts or arbitral tribunals. Here is a detailed analysis of this provision:

1. Ancillary Nature of the Power: Subsection (8)(a) highlights that the Court’s power under Section 60(1) is ancillary to the arbitral proceedings that are being conducted outside Hong Kong. This means that the Court’s role is to provide support and assistance to the primary arbitral proceedings rather than assuming primary jurisdiction.
2. Facilitating External Jurisdiction: Subsection (8)(b) underscores that the Court’s exercise of power is intended to facilitate the overall arbitration process in cases where a court or arbitral tribunal outside Hong Kong holds primary jurisdiction. The Court is acting in a supportive role to enhance the efficiency and effectiveness of the primary jurisdiction.
3. Avoiding Conflict or Duplication: By having regard to the primary jurisdiction of external courts or arbitral tribunals, the Court aims to avoid unnecessary conflict or duplication of efforts. It respects the roles and authorities of other forums while still contributing to the overall process.
4. Harmonisation of Efforts: This provision promotes a coordinated approach to international arbitration, ensuring that the various parties involved work together to achieve fair and just outcomes. It recognises that different aspects of a dispute may be addressed by different forums.

5. **Global Recognition and Respect:** By taking into consideration the primary jurisdiction outside Hong Kong, the provision reinforces the importance of recognising and respecting the roles and decisions of other jurisdictions in the international arbitration arena.
6. **Comity and Cooperation:** The provision reflects the principles of comity and cooperation between different jurisdictions and arbitral tribunals, ultimately benefitting parties seeking efficient and enforceable resolution of their disputes.

In summary, Section 60(8) of the Hong Kong Arbitration Ordinance guides the Court's exercise of power under Section 60(1) when dealing with arbitral proceedings outside Hong Kong. It emphasises the supportive and ancillary nature of the Court's role in such cases and underscores the importance of facilitating the primary jurisdiction of other courts or arbitral tribunals. This provision aligns with the Ordinance's commitment to harmonising efforts and respecting the global nature of international arbitration processes.

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

Section 60(9) of the Hong Kong Arbitration Ordinance addresses the appealability of orders or decisions made by the Court under Section 60 of the Hong Kong Arbitration Ordinance. Here is a closer look at this provision:

1. **Finality and Certainty:** Section 60(9) reinforces the finality of the Court's orders or decisions made under this section. It aims to provide certainty to the parties involved in arbitral proceedings by limiting the scope for appeal.
2. **Efficiency of Arbitration Process:** By making orders or decisions under this section not subject to appeal, the legislative intent appears to be focused on preserving the efficiency and effectiveness of the arbitration process. This avoids unnecessary delays caused by appellate proceedings.
3. **Reducing Legal Complexity:** Arbitration proceedings often involve parties seeking a streamlined and timely resolution of their disputes. By limiting the potential for appeals, Section 60(9) simplifies the legal process and reduces the potential for prolonged litigation.
4. **Respecting Party Agreements:** The provision may also respect the agreement of the parties who have chosen arbitration as their preferred method of dispute resolution. Parties typically opt for arbitration to gain more control over their dispute resolution process and to avoid the complexities associated with traditional court litigation, including appeals.
5. **Promoting Finality of Decisions:** Finality is a key principle in arbitration, and Section 60(9) aligns with this principle. Parties are expected to accept and abide by arbitral decisions, and this provision discourages attempts to challenge those decisions through appeal.
6. **Fostering International Enforcement:** Limiting the appealability of orders or decisions in relation to arbitral proceedings outside Hong Kong can also enhance the enforceability of

arbitral awards globally. This aligns with Hong Kong’s commitment to promoting itself as a favourable arbitration seat.

7. Encouraging Predictability: By making orders or decisions non-appealable, parties can have a more predictable understanding of the legal landscape and the consequences of their actions.

In summary, Section 60(9) of the Hong Kong Arbitration Ordinance underscores the finality of orders or decisions made by the Court under Section 60. By making these orders or decisions not subject to appeal, the provision aims to maintain the efficiency, effectiveness, and integrity of the arbitration process while respecting the parties’ choice to engage in arbitration for their dispute resolution needs.

(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.

Section 60(10) of the Hong Kong Arbitration Ordinance addresses the process of appealing orders of the Court made under Section 60(1) of the Hong Kong Arbitration Ordinance, specifically in cases related to the sale of relevant property. Here is a closer look at this provision:

1. Appellate Control: Section 60(10) introduces a requirement for obtaining the leave (permission) of the Court before a party can file an appeal against an order of the Court made under Section 60(1) for the sale of relevant property. This means that parties seeking to appeal such an order must first seek the Court’s permission to do so.
2. Balancing Interests: This provision strikes a balance between allowing parties to seek an appeal when substantial issues are at stake while also preventing frivolous or unnecessary appeals that could disrupt or delay the arbitration process.
3. Control over Appeals: Requiring leave to appeal gives the Court a degree of control over the appellate process. The Court can assess the merits of the appeal and the potential impact on the arbitration process before granting permission to proceed.
4. Efficiency and Finality: By requiring leave for appeals, Section 60(10) contributes to the efficiency of the legal process and reinforces the principle of finality in arbitration. It helps avoid potential delays caused by appeals that may not have strong grounds.
5. Protection of Arbitral Process: This provision safeguards the integrity of the arbitration process by ensuring that parties cannot easily disrupt the proceedings through an appeal without a legitimate basis.
6. Protection of Property Interests: The requirement for leave to appeal in cases involving the sale of relevant property is significant because property rights and interests may be affected. The provision aims to prevent speculative appeals that could disrupt property transactions without a reasonable basis.
7. Promotion of Certainty: By imposing a requirement for leave to appeal, Section 60(10) adds an extra layer of certainty to the appeals process. Parties can be reasonably assured that appeals will only be entertained when there is a legitimate reason to challenge the order.

In summary, Section 60(10) of the Hong Kong Arbitration Ordinance introduces the requirement for leave of the Court to appeal orders made under Section 60(1) for the sale of relevant property. This provision strikes a balance between the parties' right to appeal and the need to maintain efficiency, finality, and the integrity of the arbitration process. It offers an additional safeguard against frivolous appeals while ensuring that legitimate appeals can still be pursued.

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.

Section 61(1) of the Hong Kong Arbitration Ordinance addresses the enforceability of orders or directions made by an arbitral tribunal in relation to arbitral proceedings. Here is a closer look at this provision:

1. **Enforceability of Arbitral Tribunal's Orders:** Section 61(1) establishes that orders or directions issued by an arbitral tribunal, whether they originate within or outside Hong Kong, are enforceable. This means that parties are legally obligated to comply with these orders in the same way they would be for a court order.
2. **Comparable to Court Orders:** The provision equates the enforceability of arbitral tribunal orders to that of orders issued by a court, highlighting the significance of the decisions made by arbitral tribunals in the arbitration process.
3. **Leave of the Court:** While arbitral tribunal orders are enforceable, the critical aspect of this provision is the requirement for leave (permission) from the Court to enforce them. This adds a layer of oversight to ensure that the orders meet certain legal criteria and are in line with the provisions of the arbitration ordinance.
4. **Balancing Enforcement and Judicial Review:** Requiring leave from the Court strikes a balance between promoting the enforceability of arbitral tribunal orders and providing a mechanism for parties to seek judicial review if they believe the orders were issued improperly or unfairly.
5. **Protection of Due Process:** The requirement for leave ensures that orders or directions issued by arbitral tribunals are consistent with the principles of natural justice and fairness. If a party believes that an order is unjust or in violation of procedural fairness, they can seek judicial review.
6. **Enhancing Confidence:** By granting the Court the authority to grant leave for enforcing arbitral tribunal orders, Section 61(1) adds an element of confidence in the arbitration process, as there is a mechanism to review and validate these orders when necessary.
7. **Safeguarding Against Abuse:** Requiring leave of the Court prevents the misuse of arbitral tribunal orders for illegitimate purposes, as parties cannot readily enforce an order without demonstrating its validity to the Court.

In summary, Section 61(1) of the Hong Kong Arbitration Ordinance emphasises that orders or directions issued by an arbitral tribunal are enforceable in a manner comparable to court orders. However, the provision requires parties to obtain leave from the Court before enforcing such orders. This balance between enforcement and judicial oversight contributes to the credibility and fairness of the arbitration process, protecting parties' rights and ensuring due process.

(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.

Section 61(2) of the Hong Kong Arbitration Ordinance addresses the enforceability of orders or directions made by an arbitral tribunal outside of Hong Kong. Here is a closer look at this provision:

1. **Enforcement of Foreign Arbitral Orders:** Section 61(2) deals specifically with orders or directions that originate from arbitral tribunals located outside Hong Kong. It outlines the conditions under which such foreign orders can be enforced within the jurisdiction of Hong Kong.
2. **Consistency with Local Types of Orders:** The key requirement for the enforcement of foreign arbitral orders is that they must belong to a type or description of order that could be issued by an arbitral tribunal in Hong Kong for arbitral proceedings. This requirement ensures that the foreign order aligns with the legal framework and practices of Hong Kong.
3. **Ensuring Equivalence:** By mandating that the foreign order must be of a type that can be made in Hong Kong, this provision ensures a degree of equivalence between foreign and local orders, promoting fairness and consistency in the enforcement process.
4. **Harmonisation of Legal Standards:** The provision reflects a harmonisation of standards between foreign and domestic arbitral orders. It ensures that the legal principles applied in enforcing foreign orders are similar to those applied in domestic cases, reinforcing the integrity of the arbitration process.
5. **Preventing Unrecognised Orders:** The requirement to demonstrate that the foreign order can be made within the local jurisdiction prevents the enforcement of arbitrary or unusual orders that may not align with the principles of Hong Kong law.
6. **Avoiding Potential Abuse:** By specifying the types of orders or directions that can be enforced from foreign jurisdictions, Section 61(2) safeguards against potential misuse of foreign orders that could be inconsistent with local legal principles or public policy.
7. **Facilitating International Enforcement:** While the provision imposes an additional requirement for enforcement, it also ensures that foreign orders that are consistent with local standards can be recognised and enforced in Hong Kong. This facilitates international arbitration and provides a framework for parties to have confidence in the cross-border enforcement of arbitral awards.

In summary, Section 61(2) of the Hong Kong Arbitration Ordinance stipulates that foreign orders or directions made by arbitral tribunals outside Hong Kong can be enforced within the jurisdiction, provided they belong to a type or description of order that could be made in Hong Kong for arbitral proceedings. This requirement ensures consistency and fairness while preventing the enforcement of orders that do not align with local legal principles. It strikes a balance between facilitating international arbitration and maintaining the integrity of the local legal system.

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

Section 61(3) of the Hong Kong Arbitration Ordinance provides for the process of entering judgment based on a granted leave for the enforcement of an arbitral order or direction. Here is a closer look at this provision:

1. **Execution of the Order:** Once the Court grants leave for the enforcement of an arbitral order or direction made by an arbitral tribunal (whether domestic or foreign), this subsection authorises the Court to take the next step, which is to enter judgment based on the terms of the order or direction.
2. **Legal Recognition:** The act of entering judgment implies that the Court formally recognises and gives legal effect to the arbitral order or direction. It transforms the arbitral order into a legally enforceable judgment within the jurisdiction of Hong Kong.
3. **Binding Effect:** The judgment entered by the Court becomes legally binding on the parties involved. This means that the party seeking enforcement can now utilise the judicial system to execute the order or direction in a manner similar to the enforcement of a court judgment.
4. **Enforcement Mechanism:** By allowing the Court to enter judgment in terms of the arbitral order, this provision provides a streamlined and effective mechanism for the party seeking enforcement. The party can leverage the full range of legal tools available for the execution of judgments.
5. **Finality and Efficiency:** This provision promotes the finality of the arbitral proceedings by enabling swift enforcement. It avoids the need for a separate legal action to enforce the order, which could be time-consuming and costly.
6. **Consistency with Domestic Orders:** The procedure for entering judgment is consistent with how judgments from domestic court proceedings are executed. This ensures that the enforcement process for arbitral orders aligns with established legal practices.
7. **International Recognition:** For foreign arbitral orders that are enforced under Section 61(1), entering judgment provides a clear means of recognition and enforcement within Hong Kong. It also facilitates the recognition of such judgments in other jurisdictions under international conventions and treaties.

In summary, Section 61(3) of the Hong Kong Arbitration Ordinance establishes the process for entering judgment based on a granted leave for the enforcement of arbitral orders or directions. This provision

allows the Court to recognise and enforce the arbitral order as a binding judgment, providing an effective mechanism for executing the terms of the order within the jurisdiction of Hong Kong.

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

Section 61(4) of the Hong Kong Arbitration Ordinance addresses the appealability of the Court's decisions regarding the granting or refusal of leave for the enforcement of an arbitral order or direction. Here is a closer look at this provision:

1. **Finality of Court Decision:** Section 61(4) establishes that the decision of the Court to either grant or refuse leave for the enforcement of an arbitral order or direction is considered final and not subject to appeal. This decision-making process is intended to bring a sense of conclusiveness to the matter.
2. **Promoting Efficiency:** By excluding the option of appeal, this provision aims to promote efficiency in the enforcement process. It avoids unnecessary delays and potential challenges that could arise from prolonged appeals, ensuring a more streamlined enforcement process.
3. **Encouraging Compliance:** The lack of appeal underscores the importance of parties adhering to the arbitral orders and directions. Parties are more likely to comply with the decisions of the Court and the arbitral tribunal if they understand that the decisions are final and enforceable without prolonged legal battles.
4. **Predictability and Certainty:** Parties seeking to enforce arbitral orders can rely on the Court's decision without concerns about subsequent appeals. This promotes legal predictability and certainty in the enforcement process.
5. **Congruence with Arbitration's Expediency:** The provision aligns with the overall expediency of arbitration. One of the advantages of arbitration is its quicker dispute resolution compared to traditional court proceedings. Excluding appeals from decisions related to enforcement fits within this context.
6. **Respect for Arbitral Process:** This provision respects the autonomy of arbitration as a dispute resolution method. Parties agree to arbitration precisely to avoid lengthy and complex court appeals, so decisions related to enforcement are addressed promptly within the arbitration process.
7. **Consistency with International Practices:** Many jurisdictions worldwide adopt similar principles regarding the finality of decisions related to the enforcement of arbitral orders. This is in line with international arbitration practices and principles.

In summary, Section 61(4) of the Hong Kong Arbitration Ordinance establishes that decisions of the Court regarding the granting or refusal of leave for the enforcement of arbitral orders or directions are not subject to appeal. This provision enhances efficiency, encourages compliance, and aligns with the principles of arbitration as a swift and effective dispute resolution mechanism.

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

Section 61(5) of the Hong Kong Arbitration Ordinance clarifies the scope of “order or direction” mentioned in Section 61, specifically highlighting that it encompasses interim measures. Here is a closer examination of this provision:

1. **Inclusion of Interim Measures:** Section 61(5) explicitly states that an “order or direction” as mentioned throughout the section includes interim measures. An interim measure refers to a temporary measure issued by an arbitral tribunal to maintain or restore the status quo pending the final resolution of a dispute. By clarifying that interim measures are covered, the provision ensures that these measures can also be enforced with the leave of the Court under the same rules as other orders or directions.
2. **Consistency in Enforcement:** Including interim measures in the scope of this section ensures consistency in the enforcement process. Regardless of whether an order pertains to a final award or a temporary interim measure, the same standards and procedures for enforcement apply.
3. **Effective Relief:** Parties seeking interim measures from an arbitral tribunal can be assured that the measures, once granted, can be enforced with the Court’s leave. This enhances the efficacy of interim measures as they become actionable and enforceable.
4. **Protecting Parties’ Rights:** Including interim measures in the scope of enforceable orders or directions safeguards the rights of parties who have secured these measures. It prevents parties from evading their obligations by refusing to comply with interim measures.
5. **Facilitating Efficiency:** This provision aligns with the efficiency goals of arbitration. By ensuring the enforceability of interim measures, parties can swiftly obtain relief when urgent situations arise, thereby promoting the overall effectiveness of the arbitration process.
6. **Global Practice Consistency:** Many international arbitration frameworks, including those based on the UNCITRAL Model Law (which the Hong Kong Arbitration Ordinance is partially derived from), recognise the importance of enforcing interim measures. This aligns the Hong Kong Ordinance with global arbitration practices.
7. **Balancing Equitable Remedies:** Including interim measures in the section underscores the importance of granting parties equitable remedies to preserve their rights and interests while a dispute is ongoing.

In summary, Section 61(5) of the Hong Kong Arbitration Ordinance explicitly states that the term “order or direction” includes interim measures. This provision promotes consistency, effectiveness, and the enforceability of interim measures, aligning with the principles of efficient arbitration and equitable dispute resolution.

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

- (1) Where an arbitrator’s mandate terminates under article 13 of the UNCITRAL Model Law, given effect to by section 26, or under article 14 of the UNCITRAL Model Law, given effect to by section 27, then on the application of any party, the Court, in its discretion and having regard to the conduct of the arbitrator and any other relevant circumstances—**
- (a) may order that the arbitrator is not entitled to receive the whole or part of the arbitrator’s fees or expenses; and**
 - (b) may order that the arbitrator must repay the whole or part of the fees or expenses already paid to the arbitrator.**

Section 62(1) of the Hong Kong Arbitration Ordinance deals with the termination of an arbitrator’s mandate as governed by the UNCITRAL Model Law and provides the Court with discretionary powers to take actions concerning the arbitrator’s fees and expenses. Here is a closer analysis of this provision:

1. **Termination of Arbitrator’s Mandate:** The subsection specifies that its provisions come into play when an arbitrator’s mandate is terminated in accordance with Article 13 (failure or impossibility to act) or Article 14 (challenge to arbitrator) of the UNCITRAL Model Law, as adopted and applied by Sections 26 and 27 of the Hong Kong Arbitration Ordinance, respectively.
2. **Court Discretion:** The Court is given the discretionary authority to decide on the appropriate actions in cases where an arbitrator’s mandate is terminated. This empowers the Court to consider the specific circumstances surrounding the termination before making decisions regarding the arbitrator’s fees and expenses.
3. **Consideration of Conduct and Circumstances:** The Court’s discretion is guided by a range of factors, with a significant emphasis on the arbitrator’s conduct during the arbitration process and any other relevant circumstances. This underscores the importance of ensuring fairness and integrity in the arbitration proceedings.
4. **Remedy for Unfulfilled Mandate:** If the Court determines that the arbitrator’s conduct or other circumstances warrant it, it has the authority to order that the arbitrator forfeit some or all of the fees or expenses they would have received for their services as an arbitrator.
5. **Repayment of Fees:** In certain situations, the Court can also order that the arbitrator return some or all of the fees or expenses already received. This provision is likely intended to ensure that arbitrators do not benefit financially from an incomplete or terminated mandate due to their own conduct or other factors.
6. **Balancing Interests:** This provision aims to balance the interests of all parties involved – the parties to the arbitration, as well as the arbitrator. It encourages arbitrators to act professionally and responsibly while providing parties with a potential remedy if an arbitrator’s conduct or actions disrupt the arbitration proceedings.
7. **Promotion of Accountability:** By allowing for the possibility of financial consequences for arbitrators, the provision emphasises accountability and encourages arbitrators to fulfil their duties diligently, ethically, and in accordance with the applicable standards.

8. Consistency with UNCITRAL Model Law: This provision aligns with the objectives of the UNCITRAL Model Law, which seeks to establish a framework for fair and effective arbitration processes.

In summary, Section 62(1) of the Hong Kong Arbitration Ordinance grants the Court discretionary powers to address situations where an arbitrator's mandate is terminated under specified circumstances. It emphasises the importance of considering the arbitrator's conduct and relevant circumstances and allows the Court to order measures regarding fees and expenses to ensure fairness, accountability, and the proper functioning of the arbitration process.

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

Section 62(2) of the Hong Kong Arbitration Ordinance provides clarity on the appealability of orders issued by the Court under Section 62(1) of the Hong Kong Arbitration Ordinance. Here is an analysis of this provision:

1. Finality of Orders: This provision establishes the finality of orders made by the Court under Section 62(1). It indicates that once the Court has exercised its discretionary authority and issued an order related to an arbitrator's fees and expenses, that order cannot be appealed.
2. Judicial Efficiency: By stipulating that such orders are not subject to appeal, the provision contributes to the efficiency of the arbitration process. It helps prevent unnecessary delays and additional legal proceedings that could arise from appeals related to arbitrator's fees and expenses.
3. Promotion of Certainty: The provision promotes legal certainty by ensuring that the decisions of the Court on matters covered by Section 62(1) are final and binding. This clarity benefits both parties involved in arbitration and the arbitrators themselves.
4. Consistency with Arbitration Principles: The concept of finality in arbitration is consistent with the principles of arbitration as an alternative dispute resolution mechanism. Final and binding decisions are crucial for maintaining the effectiveness and efficiency of arbitration as a means of resolving disputes.
5. Balancing Party Interests: While the provision establishes finality, it is important to remember that parties involved in arbitration can still seek redress for issues related to arbitrator conduct, fees, and expenses through other legal avenues, such as a separate legal action if the circumstances warrant.
6. Preservation of the Arbitration Process: The provision supports the integrity of the arbitration process by avoiding prolonged legal battles over arbitrator fees and expenses, which could undermine the primary objective of resolving disputes efficiently and impartially.
7. Correlation with Section 62(1): The finality of orders under Section 62(2) underscores the significance of the Court's discretionary powers outlined in Section 62(1) regarding arbitrator's fees and expenses.

In summary, Section 62(2) of the Hong Kong Arbitration Ordinance affirms that orders issued by the Court under Section 62(1) regarding arbitrator's fees and expenses are not subject to appeal. This provision maintains the finality of the Court's decisions on these matters and contributes to the effectiveness and efficiency of the arbitration process.

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.**

Section 63 of the Hong Kong Arbitration Ordinance addresses the applicability of certain provisions from the Legal Practitioners Ordinance to various activities related to arbitral proceedings. Here is an analysis of this provision:

1. **Exclusion from Legal Practitioners Ordinance:** Section 63 provides a clear exclusion from the specified sections (44, 45, and 47) of the Legal Practitioners Ordinance for activities connected to arbitral proceedings. This exclusion recognises the unique nature of arbitration and the distinct legal context it operates in.
2. **Autonomy of Arbitration:** Arbitration is intended to provide parties with a flexible and independent process for resolving disputes. The exclusion from the specified sections of the Legal Practitioners Ordinance supports this autonomy by allowing parties to engage in various activities related to arbitration without being subject to certain regulations meant for court proceedings.
3. **Freedom to Seek Expert Advice:** Parties engaging in arbitral proceedings are often advised by experts in their respective fields. This section allows for the provision of advice and preparation of documents without being restricted by the regulations that apply to the practice of law in traditional court settings.
4. **Facilitating Efficient Arbitration:** The exclusion from the specified sections of the Legal Practitioners Ordinance aims to facilitate the efficiency of arbitration proceedings. It avoids unnecessary complications that could arise if strict regulatory requirements were applied to arbitration-related activities.

5. **Clarifying Boundaries:** This section clearly defines the scope of its application by outlining what is excluded from the specified sections of the Legal Practitioners Ordinance. It specifies that the exclusion applies to activities related to arbitral proceedings but not to activities connected to court proceedings that arise from or are related to arbitration.
6. **Promotion of Arbitration as an ADR Method:** By exempting certain activities related to arbitral proceedings from the regulatory framework designed for traditional legal practice, this section encourages the use of arbitration as an effective alternative dispute resolution (ADR) method.
7. **Balancing Protection and Flexibility:** While this section provides flexibility for arbitration-related activities, it is important to ensure that parties seeking legal advice within the context of arbitration are adequately protected and guided by ethical considerations.

In summary, Section 63 of the Hong Kong Arbitration Ordinance excludes the application of specific sections from the Legal Practitioners Ordinance to activities related to arbitral proceedings. This exclusion acknowledges the unique nature of arbitration and its role as an efficient and flexible method for dispute resolution, while also upholding the necessary legal and ethical standards for the practice of law within the context of arbitration.

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.”**

Please refer to the commentary on Article 28 of the UNCITRAL Model Law 2006.

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.”

Please refer to the commentary on Article 29 of the UNCITRAL Model Law 2006.

66. Article 30 of UNCITRAL Model Law (Settlement)

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

“Article 30. Settlement

- (1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.
- (2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.”
- (2) If, in a case other than that referred to in article 30 of the UNCITRAL Model Law, given effect to by subsection (1), the parties to an arbitration agreement settle their dispute and enter into an agreement in writing containing the terms of settlement (settlement agreement), the settlement agreement is, for the purposes of its enforcement, to be treated as an arbitral award.

Section 66(2) of the Hong Kong Arbitration Ordinance deals with the treatment and enforcement of settlement agreements reached by parties in arbitration proceedings. Here is an analysis of this provision:

1. Scope of Application: Section 66(2) applies when parties to an arbitration agreement settle their dispute and create a written agreement outlining the terms of settlement, which is commonly referred to as a “settlement agreement”.
2. Parallel to Article 30: This section refers to “that referred to in article 30 of the UNCITRAL Model Law, given effect to by subsection (1)”. Article 30 of the UNCITRAL Model Law pertains to the form and effect of an arbitral award, including its finality and binding nature. This section parallels the treatment of settlement agreements with arbitral awards, but it applies to cases other than those specifically covered by Article 30.
3. Enforcement as an Award: The key provision of this section is that a settlement agreement is to be treated as an arbitral award for the purposes of its enforcement. This means that the settlement agreement gains the same status as an award rendered by the arbitral tribunal.
4. Facilitating Enforcement: By treating a settlement agreement as an arbitral award, this section simplifies and streamlines the process of enforcing such agreements. Enforcement mechanisms that apply to arbitral awards can now also be used for settlement agreements.
5. Enforcement Mechanisms: Arbitral awards are typically enforceable under the New York Convention and other international treaties. Treating a settlement agreement as an award allows parties to utilise these mechanisms for the enforcement of their settlement agreements.
6. Predictability and Finality: By giving settlement agreements the status of arbitral awards, this section contributes to the predictability and finality of dispute resolution outcomes.

Parties can be assured that their agreed terms will be treated with the same enforceability as formal awards.

7. Promoting ADR: The treatment of settlement agreements as arbitral awards encourages parties to pursue alternative dispute resolution methods such as arbitration. It highlights the enforceability and legitimacy of negotiated settlements within the arbitration framework.
8. Distinct from Article 30: It is important to note that this provision is distinct from Article 30 of the UNCITRAL Model Law, which applies directly to the form and effect of arbitral awards. Section 66(2) extends a similar treatment to settlement agreements in cases not explicitly covered by Article 30.

In summary, Section 66(2) of the Hong Kong Arbitration Ordinance elevates the status of settlement agreements by treating them as arbitral awards for the purpose of enforcement. This provision aligns settlement agreements with the established mechanisms for enforcing arbitral awards, promoting the use of alternative dispute resolution methods and providing parties with efficient means to enforce their negotiated settlements.

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.”

Please refer to the commentary on Article 31 of the UNCITRAL Model Law 2006.

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

Section 67(2) of the Hong Kong Arbitration Ordinance introduces a limitation or condition to the application of Article 31(4) of the UNCITRAL Model Law within the context of the Hong Kong Arbitration Ordinance. Here is an analysis of this provision:

1. **Reference to UNCITRAL Model Law:** Article 31(4) of the UNCITRAL Model Law is a provision that addresses the effect of arbitral awards on the merits of the case. It pertains to circumstances where an award is made by the arbitral tribunal concerning claims presented in the arbitral proceedings.
2. **Subject to Section 77:** Section 77 of the Hong Kong Arbitration Ordinance appears to be the governing factor in how Article 31(4) is applied within the Hong Kong jurisdiction. The use of the phrase “subject to” indicates that the application of Article 31(4) is influenced or limited by the provisions of Section 77.
3. **Context and Limitation:** Without the full context of Section 77, it is difficult to provide a detailed analysis of the exact limitation imposed on Article 31(4). However, it is clear that Section 67(2) intends to highlight that the effect of Article 31(4) is not straightforward and is impacted by the provisions of Section 77.
4. **Potential Interaction:** Article 31(4) generally addresses the issue of partial awards, where the arbitral tribunal renders an award on only part of the claims presented. Section 77 might address matters such as the enforceability of such partial awards or related procedural aspects.
5. **Balancing Flexibility and Control:** This provision could reflect the need to balance the flexibility of arbitration proceedings, which can involve multiple awards, with the control and procedural considerations set out in Section 77. Section 77 might provide guidelines on how partial awards should be managed to ensure fairness and efficiency.
6. **Ensuring Consistency:** By stating that Article 31(4) is subject to Section 77, the Hong Kong Arbitration Ordinance aims to ensure that the application of Article 31(4) is consistent with the broader framework of the ordinance and aligned with any specific procedural requirements or safeguards.

In summary, Section 67(2) of the Hong Kong Arbitration Ordinance specifies that the application of Article 31(4) of the UNCITRAL Model Law is subject to Section 77. This indicates that the effect of Article 31(4) within the Hong Kong context is influenced by the provisions and considerations outlined in Section 77 of the ordinance, although the exact nature of this influence would require a detailed examination of Section 77 itself.

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).”**

Please refer to the commentary on Article 32 of the UNCITRAL Model Law 2006.

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

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

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

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

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

- (2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) of this article on its own initiative within thirty days of the date of the award.
- (3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.
- (4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.
- (5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.”

Please refer to the commentary on Article 33 of the UNCITRAL Model Law 2006.

(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).

Section 69(2) of the Hong Kong Arbitration Ordinance outlines the authority granted to an arbitral tribunal to make certain changes to an arbitral award in response to the correction of errors or the interpretation of points or parts of the award. Here is a breakdown of this provision:

1. Reference to UNCITRAL Model Law: Article 33 of the UNCITRAL Model Law addresses the correction and interpretation of arbitral awards. It allows for the correction of errors in an award and provides for the power of the arbitral tribunal to interpret specific points or parts of the award.
2. Necessitated by or Consequential on Correction/Interpretation: This section grants the arbitral tribunal the authority to make “other changes” to the award that are related to or consequential upon the correction of errors or the interpretation of points within the award. This means that when an error is corrected or a point is interpreted, additional changes that logically follow or are necessitated by the correction or interpretation can also be made by the arbitral tribunal.
3. Authority of the Arbitral Tribunal: The arbitral tribunal is entrusted with the power to make these additional changes. This reflects the tribunal’s role in ensuring the coherence, accuracy, and integrity of the award, even after it has been issued.
4. Correction of Errors: When errors are identified in the award (such as computational errors or typographical mistakes), the tribunal can make corrections. If these corrections lead to changes elsewhere in the award, the tribunal is authorised to make those necessary adjustments.
5. Interpretation of Points: If a point or part of the award requires interpretation to clarify its meaning, the tribunal can provide the needed interpretation. If this interpretation has broader implications for other parts of the award, the tribunal can also modify those parts accordingly.
6. Ensuring the Effectiveness of the Award: This provision is designed to ensure that the arbitral award is effective and accurately reflects the tribunal’s intended outcome, even if some adjustments are required due to errors or the need for interpretation.
7. Consistency with the UNCITRAL Model Law: By giving effect to Article 33 of the UNCITRAL Model Law, this section aligns with international arbitration norms and provides clarity on the tribunal’s authority to address errors and interpret points within the award.

In summary, Section 69(2) of the Hong Kong Arbitration Ordinance empowers the arbitral tribunal to make other changes to an award that are necessitated by or consequential on the correction of errors or the interpretation of points in the award, in accordance with Article 33 of the UNCITRAL Model Law.

This provision ensures that the tribunal can maintain the integrity and coherence of the award even after its issuance.

(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.

Section 69(3) of the Hong Kong Arbitration Ordinance pertains to the power of the arbitral tribunal to review an award of costs under specific circumstances. Here is a breakdown of this provision:

1. **Time Limit for Review:** The arbitral tribunal is granted the authority to review an award of costs, but this power is limited to within 30 days from the date of the award. This time limit ensures that the review process takes place in a timely manner after the award is issued.
2. **Reason for Review:** The primary reason for allowing a review is if the tribunal, when initially making the award, was unaware of certain information related to costs. This information includes details about the costs incurred by the parties throughout the arbitration process, as well as any offers for settlement that were made.
3. **Inclusion of Offers for Settlement:** The provision specifically mentions that any offers for settlement should also be considered in the review. Offers for settlement can have an impact on the allocation of costs, as they may influence the tribunal's assessment of the reasonableness of each party's position.
4. **Tribunal's Awareness:** The section implies that the tribunal's lack of awareness of relevant cost-related information is a condition that triggers the right to review. This indicates that if the tribunal had been aware of this information at the time of making the award, it might have resulted in a different determination of costs.
5. **Flexibility of Review:** This provision offers flexibility by allowing the tribunal to revisit the award of costs if new information comes to light that could potentially affect the fairness and accuracy of the cost allocation.
6. **Balancing Fairness and Efficiency:** The provision balances the need for fairness in cost allocation with the need to maintain an efficient and final resolution process. Allowing the tribunal to review within a limited time frame strikes this balance.
7. **Preserving the Finality of Awards:** The provision's 30-day time frame ensures that the review process does not unduly delay the finality of the arbitration award. After this period, the award becomes final and binding.

In summary, Section 69(3) of the Hong Kong Arbitration Ordinance grants the arbitral tribunal the power to review an award of costs within 30 days from the date of the award if the tribunal was not aware of certain cost-related information, including settlement offers, which it should have taken into account when making the award. This provision aims to ensure that the cost allocation is fair and reflects all relevant information while still preserving the finality of the award.

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

Section 69(4) of the Hong Kong Arbitration Ordinance outlines the scope of the arbitral tribunal's authority when conducting a review of an award of costs under the conditions set forth in Section 69(3). Here is a breakdown of this section:

1. **Review Scope:** Section 69(4) focuses on the specific actions that the arbitral tribunal can take during the review process initiated under subsection (3). The review's purpose is to ensure that the award of costs aligns with all relevant information and that it remains fair and appropriate.
2. **Confirmation:** The tribunal has the authority to confirm the original award of costs if, upon review, it determines that the allocation of costs was accurate and reasonable based on the new information that came to light during the review process.
3. **Variation:** The tribunal may also decide to vary the award of costs. This means that if the new information indicates that the original allocation of costs was not entirely accurate or fair, the tribunal can adjust the amounts attributed to each party accordingly.
4. **Correction:** The section also grants the tribunal the power to correct the award of costs. This correction might involve rectifying any errors or inaccuracies in the original allocation based on the information that was previously unknown to the tribunal.
5. **Flexibility and Discretion:** By providing the tribunal with the authority to confirm, vary, or correct the award, this section affords flexibility and discretion to the tribunal to make appropriate adjustments based on the merits of the new information.
6. **Ensuring Fairness:** The primary goal of this provision is to ensure that the award of costs is fair, just, and reflective of all relevant facts. The tribunal's power to vary or correct the award is intended to prevent any potential injustice that might arise from an incomplete or outdated understanding of the cost-related factors.
7. **Maintaining Finality:** While the section grants the tribunal the authority to modify the award of costs, it is important to note that this power is confined to the review process initiated under subsection (3). Once the review is completed and the award is adjusted, the finality of the modified award will be upheld.

In summary, Section 69(4) of the Hong Kong Arbitration Ordinance empowers the arbitral tribunal to take action on the award of costs during a review conducted under subsection (3). The tribunal can confirm the original award, vary the allocation of costs, or correct any errors in the award. This provision aims to ensure fairness and accuracy in the cost allocation while preserving the finality of the award as modified after the review.

70. Award of remedy or relief

(1) Subject to subsection (2) and section 103D(6), 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. (Amended 5 of 2017 s. 4)

Section 70(1) of the Hong Kong Arbitration Ordinance outlines the scope of remedies and relief that an arbitral tribunal can award when deciding a dispute. Here is a breakdown of this section:

1. **Wide Range of Remedies:** Section 70(1) grants the arbitral tribunal significant latitude when it comes to awarding remedies or relief. It empowers the tribunal to provide a wide array of remedies that are typically available through civil court proceedings.
2. **Alignment with Court Proceedings:** The section aligns the powers of the arbitral tribunal with those of a court in civil proceedings. This means that parties to arbitration are not limited to a narrow set of remedies, and they can seek relief that is comparable to what they could have obtained through litigation.
3. **Jurisdictional Limits:** The power to award remedies or relief is subject to subsection (2) and section 103D(6). This implies that there may be certain limitations, conditions, or exceptions set forth in these subsections that guide the tribunal's authority to award specific remedies.
4. **Flexibility in Resolution:** By granting the tribunal the authority to award a range of remedies, this provision underscores the flexibility and adaptability of arbitration as a dispute resolution mechanism. Parties have the opportunity to tailor the process and seek remedies that best address their specific concerns.
5. **Equitable Relief:** This provision enables the arbitral tribunal to provide equitable remedies, such as injunctions, specific performance, and declaratory relief, in addition to monetary compensation. This reflects the tribunal's capacity to address both legal and equitable aspects of disputes.
6. **Legislative Amendment:** The amendment made by Section 70(1) was introduced in 2017 through Amendment 5 of the Hong Kong Arbitration Ordinance. This change broadened the tribunal's authority to award remedies, enhancing the efficiency and effectiveness of arbitration as an alternative to court proceedings.
7. **Promotion of Arbitration:** By allowing arbitral tribunals to award remedies and relief that are akin to those available in court proceedings, Section 70(1) promotes the use of arbitration as a viable and robust alternative dispute resolution mechanism. It enhances parties' confidence in arbitration's ability to address their legal and commercial interests effectively.

In summary, Section 70(1) of the Hong Kong Arbitration Ordinance grants arbitral tribunals the authority to award a comprehensive range of remedies and relief when deciding disputes. This provision aligns the powers of the tribunal with those of a court in civil proceedings, enabling parties to seek equitable and monetary relief as appropriate to their case. The amendment introduced in 2017 further solidifies the role of arbitration as an effective and flexible means of dispute resolution.

- (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.**

Section 70(2) of the Hong Kong Arbitration Ordinance addresses the arbitral tribunal's authority to order specific performance of contracts, excluding contracts related to land or interests in land. Here is a breakdown of this section:

1. **Specific Performance:** Specific performance is a remedy where a party is required to fulfil their contractual obligations exactly as stated in the contract. It is a discretionary remedy and is usually available when monetary damages are insufficient to provide adequate relief.
2. **Power of Arbitral Tribunal:** Section 70(2) grants the arbitral tribunal the same power as the Court to order specific performance of any contract, subject to certain conditions. This means that, in cases where specific performance is appropriate, the arbitral tribunal has the authority to enforce it, similar to how a court would.
3. **Party Consent:** The authority to order specific performance is subject to the agreement of the parties. This means that parties can agree in their arbitration agreement to limit or expand the tribunal's power to order specific performance.
4. **Exclusion of Land Contracts:** The power to order specific performance does not extend to contracts relating to land or any interest in land. This exclusion acknowledges the unique nature of real property transactions and reflects that such matters are usually handled by courts due to their complexities.
5. **Contractual Flexibility:** By allowing parties to agree on the scope of the tribunal's power regarding specific performance, this provision provides a level of flexibility in arbitration proceedings. Parties can tailor their arbitration agreement to suit their specific needs and preferences.
6. **Efficient Resolution:** Allowing arbitral tribunals to order specific performance enhances arbitration's capacity to provide comprehensive remedies and achieve efficient dispute resolution. In cases where parties seek to enforce the specific terms of their contract, arbitration can be a suitable forum.
7. **Contractual Certainty:** By providing a framework for ordering specific performance, this provision contributes to contractual certainty and encourages parties to adhere to their contractual obligations.

In summary, Section 70(2) of the Hong Kong Arbitration Ordinance empowers the arbitral tribunal to order specific performance of contracts, except for contracts related to land or interests in land. This provision strikes a balance between parties' autonomy and the tribunal's authority, while also recognising the complexity of real property transactions. It enhances arbitration's capacity to provide comprehensive remedies and contributes to the effective resolution of contractual disputes.

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.

Section 71 of the Hong Kong Arbitration Ordinance addresses the arbitral tribunal's authority to issue multiple awards in stages or on different aspects of a dispute. Here is a breakdown of this section:

1. **Multiple Awards:** Section 71 grants the arbitral tribunal the discretion to render more than one award in an arbitration case. These awards could pertain to various aspects, issues, or stages of the matters that need to be determined.
2. **Party Consent:** The power to issue multiple awards is subject to the agreement of the parties. If the parties' arbitration agreement does not specify otherwise, the tribunal has the authority to issue separate awards on different aspects of the dispute.
3. **Flexibility:** Allowing for multiple awards enhances the flexibility of the arbitration process. Parties may have complex disputes with various components or may prefer a phased approach to resolution. This provision recognises that different aspects of a dispute might be resolved separately, leading to a more efficient and focused resolution.
4. **Efficiency:** In complex cases, issuing multiple awards can expedite the resolution process. Parties can obtain decisions on discrete issues without waiting for the entire dispute to be fully resolved. This approach can lead to quicker resolution and more efficient proceedings.
5. **Clarity:** When separate awards are issued for different aspects of a dispute, it provides clarity and transparency to the parties. Each award can focus on a specific issue, avoiding potential confusion and ensuring that each issue is addressed comprehensively.
6. **Comprehensive Resolution:** The ability to issue multiple awards ensures that each issue is thoroughly analysed and resolved. This can lead to a more comprehensive resolution of the dispute, as the tribunal can delve into each aspect without rushing through the entire case.
7. **Balancing Party Autonomy and Tribunal Authority:** This provision strikes a balance between party autonomy and the tribunal's authority. While parties have the option to agree on the number and timing of awards, the provision ensures that, absent such an agreement, the tribunal retains the discretion to issue multiple awards.

In summary, Section 71 of the Hong Kong Arbitration Ordinance grants the arbitral tribunal the authority to issue multiple awards at different times on various aspects of the matters to be determined, unless the parties agree otherwise. This provision reflects the flexibility of the arbitration process, allowing for efficient resolution and addressing complex disputes more comprehensively.

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.

Section 72(1) of the Hong Kong Arbitration Ordinance addresses the timing of when an arbitral tribunal can make an award in arbitration proceedings. Here is a breakdown of this section:

1. **Unrestricted Authority:** Section 72(1) grants arbitral tribunals significant flexibility in terms of the timing of making awards. It allows arbitral tribunals to issue awards at any point during the arbitration proceedings, unless the parties have agreed otherwise.
2. **Party Consent:** The provision underscores the principle of party autonomy. It emphasises that the timing of award issuance can be tailored to the parties' preferences through their arbitration agreement. If the parties have not agreed on a specific timing for the award, the tribunal's discretion to issue an award remains unrestricted.
3. **Efficiency and Timeliness:** The provision aligns with the arbitration process's efficiency and timeliness objectives. Tribunals can adapt their award issuance to the specific circumstances of each case. This can help expedite the resolution of disputes and provide prompt outcomes to the parties.
4. **Flexibility for Complex Cases:** In complex disputes, different aspects of the case might require varying amounts of time for deliberation. This provision enables tribunals to issue interim or partial awards while continuing to deliberate on other aspects of the dispute, providing parties with incremental resolution.
5. **Avoiding Delays:** Allowing tribunals to make awards at any time helps prevent unnecessary delays in the arbitration process. This is especially important in cases where parties are looking for prompt decisions to facilitate business transactions or resolve issues efficiently.
6. **Balancing Procedural Fairness:** While the provision allows for awards at any time, arbitral tribunals must still ensure procedural fairness. Parties should have reasonable opportunities to present their cases and address the issues under consideration before the tribunal makes a final award.
7. **Discretion and Impartiality:** This provision preserves the tribunal's discretion to manage the proceedings and decide when an award is appropriate. It also reinforces the principle that the tribunal should act fairly and impartially throughout the arbitration process.

In summary, Section 72(1) of the Hong Kong Arbitration Ordinance empowers arbitral tribunals to make awards at any time, unless the parties have agreed otherwise. This provision underscores the efficiency, flexibility, and tailored nature of the arbitration process, while also respecting party autonomy and ensuring procedural fairness.

- (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.**

Section 72(2) of the Hong Kong Arbitration Ordinance addresses the extension of time for making an award in arbitration proceedings. Here is a breakdown of this section:

1. **Time Limit Extension:** Section 72(2) provides a mechanism for extending the time limit within which an arbitral tribunal must make an award. This time limit may be set by the Hong Kong Arbitration Ordinance itself or by any other applicable law or agreement between the parties.
2. **Court Authority:** The authority to grant an extension lies with the Court. This emphasises the role of the judicial system in overseeing arbitration proceedings and ensuring that they adhere to established legal principles.
3. **Flexibility and Adaptability:** The provision recognises that circumstances in arbitration cases can vary widely. The extension mechanism allows for flexibility, enabling parties to request additional time when justified by the complexity of the dispute or unforeseen developments.
4. **Application by Any Party:** Any party to the arbitration proceedings may apply for an extension of the time limit, regardless of whether the original time has expired or not. This allows parties to proactively address potential delays and seek appropriate adjustments.
5. **Judicial Oversight:** By requiring Court approval for time extensions, the provision ensures that such extensions are not granted arbitrarily. The Court can assess the reasons provided for the extension and make a decision based on the interests of justice.
6. **Balancing Efficiency and Fairness:** While extensions can be beneficial for allowing thorough consideration of complex issues, the provision also balances this with the need for efficient resolution. The Court's discretion ensures that extensions are granted when warranted, avoiding undue delays.
7. **Legal Certainty:** The provision contributes to the legal certainty of the arbitration process. Parties can seek extensions through a formal legal process, which adds transparency and predictability to the proceedings.
8. **Preserving Impartiality:** This provision helps ensure impartiality by providing a framework for time limit extensions that is transparent and available to all parties. It prevents one party from unilaterally delaying the arbitration process without proper justification.

In summary, Section 72(2) of the Hong Kong Arbitration Ordinance grants the Court the authority to extend the time limit for making an award in arbitration proceedings. This mechanism balances the need for flexibility in complex cases with the importance of efficient and timely dispute resolution, while also maintaining legal oversight and fairness.

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

Section 72(3) of the Hong Kong Arbitration Ordinance addresses the appealability of an order made by the Court under subsection (2), which pertains to the extension of the time limit for making an award in arbitration proceedings. Here is an analysis of this section:

1. **Finality of Court Order:** This subsection emphasises the finality of the Court’s decision regarding the extension of the time limit for making an award. It states that an order made by the Court under subsection (2) is not subject to appeal. This means that once the Court has ruled on an application for an extension, parties cannot further challenge that decision through the appellate process.
2. **Judicial Efficiency:** By precluding appeals from orders related to time limit extensions, this provision contributes to judicial efficiency. It avoids unnecessary delays and legal complexities associated with appeals, allowing the arbitration proceedings to continue without disruptions.
3. **Promoting Certainty:** The provision enhances the predictability and certainty of the arbitration process. Parties can rely on the Court’s decision regarding time extensions without the uncertainty of potential appeals that might hinder the arbitration’s progress.
4. **Balancing Interests:** While finality is crucial, it is important to note that this provision does not compromise parties’ fundamental rights to a fair process. The subsection does not impede a party’s ability to request an extension from the Court; it only limits the possibility of further appeals after the Court has ruled.
5. **Encouraging Cooperation:** The provision can incentivise parties to cooperate and work towards a consensus regarding extensions. Knowing that Court decisions on this matter are not appealable, parties may be more inclined to reach mutually acceptable solutions for time extensions.
6. **Preserving Neutrality:** By removing the potential for multiple layers of review, the provision preserves the neutrality and impartiality of the arbitration process. It prevents either party from gaining an undue advantage through the appellate process, which could potentially disrupt the balance of the proceedings.

In summary, Section 72(3) of the Hong Kong Arbitration Ordinance underscores the finality of Court orders related to the extension of time limits for making arbitration awards. By excluding the possibility of appeal, the provision promotes judicial efficiency, enhances predictability, and maintains the fairness and integrity of the arbitration process.

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.**

Section 73(1) of the Hong Kong Arbitration Ordinance addresses the finality and binding nature of awards made by arbitral tribunals pursuant to arbitration agreements. Here is an analysis of this section:

1. **Finality and Binding Nature:** The key purpose of this section is to establish that an award rendered by an arbitral tribunal, in accordance with an arbitration agreement, carries finality and binding effect. This means that the decision reached by the arbitral tribunal holds legal significance and cannot be easily challenged or disregarded.
2. **Consistency with Arbitration Principles:** This provision aligns with a fundamental principle of arbitration, which is to provide a mechanism for the resolution of disputes that is expeditious, efficient, and final. Finality and binding nature of awards contribute to the certainty and predictability of outcomes in arbitration proceedings.
3. **Promoting Enforceability:** The final and binding nature of arbitration awards is essential for their enforceability. When an award is recognised as conclusive and binding on the parties, it enhances the likelihood of voluntary compliance and simplifies the enforcement process.
4. **Reducing Litigation:** By emphasising the finality of arbitral awards, this provision discourages parties from attempting to challenge awards through litigation. This is in line with the intent of arbitration to provide an alternative to lengthy court proceedings.
5. **Strengthening Arbitration’s Credibility:** Certainty and enforceability of awards contribute to the credibility of arbitration as a reliable method of dispute resolution. Parties are more likely to engage in arbitration when they trust that the decisions reached will be respected and enforced.
6. **Inclusion of Third Parties:** This section extends the finality and binding nature of awards to not only the parties directly involved in the arbitration but also to any person claiming through or under any of the parties. This prevents parties from avoiding the effects of an award by involving third parties.
7. **Flexibility Through Agreement:** The provision acknowledges that parties can deviate from the default rule through agreement. If the parties wish to allow for a different level of finality or binding nature, they have the freedom to do so by expressly stipulating it in their arbitration agreement.
8. **Certainty and Legal Predictability:** By clarifying the scope of finality and binding nature, this provision contributes to the legal predictability of arbitration outcomes, which is crucial for parties making informed decisions regarding arbitration as a dispute resolution method.

In summary, Section 73(1) of the Hong Kong Arbitration Ordinance underscores the finality and binding nature of awards made by arbitral tribunals pursuant to arbitration agreements. This provision reinforces the core principles of arbitration, promoting enforceability, reducing litigation, and enhancing the credibility of the arbitration process.

(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.**

Section 73(2) of the Hong Kong Arbitration Ordinance qualifies and limits the scope of the finality and binding nature of arbitral awards established in subsection (1). Here is an analysis of this section:

1. **Preservation of Challenge Rights:** While subsection (1) emphasises the finality and binding nature of arbitral awards, subsection (2) clarifies that this does not fully foreclose a person’s right to challenge an award. This is important to maintain a balance between the principle of award finality and the need to address certain circumstances where challenges are warranted.
2. **Statutory Challenge Mechanisms:** Subsection (2)(a) lists specific provisions within the Arbitration Ordinance that provide mechanisms for challenging awards. These provisions include Section 26 (regarding an arbitrator’s mandate), Section 81 (regarding the setting aside of awards), and certain provisions in Schedule 2 (related to the appointment and removal of arbitrators). This highlights that parties have a statutory route to challenge awards under certain circumstances.
3. **Arbitral Process of Appeal or Review:** Subsection (2)(b) broadens the scope of challenge beyond statutory mechanisms. It acknowledges that parties may have access to other forms of appeal or review provided by the arbitral process itself. This could include processes defined in institutional rules or agreed-upon procedures between the parties.
4. **Balancing Flexibility and Finality:** By preserving challenge rights, this provision strikes a balance between ensuring the finality and binding nature of arbitral awards while also accommodating situations where there may be valid reasons for reviewing or appealing an award.
5. **Maintaining Accountability:** Allowing for challenges based on statutory mechanisms or agreed-upon appeal or review processes ensures that arbitral tribunals remain accountable and that parties have mechanisms to address any procedural or substantive errors that might have occurred during the arbitration process.
6. **Promoting Confidence in Arbitration:** By acknowledging that challenge mechanisms exist, the provision contributes to the overall confidence in the arbitration process. Parties are more likely to choose arbitration when they know that mechanisms are in place to address any significant issues that might arise with an award.

In summary, Section 73(2) of the Hong Kong Arbitration Ordinance clarifies that the finality and binding nature of arbitral awards under subsection (1) do not completely preclude parties from challenging awards. It outlines specific statutory provisions and allows for other forms of appeal or review processes, ensuring that parties have avenues to address any valid concerns regarding the awards while maintaining a balanced approach to the finality of awards.

74. Arbitral tribunal may award costs of arbitral proceedings

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

Section 74(1) of the Hong Kong Arbitration Ordinance grants the arbitral tribunal the authority to issue directions related to the costs of arbitral proceedings, including the fees and expenses of the tribunal itself. Here is an analysis of this section:

1. **Cost Allocation Authority:** This provision underscores the arbitral tribunal's role in determining the allocation of costs associated with the arbitral proceedings. Costs include not only the fees and expenses of the tribunal but also other costs incurred by the parties throughout the arbitration process.
2. **Flexibility and Autonomy:** The section grants the arbitral tribunal significant discretion to issue directions on costs. This flexibility allows the tribunal to consider the specific circumstances of the case, the conduct of the parties, and any relevant factors when making decisions about cost allocation.
3. **Incentive for Efficiency:** The arbitral tribunal's authority to make cost-related directions can incentivise parties to conduct themselves in a cost-efficient and reasonable manner during the arbitration process. Parties are more likely to be mindful of their actions if they know that the tribunal has the power to influence the allocation of costs.
4. **Balancing the Financial Burden:** By giving the arbitral tribunal the authority to allocate costs, the provision seeks to achieve a fair balance in terms of the financial burden borne by the parties. This helps ensure that the costs are distributed equitably based on the tribunal's assessment of the parties' conduct and the outcome of the arbitration.
5. **Party Participation:** This provision encourages parties to actively engage in the proceedings, cooperate with the tribunal, and provide necessary information promptly. Effective participation can influence the tribunal's decisions regarding costs.
6. **Disincentive for Unreasonable Behaviour:** The authority to allocate costs also serves as a mechanism to deter parties from pursuing frivolous claims, delaying tactics, or otherwise behaving unreasonably during the arbitration process. Parties are aware that their actions could impact the allocation of costs.
7. **Efficiency and Procedural Streamlining:** The power to make cost-related directions supports the goal of achieving a streamlined and efficient arbitration process. Parties are motivated to present their cases effectively and efficiently, reducing unnecessary delays and expenses.

8. **Transparency and Predictability:** The arbitral tribunal’s exercise of discretion in issuing cost-related directions should be transparent and well-reasoned, providing parties with a clear understanding of the factors that influenced the allocation of costs.

In summary, Section 74(1) of the Hong Kong Arbitration Ordinance empowers the arbitral tribunal to include directions regarding the costs of arbitral proceedings, including the fees and expenses of the tribunal itself. This provision encourages parties to act reasonably, promotes procedural efficiency, and ensures that costs are allocated fairly based on the tribunal’s assessment of the case.

(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.

Section 74(2) of the Hong Kong Arbitration Ordinance provides the arbitral tribunal with the authority to determine the allocation of costs in an award, considering various relevant circumstances, including any written settlement offers. Here is an analysis of this section:

1. **Broad Discretion:** This provision underscores the broad discretion vested in the arbitral tribunal when it comes to cost allocation. The tribunal is empowered to consider a wide range of factors to determine how costs should be paid and by whom.
2. **Consideration of All Relevant Circumstances:** The section emphasises the importance of taking into account all relevant circumstances when deciding on the allocation of costs. This may include factors such as the conduct of the parties, the complexity of the case, the success of the parties on different issues, and any offers of settlement.
3. **Settlement Offers:** The provision specifically highlights that the tribunal should consider any written offer of settlement made by the parties. This suggests that parties’ willingness to settle and the terms of settlement offers can impact the cost allocation decision.
4. **Promoting Settlement:** By considering settlement offers, the provision aligns with the broader goal of arbitration, which includes encouraging parties to resolve their disputes amicably. Parties may be motivated to engage in settlement discussions if they know that such offers could influence the cost allocation.
5. **Transparency and Fairness:** The arbitral tribunal’s obligation to consider all relevant circumstances, including settlement offers, contributes to transparency and fairness in the cost allocation process. Parties are more likely to accept the outcome if they see that their submissions, behaviour, and settlement attempts have been considered.
6. **Effective Use of Discretion:** The section’s language—“to whom and by whom and in what manner the costs are to be paid”—illustrates the tribunal’s comprehensive authority over cost allocation. This allows the tribunal to tailor the award to the specific circumstances of the case.
7. **Encouraging Efficient Proceedings:** Parties are incentivised to engage in arbitration in a productive and cooperative manner. They may be more inclined to actively seek

settlement or engage in negotiations if they know that their efforts could influence the cost allocation outcome.

8. **Preservation of Neutrality:** The provision ensures that the tribunal remains neutral and impartial in its cost allocation decisions. By considering all relevant circumstances, including settlement offers, the tribunal guards against any potential bias that could arise from the allocation of costs.

In summary, Section 74(2) of the Hong Kong Arbitration Ordinance empowers the arbitral tribunal to exercise its discretion in determining the allocation of costs. The tribunal must consider all relevant circumstances, including any written settlement offers, to decide how costs should be paid, by whom, and in what manner. This provision contributes to a fair, transparent, and efficient cost allocation process in arbitration proceedings.

(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).

Section 74(3) of the Hong Kong Arbitration Ordinance provides the arbitral tribunal with the discretionary authority to order costs, including the fees and expenses of the tribunal, to be paid by a party in connection with a request made by any of the parties for an order or direction, including interim measures. Here is an analysis of this section:

1. **Discretionary Authority:** The provision emphasises the arbitral tribunal’s discretion to make decisions regarding the allocation of costs. This discretion allows the tribunal to consider the specific circumstances of each case and make a fair determination based on the facts and arguments presented.
2. **Costs of Requests:** The section applies to requests made by parties for various types of orders or directions, including interim measures. This indicates that the tribunal’s discretion extends to assessing costs related to any type of request that parties may make during the course of arbitration proceedings.
3. **Ensuring Responsibility:** By allowing the tribunal to order costs in connection with requests, the provision promotes responsibility in the parties’ actions. Parties must weigh the potential costs they may incur when making requests for orders or directions, encouraging them to make well-considered and reasonable requests.
4. **Balancing Interests:** The discretionary power to allocate costs provides the tribunal with the ability to strike a balance between the rights and interests of the parties. It ensures that parties are held accountable for their actions while discouraging frivolous or unnecessary requests that could burden the process.
5. **Encouraging Efficiency:** The provision incentivises parties to avoid unnecessary or excessive requests that could result in additional costs. This encourages efficiency and cooperation in the arbitration process, as parties are motivated to focus on essential matters.

6. **Flexibility in Arbitral Proceedings:** Arbitral proceedings often require flexibility to accommodate the parties' specific needs and the complexity of the dispute. This provision offers a flexible mechanism for the tribunal to address cost-related issues that may arise during the proceedings.
7. **Preservation of Neutrality:** The discretionary authority granted to the tribunal ensures its neutrality in determining cost allocation. The tribunal can evaluate the merits and circumstances of each request without bias or undue influence.
8. **Balancing Protection and Fairness:** The provision strikes a balance between protecting parties from being burdened by unwarranted costs and ensuring that parties do not make requests without merit. This helps maintain fairness and integrity in the arbitration process.
9. **Interim Measures:** The inclusion of interim measures in the scope of this provision underscores their significance in arbitration proceedings. It aligns with the overall goal of arbitration to provide effective remedies to parties while maintaining the efficiency of the process.

In summary, Section 74(3) of the Hong Kong Arbitration Ordinance grants the arbitral tribunal the discretion to order costs, including tribunal fees and expenses, to be paid by a party in relation to requests for orders or directions, including interim measures. This discretionary power ensures that the tribunal can balance the interests of the parties, encourage responsible behaviour, and promote fairness and efficiency in the arbitration proceedings.

(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.

Section 74(4) of the Hong Kong Arbitration Ordinance provides the arbitral tribunal with the authority to determine the timing of payment for costs ordered under subsection (3) of the same section. Here is an analysis of this provision:

1. **Timing of Cost Payment:** This subsection addresses the practical aspect of cost payment by specifying when the costs ordered under subsection (3) should be paid. The tribunal has the discretion to set the timing either as "forthwith" or at a specific time determined by the tribunal.
2. **Flexibility for Tribunal:** The provision acknowledges that the arbitral tribunal is best positioned to determine when the ordered costs should be paid. This flexibility takes into account the circumstances of the arbitration, the parties' financial situations, and the overall progress of the proceedings.
3. **Alignment with Arbitration Proceedings:** The ability to specify the timing of cost payment aligns with the procedural flexibility that arbitration offers. It enables the tribunal to tailor its decisions to the unique circumstances of each case, promoting efficient and effective resolution of disputes.

4. **Enforcement of Tribunal’s Decision:** By specifying the timing of cost payment, the tribunal’s decision is clearer and more enforceable. This reduces ambiguity and potential disputes that could arise regarding the timeline for compliance with the tribunal’s orders.
5. **Balancing Equitable Interests:** The provision allows the tribunal to balance the interests of both parties. For instance, the tribunal may consider factors such as the financial capability of the party liable for costs, ensuring that the payment timing is reasonable and fair.
6. **Incentive for Compliance:** The provision provides an incentive for parties to comply with the tribunal’s orders promptly. It discourages unnecessary delays in meeting financial obligations arising from the arbitration process.
7. **Preservation of Tribunal’s Authority:** By giving the tribunal the power to specify payment timing, the provision reinforces the tribunal’s authority and control over the arbitration process, enhancing the effectiveness of the tribunal’s decisions.
8. **Catering to Parties’ Circumstances:** Different cases may have varying needs regarding cost payment. Some parties may be able to pay costs immediately, while others may require more time. This provision allows the tribunal to adapt to these varying circumstances.
9. **Ensuring Finality:** Determining the timing of cost payment ensures that the arbitration process moves forward with finality. The provision contributes to the efficient resolution of disputes and helps parties move beyond the arbitration phase.

In summary, Section 74(4) of the Hong Kong Arbitration Ordinance grants the arbitral tribunal the authority to direct the timing of payment for costs ordered under subsection (3). This provision reflects the tribunal’s flexibility, discretion, and practical approach to managing cost-related matters within the arbitration process. It also enhances the enforceability of the tribunal’s decisions and maintains a balanced and fair approach to cost allocation.

(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).**

Section 74(5) of the Hong Kong Arbitration Ordinance outlines the responsibilities of the arbitral tribunal regarding the assessment and awarding of costs. Here is an analysis of this provision:

1. **Cost Assessment Obligation:** This subsection places a duty on the arbitral tribunal to assess the amount of costs that should be awarded or ordered to be paid under Section 74. The tribunal’s assessment includes all costs except for the fees and expenses of the tribunal itself.
2. **Compliance with Procedural Fairness:** The provision underscores the importance of procedural fairness by requiring the tribunal to assess costs before awarding them. This

assessment ensures that costs are determined accurately and based on relevant considerations.

3. **Determination of Reasonable Costs:** By assessing the amount of costs, the tribunal ensures that the costs awarded are reasonable and proportional to the nature of the dispute and the work involved in the arbitration proceedings.
4. **Balancing Equitable Interests:** The provision seeks to achieve a fair balance between the parties' interests. The tribunal's assessment should consider both the prevailing party's legitimate costs and the potential burden on the losing party.
5. **Transparency and Justification:** The requirement to assess costs reflects transparency in the tribunal's decision-making process. The tribunal must provide justification for the costs awarded, ensuring parties understand how the assessment was made.
6. **Clarification of Scope:** This subsection clarifies that the tribunal's responsibility for assessing costs covers all costs apart from the tribunal's own fees and expenses. It provides a clear boundary for the tribunal's assessment authority.
7. **Alignment with Arbitration's Flexibility:** The provision aligns with arbitration's flexible nature. The tribunal can consider various factors, such as complexity, the volume of evidence, and the extent of legal arguments, to determine the appropriate costs.
8. **Consistency in Cost Awards:** By requiring the tribunal to assess and award costs, the provision promotes consistency in the treatment of costs across different arbitration cases.
9. **Avoidance of Excessive Costs:** The provision supports the principle of avoiding excessive costs in arbitration proceedings, ensuring that the costs awarded are reasonable and justifiable.
10. **Section 75 Exception:** The provision is subject to Section 75, which relates to cost orders in relation to an interim award on jurisdiction. This indicates that there may be specific circumstances where Section 74(5) might not apply due to the operation of Section 75.

In summary, Section 74(5) of the Hong Kong Arbitration Ordinance establishes the arbitral tribunal's obligation to assess and award costs (excluding the tribunal's own fees and expenses). This requirement ensures that costs are fairly determined, transparently justified, and proportionate to the circumstances of the arbitration proceedings. It contributes to the overall effectiveness, fairness, and integrity of the arbitration process.

(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).

Section 74(6) of the Hong Kong Arbitration Ordinance introduces an element of flexibility in the arbitral tribunal's assessment of costs, deviating from the scales and practices adopted by the court on taxation. Here is an analysis of this provision:

1. **Cost Assessment Flexibility:** This subsection emphasises the distinct nature of arbitration proceedings by indicating that the arbitral tribunal is not bound by the scales and practices adopted by the court on taxation. Instead, the tribunal has flexibility in determining the amount of costs to be awarded.
2. **Arbitration's Non-Litigious Nature:** Arbitration is a dispute resolution method that diverges from traditional litigation. By not obliging the tribunal to follow court taxation scales and practices, the provision recognises the unique characteristics of arbitration.
3. **Tailoring to Arbitration:** The flexibility provided enables the arbitral tribunal to tailor its approach to cost assessment according to the specific circumstances of the arbitration, such as the complexity of the case, the extent of legal work involved, and the parties' agreements.
4. **Efficiency and Expediency:** Deviating from court taxation scales may lead to more efficient and expedient cost assessments. The tribunal can adopt approaches that suit the arbitration process, potentially avoiding lengthy taxation procedures.
5. **Balancing Interests:** The provision balances the need to determine costs fairly and equitably with the need to maintain the efficiency and cost-effectiveness of arbitration. This may result in cost assessments that reflect the nature and scope of the proceedings.
6. **Encouraging Innovation:** By allowing the arbitral tribunal to depart from court taxation practices, the provision encourages the exploration of innovative and more streamlined methods for assessing costs.
7. **Avoiding Rigidity:** The provision avoids rigid adherence to court practices, acknowledging that arbitration operates within a different framework and allowing for more adaptable cost assessments.
8. **Parties' Expectations:** The provision respects the parties' expectations in arbitration. Since arbitration is a consensual process, parties can tailor their agreements to reflect their preferences for cost assessment.
9. **Expertise of Tribunal:** Arbitral tribunals often consist of experts in various fields. Allowing them to determine costs without strict adherence to court practices leverages their expertise to make informed and nuanced decisions.
10. **Subsection (7) Exception:** It is important to note that the provision is subject to subsection (7), which may provide specific circumstances where court taxation scales may be applied in assessing costs. This indicates that while the tribunal has flexibility, there are instances where court practices might still be relevant.

In summary, Section 74(6) of the Hong Kong Arbitration Ordinance acknowledges the distinctiveness of arbitration proceedings and provides the arbitral tribunal with flexibility in assessing costs. By not mandating adherence to court taxation scales, the provision supports efficiency, adaptation to arbitration's unique context, and the maintenance of a fair and tailored cost assessment process.

(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.**

Section 74(7) of the Hong Kong Arbitration Ordinance sets out two key principles that guide the arbitral tribunal’s discretion when awarding costs in arbitration proceedings. Here is an analysis of this provision:

1. **Reasonableness of Costs:** Subsection (7)(a) underscores the principle that costs awarded by the arbitral tribunal must be reasonable. This principle aligns with the overarching goal of fairness and equity in arbitration, ensuring that parties are not burdened with excessive or unreasonable costs.
2. **Balancing All Circumstances:** The provision requires the arbitral tribunal to consider all relevant circumstances when determining the reasonableness of costs. This might include factors such as the complexity of the case, the efforts put forth by the parties, the duration of proceedings, and the extent of legal work required.
3. **Flexibility in Cost Assessment:** By taking into account all circumstances, the provision allows the arbitral tribunal to adopt a flexible approach to cost assessment. This flexibility is essential in adapting to the unique aspects of each arbitration, which can vary widely in terms of nature and complexity.
4. **Promotion of Fairness:** The requirement of reasonableness promotes fairness in cost allocation. It discourages parties from engaging in unnecessary or excessive legal activities that could inflate costs, ensuring that parties bear costs commensurate with their actions and the circumstances of the case.
5. **Pre-Arbitration Costs:** Subsection (7)(b) provides the tribunal with the discretion to allow costs incurred by parties in preparing for the arbitral proceedings before the formal commencement of the arbitration. This recognises that parties may invest significant resources in preparation activities that contribute to the overall resolution of the dispute.
6. **Party Agreements:** The provision acknowledges the importance of party agreements in cost allocation. If the parties have a prior agreement on the allocation of pre-arbitration costs, the tribunal is bound to respect that agreement.
7. **Preventing Unforeseen Costs:** Allowing costs incurred prior to the commencement of arbitration encourages early case preparation, which can contribute to the efficient progression of the proceedings and potentially prevent unforeseen delays and costs.
8. **Equitable Distribution of Costs:** By requiring that costs be reasonable and taking into account the circumstances, the provision promotes an equitable distribution of costs among the parties, discouraging any party from unnecessarily burdening the other with excessive costs.

9. **Avoiding Windfall or Unjust Costs:** The provision aims to prevent situations where one party could gain a windfall or another could face undue financial burden due to unreasonable or unbalanced cost awards.

In summary, Section 74(7) of the Hong Kong Arbitration Ordinance emphasises the principles of reasonableness and fairness in cost allocation. It allows the arbitral tribunal to consider all relevant circumstances and exercise its discretion in awarding costs while also addressing the issue of costs incurred in preparation before formal arbitration commencement. This approach supports the overall efficiency, equity, and effectiveness of arbitration proceedings.

(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.

Section 74(8) of the Hong Kong Arbitration Ordinance addresses the validity of arbitration agreement provisions that attempt to impose a requirement for parties to bear their own costs in arbitral proceedings. Here is an analysis of this provision:

1. **Prohibition of One-Sided Cost Allocation:** This provision aims to prevent arbitration agreement clauses that would result in an uneven and potentially unjust allocation of costs among the parties. Arbitration proceedings often involve legal representation, administrative expenses, and other costs that can significantly impact the parties' financial positions.
2. **Promotion of Fairness:** By declaring such clauses void, the provision promotes fairness and equity in arbitration proceedings. It ensures that costs are allocated in a manner that takes into account the merits of the dispute, the conduct of the parties, and other relevant factors.
3. **Avoidance of Unreasonable Financial Burden:** The provision guards against situations where one party might be unfairly burdened with all costs, regardless of the outcome of the arbitration. This prevents a potential deterrent effect on parties seeking to enforce their rights through arbitration due to concerns about disproportionate costs.
4. **Encouragement of Meritorious Claims:** Voiding one-sided cost clauses encourages parties with meritorious claims to pursue arbitration without undue fear of being burdened with all costs, even if their claims are ultimately successful.
5. **Aligning with Arbitration Principles:** The principle of fairness and the equitable allocation of costs are fundamental to the principles of arbitration, which aim to provide a streamlined and efficient alternative to litigation. This provision aligns with those principles.
6. **Preventing Contractual Imbalance:** Parties to arbitration agreements often have unequal bargaining power, and one-sided cost clauses could further widen this imbalance. The provision helps prevent the exploitation of such disparities in negotiating power.
7. **Uniform Approach to Cost Allocation:** The provision establishes a uniform approach to cost allocation in arbitration, ensuring that parties are not subject to varying or potentially

unfavourable cost allocation terms depending on the arbitration agreement they enter into.

8. **Maintaining Arbitration's Attractiveness:** By promoting a balanced and fair cost allocation, the provision contributes to maintaining arbitration's attractiveness as a dispute resolution method, especially for parties who value the efficiency, flexibility, and predictability that arbitration offers.

In summary, Section 74(8) of the Hong Kong Arbitration Ordinance serves to promote fairness and equity in arbitration proceedings by voiding arbitration agreement provisions that mandate one-sided cost allocation. By doing so, it reinforces the principles of arbitration, prevents potential financial burdens on parties, and contributes to the effectiveness and credibility of the arbitration process.

(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.

Section 74(9) of the Hong Kong Arbitration Ordinance introduces an exception to the general rule established in Section 74(8), which declares certain arbitration agreement provisions void if they require parties to bear their own costs. This subsection provides that such provisions are not void if they are part of an agreement to arbitrate a dispute that had already arisen before the arbitration agreement was made. Here is an analysis of this provision:

1. **Exception for Pre-Existing Disputes:** Section 74(9) recognises that in situations where a dispute has already arisen between the parties prior to the agreement to arbitrate, the allocation of costs may be negotiated and agreed upon differently. It acknowledges that parties might want to maintain the status quo in terms of cost allocation for disputes that were already ongoing.
2. **Preservation of Parties' Intentions:** The provision allows parties to respect their original intentions regarding cost allocation when an ongoing dispute is transitioned into an arbitration process. Parties might have initially negotiated their cost-sharing arrangement with a specific context in mind, and this provision acknowledges that pre-existing disputes may have unique factors that warrant retaining the original cost allocation terms.
3. **Balancing Efficiency and Fairness:** By permitting pre-existing cost allocation terms to be preserved, the provision strikes a balance between efficiency and fairness. It recognises that parties might have already taken costs into consideration when deciding to resolve their dispute through arbitration.
4. **Respect for Contractual Freedom:** This exception respects the principle of contractual freedom. Parties have the autonomy to structure their agreements based on their specific circumstances. By allowing parties to maintain their cost allocation arrangement for pre-existing disputes, the provision upholds their contractual autonomy.
5. **Avoidance of Disruption:** The provision avoids disrupting ongoing disputes by imposing new cost allocation terms that the parties did not originally anticipate. This stability contributes to smoother transitions from the pre-arbitration phase to the arbitration process.

6. **Clear Scope of Exception:** The provision specifically applies to agreements that pertain to disputes that had already arisen before the arbitration agreement was made. This clarifies that the exception is limited to the context of pre-existing disputes and does not apply to new disputes that arise after the arbitration agreement is entered into.

In summary, Section 74(9) of the Hong Kong Arbitration Ordinance provides an exception to the general rule by allowing arbitration agreement provisions related to cost allocation to be upheld if they are part of an agreement to arbitrate a dispute that had already arisen before the arbitration agreement was made. This exception recognises the unique circumstances of ongoing disputes and respects the parties' original intentions regarding cost-sharing arrangements.

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)**

Section 75(1) of the Hong Kong Arbitration Ordinance establishes a framework for the taxation of costs in cases where the parties have agreed that the costs of arbitral proceedings are to be taxed by the court. This section outlines the process and conditions under which the arbitral tribunal's award would be deemed to include directions for the taxation of costs by the court. Here is an analysis of this provision:

1. **Agreement-Driven Taxation of Costs:** Section 75(1) reflects the principle of party autonomy, allowing the parties to decide whether the costs of arbitral proceedings should be subject to taxation by the court. If the parties have agreed to such taxation, the provision outlines the consequences and procedure.
2. **Interaction with Section 74:** This section explicitly states that it operates without affecting Section 74(1) and (2) of the ordinance. While Section 74 deals with the arbitral tribunal's power to make directions regarding costs, Section 75 deals specifically with the scenario where taxation of costs by the court is agreed upon.
3. **Deemed Inclusion of Taxation Directions:** If the parties have agreed that the costs are to be taxed by the court and the arbitral tribunal does not direct otherwise in the award, the award is deemed to include directions that the costs (excluding tribunal fees and expenses) are to be taxed by the court. This simplifies the process and avoids the need for separate orders.
4. **Reference to Court Rules:** The provision refers to specific court rules (rule 28(2) of Order 62 of the Rules of the High Court) that govern the taxation of costs in court proceedings. This reference ensures consistency and predictability in the taxation process.
5. **Maintaining Party and Party Basis:** The provision states that the costs are to be taxed by the court on a "party and party basis", which is a standard cost assessment where the

successful party's reasonable costs are recovered from the unsuccessful party. This maintains fairness and consistency in the treatment of costs.

6. **Arbitral Tribunal's Authority:** While the provision deems the award to include directions for taxation by the court, it also acknowledges that the arbitral tribunal has the authority to direct otherwise. This allows flexibility if the tribunal believes that specific circumstances warrant a different approach.
7. **Ensuring Clarity:** Section 75(1) helps ensure clarity and predictability in the taxation of costs process when the parties have chosen to submit to court taxation. By outlining the default consequences and referring to established court rules, the section reduces potential disputes and uncertainties.

In summary, Section 75(1) of the Hong Kong Arbitration Ordinance outlines the process for the taxation of costs by the court when the parties have agreed to such a mechanism. The provision deems that an arbitral award includes directions for taxation unless otherwise directed by the arbitral tribunal, ensuring a clear and standardised process for cost assessment when court taxation is chosen by the parties.

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

Section 75(2) of the Hong Kong Arbitration Ordinance addresses the procedural step that the arbitral tribunal needs to take in cases where the parties have agreed to have the costs of arbitral proceedings taxed by the court. Here is an analysis of this provision:

1. **Taxation by the Court:** Section 75(2) refers to a situation where the parties have agreed that the costs of arbitral proceedings are to be taxed by the court. This means that the costs assessment process is shifted from the arbitral tribunal to the court, as per the parties' agreement.
2. **Additional Award of Costs:** The provision states that upon the completion of the taxation process by the court, the arbitral tribunal must make an additional award of costs. This award would reflect the outcome of the taxation, which typically determines the amount of costs recoverable by the successful party from the unsuccessful party.
3. **Reflecting the Result of Taxation:** The purpose of this additional award is to align the final cost recovery with the result of the taxation process. This ensures that the party awarded costs is compensated for the expenses incurred and assessed by the court.
4. **Maintaining Accuracy:** By requiring the arbitral tribunal to issue an additional award of costs that reflects the outcome of court taxation, this provision helps maintain the accuracy and fairness of the costs awarded. It ensures that the successful party receives the appropriate amount as determined by the court.
5. **Completing the Process:** The provision adds a layer of finality to the cost assessment process. After the court has conducted the taxation and determined the costs, the arbitral tribunal's issuance of an additional award completes the process and confirms the final amount of costs payable.

6. **Compliance with Parties' Agreement:** This provision reinforces the parties' agreement to have costs taxed by the court. By making an additional award of costs based on the outcome of the taxation, the arbitral tribunal adheres to the parties' chosen mechanism for determining costs.

In summary, Section 75(2) of the Hong Kong Arbitration Ordinance mandates the arbitral tribunal to issue an additional award of costs that reflects the result of the taxation by the court. This provision ensures that the successful party's recoverable costs are accurately determined and aligns with the parties' agreement to have costs taxed by the court.

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

Section 75(3) of the Hong Kong Arbitration Ordinance addresses the finality of decisions made by the court during the taxation process. Here is an analysis of this provision:

1. **Finality of Court Decision:** This provision establishes that a decision of the court on taxation, which determines the final amount of costs payable by the unsuccessful party, is not subject to appeal. In other words, once the court has assessed and determined the costs, that decision stands as final.
2. **Avoiding Protracted Disputes:** By stating that a court decision on taxation is not appealable, the provision aims to prevent parties from engaging in lengthy and protracted disputes over the costs awarded. This contributes to the efficient resolution of arbitration proceedings and promotes the principle of finality in dispute resolution.
3. **Promoting Certainty:** Parties involved in arbitration proceedings benefit from knowing that once the court has decided on the taxation of costs, there is no avenue for further appeal. This promotes certainty in the costs recovery process and helps parties plan accordingly.
4. **Streamlining the Process:** Arbitration is often chosen for its expediency and the ability to avoid lengthy court procedures. By limiting the appealability of taxation decisions, Section 75(3) ensures that the process of determining costs remains relatively swift and aligned with the general goals of arbitration.
5. **Respect for Court Decisions:** The provision emphasises the respect that should be accorded to court decisions. This underscores the importance of adhering to the decisions of the court within the arbitration process.
6. **Balancing Finality and Fairness:** While this provision prevents appeals on taxation decisions, it is crucial that parties have an opportunity to challenge decisions that are clearly erroneous or unfairly determined. However, these challenges may need to be pursued through other mechanisms within the arbitration process, as detailed in the ordinance.

In summary, Section 75(3) of the Hong Kong Arbitration Ordinance establishes that decisions of the court on taxation are not subject to appeal. This provision contributes to the efficiency and finality of the arbitration process, promoting certainty and respecting the authority of court decisions.

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

Section 75(4) of the Hong Kong Arbitration Ordinance introduces a limitation to the scope of Section 75(1) and (2), specifying that Section 75 does not apply to costs ordered to be paid under Section 74(3). Here is an analysis of this provision:

1. **Limitation on Applicability:** Section 75(4) serves as a restriction on the scope of Sections 75(1) and (2). While Section 75 generally addresses the taxation of costs by the court, this provision explicitly states that the rules outlined in Section 75 do not apply to costs ordered to be paid under Section 74(3).
2. **Distinction Between Types of Costs:** The distinction drawn between costs ordered under Section 74(3) and other costs suggests that there may be a fundamental difference in how these types of costs are treated within the arbitration process.
3. **Preserving Arbitral Tribunal’s Discretion:** Costs ordered under Section 74(3) may be unique and require different considerations compared to other costs. By excluding such costs from the rules related to taxation set out in Section 75, the provision preserves the arbitral tribunal’s discretion in awarding these specific costs.
4. **Contextualising Costs for Requests and Orders:** Section 74(3) likely refers to costs related to requests made by parties for orders or directions, including interim measures, during the arbitration proceedings. Excluding these costs from Section 75 acknowledges the distinct nature of these costs, which may involve different principles and considerations than the costs typically subject to taxation.
5. **Maintaining Flexibility:** Arbitration proceedings often require a level of flexibility to address unique circumstances. By not subjecting costs ordered under Section 74(3) to the rules of taxation, the provision maintains the flexibility necessary to handle these specific types of costs.

In essence, Section 75(4) of the Hong Kong Arbitration Ordinance establishes that the rules outlined in Section 75 (relating to taxation of costs) do not apply to costs ordered to be paid under Section 74(3). This recognition of distinct categories of costs helps to maintain the flexibility and appropriateness of handling different types of costs within the arbitration process.

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.

Section 76 of the Hong Kong Arbitration Ordinance addresses the applicability of Section 50 of the Legal Practitioners Ordinance (Cap. 159) to the recovery of costs in an arbitration context. Here is an analysis of this provision:

1. **Exemption from Section 50:** Section 76 states that Section 50 of the Legal Practitioners Ordinance (Cap. 159) does not apply to the recovery of costs in an arbitration. This

exemption signifies that the rules and limitations outlined in Section 50 regarding the recovery of costs by unqualified persons do not extend to arbitration proceedings.

2. **Freedom in Choosing Representatives:** The exclusion of Section 50 from arbitration proceedings allows parties greater flexibility in selecting their representatives, including lawyers or other professionals, without being bound by the restrictions set out in Section 50. This flexibility can contribute to a more efficient and effective arbitration process.
3. **Promoting Access to Representation:** The exclusion of Section 50 from arbitration may promote access to specialised legal or non-legal representatives for parties involved in arbitration. This is particularly relevant for international parties who may want to choose representatives with specific expertise.
4. **Tailoring to Arbitration's Unique Nature:** Arbitration is often considered an alternative dispute resolution mechanism that allows parties to tailor their procedures. The exclusion of Section 50 acknowledges that arbitration has its own distinct characteristics and processes, which may differ from traditional court proceedings.
5. **Maintaining Consistency with International Norms:** Many international arbitration practices allow parties to choose their representatives freely, irrespective of their qualification status in the local jurisdiction. The exemption from Section 50 aligns with international arbitration norms and practices.
6. **Enhancing Autonomy:** Parties' autonomy in arbitration extends to the choice of representatives. Exempting arbitration from Section 50 upholds the parties' ability to freely select the professionals they deem suitable to represent them.

In summary, Section 76 of the Hong Kong Arbitration Ordinance clarifies that Section 50 of the Legal Practitioners Ordinance (Cap. 159) does not apply to the recovery of costs in arbitration. This exemption acknowledges the unique nature of arbitration proceedings and allows parties to have greater flexibility in choosing their representatives without being constrained by the rules applicable to unqualified persons.

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

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

Section 77(1) of the Hong Kong Arbitration Ordinance addresses the authority of an arbitral tribunal to withhold the delivery of an award until full payment of the fees and expenses of the tribunal is made. Here is an analysis of this provision:

1. **Enforcement of Tribunal's Remuneration:** This provision empowers the arbitral tribunal to ensure that it receives full remuneration for its services and expenses before delivering the final award. It highlights the significance of financial fairness and transparency in the arbitration process.
2. **Encouragement of Timely Payment:** By allowing the arbitral tribunal to withhold the award until fees and expenses are settled, Section 77(1) encourages parties to make

timely payments for the tribunal's services. This can expedite the resolution process and help maintain the integrity of the arbitration system.

3. **Preventing Delay Tactics:** Parties may sometimes attempt to delay the arbitration process by not promptly fulfilling their financial obligations. This provision serves as a deterrent against such delay tactics and promotes the efficiency of the arbitration proceedings.
4. **Protection of Tribunal's Independence:** Ensuring that the arbitral tribunal is fully compensated for its work contributes to maintaining the tribunal's independence and impartiality. This provision helps prevent situations where financial disputes between the parties and the tribunal could compromise the tribunal's integrity.
5. **Balancing Interests:** While Section 77(1) safeguards the tribunal's interests, it also strikes a balance by not allowing the withholding of the award in cases where the fees and expenses have been fully paid. This ensures that the parties' rights to receive a prompt and final resolution of their dispute are protected.
6. **Transparency and Accountability:** This provision promotes transparency in the arbitration process by making it clear that the delivery of the award is contingent on the settlement of fees and expenses. It encourages parties to engage in open communication regarding financial matters.
7. **Positive Impact on Process:** The provision can have a positive impact on the overall efficiency and effectiveness of arbitration proceedings, as parties are motivated to meet their financial obligations, leading to smoother resolution processes.
8. **Limited Scope:** It is important to note that this provision specifically relates to the fees and expenses of the tribunal and not to any other costs associated with the arbitration proceedings.

In summary, Section 77(1) of the Hong Kong Arbitration Ordinance empowers an arbitral tribunal to withhold the delivery of an award until full payment of the fees and expenses of the tribunal is made. This provision aims to ensure the financial fairness of the arbitration process, prevent delay tactics, protect the tribunal's independence, and promote overall transparency and efficiency in arbitration proceedings.

- (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.

Section 77(2) of the Hong Kong Arbitration Ordinance outlines the procedure and powers of the Court in cases where an arbitral tribunal refuses to deliver an award to the parties due to unpaid fees and expenses. Let us analyse this provision:

1. **Court Intervention:** This section establishes a mechanism for parties to seek court intervention when an arbitral tribunal withholds an award due to unpaid fees and expenses. It provides a remedy for parties to resolve disputes over outstanding payments in a structured manner.
2. **Judicial Discretion:** The provision grants the Court discretion to issue orders aimed at resolving the situation. The Court can choose among various options, taking into account the circumstances of the case and the fairness of the outcome.
3. **Payment Into the Court:** The applicant seeking the award may need to make a payment into the Court. This payment could either cover the full amount of fees and expenses demanded by the tribunal or a lesser amount specified by the Court. This payment acts as a guarantee for the tribunal's remuneration.
4. **Determining Fees and Expenses:** The Court is empowered to determine the appropriate amount of fees and expenses payable to the tribunal. This discretion allows the Court to assess the fairness of the tribunal's demands and decide on a reasonable sum.
5. **Allocation of Payment:** The Court can order that the determined fees and expenses be paid to the tribunal out of the money deposited in the Court. This ensures that the tribunal receives its due remuneration.
6. **Balancing Interests:** The provision strikes a balance between the interests of both parties and the arbitral tribunal. It ensures that the tribunal is compensated while also safeguarding the parties' right to receive the award promptly upon resolving the payment issue.

7. **Protection of Party Interests:** The provision helps protect the interests of parties by allowing them to obtain the award despite a payment dispute. This prevents undue delays in receiving a resolution to their dispute.
8. **Flexibility in Resolution:** The range of orders that the Court can issue provides flexibility for tailoring solutions to the specific circumstances of each case. This adaptability is important given the unique aspects of different arbitration proceedings.
9. **Resolution of Financial Disputes:** By involving the Court in resolving payment-related disputes, the provision contributes to maintaining the integrity of the arbitration process and preventing situations where financial disagreements negatively impact the proceedings.
10. **Court's Authority:** This provision highlights the authority and importance of the Court in overseeing and facilitating the arbitration process to ensure that all parties' rights are respected and that the process is conducted fairly and efficiently.

In summary, Section 77(2) of the Hong Kong Arbitration Ordinance outlines the process by which a party can seek Court intervention when an arbitral tribunal refuses to deliver an award due to unpaid fees and expenses. The provision empowers the Court to issue orders that balance the interests of all parties involved while safeguarding the integrity of the arbitration process.

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

- (a) the amount of the fees and expenses payable is the amount which the applicant is liable to pay—**
 - (i) under section 78; or**
 - (ii) under any agreement relating to the payment of the arbitrators; and**
- (b) the fees and expenses of—**
 - (i) an expert appointed under article 26 of the UNCITRAL Model Law, given effect to by section 54(1); or**
 - (ii) an assessor appointed under section 54(2),**

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

Section 77(3) of the Hong Kong Arbitration Ordinance provides clarification on the calculation of fees and expenses payable in cases where an arbitral tribunal refuses to deliver an award due to unpaid fees and expenses. Let us analyse this provision:

1. **Calculation of Fees and Expenses:** This subsection specifies the factors to consider when determining the fees and expenses payable by the applicant. It establishes the basis for calculating the amount due to the arbitral tribunal.

2. **Liability of the Applicant:** The subsection refers to Section 78 and any agreement relating to payment of the arbitrators. It underscores the applicant’s liability to pay the fees and expenses in accordance with the relevant provisions of the Ordinance or any existing agreement.
3. **Clarity on Expert and Assessor Fees:** The subsection clarifies that the fees and expenses of experts appointed under Article 26 of the UNCITRAL Model Law (given effect by Section 54(1)) and assessors appointed under Section 54(2) are to be treated as part of the fees and expenses of the arbitral tribunal.
4. **Uniform Treatment:** Treating expert and assessor fees as part of the arbitral tribunal’s expenses ensures a consistent approach in determining the total sum owed for the proceedings.
5. **Avoiding Disputes:** By specifying how to treat expert and assessor fees in relation to tribunal expenses, this provision helps prevent potential disputes regarding the allocation and calculation of costs.
6. **Consistency with UNCITRAL Model Law:** The reference to Article 26 of the UNCITRAL Model Law underscores the alignment of the Hong Kong Arbitration Ordinance with international arbitration principles and practices.
7. **Transparency and Clarity:** This subsection contributes to transparency and clarity in the determination of fees and expenses, which is important to maintain trust in the arbitration process.
8. **Enforcement of Tribunal’s Rights:** The provision emphasises the importance of ensuring that the arbitral tribunal’s fees and expenses are duly accounted for and paid, as they are essential for the proper functioning of the arbitration process.

In summary, Section 77(3) of the Hong Kong Arbitration Ordinance clarifies the factors to consider when calculating fees and expenses payable in cases where an arbitral tribunal refuses to deliver an award due to unpaid fees. It aligns with international arbitration practices, promotes transparency, and helps prevent disputes related to the allocation of costs.

(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.**

Section 77(4) of the Hong Kong Arbitration Ordinance establishes limitations on the circumstances under which an application can be made to the Court when an arbitral tribunal refuses to deliver an award due to unpaid fees and expenses. Let us analyse this provision:

1. **Exhaustion of Arbitral Process:** This subsection stipulates that an application under subsection (2) cannot be made if there is an available arbitral process for appealing or

reviewing the amount of the fees or expenses demanded. This reflects the principle of exhausting all internal remedies within the arbitral process before resorting to court intervention.

2. **Promoting Efficiency:** By requiring parties to first utilise any available arbitral process for challenging the fees and expenses demanded, this provision encourages efficiency within the arbitration framework and minimises unnecessary court involvement.
3. **Finality of Fee Determination:** If there is a specific mechanism for arbitral review or appeal of fees, parties are expected to follow that process, contributing to finality and certainty in the determination of fees and expenses.
4. **Fixed Amount Agreements:** Subsection (4)(b) specifies that no application can be made if the total amount of fees and expenses has been pre-agreed upon between a party and the arbitrators in a written agreement. This provision respects the autonomy of the parties in agreeing to fee arrangements.
5. **Autonomy of Parties:** Recognising the validity of agreements regarding fees and expenses demonstrates the principle of party autonomy in arbitration. It also reflects the acknowledgment that parties are entitled to structure their arbitration arrangements according to their preferences and needs.
6. **Balancing Court Intervention:** The provision aims to balance the role of the Court in overseeing the arbitration process and the parties' autonomy to resolve matters within the arbitration framework itself.
7. **Encouraging Clarity in Agreements:** Parties are incentivised to explicitly outline fee arrangements in writing, thereby reducing the likelihood of disputes over fees and expenses in the future.
8. **Ensuring Fairness:** The provision ensures that parties have appropriate avenues for addressing disputes over fees and expenses, either through the available arbitral process or through agreed-upon mechanisms.

In summary, Section 77(4) of the Hong Kong Arbitration Ordinance imposes limitations on when an application can be made to the Court in cases of unpaid fees and expenses. It emphasises the importance of utilising available arbitral processes for resolving such matters and respecting pre-agreed fee arrangements between parties and 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.

Section 77(5) of the Hong Kong Arbitration Ordinance extends the application of the provisions outlined in subsections (1) to (4) to encompass not only the arbitral tribunal itself but also any arbitral or other institution or person who has been granted authority by the parties in relation to the delivery of the arbitral tribunal's award. Here is an analysis of this provision:

1. **Scope of Application:** This subsection extends the coverage of the preceding subsections (1) to (4) to include situations where the authority to deliver the arbitral award has been vested in an institution or person other than the arbitral tribunal itself.
2. **Institutional Arbitration:** Many arbitration proceedings are administered by arbitral institutions that offer administrative support and facilities for the conduct of arbitration. These institutions may be tasked with handling procedural matters, including the delivery of the award.
3. **Party Designated Authority:** In some cases, the parties may designate a specific person or entity to handle certain aspects of the arbitration process, including the delivery of the award. This can help streamline administrative procedures.
4. **Uniform Treatment:** By applying the same rules to institutions or persons vested with powers related to the award delivery, the law ensures consistent treatment regardless of whether the award is being delivered by the arbitral tribunal or through an external authority.
5. **Procedural Consistency:** Extending the provisions to such institutions or persons promotes procedural consistency, ensuring that the same principles regarding unpaid fees and expenses are followed regardless of who is delivering the award.
6. **Efficiency and Finality:** Applying these provisions to designated institutions or persons underscores the importance of prompt payment of fees and expenses, whether the award is delivered by the tribunal or a different entity. This is essential for maintaining the efficiency and finality of the arbitration process.
7. **Party Agreements:** Parties may agree to delegate certain administrative tasks to institutions or individuals to ensure a smooth arbitration process. This subsection respects the parties' autonomy to shape the arbitration procedure according to their preferences.

In summary, Section 77(5) extends the coverage of the preceding subsections to institutions or persons authorised by the parties to handle matters related to the delivery of the arbitral award. This promotes uniformity, procedural consistency, and efficiency within the arbitration process, while respecting the autonomy of the parties to choose how administrative aspects of arbitration are managed.

(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.

Section 77(6) of the Hong Kong Arbitration Ordinance further clarifies the application of the provisions in subsections (1) to (4) when extended to institutions or persons authorised to handle matters related to the delivery of the arbitral award. Here is an analysis of this provision:

1. **Interpretive Modification:** This subsection modifies the interpretation of the references made in subsections (1) to (4) when those provisions are applied under subsection (5) to institutions or persons other than the arbitral tribunal.

2. **Inclusive Definition:** The provision specifies that in this context, references to “fees and expenses of the arbitral tribunal” are to be read more broadly to include the fees and expenses of the institution or person designated to handle the delivery of the award.
3. **Contextual Alignment:** This clarification ensures that the language used in subsections (1) to (4) remains meaningful and applicable even when dealing with situations where an institution or person other than the arbitral tribunal is involved.
4. **Consistency in Language:** By incorporating the fees and expenses of the institution or person into the scope of these provisions, the law maintains consistency in the terminology used across different scenarios involving the delivery of arbitral awards.
5. **Accurate Legal Application:** This subsection ensures that parties, institutions, and other relevant entities can accurately apply the law when it comes to fees and expenses, irrespective of whether the award is delivered by the arbitral tribunal or another authorised entity.
6. **Practical Effect:** In practical terms, this provision underscores the principle that unpaid fees and expenses are a valid reason for withholding the delivery of an award, regardless of the entity responsible for the delivery.
7. **Balanced Approach:** This subsection balances the need for consistent application of legal principles with the flexibility required to address varying scenarios where different entities handle award delivery.

In summary, Section 77(6) clarifies that when the provisions of subsections (1) to (4) are extended to institutions or persons designated to handle the award delivery, the language used in those provisions is interpreted to include the fees and expenses of the designated entity. This ensures that the legal framework effectively addresses fee-related matters, regardless of who is responsible for delivering the arbitral award.

(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.

Section 77(7) of the Hong Kong Arbitration Ordinance introduces a provision that addresses the enforcement of an arbitral award when an application has been made to the Court under subsection (2) of the same section. Here is an analysis of this provision:

1. **Conditional Stay of Enforcement:** This subsection establishes a temporary stay on the enforcement of an arbitral award, specifically in relation to the fees or expenses of the arbitral tribunal, when an application is lodged with the Court as per subsection (2).
2. **Preservation of Status Quo:** The stay of enforcement ensures that the status quo is maintained until the Court has the opportunity to review and address the application related to the fees and expenses. This prevents any enforcement actions from occurring before the application has been resolved.

3. **Fair Process:** By implementing a stay, the provision aims to ensure fairness in the process. It gives the Court time to consider the application and make an informed decision without the risk of one party taking unilateral action to enforce the award before the fees and expenses issue has been addressed.
4. **Integrated Approach:** This subsection complements the provisions in subsections (1) to (4), and it shows that the legal framework surrounding arbitral award fees and expenses is comprehensive and interconnected.
5. **Avoiding Inequities:** The provision helps avoid potential inequities where one party could enforce an award before another party's application for the review of fees and expenses has been fully examined by the Court.
6. **Efficient Resolution:** While introducing a stay temporarily delays the enforcement of the award, it contributes to the overall efficiency of the arbitration process by ensuring that fee-related matters are thoroughly addressed before enforcement takes place.

In essence, Section 77(7) of the Hong Kong Arbitration Ordinance serves to temporarily halt the enforcement of an arbitral award concerning fees or expenses of the arbitral tribunal when an application under subsection (2) is pending before the Court. This provision aligns with the aim of maintaining fairness and equity in the arbitration process and upholding the integrity of the arbitration framework.

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

Section 77(8) of the Hong Kong Arbitration Ordinance establishes the right of an arbitrator to participate in any determination made under the provisions of Section 77. Here is an analysis of this provision:

1. **Arbitrator's Right to Participation:** This subsection acknowledges the involvement of arbitrators in the determination process governed by Section 77. It grants arbitrators the entitlement to "appear and be heard" regarding the decisions or determinations made under this section.
2. **Ensuring Procedural Fairness:** By granting arbitrators the right to be heard, the provision aims to ensure procedural fairness in the arbitration proceedings, even when it comes to matters related to fees and expenses. This aligns with the principles of natural justice and due process.
3. **Expert Insight:** Arbitrators possess specialised knowledge and understanding of the arbitration process, including the intricacies of fees and expenses related to arbitral proceedings. Allowing them to provide input could lead to more informed and well-rounded decisions.
4. **Effective Communication:** The ability of arbitrators to appear and be heard in such matters allows them to clarify any points, raise relevant concerns, and contribute to a comprehensive understanding of the situation, enhancing communication and transparency.

5. **Balancing Interests:** This provision aims to strike a balance between the rights of the parties involved and the involvement of the arbitrators who are well-versed in the nuances of the arbitration process.
6. **Conflict Resolution:** Allowing arbitrators to present their perspectives helps resolve potential disputes or disagreements related to fees and expenses more effectively, as their insights can address any misunderstandings or misinterpretations.

In summary, Section 77(8) of the Hong Kong Arbitration Ordinance recognises the participation of arbitrators in the determination process under Section 77. This provision is aligned with principles of fairness, expert insight, and effective communication within the arbitration process, ultimately contributing to a more balanced and well-informed resolution of matters related to fees and expenses.

(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.

Section 77(9) of the Hong Kong Arbitration Ordinance addresses the procedural outcome when the amount of fees and expenses is determined by the Court under subsection (2)(b). Here is an analysis of this provision:

1. **Alignment with Determination:** This subsection ensures that the arbitral process remains consistent by requiring the arbitral tribunal to align its previous award with the determination made by the Court regarding the amount of fees and expenses payable.
2. **Finality and Clarity:** The provision aims to provide finality and clarity in the arbitration process by reflecting the accurate and agreed-upon amount of fees and expenses in the tribunal's award. This helps prevent any confusion or disputes arising from discrepancies between the original award and the determined amount.
3. **Enforcement and Compliance:** Ensuring that the arbitral tribunal amends its previous award to reflect the determined amount enhances the enforceability and compliance of the award. It enables parties to have a clear understanding of their financial obligations and responsibilities.
4. **Efficiency and Consistency:** By mandating that the arbitral tribunal amend the award to reflect the determination, the provision maintains efficiency and consistency in the arbitration process, as all parties are bound by the same decided amount of fees and expenses.
5. **Coordinated Decision-Making:** The coordination between the Court's determination and the arbitral tribunal's award prevents contradictory outcomes, promotes coordination between different bodies involved in the arbitration process, and reduces the potential for multiple disputes.
6. **Reduced Legal Disputes:** Requiring the tribunal to amend its award in line with the determined fees and expenses helps reduce the likelihood of further legal disputes or challenges based on discrepancies between the two amounts.

In conclusion, Section 77(9) of the Hong Kong Arbitration Ordinance ensures that the amount of fees and expenses determined by the Court under subsection (2)(b) is accurately reflected in the arbitral tribunal's award. This provision contributes to the enforceability, efficiency, and consistency of the arbitration process while minimising the potential for disputes related to fees and expenses.

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

Section 77(10) of the Hong Kong Arbitration Ordinance provides a crucial aspect of the legal framework surrounding arbitration. Here is an analysis of this provision:

1. **Finality and Certainty:** This provision underscores the finality and certainty of the Court's orders made under Section 77. It confirms that once the Court issues an order in relation to the fees and expenses of the arbitral tribunal, that decision is binding and not subject to further appeal. This promotes stability in the arbitration process by avoiding prolonged legal challenges or disputes over the determination of fees and expenses.
2. **Judicial Economy:** By explicitly stating that orders made under this section are not subject to appeal, the provision contributes to judicial economy. It prevents unnecessary additional rounds of litigation that could potentially arise if parties were allowed to challenge the Court's decisions on these matters.
3. **Efficient Dispute Resolution:** The provision aligns with the goals of arbitration – efficient and streamlined dispute resolution. It ensures that parties can rely on the Court's decision on fees and expenses without the delay and expense of an appellate process.
4. **Final Decision:** Parties can confidently approach arbitration knowing that the decision regarding the fees and expenses, once made by the Court, will stand as the final determination. This reduces uncertainty and encourages the timely resolution of disputes.
5. **Promotion of Arbitration:** By preventing appeals on fee-related matters, this provision promotes the use of arbitration as a quicker and less costly alternative to traditional litigation. Parties can trust in the finality of these decisions, enhancing the attractiveness of arbitration as a dispute resolution method.
6. **Clarity and Predictability:** The provision adds clarity to the legal framework surrounding arbitration. Parties can anticipate that the Court's decisions on fees and expenses will not be subject to further appeal, providing a more predictable outcome for all parties involved.

In summary, Section 77(10) of the Hong Kong Arbitration Ordinance plays a significant role in ensuring that decisions related to fees and expenses made by the Court are final and not subject to appeal. This supports the principles of efficiency, finality, and predictability in the arbitration process, while also promoting arbitration as an effective method of resolving disputes.

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.**

Section 78(1) of the Hong Kong Arbitration Ordinance addresses the financial obligations of parties involved in arbitral proceedings. Here is an analysis of this provision:

1. **Shared Financial Responsibility:** The provision establishes that the financial responsibility for paying the fees and expenses of the arbitral tribunal is shared among all parties involved in the proceedings. This joint and several liability means that each party is responsible not only for their own share of the costs but also for the entire amount if other parties are unable or unwilling to pay their portions.
2. **Reasonableness:** The provision emphasises that the fees and expenses payable to the arbitral tribunal should be “reasonable”. This ensures that the costs incurred by the tribunal are appropriate and justifiable in light of the complexity of the dispute, the work involved, and the industry standards.
3. **Flexibility:** The term “appropriate in the circumstances” indicates a flexible approach to determining the fees and expenses. This recognises that the nature of each dispute may vary, and the costs associated with arbitral proceedings should reflect the specific needs of each case.
4. **Equitable Allocation:** The concept of joint and several liability promotes an equitable allocation of costs. It prevents one party from avoiding their financial responsibility and ensures that the tribunal’s fees and expenses are covered even if one party fails to fulfil its obligation.
5. **Encouraging Cooperation:** The joint and several liability aspect encourages parties to cooperate in fulfilling their financial obligations. If one party fails to pay its share, other parties can still ensure that the tribunal’s costs are met, avoiding any disruptions to the proceedings.
6. **Certainty and Predictability:** By specifying that the parties are jointly and severally liable, the provision contributes to certainty and predictability in the arbitration process. The parties know that the tribunal’s fees and expenses will be addressed, even if there are difficulties with one party’s ability to pay.
7. **Financial Planning:** Parties engaged in arbitration can better plan their budgets and financial commitments knowing that their liability for the tribunal’s costs is clearly outlined in the ordinance.

In summary, Section 78(1) of the Hong Kong Arbitration Ordinance establishes the financial responsibilities of parties involved in arbitral proceedings. It emphasises the equitable sharing of costs, the reasonableness of fees, and the importance of ensuring that the tribunal’s expenses are adequately covered to support a fair and efficient arbitration process.

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

Section 78(2) of the Hong Kong Arbitration Ordinance adds a layer of complexity to the financial responsibilities established in Section 78(1). Here is an analysis of this provision:

1. **Hierarchy of Provisions:** Section 78(2) clarifies that the financial responsibilities outlined in subsection (1) are subject to any orders made by the Court under section 62 or any other relevant provision of the Ordinance. This means that if there are specific court orders or provisions elsewhere in the ordinance that modify the financial obligations of the parties, those modifications will take precedence.
2. **Flexibility and Adaptability:** By referencing potential court orders or relevant provisions of the ordinance, this subsection recognises that arbitration proceedings can be complex and multifaceted. Different cases may involve varying circumstances that warrant specific adjustments to the parties' financial responsibilities.
3. **Harmonising with Other Sections:** The reference to section 62 specifically addresses the situation where an arbitrator's mandate has terminated under certain circumstances. If the court has made an order under section 62 (related to arbitrator's fees and expenses), it can impact the financial obligations of the parties as outlined in section 78(1).
4. **Ensuring Fairness:** This provision ensures that financial responsibilities are balanced and fair, taking into account specific scenarios where deviations from the general rule might be necessary. Court orders under section 62, for example, might be based on considerations that the ordinary rule in section 78(1) might not fully address.
5. **Legal Predictability:** Despite the potential for modifications due to other provisions, this subsection also helps maintain a certain level of legal predictability. Parties can still anticipate their general financial obligations under section 78(1), with modifications being determined based on specific circumstances or court orders.
6. **Preserving Judicial Oversight:** The reference to court orders emphasises the role of the court in overseeing and ensuring the fairness and validity of arbitration proceedings. This ensures that any changes to the parties' financial responsibilities are in line with legal standards and principles.

In summary, Section 78(2) of the Hong Kong Arbitration Ordinance acknowledges the possibility of modifications to the financial obligations of parties outlined in Section 78(1). It underscores the importance of harmonising those obligations with other provisions, particularly court orders under section 62 or other relevant sections, to ensure fairness and legal consistency in the arbitration process.

(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.**

Section 78(3) of the Hong Kong Arbitration Ordinance clarifies the scope and implications of the financial responsibilities outlined in Section 78(1). Here is an analysis of this provision:

1. **Preserving Different Financial Aspects:** This subsection makes it clear that Section 78(1) does not affect two specific areas: (a) the liability of the parties among themselves to pay the costs of the arbitral proceedings and (b) any contractual rights or obligations regarding the payment of the fees and expenses of the arbitral tribunal.
2. **Costs vs. Fees and Expenses:** The distinction between the “costs of the arbitral proceedings” and the “fees and expenses of the arbitral tribunal” is important. The former generally refers to broader costs associated with the arbitration process, such as administrative costs, legal representation costs, and other incidental expenses. The latter refers more specifically to the compensation due to the arbitrators themselves.
3. **Party-to-Party Liability:** This subsection does not affect the internal allocation of costs among the parties involved in the arbitration proceedings. It underscores that the liability of the parties among themselves to pay the broader costs (including party-to-party costs) remains intact, and the allocation can be determined according to other relevant rules or agreements.
4. **Contractual Obligations:** It is also clarified that any contractual rights or obligations regarding the payment of the fees and expenses of the arbitral tribunal are separate from the provisions of Section 78. Parties can have specific agreements regarding how they will handle the arbitrators’ compensation, and those contractual terms will continue to apply.
5. **Legal Predictability:** This subsection enhances legal predictability by ensuring that parties can understand the distinction between the broader costs of the proceedings and the compensation of the arbitral tribunal. It reinforces the idea that parties’ financial obligations to each other and their specific agreements regarding arbitrators’ fees are not affected by Section 78(1).
6. **Balancing Financial Aspects:** This provision contributes to maintaining a balanced and coherent approach to the financial aspects of arbitration. While Section 78(1) establishes the joint and several liability of the parties for the fees and expenses of the tribunal, other financial aspects, such as the distribution of costs among parties and contractual arrangements, are left intact.

In summary, Section 78(3) of the Hong Kong Arbitration Ordinance clarifies that the provision in Section 78(1) regarding parties’ joint and several liability for tribunal fees and expenses does not affect the broader financial landscape of arbitration, including the internal allocation of costs among parties and any contractual arrangements related to arbitrators’ compensation.

(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.**

Section 78(4) of the Hong Kong Arbitration Ordinance provides definitions for certain terms used within the context of this section. Here is an analysis of this provision:

1. **Definition of “Arbitral Tribunal”:** This subsection defines the term “arbitral tribunal” for the purposes of Section 78. It clarifies that the term encompasses not only the active members of the tribunal but also other related individuals, specifically addressing two scenarios:
 - a. **Ceased Member of the Tribunal:** A “member of the tribunal who has ceased to act” refers to an arbitrator who was initially part of the tribunal but is no longer actively participating in the arbitration process. This might occur due to various reasons, such as resignation, replacement, or any other circumstances that result in the arbitrator’s departure from the tribunal.
 - b. **Umpire Replacing Tribunal Members:** An “umpire who has not yet replaced members of the tribunal” refers to an individual who is designated to replace members of the tribunal if necessary. This might occur if the tribunal consists of an odd number of arbitrators and one or more members of the tribunal are unable to participate. The umpire is typically appointed to maintain an odd number of arbitrators and facilitate decision-making.
2. **Expansive Definition:** By including these specific scenarios, the section ensures a comprehensive and inclusive definition of “arbitral tribunal” to cover not only active members but also individuals who were once part of the tribunal or those designated to replace members.
3. **Clarity in Application:** This definition enhances clarity and precision in applying Section 78, ensuring that it applies appropriately to individuals who have been members of the tribunal in the past or are designated to become part of it in the future.
4. **Safeguarding Liability and Responsibilities:** Including these scenarios under the definition maintains consistency in the treatment of financial liabilities and responsibilities associated with the tribunal’s fees and expenses. It ensures that obligations under Section 78 extend to both active members and those who have ceased to act, as well as to umpires who may replace members.

In summary, Section 78(4) of the Hong Kong Arbitration Ordinance clarifies the scope of the term “arbitral tribunal” within the context of Section 78, encompassing not only active members of the tribunal but also individuals who have ceased to act as members and umpires designated to replace members. This definition ensures that the financial obligations outlined in Section 78 are appropriately applied to these different scenarios.

79. Arbitral tribunal may award interest

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

Section 79(1) of the Hong Kong Arbitration Ordinance pertains to the award of interest by an arbitral tribunal in arbitral proceedings. Here is an analysis of this provision:

1. **Interest Awards by Arbitral Tribunals:** This section establishes the authority of an arbitral tribunal to award interest in arbitral proceedings, provided that the parties have not agreed otherwise. Interest awards can serve as a means to compensate a party for the delay in receiving payment or to reflect the time value of money.
2. **Types of Interest and Applicability: Simple or Compound Interest:** The section allows the arbitral tribunal to award either simple or compound interest. Simple interest is calculated on the principal amount, while compound interest is calculated on both the principal and any previously accrued interest.
3. **Applicability:** The interest can be awarded for three specific categories:
 - a. **Money Awarded by the Tribunal:** Interest can be awarded on the money determined and awarded by the tribunal during the arbitral proceedings.
 - b. **Money Claimed but Paid Before the Award:** If a party claimed a certain amount of money and that amount was paid before the arbitral award was made, the tribunal can award interest on the amount that was outstanding before payment.
 - c. **Costs Awarded:** Interest can also be awarded on costs that are awarded or ordered by the tribunal in the course of the arbitral proceedings.
4. **Discretion in Dates, Rates, and Rests:** The section provides the arbitral tribunal with discretion regarding the determination of interest details, including:
 - a. **Dates:** The tribunal can decide the starting and ending dates for the period during which interest is to be calculated.
 - b. **Rates:** The tribunal can determine the appropriate interest rate to be applied during the specified period.
 - c. **Rests:** The tribunal can decide whether to calculate interest using simple rests (annual, semi-annual, etc.) or compound rests (more frequent calculations).

5. **Limitation on Period Ending Date:** The interest period specified by the tribunal should not extend beyond the date of payment, ensuring that interest is only calculated up to the point when the amount is actually paid.
6. **Subject to Section 80:** The provision notes that the tribunal's authority to award interest under Section 79(1) is subject to the provisions of Section 80 of the Arbitration Ordinance. Section 80 deals with the power of the tribunal to award interest in exceptional cases involving legal or equitable relief.
7. **Flexibility and Adaptable Awards:** By allowing the arbitral tribunal flexibility in determining interest rates, dates, and rests, this provision recognises that different situations may warrant different interest calculations.
8. **Balancing Party Autonomy and Tribunal Authority:** The section strikes a balance between the autonomy of parties (if they have an agreement on interest) and the tribunal's authority to award interest when parties have not explicitly agreed.

In summary, Section 79(1) of the Hong Kong Arbitration Ordinance grants arbitral tribunals the power to award interest in arbitral proceedings, subject to the specific circumstances outlined in the provision. It outlines the types of interest that can be awarded, the discretion given to the tribunal in determining interest details, and the provision's interaction with other sections of the ordinance. This provision underscores the tribunal's authority to craft interest awards in line with the circumstances of each case.

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

Section 79(2) of the Hong Kong Arbitration Ordinance clarifies the relationship between subsection (1) and other provisions that confer power upon an arbitral tribunal to award interest. Here is an analysis of this provision:

1. **Clarification of Relationship:** This subsection serves to clarify that the granting of power to an arbitral tribunal to award interest under Section 79(1) does not restrict or limit any other existing powers of the tribunal to award interest.
2. **Preservation of Tribunal's Authority:** By stating that Section 79(1) does not affect other powers of the tribunal to award interest, this subsection underscores the tribunal's autonomy and authority to determine whether and how interest should be awarded in specific cases, even if those cases fall outside the scope of Section 79(1).
3. **Flexibility in Interest Awards:** The provision recognises that arbitral tribunals may have multiple bases on which to award interest in various situations. These bases might include customary practice, the nature of the dispute, the jurisdiction's legal principles, or the specifics of the arbitration agreement.
4. **Potential for Different Considerations:** Since the ordinance does not specify the exact circumstances for interest awards under other powers, the tribunal has the freedom to consider various factors that could justify an interest award in cases not explicitly covered by Section 79(1).

5. **Complex Cases:** Certain cases might involve multiple claims, counterclaims, or distinct issues where the tribunal’s power to award interest arises from factors beyond those covered by Section 79(1). This subsection acknowledges the complexity of arbitration cases and ensures that tribunals retain the flexibility to address interest issues comprehensively.
6. **Harmonisation of Provisions:** This subsection harmonises Section 79(1) with the broader power of the tribunal to award interest, ensuring that one provision does not inadvertently limit the tribunal’s discretion under the other.

In summary, Section 79(2) of the Hong Kong Arbitration Ordinance clarifies that the grant of power to arbitral tribunals to award interest under Section 79(1) does not impede or restrict the tribunal’s pre-existing authority to award interest under other powers. This provision reinforces the tribunal’s autonomy and flexibility in awarding interest to suit the specific circumstances of each case.

(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.

Section 79(3) of the Hong Kong Arbitration Ordinance clarifies the scope of a reference within subsection (1)(a) of the same section. Here is an analysis of this provision:

1. **Interpretation Clarification:** This subsection serves to provide an interpretation and clarification of the term “money awarded by the tribunal” as used in subsection (1)(a) of Section 79.
2. **Declaratory Awards Inclusion:** The provision explicitly states that the reference to “money awarded by the tribunal” includes amounts that are payable as a consequence of a declaratory award made by the tribunal.
3. **Impact of Declaratory Awards:** A declaratory award is an award issued by an arbitral tribunal that declares the rights, obligations, or legal relationship of the parties without ordering specific remedies. Such awards are essentially statements of the legal status of certain matters. Section 79(3) ensures that any monetary consequences arising from such declaratory awards fall within the purview of interest awards contemplated by subsection (1)(a).
4. **Broadening the Scope:** By incorporating amounts payable due to declaratory awards, the provision broadens the potential scenarios in which interest can be awarded under subsection (1)(a). It recognises that declaratory awards can have financial implications, even if they do not explicitly order specific payments.
5. **Consistency with Legislative Intent:** This provision aligns with the legislative intent to provide flexibility and fairness in arbitral proceedings. It recognises that financial implications can arise from declaratory awards, just as they can from more direct forms of monetary awards.
6. **Encouragement of Clear Interpretation:** The inclusion of declaratory awards in the reference helps prevent potential disputes or confusion over whether these types of awards are covered under the scope of interest awards as specified in subsection (1)(a).

In summary, Section 79(3) of the Hong Kong Arbitration Ordinance clarifies that the term “money awarded by the tribunal” in subsection (1)(a) of the same section includes amounts payable as a result of declaratory awards made by the tribunal. This clarification ensures that any financial consequences arising from declaratory awards are treated consistently with other monetary awards for the purpose of interest awards.

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.

Section 80(1) of the Hong Kong Arbitration Ordinance pertains to the payment of interest on money awarded by an arbitral tribunal. Here is an analysis of this provision:

1. **Interest on Awarded Money:** The provision addresses the question of when and how interest should be payable on the monetary amounts awarded by an arbitral tribunal.
2. **Commencement Date:** Interest is to be paid from the “date of the award”. This means that the interest starts accruing from the date on which the arbitral tribunal issues its final decision (award) that determines the amount of money to be paid.
3. **Default Interest Rate:** The default interest rate specified is the “judgment rate”. The judgment rate is the statutory rate of interest that is applied to judgments by courts. It provides a consistent benchmark for calculating interest on monetary awards in arbitration.
4. **Award Override:** The provision acknowledges that the award itself may specify a different arrangement regarding interest. This recognises the importance of party autonomy and the tribunal’s discretion to tailor the interest terms based on the specifics of the case.
5. **Flexibility and Consistency:** By allowing the tribunal to vary the interest rate if the award provides otherwise, the provision accommodates flexibility to address unique circumstances while maintaining consistency with established practices.
6. **Fairness and Certainty:** The provision balances the parties’ interests by ensuring that a default interest rate is set, yet allowing for parties to negotiate interest terms as part of the arbitral process. This enhances fairness and predictability in financial outcomes.
7. **Encouragement of Clarity:** The provision encourages tribunals to clearly address the interest aspect in their awards. This is important to avoid ambiguity and potential disputes regarding the application of interest.
8. **Harmonisation with Legal System:** The use of the “judgment rate” aligns the treatment of interest in arbitration with interest awarded by courts, fostering consistency and coherence between the arbitral and judicial systems.
9. **Balancing Party Autonomy and Equity:** By allowing awards to specify different interest arrangements, the provision acknowledges that parties’ preferences or the nature of the dispute may warrant deviation from the default interest rate.

In summary, Section 80(1) of the Hong Kong Arbitration Ordinance establishes the framework for the payment of interest on money awarded by an arbitral tribunal. It sets the default commencement date and interest rate, while allowing the award to determine otherwise, thus accommodating flexibility while ensuring clarity and consistency in interest arrangements.

(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.

Section 80(2) of the Hong Kong Arbitration Ordinance addresses the payment of interest on costs awarded or ordered by an arbitral tribunal. Here is an analysis of this provision:

1. **Interest on Awarded Costs:** The provision specifically deals with the issue of interest on costs awarded or ordered by an arbitral tribunal. This is important because costs can constitute a significant aspect of the overall outcome of an arbitration proceeding.
2. **Commencement Date for Interest:** Interest on costs is payable from either of two dates:
 - a. “the date of the award or order on costs”, or
 - b. “the date on which costs ordered are directed to be paid forthwith”.
3. **Default Interest Rate:** Similar to Section 80(1), the default interest rate specified here is the “judgment rate”. This consistent use of the judgment rate promotes uniformity in the treatment of interest.
4. **Award or Order Override:** Similar to Section 80(1), Section 80(2) allows for the award or order on costs to specify different terms for interest. This acknowledges the tribunal’s discretion and the parties’ autonomy in defining interest arrangements.
5. **Clarity and Predictability:** The provision enhances clarity by defining two specific commencement dates for interest calculation. This minimises ambiguity and potential disputes regarding when interest starts accruing.
6. **Forthwith Payment:** The provision recognises that costs can sometimes be ordered to be paid forthwith, even before the final resolution of the dispute. In such cases, interest accrues from the date of such an order.
7. **Balancing of Interests:** By allowing the award or order on costs to specify different interest terms, the provision strikes a balance between party autonomy and equitable treatment.
8. **Alignment with Judicial Practices:** The use of the “judgment rate” aligns the treatment of interest on awarded costs with interest practices applied by courts, promoting consistency across the arbitration and judicial systems.

9. Encouraging Clear Awards: Just like Section 80(1), this provision encourages arbitral tribunals to provide clarity in their awards or orders on costs by explicitly addressing the issue of interest.

In summary, Section 80(2) of the Hong Kong Arbitration Ordinance sets out the framework for payment of interest on costs awarded or ordered by an arbitral tribunal. It defines specific commencement dates for interest calculation, incorporates a default interest rate, and allows the award or order to specify different interest terms. This provision enhances transparency, consistency, and predictability in interest arrangements related to awarded costs.

(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).

Section 80(3) of the Hong Kong Arbitration Ordinance provides a definition for the term “judgment rate” as used in Sections 80(1) and 80(2) of the ordinance. Let us analyse this provision:

1. Definition Clarification: The main purpose of Section 80(3) is to clarify the meaning of the term “judgment rate”. This definition aids in avoiding any ambiguity or confusion when referring to the term within Sections 80(1) and 80(2) of the ordinance.
2. Reference to Another Ordinance: The provision refers to a specific section in another ordinance, namely Section 49(1)(b) of the High Court Ordinance (Cap. 4). This cross-reference ensures consistency in defining the “judgment rate” and avoids duplicative definitions.
3. Use of the Term in Context: The definition highlights that the “judgment rate” is associated with “Interest on judgments” as determined by the Chief Justice under the High Court Ordinance. This contextualises the term’s usage and underscores its connection to interest calculations in legal matters.
4. Uniform Application: By referencing a defined term from another ordinance, Section 80(3) ensures that the term “judgment rate” retains a consistent and uniform meaning across different legal provisions and contexts.
5. Link to Judicial Authority: Referring to the Chief Justice’s determination of the “judgment rate” emphasises the role of the judiciary in setting interest rates. It reflects the legislative intent to tie the interest rate to an authoritative source within the legal system.
6. Certainty and Predictability: By explicitly specifying where the term’s definition originates and the authority responsible for determining the rate, Section 80(3) adds clarity and predictability to the application of the “judgment rate” in arbitration-related interest calculations.
7. Legislative Drafting Efficiency: Rather than duplicating the definition of “judgment rate” within the Hong Kong Arbitration Ordinance, the drafters chose to cross-reference the definition from the High Court Ordinance. This approach streamlines the legislative drafting process and maintains consistency with existing legal terminology.

In summary, Section 80(3) of the Hong Kong Arbitration Ordinance defines the term “judgment rate” for the purpose of Sections 80(1) and 80(2). It achieves clarity and uniformity by cross-referencing the term’s definition as determined by the Chief Justice under the High Court Ordinance, highlighting the role of judicial authority in determining interest rates for judgments and arbitration awards.

Part 9 Recourse Against Award

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

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

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

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

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

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

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

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

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

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

(b) the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or

(ii) the award is in conflict with the public policy of this State.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a

request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.

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

Please refer to the commentary on Article 34 of the UNCITRAL Model Law 2006.

(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).**

Section 81(2) of the Hong Kong Arbitration Ordinance outlines exceptions to the effect of Section 81(1) by specifying certain circumstances where the application of Section 81(1) does not apply. Let us break down this provision:

1. **Preservation of Other Provisions:** Section 81(2) clarifies that the operation of Section 81(1) does not affect specific rights, powers, and procedures outlined in other sections of the ordinance. This ensures that these other provisions retain their applicability and effectiveness, even in cases where Section 81(1) may apply.
2. **Specific Exceptions Listed:** The provision enumerates three exceptions, denoted as points (a), (b), and (c), to indicate the circumstances in which the application of Section 81(1) is overridden:
 - a. **Exception (a):** The provision states that the power of the Court to set aside an arbitral award under Section 26(5) is not affected. This preserves the Court’s authority to review and potentially nullify an award under specific grounds provided in Section 26(5).
 - b. **Exception (b):** The provision refers to the right to challenge an arbitral award under Section 4 of Schedule 2. This implies that the mechanism for challenging an award provided in Section 4 of Schedule 2 remains unaffected by the application of Section 81(1).
 - c. **Exception (c):** The provision also refers to the right to appeal against an arbitral award on a question of law under Section 5 of Schedule 2. This preserves the ability to appeal an award based on a legal question, even if Section 81(1) applies.
3. **Protection of Parties’ Rights:** By specifying these exceptions, Section 81(2) safeguards parties’ rights to seek judicial intervention, set aside awards, challenge awards on

specified grounds, and appeal awards based on legal issues. These provisions collectively offer parties multiple avenues to ensure the fairness and legality of arbitral proceedings and their outcomes.

4. **Balance of Powers:** The provisions outlined in Section 81(2) reflect a balance between allowing for finality in arbitral awards through Section 81(1) while also recognising the importance of providing parties with opportunities to challenge awards when warranted.
5. **Contextual Clarity:** Section 81(2) provides contextual clarity by identifying the specific sections and circumstances to which its exceptions apply. This aids practitioners and parties in understanding the interplay between Section 81(1) and other relevant sections of the ordinance.

In summary, Section 81(2) of the Hong Kong Arbitration Ordinance clarifies that the effect of Section 81(1) does not hinder certain rights and procedures provided in other sections of the ordinance. This provision ensures a balanced approach by upholding parties' rights to challenge, set aside, and appeal arbitral awards under specific circumstances while still promoting the finality and enforceability of arbitral awards.

(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.

Section 81(3) of the Hong Kong Arbitration Ordinance establishes a specific limitation on the jurisdiction of the Court to set aside or remit an arbitral award on the basis of errors of fact or law that appear on the face of the award. Let us examine this provision in detail:

1. **Scope of Jurisdiction:** Section 81(3) limits the jurisdiction of the Court in relation to the grounds for setting aside or remitting arbitral awards. It states that the Court does not have the authority to intervene based solely on errors of fact or law that are apparent on the face of the award.
2. **Subject to Exception (c) in Subsection (2):** The provision acknowledges an exception in subsection (2)(c), as indicated by "Subject to subsection (2)(c)". This means that the limitation set by subsection (3) does not apply if the right to appeal against an arbitral award on a question of law under Section 5 of Schedule 2 (subsection 2(c)) is exercised. In other words, parties can still appeal on legal questions even if the error is evident on the face of the award.
3. **Balance Between Finality and Review:** Section 81(3) contributes to the balance between the finality of arbitral awards and the limited scope of judicial intervention. It prevents parties from seeking intervention by the Court solely on the grounds of errors that are apparent from the award itself. This helps maintain the integrity of arbitral proceedings as parties have already agreed to abide by the tribunal's decision.
4. **Promotion of Arbitration Finality:** By preventing challenges based solely on errors on the face of the award, Section 81(3) aims to uphold the principle of finality in arbitration. It discourages parties from attempting to reopen proceedings or awards based on relatively straightforward errors in the tribunal's reasoning.

5. **Legal and Factual Errors:** The provision's reference to both errors of fact and law emphasises that the Court's jurisdiction is curtailed regarding both aspects of the award. This prevents parties from using perceived factual inaccuracies or legal misinterpretations as a gateway to seeking judicial review.
6. **Exception for Legal Questions:** The exception provided in subsection (2)(c) allows for the right to appeal on a question of law, reinforcing the importance of addressing significant legal issues. This exception acknowledges the potential complexity of legal matters and ensures that parties have the ability to challenge the award if it involves substantial legal errors.

In summary, Section 81(3) of the Hong Kong Arbitration Ordinance restricts the Court's jurisdiction to set aside or remit an arbitral award based solely on errors of fact or law that are evident on the face of the award. This provision aims to strike a balance between promoting the finality of arbitration awards and allowing limited judicial review in cases involving substantial legal errors, as provided by the exception in subsection (2)(c).

(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).

Section 81(4) of the Hong Kong Arbitration Ordinance introduces a requirement for obtaining the leave of the Court before appealing from a decision of the Court under Article 34 of the UNCITRAL Model Law. Here is an analysis of this provision:

1. **Leave Requirement:** This subsection stipulates that in order to appeal a decision of the Court made under Article 34 of the UNCITRAL Model Law, parties must first obtain the leave (permission) of the Court. This implies that parties cannot initiate an appeal without demonstrating to the Court that there are valid grounds for doing so.
2. **Article 34 of UNCITRAL Model Law:** Article 34 of the UNCITRAL Model Law pertains to the grounds for setting aside an arbitral award. It provides the criteria under which a party can seek the annulment of an award. Section 81(4) specifies that appeals from decisions of the Court concerning matters related to Article 34 require prior leave.
3. **Control Over Appeals:** By requiring leave for appeals from Court decisions related to Article 34, Section 81(4) grants the Court a degree of control over the appellate process. The Court has the authority to assess the merit of the proposed appeal before granting leave, ensuring that only valid and substantial appeals proceed to the appellate stage.
4. **Balancing Finality and Review:** This provision reinforces the principle of finality in arbitration while still allowing for some level of judicial review. The requirement for obtaining leave serves as a filter, preventing frivolous or weak appeals from being pursued, while permitting appeals that involve substantive legal or procedural issues.
5. **Preventing Abuse of Appeal Process:** Requiring leave for appeals helps prevent the abuse of the appeal process by parties attempting to challenge arbitral awards without legitimate grounds. It ensures that the Court's resources are used efficiently and that only genuine grievances are addressed on appeal.

6. Consistency with International Standards: The requirement for leave aligns with the principles of international arbitration standards, including the UNCITRAL Model Law, which aims to promote arbitration's efficiency and effectiveness while preserving parties' rights to challenge awards in certain circumstances.

In summary, Section 81(4) of the Hong Kong Arbitration Ordinance mandates that parties seeking to appeal decisions of the Court under Article 34 of the UNCITRAL Model Law must first obtain the leave of the Court. This provision serves as a gatekeeping mechanism to ensure that appeals are grounded in valid reasons and maintain a balance between arbitration's finality and limited judicial review.

Part 10 Recognition and Enforcement of Awards

Division 1—Enforcement of Arbitral Awards

82. Article 35 of UNCITRAL Model Law (Recognition and enforcement)

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

Please refer to the commentary on Article 35 of the UNCITRAL Model Law 2006.

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

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

Please refer to the commentary on Article 36 of the UNCITRAL Model Law 2006.

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.

Section 84(1) of the Hong Kong Arbitration Ordinance outlines the enforceability of arbitral awards and their treatment in comparison to court judgments. Here is an analysis of this provision:

1. **Enforceability of Arbitral Awards:** This subsection establishes that arbitral awards, whether issued within or outside Hong Kong, are legally enforceable. It grants such awards a level of recognition and authority similar to that of court judgments.
2. **Manner of Enforcement:** The section stipulates that an arbitral award can be enforced “in the same manner as a judgment of the Court”. This means that the mechanisms and procedures for enforcing arbitral awards should mirror those used for enforcing court judgments.
3. **Limitation on Enforceability:** While arbitral awards are enforceable, the enforcement process requires the “leave of the Court”. This indicates that parties seeking to enforce an arbitral award must first obtain permission from the Court before proceeding with enforcement.
4. **Leave Requirement:** Requiring the leave of the Court before enforcing an arbitral award adds a layer of judicial oversight to the enforcement process. This requirement ensures that the enforcement of awards is carried out in accordance with the law and any relevant legal standards.
5. **Exception Under Section 26(2):** The reference to “subject to section 26(2)” implies that there might be specific circumstances outlined in Section 26(2) of the Ordinance that

could impact the enforceability of certain awards. Section 26(2) might contain provisions related to the setting aside or refusal of enforcement of arbitral awards.

6. **Recognition of Award as Judgment:** Treating an arbitral award as having the same effect as a court judgment reinforces the idea that arbitral awards are binding and enforceable decisions. This recognition underscores the legitimacy of the arbitration process and the authority of arbitral tribunals.
7. **Efficiency and Consistency:** By treating arbitral awards in a manner akin to court judgments, Section 84(1) promotes consistency and efficiency in the enforcement of both types of decisions. This can contribute to the credibility of arbitration as an effective alternative dispute resolution mechanism.
8. **Safeguarding Due Process:** The requirement for leave of the Court ensures that parties seeking enforcement of an arbitral award comply with established legal procedures and that any potential issues or objections can be addressed through appropriate legal channels.

In summary, Section 84(1) of the Hong Kong Arbitration Ordinance establishes that an arbitral award is enforceable in a manner similar to a court judgment, but only with the leave of the Court. This provision acknowledges the binding nature of arbitral awards while maintaining a mechanism for judicial oversight in the enforcement process, contributing to the effectiveness and legitimacy of the arbitration system.

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

Section 84(2) of the Hong Kong Arbitration Ordinance builds upon the concept established in subsection (1) regarding the enforcement of arbitral awards. Here is an analysis of this provision:

1. **Judgment in Terms of the Award:** This subsection clarifies the practical consequence of obtaining the “leave of the Court” for enforcing an arbitral award. It states that if the Court grants leave under subsection (1), it has the authority to enter judgment based on the terms of the arbitral award.
2. **Legal Recognition and Effect:** By allowing the Court to enter judgment based on the terms of the award, this subsection emphasises that an arbitral award is being elevated to the status of a legally recognised and enforceable judgment. This reinforces the binding nature of the arbitral award and its equivalence to a court judgment for enforcement purposes.
3. **Efficiency in Enforcement:** Allowing the Court to enter judgment based on the award streamlines the enforcement process. It eliminates the need for parties to initiate a separate legal action for enforcement, which could potentially involve duplication of efforts and resources.
4. **Avoiding Redundant Proceedings:** Allowing the Court to enter judgment in terms of the award aligns with the overall goal of arbitration: to provide a more efficient and streamlined dispute resolution process than traditional litigation. This approach prevents parties from having to litigate the same issues in both arbitration and court proceedings.

5. **Promoting Certainty:** Enabling the Court to enter judgment based on the award enhances legal certainty. It ensures that the terms and outcomes of the arbitral proceedings are recognised and enforceable through established legal channels.
6. **Facilitating Enforcement:** By providing a mechanism for converting an arbitral award into a formal court judgment, Section 84(2) simplifies the process for enforcing the award, as the enforcement methods and tools available for court judgments can be applied to the award.

In summary, Section 84(2) of the Hong Kong Arbitration Ordinance specifies that if the Court grants leave for enforcing an arbitral award under subsection (1), it has the authority to enter judgment based on the terms of the award. This provision enhances the efficiency of the enforcement process and underscores the legal recognition and enforceability of arbitral awards.

(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).

Section 84(3) of the Hong Kong Arbitration Ordinance establishes the requirement for obtaining leave from the Court for appealing a decision related to the enforcement of an arbitral award. Here is an analysis of this provision:

1. **Leave Requirement for Appeal:** This subsection emphasises that a party seeking to appeal a decision of the Court to either grant or refuse leave to enforce an arbitral award under subsection (1) must first obtain the leave of the Court. In essence, this means that parties cannot automatically appeal such decisions; they must seek permission from the Court to proceed with the appeal.
2. **Controlled Appellate Process:** By introducing the requirement for leave, the provision ensures that the appellate process is controlled and focused on cases where there is a genuine need for appeal. This can help avoid frivolous or unnecessary appeals, contributing to the efficiency of the overall legal process.
3. **Balancing Access to Justice:** While the provision adds a layer of control to the appeal process, it is important to note that the Court retains the authority to grant leave if it deems the appeal to be meritorious. This balance helps ensure that parties with valid grounds for appeal can still have their cases heard.
4. **Efficiency in Enforcement Proceedings:** Requiring leave for appeal helps prevent potential delays in the enforcement of arbitral awards. It ensures that the enforcement process is not unduly prolonged by multiple levels of appeal, while still allowing parties to challenge enforcement decisions in cases where there are substantive legal issues at hand.
5. **Promoting Consistency and Finality:** By imposing the requirement for leave on appeals related to enforcement decisions, this subsection encourages consistency and finality in enforcement proceedings. It discourages repeated attempts to challenge the same enforcement decision through multiple appeals.
6. **Fostering Confidence in Arbitration:** The controlled appellate process outlined in Section 84(3) contributes to fostering confidence in arbitration as a reliable and efficient

alternative dispute resolution mechanism. Parties can trust that enforcement decisions will be subject to a rigorous review process while avoiding unnecessary delays.

In summary, Section 84(3) of the Hong Kong Arbitration Ordinance establishes the requirement for parties seeking to appeal a decision related to the enforcement of an arbitral award under subsection (1) to first obtain leave from the Court. This approach strikes a balance between controlling the appeal process and ensuring that valid appeals are still able to proceed. It contributes to the efficiency, consistency, and confidence in the arbitration enforcement process.

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)

- (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)**

Section 85 of the Hong Kong Arbitration Ordinance outlines the requirements that must be fulfilled by a party seeking to enforce an arbitral award that is not a Convention award, Mainland award, or Macao award. This provision establishes the necessary documentation and translation procedures for such enforcement. Here is an analysis of this section:

1. **Authentication and Certification of Documents:** The section specifies that the party seeking to enforce the arbitral award must provide either the duly authenticated original award or a duly certified copy of it. This requirement ensures the authenticity and reliability of the award being presented for enforcement.
2. **Preservation of Original Arbitration Agreement:** In addition to the award, the party must also provide the original arbitration agreement or a duly certified copy of it. This ensures that the enforceability of the award is closely tied to the underlying agreement that parties entered into to resolve their dispute through arbitration.
3. **Translation Requirement:** If the award or the arbitration agreement is not in either of the official languages of Hong Kong (Chinese or English), the party must provide a translation of the document(s) in either of the official languages. This translation must be certified by an official or sworn translator, or by a diplomatic or consular agent. This requirement ensures that the local authorities can understand and verify the content of the award and the arbitration agreement.
4. **Promoting Clarity and Understanding:** Requiring translations of documents that are not in the official languages of Hong Kong ensures that enforcement proceedings are conducted with clarity and that the relevant authorities can comprehend the content of the award and agreement accurately.

5. **Avoiding Ambiguity:** The provision helps prevent misunderstandings or potential disputes arising from incorrect interpretations of documents not originally in the official languages.
6. **Amendment for Clarity:** The provision was amended in 2013 to make the language clearer and more precise, specifying the entities that can provide certified translations and the conditions for certification.
7. **Streamlining Enforcement Process:** By setting out clear requirements for documentation and translations, this section contributes to the efficiency and smoothness of the enforcement process, providing a structured framework for parties seeking to enforce arbitral awards.
8. **Maintaining Compliance with International Standards:** The section is designed to align with international best practices for enforcing arbitral awards. It ensures that enforcement in Hong Kong meets the required standards for transparency and integrity.

In summary, Section 85 of the Hong Kong Arbitration Ordinance establishes the procedural requirements for parties seeking to enforce arbitral awards that are not Convention awards, Mainland awards, or Macao awards. These requirements ensure the authenticity of documents, the preservation of arbitration agreements, and the provision of translations when necessary, promoting clear and reliable enforcement procedures.

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**
 - (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.**

Section 86(1) of the Hong Kong Arbitration Ordinance outlines the grounds on which the enforcement of an arbitral award referred to in Section 85 may be refused. These grounds provide a framework for challenging the enforcement of such an award, ensuring that parties have recourse if certain fundamental procedural or substantive irregularities occurred during the arbitration process. Here is an analysis of this section:

1. Incapacity of a Party (Section 86(1)(a)): The first ground pertains to situations where a party to the arbitration agreement was under some legal incapacity as per the law

applicable to that party. This provision ensures that enforcement is refused when a party's incapacity at the time of entering into the arbitration agreement casts doubt on the validity of the agreement itself.

2. **Invalidity of the Arbitration Agreement (Section 86(1)(b)):** This ground encompasses cases where the arbitration agreement is proven to be invalid. The section outlines two scenarios: (i) the agreement was not valid according to the law the parties agreed to, or (ii) if there is no indication of the applicable law, the agreement was not valid under the law of the country where the award was made. This safeguards enforcement against challenges stemming from the fundamental validity of the arbitration agreement.
3. **Lack of Proper Notice or Inability to Present Case (Section 86(1)(c)):** This ground addresses situations where a party was not given proper notice of the appointment of the arbitrator or the arbitral proceedings, or if the party was otherwise unable to present their case. It ensures that parties have an opportunity to participate fully in the arbitration process before an award is enforced against them.
4. **Award Beyond the Scope of Submission (Section 86(1)(d)):** Subsection (d) provides a basis for challenging an award when it either deals with a difference not covered by the submission to arbitration or contains decisions on matters that are beyond the scope of the submission. This protects parties from enforcement of awards that venture beyond the initial issues in dispute.
5. **Irregularities in Arbitral Procedure or Authority (Section 86(1)(e)):** This ground relates to situations where the composition of the arbitral authority or the arbitral procedure was not in accordance with the parties' agreement or, in the absence of an agreement, with the law of the country where the arbitration occurred. This ensures that enforcement is denied if there are significant procedural deviations.
6. **Award Not Yet Binding or Set Aside (Section 86(1)(f)):** The final ground addresses circumstances where the award has not yet become binding on the parties or has been set aside or suspended by a competent authority in the jurisdiction where the award was made. This ensures that awards facing legal challenges are not enforced prematurely.
7. **Balancing Enforceability and Fairness:** These grounds aim to strike a balance between the enforceability of arbitral awards and ensuring procedural fairness and substantive validity. They provide mechanisms for parties to challenge enforcement when certain core aspects of arbitration have been compromised.
8. **Reflecting International Standards:** The grounds enumerated in this section are in line with internationally recognised grounds for challenging the enforcement of arbitral awards, as reflected in the New York Convention and other international arbitration frameworks.

In summary, Section 86(1) of the Hong Kong Arbitration Ordinance establishes the grounds on which enforcement of an arbitral award may be refused, safeguarding the integrity of the enforcement process by allowing parties to challenge awards that suffer from procedural or substantive irregularities. These grounds promote fairness and accountability within the arbitration system.

- (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.

Section 86(2) of the Hong Kong Arbitration Ordinance provides additional grounds on which the enforcement of an arbitral award referred to in Section 85 may be refused. These grounds offer a broader scope for challenging the enforcement of awards in cases that go beyond the specific grounds outlined in Section 86(1). Here is an analysis of this section:

1. Matter Not Capable of Settlement by Arbitration (Section 86(2)(a)): This ground stipulates that enforcement may be refused if the subject matter of the award is not capable of being settled through arbitration under the law of Hong Kong. This reflects the principle that certain types of disputes may not be suitable for resolution through arbitration, and the enforcement of awards relating to such matters is to be refused.
2. Contrary to Public Policy (Section 86(2)(b)): This ground allows for refusal of enforcement if enforcing the award would be contrary to public policy. This is a broad and flexible ground, designed to prevent enforcement of awards that would violate fundamental principles of public morality, justice, or public interest.
3. General Just Ground (Section 86(2)(c)): The last ground offers discretion to the court to refuse enforcement for “any other reason” that the court deems just. This provides the court with the flexibility to address exceptional circumstances that might not be explicitly covered by the previous grounds. It grants the court the authority to consider unique factors and determine if enforcement should be refused based on the principles of fairness and justice.
4. Balancing Enforcement and Public Interest: These grounds are designed to strike a balance between the importance of enforcing arbitral awards and the need to uphold public policy and prevent enforcement of awards that may undermine public interest or go beyond the scope of acceptable arbitral resolution.
5. Safeguarding Core Principles: By including grounds related to public policy and other just reasons, this section ensures that awards that could potentially cause harm or violate fundamental legal principles are not enforced. It reflects the jurisdiction’s commitment to upholding core legal values even in the context of international arbitration.
6. Flexibility and Discretion: Section 86(2)(c) reflects the understanding that not all scenarios can be explicitly enumerated in the law. The provision gives the court the power to use its discretion to refuse enforcement in cases that might not fit neatly into the other specific grounds but still warrant denial of enforcement.

In summary, Section 86(2) of the Hong Kong Arbitration Ordinance expands the grounds for refusing enforcement of an arbitral award referred to in Section 85. It covers matters that are beyond the scope of arbitration, violations of public policy, and other just reasons that the court may consider. These

grounds ensure that the enforcement of awards aligns with legal principles and protects public interests.

(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)

Section 86(3) of the Hong Kong Arbitration Ordinance addresses the enforcement of arbitral awards that contain both decisions on matters that were submitted to arbitration (arbitral decisions) and decisions on matters that were not submitted to arbitration (unrelated decisions). This provision aims to provide clarity on the enforceability of such awards and ensures that only the valid and arbitrable parts of the award are subject to enforcement. Here is an analysis of this section:

1. **Separability of Decisions:** Section 86(3) acknowledges that an award might contain both arbitrable decisions, which were within the scope of the arbitration agreement, and unrelated decisions, which were not subject to arbitration. This can occur when there are disputes that fall within and outside the scope of the arbitration agreement.
2. **Enforceability of Arbitral Decisions:** The provision stipulates that the award may be enforced only in relation to the arbitral decisions that can be separated from the unrelated decisions. In other words, the enforceability of the award is restricted to the valid and arbitrable portions, which were legitimately subjected to the arbitration process.
3. **Consistency with Arbitration Agreement:** This section reflects the principle that arbitration agreements are binding only for matters that the parties have agreed to submit to arbitration. Matters outside the scope of the agreement should not be enforced through arbitration awards.
4. **Avoiding Enforcement of Unrelated Matters:** By allowing the enforcement of only the arbitrable decisions, this section prevents parties from using an award to enforce matters that were not intended to be subject to arbitration. It maintains the integrity of the arbitration process and ensures that parties do not inadvertently enforce decisions that fall outside the agreed scope.
5. **Clarity and Predictability:** Section 86(3) provides clear guidance on how awards containing both arbitrable and unrelated decisions should be treated for enforcement purposes. This clarity enhances predictability for parties seeking to enforce awards and minimises disputes over enforcement.
6. **Fairness and Consistency:** By enforcing only the arbitrable decisions, the provision promotes fairness and consistency in the enforcement of arbitral awards. It prevents parties from benefiting from enforcement of unrelated matters that were not part of the arbitration process.

In summary, Section 86(3) of the Hong Kong Arbitration Ordinance ensures that arbitral awards containing both arbitrable and unrelated decisions are enforced in a manner that respects the scope

of the arbitration agreement. It establishes a clear framework for enforcement, safeguarding the parties' intentions and maintaining the integrity of the arbitration process.

- (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 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.**

Section 86(4) of the Hong Kong Arbitration Ordinance addresses situations where an application for setting aside or suspending an arbitral award referred to in section 85 has been made to a competent authority as specified in subsection (1)(f). This provision outlines the authority and actions of the court where enforcement of the award is being sought. Here is an analysis of this section:

1. **Adjournment for Application:** This section recognises that when an application for setting aside or suspending an award has been made to a competent authority, there might be a need to temporarily adjourn the proceedings for enforcing the award. This allows the court to await the decision of the competent authority before making a determination on enforcement.
2. **Preservation of Status Quo:** By allowing an adjournment, the provision aims to ensure that the enforcement process is not continued while the application for setting aside or suspension is pending. This prevents any potential contradiction between the decisions of the competent authority and the court where enforcement is sought.
3. **Security for Enforcement:** This section grants the court the authority to order the party seeking to enforce the award to provide security. The purpose of this order is to protect the interests of the party against whom enforcement is sought, particularly when there is an ongoing challenge to the validity of the award.
4. **Balancing Interests:** Section 86(4) seeks to strike a balance between the interests of the party seeking enforcement and the party opposing enforcement. It provides a mechanism for the court to take into account the ongoing challenge to the award's validity and the need to ensure fairness and equity.
5. **Preservation of Assets:** The provision for ordering security ensures that if enforcement is ultimately granted and the award is upheld, the party seeking enforcement has provided a guarantee to cover any potential harm or loss suffered by the other party during the interim period.
6. **Consistency with International Practices:** This section aligns with international arbitration practices by allowing the court to consider the validity of the award before proceeding with enforcement. It contributes to harmonising enforcement procedures with international standards.

7. Preserving Equitable Remedies: By granting the court the power to order security, this provision ensures that both parties are treated fairly and that enforcement actions do not lead to irreversible consequences before the application for setting aside or suspension is resolved.

In summary, Section 86(4) of the Hong Kong Arbitration Ordinance aims to maintain a fair and balanced approach when enforcement of an award is sought, especially when there is an ongoing challenge to the award's validity. It allows for the adjournment of proceedings and provides the court with the authority to order security to protect the interests of both parties involved.

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

Section 86(5) of the Hong Kong Arbitration Ordinance addresses the finality of decisions or orders made by the court under subsection (4) in relation to enforcement of an arbitral award. Here is an analysis of this section:

1. Finality of Decisions: This provision emphasises that the decisions or orders made by the court under subsection (4) are intended to be final and not subject to further appeal. This is in line with the goal of providing prompt and effective resolution of matters related to the enforcement of arbitral awards.
2. Promotion of Efficiency: By explicitly stating that such decisions are not subject to appeal, the section promotes efficiency in the enforcement process. Parties involved can have a clear understanding that decisions made by the court under subsection (4) will not be subject to prolonged legal challenges or delays through additional rounds of appeal.
3. Enhancing Certainty: The provision contributes to legal certainty by ensuring that once the court has made a determination under subsection (4), parties can proceed with their respective courses of action based on that determination, without the uncertainty associated with potential future appeals.
4. Balancing Interests: While parties have the right to challenge arbitral awards and seek setting aside or suspension, this provision strikes a balance by streamlining the process for handling matters related to enforcement, thereby minimising any potential disruptions to the enforcement process.
5. Consistency with Arbitration Practice: The principle of non-appealability of decisions made under subsection (4) aligns with international arbitration practices, where enforcing courts are generally cautious about allowing multiple layers of appeals in matters related to the enforcement of arbitral awards.
6. Timely Enforcement: By preventing unnecessary appeals, this provision contributes to the timely and effective enforcement of arbitral awards, which is a crucial aspect of maintaining the credibility and effectiveness of international arbitration as a dispute resolution mechanism.

In summary, Section 86(5) of the Hong Kong Arbitration Ordinance underscores the finality of decisions or orders made by the court under subsection (4) regarding enforcement of arbitral awards. It aims to

enhance efficiency, legal certainty, and timely enforcement by limiting the scope for additional appeals on these specific matters.

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)

Section 87(1) of the Hong Kong Arbitration Ordinance pertains to the enforcement of Convention awards, which are arbitral awards made in accordance with the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Here is an analysis of this section:

1. **Enforcement Mechanisms:** The section provides two avenues for the enforcement of Convention awards in Hong Kong. First, a Convention award can be enforced through an action in the Court. This is the traditional method of enforcement that involves initiating legal proceedings before the Court to seek enforcement of the award.
2. **Alternative Enforcement:** Second, the section allows for the enforcement of a Convention award in the same manner as an award to which section 84 of the Ordinance applies. Section 84 deals with the enforcement of arbitral awards generally and sets out the procedures and requirements for enforcement. This alternative method offers a streamlined process for enforcing Convention awards by aligning them with the procedures applicable to other arbitral awards.
3. **Incorporation of Section 84:** The section clarifies that the provisions of section 84 apply to Convention awards. This means that the procedural framework, conditions, and requirements outlined in section 84 for enforcing arbitral awards are to be similarly applied to the enforcement of Convention awards. Any reference to an “award” in section 84 is deemed to include a “Convention award”.
4. **Simplification and Uniformity:** By incorporating the procedures from section 84 for the enforcement of Convention awards, this provision aims to simplify and harmonise the enforcement process for both Convention and non-Convention awards. This contributes to the consistent and efficient application of enforcement procedures in Hong Kong.
5. **Alignment with International Standards:** The New York Convention is an internationally recognised treaty for the recognition and enforcement of foreign arbitral awards. By providing specific provisions for the enforcement of Convention awards in the Ordinance, Hong Kong aligns its domestic law with the principles and objectives of the Convention.
6. **Promoting International Arbitration:** This provision supports Hong Kong’s role as an international arbitration hub by offering effective mechanisms for enforcing Convention awards. The availability of streamlined enforcement methods enhances the attractiveness of Hong Kong as a preferred seat for international arbitration proceedings.

In summary, Section 87(1) of the Hong Kong Arbitration Ordinance provides clear options for the enforcement of Convention awards. It allows parties to choose between initiating an action in the

Court or utilising the enforcement procedures outlined in section 84. This approach aligns with international arbitration standards and contributes to the efficient and consistent enforcement of arbitral awards in Hong Kong.

(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)

Section 87(2) of the Hong Kong Arbitration Ordinance pertains to the legal effect and implications of enforcing a Convention award. Here is an analysis of this section:

1. **Binding Nature of Convention Award:** The section establishes that a Convention award, once enforceable as described in subsection (1), holds a binding character for all purposes on the parties involved in the arbitration. This underscores the finality and legal significance of a Convention award once it has been recognised and enforced.
2. **Expansive Utility in Legal Proceedings:** The section goes on to explain that the parties can rely on the enforced Convention award in various legal proceedings. This includes using the award as a defence, setting it off against other claims, or any other legal manner in legal proceedings within Hong Kong.
3. **Integration into Legal Framework:** By recognising the enforceable Convention award as “binding for all purposes”, the section establishes the award as a fully integrated element within the Hong Kong legal system. Parties can treat the award as legally valid and effective evidence in any relevant legal proceedings, irrespective of whether they are directly related to the arbitration in which the award was rendered.
4. **Efficiency and Consistency:** This provision enhances the efficiency and consistency of legal proceedings by allowing parties to use an enforced Convention award to support their positions. Parties can rely on the award’s content and findings without having to re-litigate the issues that were already resolved through arbitration.
5. **Enhancement of Arbitral Process:** Knowing that a Convention award can be invoked and relied upon in subsequent legal proceedings encourages parties to adhere to arbitration processes. This further promotes the use of arbitration as a reliable and efficient method of dispute resolution.
6. **Advantageous to Parties:** This provision is advantageous to parties as it allows them to effectively use the already-established findings and conclusions of the arbitration in subsequent legal actions. It can streamline proceedings and reduce the need for re-litigating matters that were already addressed in the arbitration.
7. **Harmonisation with International Norms:** The concept of treating a Convention award as binding and enforceable in various legal proceedings aligns with international arbitration principles and norms. It ensures that the award’s authority is recognised beyond the realm of arbitration.

In summary, Section 87(2) of the Hong Kong Arbitration Ordinance underscores the binding nature of a Convention award once enforceable and emphasises its utility in various legal proceedings. By allowing parties to use the award in their defence or set off against claims, this provision enhances the efficiency and consistency of the legal process and aligns with international arbitration practices.

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

Section 87(3) of the Hong Kong Arbitration Ordinance clarifies the scope and interpretation of references to “enforcement” in the context of Convention awards. Here is an analysis of this section:

1. **Comprehensive Interpretation:** This provision explicitly expands the understanding of the term “enforcement” as used in the context of Convention awards. It clarifies that the term encompasses not only the formal process of enforcing a Convention award but also includes the act of relying on such an award in legal proceedings.
2. **Emphasis on Reliance:** By including the notion of reliance on a Convention award, the section recognises that parties can invoke and utilise the content and findings of the award in various legal proceedings. This can include using the award as evidence, defence, or set-off in a case.
3. **Integration with Legal Proceedings:** The provision ensures that parties can seamlessly incorporate a Convention award into their legal strategies, irrespective of whether they are initiating an enforcement action or relying on the award’s conclusions to support their position in a different legal context.
4. **Practical Utility:** This interpretation promotes the practical utility of Convention awards. Parties can efficiently present their case by referencing the findings and conclusions of a recognised and enforceable award, without needing to relitigate the same issues.
5. **Safeguarding Efficiency:** The section aligns with the efficiency goals of arbitration by allowing parties to rely on the established facts and conclusions from the award, thus avoiding duplicative or repetitive legal proceedings.
6. **Consistency with International Norms:** This provision is in line with the international norms of arbitration, which emphasise the recognition and enforcement of awards across jurisdictions. It supports the principle that a valid and enforceable award holds legal weight and can be used effectively in subsequent legal actions.
7. **Holistic Approach:** By encompassing both formal enforcement and reliance, this provision takes a holistic view of the utility of Convention awards. It recognises that the value of a recognised award extends beyond its immediate enforcement and can have a significant impact on related legal matters.

In summary, Section 87(3) of the Hong Kong Arbitration Ordinance clarifies that references to “enforcement” of a Convention award should be understood to also include the act of relying on the award. This interpretation aligns with the practical and efficient use of Convention awards in legal proceedings, supports arbitration principles, and enhances the overall effectiveness of the enforcement regime.

88. Evidence to be produced for enforcement of Convention awards

The party seeking to enforce a Convention award must produce—

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

Section 88 of the Hong Kong Arbitration Ordinance outlines the requirements that a party must fulfil when seeking to enforce a Convention award. Here is an analysis of this section:

1. **Formal Enforceability:** Section 88 establishes procedural prerequisites that the party seeking to enforce a Convention award must satisfy. These prerequisites ensure that the process of enforcing a Convention award is conducted in a formal and documented manner.
2. **Original Award or Certified Copy:** Subsection (a) requires the party to provide either the original award that has been duly authenticated or a certified copy of the award. This emphasises the importance of having a verified record of the award's existence and contents.
3. **Original Arbitration Agreement:** Subsection (b) mandates the presentation of the original arbitration agreement that formed the basis for the arbitration proceedings leading to the award. Alternatively, a duly certified copy of the arbitration agreement can be provided. This ensures that the context and validity of the award are established by referring to the original agreement.
4. **Translation Requirement:** If the award or the arbitration agreement is not in either or both of the official languages of Hong Kong, the party must provide a translation of the document(s) in either official language. The translation must be certified by an official or sworn translator or by a diplomatic or consular agent. This requirement ensures that the court and other parties involved can understand the content of the award and agreement accurately.
5. **Legal Certainty:** The section enhances legal certainty by mandating the provision of authenticated or certified documents, thereby reducing the risk of disputes or challenges based on the authenticity of the materials provided.
6. **Transparency and Accessibility:** Requiring a translation of documents that are not in one of the official languages of Hong Kong promotes accessibility and transparency in the enforcement process. It ensures that all relevant parties can understand the content of the award and agreement.
7. **Adherence to International Standards:** These requirements are consistent with international standards for enforcing arbitral awards, particularly those under the New

York Convention. Such standards ensure uniformity and predictability in the enforcement process across different jurisdictions.

8. Updated Legislation: The analysis notes that Section 88 was amended by the 7th Amendment of the Hong Kong Arbitration Ordinance in 2013 (s. 12), indicating a legislative effort to update and refine the enforcement process.

In summary, Section 88 of the Hong Kong Arbitration Ordinance outlines the documents that a party must provide when seeking to enforce a Convention award. These requirements serve to ensure the authenticity, validity, and comprehensibility of the award and the underlying arbitration agreement, promoting a formal and reliable enforcement process consistent with international standards.

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)

Section 89(1) of the Hong Kong Arbitration Ordinance establishes a fundamental principle in the enforcement of Convention awards. Here is an analysis of this section:

Presumption of Enforceability: Section 89(1) embodies the general principle that Convention awards are presumed to be enforceable. It signifies that, under the Hong Kong legal framework, there is a strong presumption in favour of enforcing awards that have been granted under the New York Convention.

1. Limited Grounds for Refusal: The section indicates that the enforcement of a Convention award can only be refused based on the specific grounds outlined in the subsequent provisions of the Ordinance. This approach reflects a desire for predictability and consistency in the enforcement process.
2. Principle of Finality: By limiting the grounds for refusal to those explicitly mentioned, Section 89(1) aligns with the principle of finality in arbitration. This principle encourages parties to respect and adhere to the decisions made through arbitration, promoting a reliable dispute resolution mechanism.
3. Harmonisation with International Norms: This provision ensures that Hong Kong's approach to the enforcement of Convention awards is consistent with international norms, particularly the principles set forth in the New York Convention. This consistency enhances the jurisdiction's reputation as an arbitration-friendly hub.
4. Balanced Approach: While the presumption is in favour of enforcement, the subsequent sections outline specific situations in which enforcement may be refused. This balanced approach recognises the need to safeguard against potential misuse or abuse of the enforcement process.
5. Updated Legislation: The section was amended by the 7th Amendment of the Hong Kong Arbitration Ordinance in 2013 (s. 13), which indicates a legislative effort to refine and align the enforcement process with international standards.

In summary, Section 89(1) of the Hong Kong Arbitration Ordinance establishes a fundamental presumption in favour of enforcing Convention awards, subject to specific grounds for refusal as outlined in subsequent sections. This principle reflects Hong Kong's commitment to providing an effective and efficient mechanism for the recognition and enforcement of international arbitral awards, in line with the standards set forth in the New York Convention.

- (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—**
 - (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.**

Section 89(2) of the Hong Kong Arbitration Ordinance outlines the specific grounds on which the enforcement of a Convention award may be refused. Let us analyse each of these grounds:

1. Incapacity (Section 89(2)(a)): Enforcement can be refused if the person against whom the award is invoked can prove that a party to the arbitration agreement was under some legal incapacity under the applicable law at the time of entering into the arbitration agreement. This provision safeguards the interests of individuals who might have been unfairly subjected to arbitration agreements while not having the legal capacity to consent.
2. Invalid Arbitration Agreement (Section 89(2)(b)): Enforcement may be refused if the arbitration agreement, which serves as the basis for the award, is proven to be invalid. This can occur if:
 - a. The arbitration agreement was not valid under the law chosen by the parties.
 - b. If there was no indication of the law chosen, the agreement was not valid under the law of the country where the award was made. This provision ensures that the agreement meets legal requirements for validity.
3. Lack of Notice or Inability to Present Case (Section 89(2)(c)): If the person against whom enforcement is sought can demonstrate that they were not given proper notice of the appointment of the arbitrator or of the arbitral proceedings, or if they were unable to present their case, enforcement might be refused. This ensures that parties have a fair opportunity to participate in the arbitration process.
4. Award Beyond Scope (Section 89(2)(d)): Enforcement may be refused if the award:
 - a. Deals with a difference that was not contemplated by or falls outside the terms of the submission to arbitration.
 - b. Contains decisions on matters that exceed the scope of the submission to arbitration. This safeguards parties from outcomes that were not intended to be resolved through arbitration.
5. Non-Compliance with Agreement or Law (Section 89(2)(e)): If the composition of the arbitral authority or the arbitral procedure was not in accordance with:
 - a. The parties' agreement.
 - b. The law of the country where the arbitration took place.
 - c. Enforcement might be refused to ensure that arbitration procedures are conducted as agreed upon or as required by the applicable law.
6. Binding Nature or Set Aside by Competent Authority (Section 89(2)(f)): Enforcement may be refused if:
 - a. The award has not yet become binding on the parties.
 - b. The award has been set aside or suspended by a competent authority in the country where the award was made. This ensures that only valid and binding awards are recognised and enforced.

In summary, Section 89(2) of the Hong Kong Arbitration Ordinance establishes specific grounds upon which enforcement of a Convention award may be refused. These grounds serve to protect parties' rights, ensure procedural fairness, and maintain the integrity of the arbitration process while promoting consistent enforcement of valid international arbitral awards.

(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.**

Section 89(3) of the Hong Kong Arbitration Ordinance provides additional grounds upon which the enforcement of a Convention award may be refused. Let us analyse each of these grounds:

1. Incapability of Arbitration (Section 89(3)(a)): Enforcement may be refused if the subject matter of the award is a matter that, according to the law of Hong Kong, is not capable of being settled through arbitration. This provision ensures that only matters appropriate for arbitration are enforced, preserving the scope of arbitration's applicability under the law.
2. Contrary to Public Policy (Section 89(3)(b)): Enforcement can be refused if enforcing the award would be contrary to public policy. This ground provides flexibility to the court to refuse enforcement when enforcing the award would violate fundamental principles of justice, morality, or the legal system of Hong Kong.

In summary, Section 89(3) of the Hong Kong Arbitration Ordinance establishes two additional grounds on which enforcement of a Convention award may be refused: when the subject matter of the award is not capable of settlement by arbitration under Hong Kong law and when enforcing the award would be contrary to public policy. These grounds ensure that enforcement aligns with the legal and ethical principles of Hong Kong while maintaining the integrity of the arbitration process.

(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)

Section 89(4) of the Hong Kong Arbitration Ordinance addresses the enforcement of Convention awards that contain both arbitral decisions (pertaining to matters submitted to arbitration) and unrelated decisions (pertaining to matters not submitted to arbitration). This provision outlines the circumstances under which such an award can be enforced and its implications. Let us analyse this provision:

1. Separation of Decisions: Section 89(4) stipulates that if a Convention award includes decisions on both matters submitted to arbitration and matters not submitted to arbitration, the award may only be enforced to the extent that it pertains to the arbitral decisions that can be clearly separated from the unrelated decisions.

2. **Enforcement Scope:** This provision emphasises that the enforcement of a Convention award will be limited to the parts of the award that concern the arbitral decisions. In other words, the court will enforce only those portions of the award that are consistent with the arbitration agreement and within the scope of the parties' submission to arbitration.
3. **Relevance to Enforceable Matters:** The key criterion for enforcement is whether the decisions within the award are related to matters that were actually submitted to arbitration. Unrelated decisions, being outside the scope of arbitration, should not be subject to enforcement.

In summary, Section 89(4) of the Hong Kong Arbitration Ordinance ensures that Convention awards containing unrelated decisions and arbitral decisions are enforced only insofar as they pertain to the latter. This provision safeguards the principle that enforcement is limited to matters that were the subject of the arbitration agreement, promoting consistency with the parties' intentions and the arbitration process's integrity.

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

Section 89(5) of the Hong Kong Arbitration Ordinance addresses the situation where an application has been made to set aside or suspend a Convention award by a competent authority. This provision outlines the court's authority and options when an enforcement application is pending. Let us analyse this provision:

1. **Adjournment of Enforcement Proceedings:** According to Section 89(5)(a), if an application to set aside or suspend a Convention award has been submitted to a competent authority (as indicated in Section 89(2)(f)), the court responsible for enforcing the award may, at its discretion, choose to adjourn the enforcement proceedings. This allows the court to wait until the issue of setting aside or suspension is resolved before proceeding with enforcement.
2. **Ordering Security:** Section 89(5)(b) empowers the court, upon the application of the party seeking to enforce the award, to order the person against whom the enforcement is sought to provide security. The purpose of this provision is to ensure that there is a safeguard in place to protect the interests of the party seeking enforcement, particularly if there are concerns about the potential impact of the pending application to set aside or suspend the award.

In summary, Section 89(5) of the Hong Kong Arbitration Ordinance grants the court the authority to manage enforcement proceedings in cases where an application to set aside or suspend a Convention award is pending before a competent authority. The court can choose to adjourn proceedings or require the party against whom enforcement is sought to provide security, based on the circumstances

of the case. This provision strikes a balance between the enforcement of the award and the concerns raised by a pending challenge to the award's validity.

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

Section 89(6) of the Hong Kong Arbitration Ordinance states that any decision or order made by the court under subsection (5) is not subject to appeal. This provision outlines a clear limitation on the avenues for challenging or reviewing the court's decision regarding adjournment or the issuance of security in the context of enforcement proceedings for a Convention award. Here is an analysis of this provision:

1. **Finality of the Court's Decision:** Section 89(6) establishes that the decision or order made by the court under subsection (5) is final and not subject to appeal. This reinforces the principle of procedural efficiency and finality in the enforcement process for Convention awards. By not allowing appeals, the provision aims to prevent unnecessary delays in the enforcement process and promotes the swift resolution of enforcement-related matters.
2. **Balancing Speed and Certainty:** By preventing appeals from decisions made under subsection (5), this provision aims to maintain a balance between ensuring that enforcement proceedings are resolved in a timely manner and providing parties with a measure of certainty regarding the outcome of such decisions. This can be particularly important in the context of international arbitration, where swift enforcement of awards is often desired.
3. **Legal Predictability:** The provision enhances legal predictability by clarifying that decisions made under subsection (5) are not subject to appellate review. This informs parties and practitioners about the limitations of the process, allowing them to better plan their strategies and approach to enforcement proceedings.

In summary, Section 89(6) of the Hong Kong Arbitration Ordinance establishes that decisions or orders made by the court under subsection (5) related to the adjournment of enforcement proceedings or the issuance of security are final and not subject to appeal. This approach reinforces the importance of efficiency and finality in the enforcement process for Convention awards, contributing to a smoother and more predictable enforcement regime.

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.

Section 90(1) of the Hong Kong Arbitration Ordinance provides the Chief Executive in Council with the authority to make an official declaration through an order in the Gazette, designating a particular State or territory as a party to the New York Convention. The New York Convention refers to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, an international treaty that facilitates the recognition and enforcement of foreign arbitral awards in different jurisdictions. Here is an analysis of this provision:

1. **Executive Authority:** This provision grants executive authority to the Chief Executive in Council, which is the highest decision-making body in the Hong Kong Special Administrative Region of the People’s Republic of China. It empowers this body to formally declare that a specific State or territory meets the requirements for becoming a party to the New York Convention.
2. **Gazette Publication:** The order declaring a State or territory as a party to the New York Convention is required to be published in the Gazette, which is the official government publication in Hong Kong. This ensures transparency and official recognition of the declaration for all relevant parties, practitioners, and institutions involved in international arbitration and the enforcement of foreign arbitral awards.
3. **New York Convention Membership:** The New York Convention is a pivotal instrument in promoting the international enforceability of arbitral awards. This provision aligns with the goals of the Convention by enabling Hong Kong to formally recognise the parties to the Convention as designated by the Chief Executive in Council. This recognition streamlines the enforcement process for awards made in those jurisdictions within Hong Kong.
4. **Facilitating International Arbitration:** By providing the Chief Executive in Council with the power to make these declarations, this provision contributes to the development of a favourable international arbitration environment in Hong Kong. It encourages foreign entities and jurisdictions to seek enforcement of their arbitral awards in Hong Kong, further enhancing Hong Kong’s status as an arbitration-friendly jurisdiction.

In summary, Section 90(1) of the Hong Kong Arbitration Ordinance empowers the Chief Executive in Council to declare, through an official order published in the Gazette, that a particular State or territory, which is a party to the New York Convention and specified in the order, is recognised as a party to the Convention. This provision supports the principles of international arbitration and foreign award enforcement, fostering a more robust and accessible framework for resolving cross-border disputes in Hong Kong.

(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.

Section 90(2) of the Hong Kong Arbitration Ordinance establishes the legal effect of an order made under subsection (1), wherein the Chief Executive in Council designates a State or territory as a party to the New York Convention. This provision establishes the conclusive evidentiary value of such an order. Here is an analysis of this provision:

1. **Conclusive Evidence:** Section 90(2) states that an order made under subsection (1) serves as conclusive evidence of the status of the State or territory specified in the order as a party to the New York Convention. In legal terms, “conclusive evidence” means that the order is regarded as definitive and irrefutable proof of the matter it declares. Once such an order is in force, no further inquiry or debate is needed to establish the Convention party status of the designated State or territory.
2. **Legal Certainty:** This provision enhances legal certainty and predictability. It removes any ambiguity or doubt about the Convention membership of the designated State or territory. This clarity is crucial when parties seek to enforce foreign arbitral awards in Hong Kong. The provision ensures that parties can confidently rely on the order as proof of the State or territory’s New York Convention status.
3. **Efficient Enforcement Process:** Recognising a State or territory as a party to the New York Convention is a significant step towards facilitating the enforcement of foreign arbitral awards. The conclusive evidence provided by the order streamlines the enforcement process by eliminating the need for parties to provide additional evidence or arguments regarding the Convention membership of the designated jurisdiction.
4. **Binding Effect:** Section 90(2) emphasises that the conclusive evidence provided by the order remains in force while the order itself is in effect. This underscores the binding nature of the order during the specified period. It also highlights that parties can rely on the order throughout its validity for purposes related to the New York Convention and foreign arbitral award enforcement.

In summary, Section 90(2) of the Hong Kong Arbitration Ordinance establishes that an order issued under subsection (1) by the Chief Executive in Council, designating a State or territory as a party to the New York Convention, serves as conclusive evidence of that status while the order is in force. This provision enhances legal certainty, expedites enforcement processes, and strengthens the credibility of the New York Convention framework in Hong Kong’s arbitration landscape.

(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.

Section 90(3) of the Hong Kong Arbitration Ordinance establishes the coexistence of the method provided in subsections (1) and (2) for proving a State or territory’s status as a party to the New York Convention with other possible methods of proof. This provision ensures that parties and authorities have multiple avenues to establish Convention membership. Here is an analysis of this provision:

1. **Alternative Methods of Proof:** This subsection clarifies that the existence of subsections (1) and (2) does not preclude other methods of proving a State or territory’s status as a

New York Convention party. This implies that parties can still rely on other forms of evidence or documentation to demonstrate that a particular jurisdiction is indeed a signatory to the Convention.

2. **Flexibility:** By acknowledging alternative methods of proof, the provision ensures flexibility in the enforcement process. Parties seeking to enforce arbitral awards under the New York Convention can choose the method that best suits their circumstances. This can include presenting official documents, diplomatic communications, international treaties, or other means of demonstrating Convention membership.
3. **Redundancy Prevention:** The existence of multiple methods of proof prevents overreliance on a single mechanism. While subsections (1) and (2) establish an official and conclusive method of proof through an order by the Chief Executive in Council, parties can still furnish additional evidence in case there are issues with the order or in circumstances where the order itself is not available.
4. **Enhanced Credibility:** Acknowledging that alternative methods of proof exist lends credibility to the process of proving Convention membership. It underscores the importance of accurately establishing a State or territory's status as a Convention party, given its implications for foreign arbitral award enforcement.

In summary, Section 90(3) of the Hong Kong Arbitration Ordinance clarifies that the method provided in subsections (1) and (2) for proving a State or territory's New York Convention membership does not negate the validity of other methods of proof. This approach offers parties flexibility, redundancy prevention, and enhanced credibility in demonstrating Convention party status for the enforcement of foreign arbitral awards.

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.

Section 91 of the Hong Kong Arbitration Ordinance emphasises that the provisions within the Division relating to the enforcement of Convention awards should not be interpreted as diminishing or impacting any other rights or avenues available to parties seeking to enforce or rely on such awards. Here is a closer analysis of this section:

1. **Preservation of Alternative Avenues:** This section ensures that parties still retain the right to enforce or rely on a Convention award through methods other than those provided for within this particular Division of the Arbitration Ordinance. This means that parties can explore various legal avenues available for the enforcement or recognition of Convention awards under other applicable laws or treaties.
2. **Enhancing Flexibility:** By clarifying that the Division does not exclusively govern the enforcement of Convention awards, this section maintains a level of flexibility for parties involved. Parties may choose to use the enforcement mechanisms provided within the Division or may choose alternative routes based on specific circumstances or preferences.

3. **Avoiding Limitation:** The provision prevents any unintended limitations on parties' rights to enforce or rely on Convention awards. It safeguards against the perception that the Division's procedures are the sole means of enforcing or relying on these awards, thereby preserving the parties' options to utilise other legal remedies or treaties.
4. **International Treaty Obligations:** The provision recognises that the enforcement of Convention awards can be governed by international treaties and agreements beyond the scope of this Division. As such, parties can leverage broader international legal instruments when enforcing or relying on Convention awards.

In summary, Section 91 of the Hong Kong Arbitration Ordinance underscores that the Division dedicated to the enforcement of Convention awards does not restrict or undermine other available methods or avenues for enforcing or relying on such awards. This recognition of flexibility and alternative approaches ensures that parties have a range of options to pursue, aligning with international arbitration principles and agreements.

Division 3—Enforcement of Mainland Awards

92. Enforcement of Mainland awards

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

(a) by action in the Court; or

(b) in the same manner as an 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)

Section 92(1) of the Hong Kong Arbitration Ordinance pertains to the enforcement of Mainland awards in Hong Kong. This section outlines the two avenues through which a Mainland award can be enforced and makes a cross-reference to the relevant section for the enforcement mechanism. Here is a more detailed analysis:

1. **Mainland Award Definition:** The section establishes that a “Mainland award” is an award made in Mainland China (excluding Hong Kong and Macao) following arbitration proceedings.
2. **Enforcement Avenues:** The section provides two main avenues for the enforcement of Mainland awards in Hong Kong:
 - a. **Enforcement by Action in the Court:** A party seeking to enforce a Mainland award can initiate an action in the court for its enforcement. This is a typical litigation approach where the court is engaged to facilitate the enforcement process.
 - b. **Enforcement in the Same Manner as Section 84:** This refers to the option of enforcing a Mainland award in the same manner as an award covered under Section 84 of the Arbitration Ordinance. Section 84 deals with the enforcement of awards in general, and this provision extends the applicability of the enforcement mechanism to include Mainland awards.
3. **Application of Section 84:** The section makes it clear that the enforcement procedure outlined in Section 84 applies to Mainland awards as well. It treats references to “award” in Section 84 as including Mainland awards. This helps ensure consistency in enforcement mechanisms regardless of the origin of the award.
4. **Consistency with International Practice:** By providing options for enforcement similar to other types of awards, this section promotes consistency in the enforcement of Mainland awards in Hong Kong and aligns with international arbitration standards.

In essence, Section 92(1) of the Hong Kong Arbitration Ordinance establishes the avenues through which Mainland awards can be enforced in Hong Kong, either through a court action or in the same manner as other awards under Section 84. This approach facilitates the enforcement process and aligns with the overarching goal of promoting arbitration and facilitating the recognition and enforcement of awards across jurisdictions.

- (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)**

Section 92(2) of the Hong Kong Arbitration Ordinance addresses the legal effect and the binding nature of Mainland awards that are enforceable under Section 92(1). Here is an analysis of this provision:

1. **Binding Nature of Mainland Awards:** This subsection establishes that once a Mainland award is determined to be enforceable under Section 92(1), it is considered binding on the parties for all purposes. This means that the award holds legal significance beyond just the enforcement context and can be invoked and relied upon by the parties in various legal proceedings.
2. **Application in Legal Proceedings:** The subsection specifies that the parties to a Mainland award can utilise it for various purposes in legal proceedings in Hong Kong. This includes:
 - a. **Defence:** The parties can rely on the Mainland award as part of their defence in legal proceedings, reinforcing their arguments or positions.
 - b. **Set Off:** The award can be utilised for set-off purposes, allowing a party to use the award as a counterclaim or as a basis for reducing a debt owed to the other party.
 - c. **Other Legal Proceedings:** The parties can invoke the award in other legal contexts, such as in contractual disputes or disputes arising from the subject matter of the arbitration.
3. **Alignment with International Standards:** This provision ensures that Mainland awards, once recognised and enforceable in Hong Kong, have a similar binding and practical effect as awards rendered through other international arbitration proceedings. This fosters a consistent approach to the recognition and enforcement of awards and contributes to the overall efficacy of cross-border arbitration.
4. **Promotion of Arbitration:** By granting Mainland awards the same binding effect as other awards, this subsection encourages parties to engage in arbitration and fosters a level playing field for the enforcement of awards from different jurisdictions.

In summary, Section 92(2) underscores the binding nature of Mainland awards enforceable under Section 92(1) and outlines the ways in which parties can utilise these awards in various legal proceedings in Hong Kong. This provision ensures that Mainland awards are treated with the same respect and effectiveness as other arbitration awards, contributing to the harmonisation of international arbitration standards.

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

Section 92(3) of the Hong Kong Arbitration Ordinance clarifies the scope of the term “enforcement” as used in relation to Mainland awards. Here is an analysis of this provision:

1. **Comprehensive Scope of “Enforcement”:** This subsection extends the scope of the term “enforcement” to encompass not only the formal process of enforcing a Mainland award in accordance with the provisions of the Ordinance but also the act of relying on a Mainland award for various purposes.
2. **Relying on Mainland Awards:** The provision highlights that parties can rely on a Mainland award not only when seeking its formal enforcement but also in other legal proceedings or contexts where the award’s content, findings, or decisions are pertinent. This emphasises the practical and legal significance of Mainland awards beyond just the enforcement stage.
3. **Consistency with International Arbitration Standards:** By clarifying that “enforcement” includes reliance, this provision aligns with international arbitration principles and practices. Arbitration awards, including Mainland awards, often hold legal significance beyond enforcement, and parties may wish to use them for various legal purposes.
4. **Flexibility in Legal Proceedings:** This interpretation enhances the flexibility for parties to utilise Mainland awards in different legal contexts. It acknowledges that parties may wish to refer to the award’s content or decisions to support their arguments or positions in disputes or negotiations.
5. **Promotion of Arbitration Efficacy:** By recognising the broader scope of the term “enforcement”, this provision promotes the effective utilisation of Mainland awards. It encourages parties to maximise the value of their arbitral awards in legal proceedings by considering their relevance in a wider range of contexts.

In summary, Section 92(3) clarifies that “enforcement” of a Mainland award includes relying on the award’s content and decisions for various legal purposes beyond the formal enforcement process. This interpretation aligns with international arbitration standards and underscores the practical significance of Mainland awards in different legal proceedings and contexts.

93. (Repealed 1 of 2021 s. 4)

94. Evidence to be produced for enforcement of Mainland awards

The party seeking to enforce a Mainland award must produce—

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

Section 94 of the Hong Kong Arbitration Ordinance outlines the requirements for the party seeking to enforce a Mainland award. This provision emphasises the documentation and certification needed for the enforcement process. Here is an analysis of this provision:

1. **Formal Documentation Requirement:** The provision stipulates that the party seeking to enforce a Mainland award must provide specific documents to support their enforcement application. These documents include the original award, the original arbitration agreement, and translations if necessary.
2. **Original Award or Certified Copy:** The party must submit either the original Mainland award or a certified copy of it. This requirement ensures that the enforcing party provides accurate and legitimate documentation that accurately reflects the contents of the award.
3. **Original Arbitration Agreement or Certified Copy:** Similarly, the original arbitration agreement, which establishes the parties' consent to arbitrate, must be submitted. If the original agreement is not available, a certified copy can be provided to fulfil this requirement.
4. **Translation Requirement:** If the award or the arbitration agreement is not in one of the official languages (Chinese or English), a certified translation in either of these official languages must be provided. This ensures that the enforcement authorities can accurately understand the content of the award and the arbitration agreement.
5. **Certification by Authorised Entities:** The translation and copies of documents must be certified by official or sworn translators, or by diplomatic or consular agents. This certification ensures the authenticity and accuracy of the provided documents, enhancing the credibility of the enforcement application.
6. **Compliance with Formalities:** The requirements outlined in this provision emphasise compliance with formalities and the accurate presentation of documentation. These requirements contribute to the orderly and efficient enforcement process and help prevent issues related to authenticity and accuracy.
7. **Enhanced Transparency and Accountability:** Requiring proper documentation and certifications enhances transparency and accountability in the enforcement process. It ensures that the enforcement authorities have access to reliable and verified information.

In summary, Section 94 of the Hong Kong Arbitration Ordinance mandates the party seeking to enforce a Mainland award to provide specific documentation, including the original award, the original

arbitration agreement, and translations if necessary. This provision contributes to the accuracy, transparency, and credibility of the enforcement process and helps ensure that the enforcing party meets the necessary formal requirements.

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)

Section 95(1) of the Hong Kong Arbitration Ordinance addresses the conditions under which enforcement of a Mainland award can be refused. This provision emphasises that enforcement may only be denied based on the specific grounds outlined in the subsequent sections of the ordinance. Here is an analysis of this provision:

1. **Limited Grounds for Refusal:** This provision establishes a framework for refusing enforcement of a Mainland award. It emphasises that the grounds for refusal are confined to those specified in the subsequent sections of the ordinance. This approach provides clarity and predictability to parties involved in the enforcement process.
2. **Certainty and Consistency:** By specifying that the grounds for refusal are outlined within the ordinance, this provision ensures that enforcement decisions are consistent and aligned with the legal framework. This helps prevent arbitrary refusals and promotes a fair and standardised enforcement process.
3. **Avoiding Unsubstantiated Refusals:** The provision prevents enforcement authorities from refusing enforcement based on unspecified or arbitrary reasons. This helps maintain the integrity of the enforcement process and ensures that decisions are made on well-defined legal grounds.
4. **Promoting Efficiency:** By clearly stating that enforcement may only be refused based on the specified grounds, this provision streamlines the enforcement process. Parties involved can focus on addressing the relevant grounds for refusal rather than engaging in protracted disputes over undefined or irrelevant issues.
5. **Legal Certainty for Parties:** Parties seeking to enforce a Mainland award can have confidence in knowing that their enforcement application will be assessed based on the criteria outlined in the ordinance. This certainty allows parties to anticipate potential challenges and address them effectively during the enforcement process.
6. **Avoiding Abuse of Process:** By listing the permissible grounds for refusal, this provision discourages parties from attempting to thwart enforcement through unsupported or frivolous arguments. It helps prevent the abuse of legal process for strategic or dilatory purposes.
7. **Balancing Enforcement and Party Rights:** While emphasising that enforcement may only be refused based on specific grounds, this provision also acknowledges the importance of safeguarding party rights and ensuring a fair and just enforcement process.

In summary, Section 95(1) of the Hong Kong Arbitration Ordinance establishes a clear framework for refusing enforcement of a Mainland award. By specifying that enforcement may only be refused based on the grounds detailed in subsequent sections of the ordinance, this provision promotes legal certainty, consistency, and efficiency in the enforcement process while safeguarding party rights.

- (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;**
 - (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.**

Section 95(2) of the Hong Kong Arbitration Ordinance outlines the specific grounds upon which enforcement of a Mainland award can be refused. This provision enumerates various scenarios in which the person against whom the award is invoked can present evidence to prove that enforcement should be denied. Here is an analysis of this provision:

1. **Incapacity of a Party:** Subsection (a) acknowledges that if a party to the arbitration agreement was under some legal incapacity according to the relevant law applicable to that party, enforcement of the Mainland award may be refused. This ensures that parties are not unfairly bound by awards in cases where they lacked the capacity to enter into a binding agreement.
2. **Validity of the Arbitration Agreement:** Subsection (b) focuses on the validity of the arbitration agreement. It outlines scenarios where the arbitration agreement might not be considered valid, either under the law to which the parties subjected it or under the law of the Mainland. This emphasises the importance of a valid and legally binding arbitration agreement as a foundation for enforcing the award.
3. **Lack of Proper Notice or Inability to Present Case:** Subsection (c) addresses situations where a party claims they were not given proper notice of the appointment of the arbitrator or the arbitral proceedings, or were otherwise unable to present their case. This ensures that parties are not deprived of their right to present their arguments and evidence before an arbitral tribunal.
4. **Scope of Arbitral Decision:** Subsection (d) covers instances where the Mainland award goes beyond the scope of the matters submitted to arbitration. This provision safeguards against situations where the arbitral tribunal makes decisions on issues that were not within the agreed scope of the arbitration.
5. **Composition and Procedure:** Subsection (e) addresses issues related to the composition of the arbitral authority or procedural matters. It specifies that the arbitral authority and procedure should align with either the parties' agreement or the law of the Mainland. This ensures fairness and adherence to agreed-upon procedures.
6. **Binding Nature of the Award:** Subsection (f)(i) considers scenarios where the Mainland award has not yet become binding on the parties. This recognises that an award may not be enforceable until it has become binding on the parties involved.
7. **Setting Aside or Suspension of the Award:** Subsection (f)(ii) deals with the situation where the Mainland award has been set aside or suspended by a competent authority in the Mainland or under Mainland law. This provision ensures that awards that have been nullified or suspended are not enforced in Hong Kong.

In summary, Section 95(2) of the Hong Kong Arbitration Ordinance provides a comprehensive list of specific grounds upon which enforcement of a Mainland award may be refused. These grounds emphasise the importance of fairness, proper procedure, valid agreements, and the scope of the arbitration process, while also considering the validity and binding nature of the award in the Mainland jurisdiction.

(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.**

Section 95(3) of the Hong Kong Arbitration Ordinance outlines additional grounds upon which enforcement of a Mainland award may be refused. These grounds relate to the compatibility of the award with the legal framework and public policy of Hong Kong. Here is an analysis of this provision:

1. **Incompatibility with Law:** Subsection (a) deals with the scenario where the Mainland award pertains to a matter that is not capable of being settled by arbitration under the law of Hong Kong. This provision ensures that awards that involve subject matters that are not suitable for arbitration in Hong Kong are not enforced.
2. **Contrary to Public Policy:** Subsection (b) addresses the situation where enforcement of the Mainland award would be contrary to public policy. This is a fundamental principle in legal systems that allows courts to refuse enforcement of awards that would go against the public interest, morality, or core values of the jurisdiction.

These provisions underscore the importance of harmonising the enforcement of foreign awards with the legal and ethical standards of the enforcing jurisdiction. They allow the Hong Kong courts to safeguard the integrity of its legal system and ensure that foreign awards do not undermine the public policy principles and legal norms of Hong Kong.

(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)

Section 95(4) of the Hong Kong Arbitration Ordinance deals with the enforcement of Mainland awards that contain both arbitral decisions (related to the matters submitted to arbitration) and unrelated decisions (on matters not submitted to arbitration). This provision outlines the circumstances under which a Mainland award can be enforced and the extent to which the award can be enforced. Here is an analysis of this provision:

1. **Distinctiveness of Decisions:** This section recognises that a Mainland award might include decisions on matters that were not part of the original arbitration. In such cases, it establishes a principle of “severability”, meaning that the enforceability of the award will be assessed based on the arbitration-related decisions that can be separated from the unrelated decisions.
2. **Limitation on Enforcement:** The provision specifies that the enforcement of the Mainland award will be permitted only to the extent that it pertains to the arbitral decisions related to the matters submitted to arbitration. In other words, the unrelated decisions cannot be enforced, as they fall outside the scope of the arbitration agreement.

3. **Harmonising with Hong Kong Law:** This provision ensures that the enforcement of Mainland awards is consistent with the principles of the Hong Kong legal system. By allowing enforcement only for the arbitral decisions that align with the scope of arbitration, it prevents the enforcement of decisions that might exceed the boundaries agreed upon by the parties.
4. **Balancing Parties' Intent:** This provision strikes a balance between honouring the parties' intent to arbitrate certain matters and the need to ensure that foreign awards align with the legal framework and jurisdictional boundaries of Hong Kong.

Overall, section 95(4) ensures that the enforcement of Mainland awards remains within the intended scope of the arbitration agreement and prevents enforcement of decisions that go beyond what the parties had agreed to submit to arbitration. This helps maintain the integrity of the arbitration process and the enforcement of awards within Hong Kong's legal framework.

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.

Section 96(1) of the Hong Kong Arbitration Ordinance establishes the scope and applicability of the rules governing the enforcement of Mainland awards within the jurisdiction of Hong Kong. Here is an analysis of this provision:

1. **Scope of the Division:** This section confirms that the Division, which includes sections related to the enforcement of Mainland awards, applies to the process of enforcing these awards within Hong Kong. The Division encompasses the rules, procedures, and conditions under which Mainland awards can be recognised and enforced.
2. **Subject to Subsection (2):** The provision introduces an exception by mentioning "subject to subsection (2)". This indicates that there may be specific conditions or considerations outlined in subsection (2) that could modify or restrict the general application of the Division to the enforcement of Mainland awards.
3. **Regulation of Enforcement:** The primary purpose of this provision is to regulate the enforcement process of Mainland awards in Hong Kong, ensuring that there is a clear legal framework for recognising and enforcing awards rendered in the Mainland jurisdiction.
4. **Legal Clarity:** By specifying that this Division governs the enforcement of Mainland awards, this section enhances legal clarity and predictability for parties involved in arbitration proceedings. It ensures that there are clear guidelines and procedures for enforcing awards from Mainland China within the jurisdiction of Hong Kong.

In summary, section 96(1) clarifies that the Division containing provisions related to the enforcement of Mainland awards is applicable in Hong Kong, providing a structured legal framework for recognising and enforcing these awards.

(2) If—

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

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

Section 96(2) of the Hong Kong Arbitration Ordinance addresses a specific scenario involving the enforcement of Mainland awards that were previously treated as Convention awards under the repealed version of the ordinance. Here is an analysis of this provision:

1. **Transitional Provisions:** Section 96(2) introduces a transitional provision that applies to a specific category of Mainland awards. The provision refers to awards that met the criteria of being Convention awards under the previous version of the ordinance before the transfer of sovereignty over Hong Kong from the United Kingdom to China on July 1, 1997.
2. **Enforcement Refusal:** The provision specifies that for these awards, if enforcement had been refused under the repealed section 44 of the previous version of the ordinance before the commencement of section 5 of the Arbitration (Amendment) Ordinance 2000 (2 of 2000), then certain sections within the present ordinance, namely sections 92 to 95, do not apply to the enforcement of that particular award.
3. **Limitation of Application:** Sections 92 to 95 deal with the enforcement of Mainland awards, setting out the conditions, procedures, and criteria for enforcing such awards within Hong Kong's jurisdiction. However, this subsection carves out an exception for a specific subset of awards as described above.
4. **Historical Context:** This provision is relevant in the context of Hong Kong's legal development following its transfer of sovereignty to China in 1997. It accounts for awards that were treated as Convention awards under the repealed version of the ordinance but were subject to enforcement refusal before certain legislative amendments were introduced in 2000.

In summary, section 96(2) addresses a unique situation involving the enforcement of Mainland awards that were previously treated as Convention awards but were subject to enforcement refusal under the old ordinance. It stipulates that certain sections governing the enforcement of Mainland awards will not apply in this specific historical context.

97. (Repealed 1 of 2021 s. 5)

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.

Section 98 of the Hong Kong Arbitration Ordinance addresses the enforceability of Mainland awards that had been refused enforcement in Hong Kong during a specific period. Here is an analysis of this provision:

1. **Enforcement Despite Previous Refusal:** Section 98 introduces an exception to the general principle that enforcement of an award that had been previously refused is not permissible. This provision pertains specifically to Mainland awards.
2. **Temporal Scope:** The provision refers to a specific time frame, which is between July 1, 1997 (when Hong Kong's sovereignty was transferred to China) and the commencement of section 5 of the Arbitration (Amendment) Ordinance 2000 (2 of 2000). It is during this period that the enforcement of a Mainland award might have been refused under the repealed version of the ordinance.
3. **Effect of Refusal During That Period:** Despite a Mainland award having been refused enforcement during the specified period, section 98 declares that, subject to the provisions of section 96(2), the award becomes enforceable under the enforcement framework provided by the present ordinance. In essence, this means that a Mainland award, which had previously faced enforcement refusal, is given a new opportunity for enforcement under the current law.
4. **Impact of Section 96(2):** The operation of section 96(2), as referred to in section 98, might affect the applicability of the enforcement framework to these previously refused awards. Section 96(2) pertains to certain awards that were treated as Convention awards under the repealed ordinance, and its effect on the enforcement of those awards is outlined in that section.
5. **Context and Rationale:** This provision reflects a transitional approach to the enforcement of Mainland awards that faced refusal during the mentioned period. It recognises that changes in Hong Kong's legal framework, particularly those introduced by the Arbitration (Amendment) Ordinance 2000, may warrant reconsideration of the enforceability of such awards.

In summary, section 98 of the Hong Kong Arbitration Ordinance provides a mechanism for Mainland awards that were refused enforcement between July 1, 1997, and the commencement of the Arbitration (Amendment) Ordinance 2000. Despite the previous refusal, these awards are rendered enforceable under the present ordinance, subject to the considerations outlined in section 96(2).

Division 4—Enforcement of Macao Awards

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.

Section 98A(1) of the Hong Kong Arbitration Ordinance pertains to the enforcement of Macao awards and outlines the methods through which a Macao award can be enforced in Hong Kong. Here is an analysis of this provision:

1. **Enforcement of Macao Awards:** The provision focuses on Macao awards, which are arbitral awards issued in Macao. These awards are subject to a specific enforcement framework outlined in this section.
2. **Enforcement Options:** Section 98A(1) provides two alternative methods for enforcing a Macao award in Hong Kong:
 - a. **Enforcement by Action in Court:** A party seeking to enforce a Macao award can initiate legal proceedings in the court. This method involves following the standard legal procedures of filing a legal action for enforcement.
 - b. **Enforcement in the Same Manner as Section 84:** Alternatively, a Macao award can be enforced in the same manner as an award to which section 84 applies. Section 84 pertains to the enforcement of awards generally and provides guidelines for enforcement. The provision makes a reference in section 84 to a “Macao award” as if it were an award covered by section 84.
3. **Application of Section 84 to Macao Awards:** By referencing section 84, this provision essentially applies the enforcement mechanisms and procedures outlined in section 84 to Macao awards. This means that the same rules and procedures that apply to the enforcement of awards generally, as described in section 84, are extended to the enforcement of Macao awards.
4. **Binding Nature and Defensibility:** A Macao award, once enforced, becomes binding on the parties and can be relied upon by any party as a defence, set-off, or otherwise in legal proceedings within Hong Kong. This reinforces the significance of the enforcement process and the legal status of the award.

In summary, section 98A(1) of the Hong Kong Arbitration Ordinance outlines the methods through which a Macao award can be enforced in Hong Kong. It provides two enforcement options: through legal action in court or in the same manner as section 84 applies to awards. The provision extends the application of section 84 to Macao awards, ensuring a consistent enforcement framework for arbitral awards, while also emphasising the binding nature and defensibility of Macao awards once they are enforced.

(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.

Section 98A(2) of the Hong Kong Arbitration Ordinance addresses the legal implications and significance of enforcing a Macao award. Here is an analysis of this provision:

1. **Binding Nature of Macao Awards:** The provision underscores that once a Macao award is enforced in Hong Kong, it becomes legally binding on the parties involved in the arbitration that led to the award. This means that the parties are obligated to comply with the terms and decisions contained within the award.
2. **Applicability in Legal Proceedings:** The provision emphasises that the binding nature of the Macao award extends to all legal proceedings within Hong Kong. As a result, the award can be invoked and relied upon by any of the parties involved in the arbitration or any subsequent legal proceedings arising in Hong Kong.
3. **Defensive Use of Macao Award:** The provision highlights that parties can utilise the Macao award as a defence in legal proceedings. This means that a party facing legal claims or actions can cite the Macao award as evidence to support their position or to counter claims made against them.
4. **Set-Off and Other Uses:** In addition to being used as a defence, parties can also employ the Macao award for purposes such as set-off. Set-off refers to the practice of applying a claim to offset a counterclaim, potentially reducing or eliminating financial liabilities between parties.
5. **Flexibility in Application:** The provision's use of the term "otherwise" implies that the Macao award can be relied upon in various other ways during legal proceedings, beyond just being used as a defence or for set-off. This provides flexibility for parties to use the award strategically within the context of legal disputes.

In summary, section 98A(2) of the Hong Kong Arbitration Ordinance establishes the binding nature of an enforced Macao award on the parties and emphasises its wide applicability in various legal proceedings within Hong Kong. This provision recognises that an enforced Macao award carries significant legal weight and can be leveraged by parties for defensive purposes, set-off, and other relevant uses during legal disputes.

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

Section 98A(3) of the Hong Kong Arbitration Ordinance addresses the interpretation of terms used in the division related to the enforcement of Macao awards. Here is an analysis of this provision:

1. **Inclusive Interpretation:** The provision clarifies that when the division refers to "enforcement" of a Macao award, it encompasses a broader concept, which is the "reliance" on a Macao award. This means that the division not only covers the formal

process of enforcing the award through legal procedures but also includes the utilisation of the award as evidence or for other purposes in legal proceedings.

2. **Comprehensive Application:** By including reliance within the scope of enforcement, the provision ensures that parties involved in legal proceedings can use the Macao award effectively even if they are not seeking its formal enforcement through court orders. This interpretation enhances the practical value of the Macao award in legal disputes.
3. **Flexible Use:** The provision's inclusive interpretation acknowledges that parties may wish to rely on the Macao award for purposes beyond seeking its formal enforcement, such as invoking it as evidence or in arguments during legal proceedings. This interpretation recognises the award's evidentiary and persuasive value.
4. **Legal Certainty:** By explicitly stating that reliance on a Macao award falls within the scope of enforcement, the provision enhances legal certainty for parties and the courts. It clarifies that parties can cite and refer to the Macao award in a variety of ways during legal proceedings, ensuring consistency in interpretation.

In summary, section 98A(3) of the Hong Kong Arbitration Ordinance ensures a comprehensive interpretation of the term "enforcement" in the context of Macao awards. This provision clarifies that the division's provisions cover both the formal process of enforcing the award and the broader concept of relying on the award as evidence or for other purposes during legal proceedings. This inclusive interpretation enhances the practical utility of Macao awards in resolving disputes and strengthens legal certainty.

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.

Section 98B of the Hong Kong Arbitration Ordinance pertains to the enforcement of Macao awards that have not been fully satisfied through enforcement proceedings conducted in Macao or other locations outside of Hong Kong. Here is an analysis of this provision:

1. **Jurisdictional Gap:** This section addresses a scenario where a Macao award, issued by an arbitration proceeding in Macao, remains partially unsatisfied after enforcement efforts conducted in Macao or another foreign jurisdiction. This situation could arise due to various reasons, such as the inability to locate assets of the losing party or limitations in the enforcement mechanisms of the relevant jurisdiction.
2. **Secondary Enforcement:** In such cases, section 98B provides an avenue for the party seeking enforcement of the award to initiate proceedings in Hong Kong to enforce the unsatisfied portion of the award. This secondary enforcement mechanism is available when the original enforcement proceedings outside of Hong Kong have not resulted in full satisfaction of the award.
3. **Applicability to Macao Awards:** The provision is specifically applicable to Macao awards, indicating its relevance in the context of Macao arbitration proceedings. This distinguishes

it from other sections that deal with the enforcement of awards from different jurisdictions.

4. **Cross-Border Enforcement:** The provision acknowledges the cross-border nature of arbitration awards and the practical challenges that can arise when enforcing awards in multiple jurisdictions. It offers a way for parties to pursue enforcement in Hong Kong for the remaining portion of the award that was not successfully enforced elsewhere.
5. **Efficient Enforcement:** Section 98B aims to enhance the efficacy of Macao awards by allowing parties to enforce the unsatisfied portion of the award in Hong Kong. This could potentially provide a more effective avenue for enforcement, especially if the losing party has assets or presence in Hong Kong.
6. **Complementary to Other Provisions:** While this provision addresses a specific scenario, it works in tandem with other provisions of the ordinance that deal with enforcement of awards from various jurisdictions. It provides an additional option when traditional enforcement proceedings elsewhere are not fully effective.

In summary, section 98B of the Hong Kong Arbitration Ordinance serves as a mechanism for enforcing the unsatisfied portion of a Macao award in Hong Kong when prior enforcement attempts in Macao or other jurisdictions have been inadequate. This provision underscores the cross-border challenges of enforcement and provides parties with an alternative route to achieve the full satisfaction of their arbitration awards.

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**
- (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.**

Section 98C of the Hong Kong Arbitration Ordinance outlines the documentation requirements that a party seeking to enforce a Macao award must fulfil. Here is an analysis of this provision:

1. **Documentary Evidence:** This section emphasises the importance of providing necessary documentation to initiate the enforcement process for a Macao award in Hong Kong. The specified documents serve as evidence to support the validity and authenticity of the award and the arbitration agreement.
2. **Original Award or Certified Copy:** The provision mandates the presentation of the original Macao award that has been duly authenticated or a certified copy of it. This requirement ensures that the enforcement process is based on genuine and verified copies of the award. The original award or its certified copy is crucial to demonstrate the legitimacy of the award.

3. **Original Arbitration Agreement or Certified Copy:** Similarly, the original arbitration agreement that led to the award, or a certified copy thereof, is required. This provision underscores the need to establish a clear connection between the award and the underlying arbitration agreement. The presentation of the arbitration agreement ensures that the enforcement request is consistent with the parties' original intent to arbitrate disputes.
4. **Translation Requirement:** If the award or the arbitration agreement is not in one or both of the official languages of Hong Kong (Chinese and English), a certified translation in either official language is necessary. This requirement ensures that the court and other parties involved can understand the contents of the award and the agreement without any ambiguity.
5. **Certification by Authorised Entities:** The translation, whether of the award or the arbitration agreement, must be certified by an official or sworn translator, or by a diplomatic or consular agent. This certification is necessary to validate the accuracy of the translation and its adherence to the original content.
6. **Promoting Clarity and Transparency:** By specifying the required documents and their certified versions, this provision ensures clarity and transparency in the enforcement process. It helps prevent potential disputes over the authenticity of documents and their content.
7. **Enhancing the Integrity of Enforcement:** The requirements in section 98C are designed to safeguard the integrity of the enforcement process. By ensuring that the presented documents are genuine, correctly translated, and properly certified, the provision helps prevent fraudulent attempts to enforce awards based on inaccurate or misleading information.
8. **International Recognition:** Given the cross-border nature of arbitration and enforcement, the provisions outlined in section 98C align with international best practices and recognition standards for the enforcement of foreign arbitration awards.

In summary, section 98C of the Hong Kong Arbitration Ordinance establishes the essential documentation that must be provided by the party seeking to enforce a Macao award in Hong Kong. By specifying the required materials and certifications, this provision aims to ensure the legitimacy, authenticity, and transparency of the enforcement process.

98D. Refusal of enforcement of Macao awards

(1) Enforcement of a Macao award may not be refused except as mentioned in this section.

Section 98D(1) of the Hong Kong Arbitration Ordinance pertains to the refusal of enforcement of a Macao award and sets out the limited grounds upon which enforcement may be denied. Here is an analysis of this provision:

1. **Exclusive Grounds for Refusal:** This subsection specifies that the grounds for refusing the enforcement of a Macao award are confined to those mentioned within this section. This

approach reflects the intention to maintain a standardised and consistent framework for assessing the enforceability of Macao awards, avoiding ad hoc justifications for refusal.

2. **Limiting Discretion:** By outlining specific grounds for refusal, section 98D(1) aims to limit the discretionary power of the enforcing court in rejecting enforcement requests. This helps ensure that enforcement decisions are made based on objective and predefined criteria, enhancing predictability and transparency in the enforcement process.
3. **Clarity and Certainty:** By setting clear boundaries on the grounds for refusal, the provision promotes legal clarity and certainty for parties seeking to enforce Macao awards. Parties can better anticipate potential challenges to enforcement and tailor their arguments accordingly.
4. **Encouraging Enforcement:** The provision's emphasis on restricting the grounds for refusal indicates a legislative intent to facilitate the enforcement of Macao awards whenever possible. This approach aligns with the general principle of promoting the effectiveness and finality of arbitration awards.
5. **Balancing Enforcement and Validity Concerns:** While the provision aims to facilitate enforcement, it also recognises the importance of addressing valid concerns that might arise in exceptional cases. The provision strikes a balance between encouraging enforcement and safeguarding against potential abuse or instances where enforcement would be contrary to public policy.
6. **Uniform Approach to International Awards:** This subsection mirrors similar provisions found in international arbitration treaties and conventions. By adopting a standardised approach to refusal grounds, the provision aligns with international best practices for the enforcement of foreign arbitration awards.
7. **Legal Predictability:** The provision contributes to legal predictability by clearly delineating the permissible grounds for refusal. This helps parties involved in arbitration proceedings and enforcement actions to better anticipate the outcomes and potential challenges.
8. **Enhancing International Reputation:** A clear and well-defined set of refusal grounds enhances Hong Kong's reputation as an arbitration-friendly jurisdiction that respects international agreements and upholds the integrity of the arbitration process.

In summary, section 98D(1) of the Hong Kong Arbitration Ordinance establishes that enforcement of a Macao award may only be refused on the grounds specified within the section. This approach aims to strike a balance between facilitating enforcement and addressing legitimate concerns, contributing to the effectiveness and predictability of the enforcement process for Macao awards.

- (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—
 - (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.

Section 98D(2) of the Hong Kong Arbitration Ordinance outlines the grounds on which enforcement of a Macao award may be refused. This subsection provides a comprehensive list of specific circumstances under which enforcement can be denied. Here is an analysis of the key aspects:

1. Incapacity Ground (a): This ground allows the person against whom enforcement is sought to prove that a party to the arbitration agreement was under some legal incapacity according to the applicable law. This recognises the importance of ensuring that arbitration agreements are entered into with proper legal capacity and consent.
2. Invalid Arbitration Agreement Ground (b): This ground deals with situations where the arbitration agreement itself is challenged as being invalid. It provides two avenues for

challenge: (i) under the law to which the parties subjected it, or (ii) under the law of Macao. This is aimed at ensuring that the agreement to arbitrate is legally sound.

3. Lack of Proper Notice or Inability to Present Case (c): This ground focuses on procedural fairness. If the person against whom enforcement is sought can demonstrate that they were not properly notified of the arbitration proceedings or were unable to present their case, it might lead to a refusal of enforcement.
4. Scope of Arbitration Agreement and Award (d): This ground addresses the principle of competence-competence. It allows refusal of enforcement if the award deals with differences beyond the scope of the submission to arbitration or makes decisions on matters not contemplated by the arbitration agreement.
5. Composition and Procedure Ground (e): This ground focuses on the integrity of the arbitration process. If the composition of the arbitral authority or the arbitral procedure was not in accordance with the parties' agreement or the law of Macao (in the absence of an agreement), enforcement might be refused.
6. Binding Nature and Set-Aside Ground (f): This ground encompasses issues related to the binding nature of the award and its status in Macao. If the award is not yet binding on the parties or has been set aside or suspended by a competent authority in Macao or under Macao law, this could serve as a basis for refusal.
7. Safeguarding Fundamental Principles: The enumerated grounds aim to safeguard fundamental principles of fairness, integrity, and legality in the arbitration process. They balance the recognition of arbitration autonomy with the necessity of upholding standards of due process.
8. Consistency with International Conventions: The provision aligns with international best practices found in various arbitration treaties and conventions. By specifying the grounds for refusal, the Hong Kong Arbitration Ordinance provides a clear framework that is in line with internationally recognised principles.
9. Procedural Safeguards and Party Protection: By setting out these specific grounds, section 98D(2) offers procedural safeguards for parties involved in enforcement proceedings, providing them with a structured process to challenge enforcement while preventing arbitrary or unjustified refusals.

In conclusion, section 98D(2) of the Hong Kong Arbitration Ordinance establishes a comprehensive set of grounds on which enforcement of a Macao award may be refused. These grounds cover various aspects of capacity, validity, procedural fairness, scope of arbitration, composition, and status of the award, ensuring a balanced approach to enforcement while protecting parties' rights and ensuring the integrity of the arbitration process.

(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.**

Section 98D(3) of the Hong Kong Arbitration Ordinance outlines additional grounds on which enforcement of a Macao award may be refused. This subsection focuses on matters related to the subject matter of the award and public policy considerations. Here is an analysis of the key points:

1. **Subject Matter Ground (a):** This ground addresses the compatibility of the award’s subject matter with the scope of matters that are capable of being settled through arbitration under the law of Hong Kong. It suggests that if the subject matter of the award is not amenable to arbitration under Hong Kong law, enforcement may be refused.
2. **Public Policy Ground (b):** This ground pertains to public policy considerations. If enforcement of the Macao award would be contrary to the public policy of Hong Kong, it may be refused. This is a recognised principle in international arbitration and reflects the idea that enforcement should not be granted if it would be fundamentally at odds with the legal principles and values of the enforcing jurisdiction.
3. **Balancing Flexibility and Limitations:** These grounds strike a balance between the flexibility afforded by international arbitration and the need to ensure that certain issues are not arbitrable due to their nature or public importance. By allowing refusal of enforcement when the subject matter is not capable of arbitration or when public policy concerns arise, the provision safeguards core principles while respecting the autonomy of the arbitral process.
4. **Respecting National Laws and Values:** The grounds align with the general principle that enforcement of foreign awards should not undermine the legal and policy framework of the enforcing jurisdiction. By including these grounds, the Hong Kong Arbitration Ordinance acknowledges the importance of upholding local legal and societal norms.
5. **Harmonisation with International Standards:** The refusal grounds in section 98D(3) are consistent with international arbitration norms and practices, as they are found in various arbitration treaties and conventions. This fosters harmonisation in the enforcement of foreign arbitral awards across different jurisdictions.
6. **Maintaining Confidence in the Arbitral Process:** By incorporating these grounds, the provision contributes to maintaining the credibility and trustworthiness of international arbitration. It ensures that awards that conflict with local laws or public policy are not readily enforced, while respecting the principles of international comity and respect for foreign judgments.

In summary, section 98D(3) of the Hong Kong Arbitration Ordinance provides additional grounds on which enforcement of a Macao award may be refused. These grounds address matters related to the subject matter of the award and public policy concerns, striking a balance between the flexibility of arbitration and the need to ensure compliance with local laws and values. The provision promotes consistency, fairness, and the integrity of the arbitration process while respecting the legal framework of the enforcing jurisdiction.

- (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.**

Section 98D(4) of the Hong Kong Arbitration Ordinance addresses a specific scenario in which a Macao award contains both arbitral decisions on matters submitted to arbitration and unrelated decisions on matters that were not submitted to arbitration. The provision restricts the enforceability of such an award, allowing enforcement only with respect to the arbitral decisions that can be separated from the unrelated decisions. Here is an analysis of the key points:

1. **Scope of Enforceability:** This subsection emphasises the principle of separability of arbitral decisions from non-arbitral decisions within a single award. It ensures that only those portions of the Macao award that pertain to the actual subject matter of the arbitration and were properly submitted to arbitration can be enforced.
2. **Preservation of Autonomy:** The provision respects the autonomy of the arbitral process by allowing enforcement only for those aspects of the award that are consistent with the parties' agreement and the scope of arbitration.
3. **Mitigating Potentially Controversial Aspects:** By permitting enforcement only for the separable arbitral decisions, the provision helps avoid potential controversy that could arise from enforcing unrelated decisions that were not subject to arbitration.
4. **Ensuring Coherence:** The subsection contributes to the overall coherence and integrity of the enforcement process. It aligns with the idea that only the portions of an award that were subject to a valid arbitration agreement and that fall within the scope of arbitration should be subject to enforcement.
5. **Reflecting International Best Practices:** The concept of separating enforceable arbitral decisions from unrelated decisions is consistent with international arbitration practices. This approach is designed to avoid enforcement of aspects of an award that were not properly arbitrated.
6. **Balancing Enforcement and Fairness:** Section 98D(4) balances the legitimate expectations of parties seeking enforcement with the principles of fairness and adherence to arbitration agreements. It ensures that parties do not enforce decisions on matters they did not intend to arbitrate.
7. **Legal Certainty:** By clarifying the enforceability of separable arbitral decisions, this provision enhances legal certainty for both the parties and the enforcing court. It provides clear guidance on the enforceability of different aspects of the award.

In summary, section 98D(4) of the Hong Kong Arbitration Ordinance addresses the enforceability of Macao awards containing both arbitral and unrelated decisions. By allowing enforcement only for separable arbitral decisions, the provision preserves the autonomy of the arbitral process, maintains coherence in enforcement proceedings, and aligns with international best practices. It balances the interests of parties seeking enforcement with the principles of fairness and the scope of arbitration agreements.

- (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.

Section 98D(5) of the Hong Kong Arbitration Ordinance addresses the enforcement of Macao awards and outlines the course of action that the court can take when an application for setting aside or suspending a Macao award has been made to a competent authority. Here is an analysis of this subsection:

1. Section 98D(5)(a):
 - a. Adjudgment of Enforcement Proceedings: This part empowers the court with the discretion to adjourn the proceedings for the enforcement of a Macao award if an application for setting aside or suspending the award is pending before a competent authority as specified in subsection (2)(f).
 - b. Preserving Judicial Economy: Allowing the court to adjourn enforcement proceedings prevents the unnecessary continuation of enforcement actions when the validity of the award is being challenged concurrently. It promotes judicial economy by avoiding inconsistent rulings and conserving judicial resources.
 - c. Balancing Interests: The provision seeks to strike a balance between the need for efficient enforcement and the requirement to respect the process of challenging an award's validity.
2. Section 98D(5)(b):
 - a. Order for Security: This part grants the court the authority to order the party seeking enforcement of the Macao award to provide security. The security may be ordered upon the application of the party seeking to enforce the award against the party against whom enforcement is invoked.
 - b. Protecting the Respondent's Interests: By ordering security, the court ensures that the party seeking enforcement is financially prepared to compensate the respondent in case the award is subsequently set aside or suspended by the competent authority. This measure helps safeguard the interests of the party against whom enforcement is sought.
 - c. Preventing Irreparable Harm: The provision helps prevent potential harm to the respondent by ensuring that enforcement does not proceed without adequate safeguards in cases where the award's validity is uncertain.

In summary, section 98D(5) of the Hong Kong Arbitration Ordinance establishes a framework for the enforcement of Macao awards when there is an ongoing challenge to the award's validity. The court is

granted discretionary powers to adjourn enforcement proceedings and to order security, thereby facilitating a fair and balanced process that respects the rights of both parties involved.

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

Section 98D(6) of the Hong Kong Arbitration Ordinance pertains to the consequences of a decision or order made by the court under subsection (5), which relates to the enforcement of Macao awards and the adjournment or security measures in cases where an application for setting aside or suspending a Macao award is pending. Here is an analysis of this subsection:

1. **Finality of Decision:** This provision establishes that any decision or order made by the court under subsection (5) is considered final and not subject to appeal. In other words, parties affected by the court's decision cannot challenge it through an appellate process.
2. **Judicial Efficiency:** By preventing appeals, this provision promotes judicial efficiency and streamlines the enforcement process. It avoids prolonging disputes over procedural matters, such as the court's decision on adjournment or the requirement of security, which could further delay the overall resolution of the matter.
3. **Preservation of Proceedings:** Ensuring that decisions or orders under subsection (5) are not appealable prevents unnecessary disruptions in enforcement proceedings. It allows for a more streamlined and predictable enforcement process, as parties can rely on the court's decisions without the fear of being subjected to further rounds of litigation on these specific issues.
4. **Balancing Interests:** While this provision denies the right to appeal, it is important to note that the overall arbitration framework, including other provisions of the Arbitration Ordinance, provides parties with mechanisms for seeking recourse against unjust or prejudicial decisions.

In summary, section 98D(6) of the Hong Kong Arbitration Ordinance underscores the finality of decisions or orders made by the court under subsection (5) with respect to the enforcement of Macao awards. This approach supports efficiency in the enforcement process and ensures a balanced approach between the interests of parties involved.

Part 10A Third Party Funding of Arbitration**Division 1—Purposes****98E. Purposes**

The purposes of this Part are to—

- (a) ensure that third party funding of arbitration is not prohibited by particular common law doctrines; and**
- (b) provide for measures and safeguards in relation to third party funding of arbitration.**

Section 98E of the Hong Kong Arbitration Ordinance outlines the purposes of a specific part of the ordinance, which relate to third party funding of arbitration. Here is an analysis of this section:

1. **Promotion of Third Party Funding:** The primary objective of this section is to encourage and facilitate third party funding of arbitration. Third party funding involves a scenario where a person or entity, other than the parties to the arbitration, provides financial support to one of the parties to pursue their claim or defence in the arbitration process.
2. **Overcoming Common Law Doctrines:** Part (a) of the section emphasises the intention to remove any potential legal barriers posed by common law doctrines that might prohibit or restrict third party funding of arbitration. Historically, some common law doctrines like the doctrines of champerty and maintenance raised concerns about third parties financially supporting litigation. This section aims to clarify that these doctrines should not hinder third party funding in arbitration.
3. **Establishing Safeguards:** Part (b) of the section highlights the importance of implementing measures and safeguards when it comes to third party funding of arbitration. This indicates that while the ordinance seeks to enable third party funding, it also recognises the need for appropriate regulations to ensure fairness, transparency, and ethical practices in the process.
4. **Balancing Interests:** The section aims to strike a balance between promoting third party funding and maintaining the integrity of the arbitration process. It acknowledges the potential benefits of third party funding, such as allowing parties with limited resources to pursue their claims effectively, while also acknowledging the need for safeguards to prevent potential abuses or conflicts of interest.
5. **Modernising Arbitration Laws:** This section reflects a modern approach to arbitration laws by addressing evolving practices such as third party funding. It aligns with international trends that recognise the role of third party funding in enhancing access to justice and ensuring the efficiency of arbitration proceedings.

In summary, section 98E of the Hong Kong Arbitration Ordinance highlights the objectives of a specific part of the ordinance that aims to enable and regulate third party funding of arbitration. It aims to eliminate any legal obstacles, provide necessary safeguards, and strike a balance between encouraging third party funding and maintaining the integrity of the arbitration process.

Division 2—Interpretation

98F. Interpretation

In this Part—

advisory body (諮詢機構) means the person appointed by the Secretary for Justice under section 98X(1);

arbitration (仲裁) includes the following proceedings under this Ordinance—

- (a) court proceedings;
- (b) proceedings before an emergency arbitrator; and
- (c) mediation proceedings;

arbitration body (仲裁機構)—

- (a) in relation to an arbitration (other than the proceedings mentioned in paragraphs (b) and (c))—means the arbitral tribunal or court, as the case may be;
- (b) in relation to proceedings before an emergency arbitrator—means the emergency arbitrator; or
- (c) in relation to mediation proceedings—means the mediator appointed under section 32 or referred to in section 33, as the case may be;

arbitration funding (仲裁資助), in relation to an arbitration, means money, or any other financial assistance, in relation to any costs of the arbitration;

authorized body (獲授權機構) means the person appointed by the Secretary for Justice under section 98X(2);

code of practice (實務守則) means the code of practice issued under Division 4 and as amended from time to time;

costs (費用), in relation to an arbitration, means the costs and expenses of the arbitration and includes—

- (a) pre-arbitration costs and expenses; and
- (b) the fees and expenses of the arbitration body;

emergency arbitrator (緊急仲裁員) has the meaning given by section 22A;

funded party (受資助方)—see section 98I;

funding agreement (資助協議)—see section 98H;

mediation proceedings (調解程序) means mediation proceedings referred to in section 32(3) or 33;

potential third party funder (潛在出資第三者) means a person who carries on any activity with a view to becoming a third party funder;

provision (提供)—

- (a) in relation to the provision of arbitration funding to a person (recipient)—includes the provision of the arbitration funding to another person (for example, to the recipient’s legal representative) at the recipient’s request; and
- (b) in relation to the provision of arbitration funding by a person (funder)—includes the provision of the arbitration funding by another person that is arranged by the funder;

third party funder (出資第三者)—

- (a) means a third party funder within the meaning of section 98J; and
- (b) in Division 4, includes a potential third party funder;

third party funding of arbitration (第三者資助仲裁)—see section 98G.

Section 98F of the Hong Kong Arbitration Ordinance provides definitions for various terms used within the part of the ordinance related to third party funding of arbitration. Let us analyse the definitions provided in this section:

1. **Advisory Body:** This term refers to a person appointed by the Secretary for Justice under section 98X(1). The advisory body is likely an entity responsible for providing guidance and advice in matters related to third party funding of arbitration.
2. **Arbitration:** The term “arbitration” is broadly defined to include various proceedings under the ordinance. This encompasses not only traditional arbitration proceedings but also extends to court proceedings related to arbitration, proceedings before an emergency arbitrator, and mediation proceedings.
3. **Arbitration Body:** This term defines the relevant body overseeing different types of arbitration proceedings. It encompasses the arbitral tribunal or court for standard arbitrations, the emergency arbitrator for proceedings before an emergency arbitrator, and the mediator for mediation proceedings.
4. **Arbitration Funding:** Refers to money or financial assistance provided to cover the costs of arbitration. This covers various expenses related to the arbitration process, including fees and expenses of the arbitration body.
5. **Authorised Body:** This term refers to a person appointed by the Secretary for Justice under section 98X(2). The authorised body likely plays a role in overseeing and regulating third party funding activities.

6. Code of Practice: This term refers to a code of practice issued under Division 4 of the ordinance, which provides guidelines and standards related to third party funding of arbitration. The code of practice is subject to amendments as needed.
7. Costs: In relation to arbitration, this term includes all costs and expenses associated with the arbitration process. It covers not only the costs incurred during arbitration proceedings but also pre-arbitration costs and expenses, as well as fees and expenses of the arbitration body.
8. Emergency Arbitrator: This term is defined in section 22A and refers to an arbitrator who can be appointed to hear urgent matters even before the full arbitral tribunal is constituted.
9. Funded Party: This term is defined in section 98I and refers to the party that receives third party funding for its arbitration proceedings.
10. Funding Agreement: This term is defined in section 98H and refers to an agreement between a third party funder and a funded party for providing arbitration funding.
11. Mediation Proceedings: Refers to the mediation proceedings described in sections 32(3) or 33 of the ordinance.
12. Potential Third Party Funder: This term refers to a person who is engaging in activities with the intention of becoming a third party funder in the future.
13. Provision: In the context of arbitration funding, this term refers to the provision of arbitration funding to a recipient, which could include providing funding to the recipient's legal representative upon request.
14. Third Party Funder: This term is defined in section 98J and refers to a person or entity that provides third party funding for arbitration proceedings. In Division 4, it also includes potential third party funders.
15. Third Party Funding of Arbitration: This term refers to the concept of third party funding in the context of arbitration and is further defined in section 98G.

Overall, section 98F provides definitions for key terms used throughout the part of the ordinance that addresses third party funding of arbitration. These definitions clarify the roles, relationships, and activities involved in the third party funding of arbitration proceedings in Hong Kong.

98G. Meaning of third party funding of arbitration

Third party funding of arbitration is the provision of arbitration funding for an arbitration—

- (a) under a funding agreement;**
- (b) to a funded party;**
- (c) by a third party funder; and**
- (d) in return for the third party funder receiving a financial benefit only if the arbitration is successful within the meaning of the funding agreement.**

Section 98G of the Hong Kong Arbitration Ordinance defines the concept of third party funding of arbitration. Let us break down the components of this definition:

1. **Third Party Funding of Arbitration:** This term refers to the practice of providing financial assistance for arbitration proceedings by a third party funder. It involves certain conditions and elements as outlined in the rest of the definition.
2. **Provision of Arbitration Funding:** Third party funding of arbitration involves providing financial support to cover the costs and expenses associated with an arbitration proceeding.
3. **Under a Funding Agreement:** The financial support for arbitration is provided within the framework of a funding agreement. A funding agreement is a contractual arrangement that outlines the terms and conditions under which the third party funder will provide the funding.
4. **To a Funded Party:** The arbitration funding is provided to the funded party, which is the party involved in the arbitration proceedings and seeking financial assistance.
5. **By a Third Party Funder:** The provision of arbitration funding is carried out by a third party funder. This entity is separate from the parties involved in the arbitration, and its primary role is to provide financial resources to support the arbitration proceedings.
6. **In Return for a Financial Benefit:** The third party funder's involvement is contingent upon receiving a financial benefit. This means that the third party funder will expect to gain some form of financial return or compensation based on the outcome of the arbitration proceedings.
7. **Only if the Arbitration is Successful:** The financial benefit received by the third party funder is conditioned upon the arbitration being successful. "Successful" is defined within the context of the funding agreement, and the terms of success are determined by the agreement between the third party funder and the funded party.

In summary, section 98G defines third party funding of arbitration as the provision of financial assistance for arbitration proceedings by a third party funder, under a funding agreement, to a funded party, in exchange for a financial benefit that is contingent upon the successful outcome of the arbitration as defined by the funding agreement. This definition establishes the essential components and conditions of third party funding in the context of arbitration in Hong Kong.

98H. Meaning of funding agreement

- (1) A funding agreement is an agreement for third party funding of arbitration that is— (Amended 6 of 2022 s. 3)**
- (a) in writing;**
 - (b) made between a funded party and a third party funder; and**
 - (c) made on or after the commencement date of Division 3.**

Section 98H(1) of the Hong Kong Arbitration Ordinance defines a “funding agreement” in the context of third party funding of arbitration. Let us break down the elements of this definition:

1. **Funding Agreement:** The term “funding agreement” refers to a specific type of agreement that is entered into for the purpose of third party funding of arbitration. It outlines the terms and conditions under which a third party funder provides financial support to a funded party for arbitration proceedings.
2. **In Writing:** A funding agreement must be documented in writing. This requirement ensures that the terms of the agreement are clear, transparent, and legally enforceable.
3. **Between a Funded Party and a Third Party Funder:** The agreement must be entered into between two parties: the funded party and the third party funder. The funded party is the party involved in the arbitration proceedings seeking financial support, while the third party funder is the entity providing the financial assistance.
4. **Made on or After the Commencement Date of Division 3:** The funding agreement must be executed on or after the commencement date of Division 3 of the Hong Kong Arbitration Ordinance. This division likely contains provisions related to third party funding and its regulation within the ordinance.

In summary, section 98H(1) defines a funding agreement as a written agreement made between a funded party and a third party funder for the purpose of third party funding of arbitration. The agreement outlines the terms and conditions of the financial support provided by the third party funder to the funded party. This definition ensures that funding agreements are properly documented, involve the relevant parties, and are subject to the applicable regulations and provisions set forth in the Hong Kong Arbitration Ordinance.

- (2) To avoid doubt, a funding agreement is not to be construed to include an ORFS agreement for arbitration within the meaning of Part 10B. (Added 6 of 2022 s. 3)**

Section 98H(2) of the Hong Kong Arbitration Ordinance clarifies the scope of what constitutes a “funding agreement” by excluding a specific type of agreement known as an “ORFS agreement for arbitration” within the meaning of Part 10B. Let us break down the key points of this provision:

1. ORFS Agreement for Arbitration: The term “ORFS agreement for arbitration” refers to a particular type of agreement related to arbitration, specifically governed by Part 10B of the ordinance.
2. Exclusion: Section 98H(2) makes it clear that the definition of a “funding agreement” should not be interpreted to include an ORFS agreement for arbitration. In other words, an ORFS agreement for arbitration is not considered a form of funding agreement for the purposes of the provisions related to third party funding of arbitration.
3. Scope Clarity: This provision is included to avoid any confusion or ambiguity about the types of agreements that fall under the definition of a “funding agreement”. By specifying that ORFS agreements for arbitration are excluded, the ordinance ensures that the regulatory framework for third party funding of arbitration does not overlap with the framework for ORFS agreements under Part 10B.

In summary, section 98H(2) serves to clarify that the term “funding agreement” does not include ORFS agreements for arbitration as defined in Part 10B of the Hong Kong Arbitration Ordinance. This exclusion helps maintain clear boundaries between the regulatory provisions governing third party funding of arbitration and those pertaining to other types of agreements related to arbitration.

98I. Meaning of funded party

(1) A funded party is a person—

- (a) who is a party to an arbitration; and
- (b) who is a party to a funding agreement for the provision of arbitration funding for the arbitration to the person by a third party funder.

Section 98I(1) of the Hong Kong Arbitration Ordinance defines the term “funded party” within the context of third party funding of arbitration. This definition outlines the criteria that need to be met for an individual or entity to be considered a “funded party”. Let us break down the key elements of this provision:

1. Definition of Funded Party: A “funded party” refers to a person who fulfils two specific conditions:
 - a. Arbitration Party: The person must be a party to an ongoing arbitration. This means they are involved in the arbitration proceedings as a participant or party.
 - b. Funding Agreement: The person must also be a party to a funding agreement that outlines the provision of arbitration funding for the ongoing arbitration. This funding is provided by a third party funder. In other words, the person agrees to receive financial support for their arbitration-related costs from a third party funder in accordance with a formal agreement.
2. The purpose of this definition is to identify individuals or entities who are actively engaged in an arbitration and have entered into a funding agreement with a third party funder to receive financial assistance for the costs associated with the arbitration.

In summary, section 98I(1) clarifies the criteria for designating someone as a “funded party” in the context of third party funding of arbitration. It outlines the specific conditions that need to be met, including participation in an arbitration and the existence of a funding agreement with a third party funder.

(2) In subsection (1)(a), the reference to a party to an arbitration includes—

- (a) a person who is likely to be a party to an arbitration that is yet to commence; and**
- (b) a person who was a party to an arbitration that has ended.**

Section 98I(2) of the Hong Kong Arbitration Ordinance provides additional clarity to the definition of a “funded party” as outlined in subsection (1). This subsection explains that the reference to a “party to an arbitration” in subsection (1)(a) encompasses a broader scope beyond just ongoing arbitration proceedings. Let us break down the components of this provision:

1. **Likely to Be a Party:** The provision extends the definition of a “party to an arbitration” to include individuals or entities who are likely to become parties to an arbitration that is yet to commence. This means that even before an arbitration begins, a person who is anticipated to participate in the arbitration can be considered a “funded party” if they meet the other conditions specified in subsection (1).
2. **Party to an Ended Arbitration:** The provision also includes individuals or entities who were parties to an arbitration that has already concluded. This ensures that those who were involved in a past arbitration but still have arbitration-related matters to address, such as enforcement of an award or any remaining financial issues, can still qualify as “funded parties”.

In summary, section 98I(2) broadens the scope of who can be considered a “funded party” beyond just ongoing arbitration proceedings. It includes those who are likely to participate in future arbitrations and those who were involved in completed arbitrations but have ongoing matters related to the arbitration process. This expansion of the definition recognises the various stages and complexities of arbitration proceedings that may require third party funding.

98J. Meaning of third party funder

(1) A third party funder is a person—

- (a) who is a party to a funding agreement for the provision of arbitration funding for an arbitration to a funded party by the person; and**
- (b) who does not have an interest recognized by law in the arbitration other than under the funding agreement.**

Section 98J(1) of the Hong Kong Arbitration Ordinance defines the term “third party funder” within the context of third party funding for arbitration. Let us analyse the key components of this provision:

1. Party to a Funding Agreement: A “third party funder” is an individual or entity that is a party to a funding agreement. This agreement is made for the purpose of providing arbitration funding to a funded party, who is typically a party involved in the arbitration proceedings.
2. Limitation on Interest in the Arbitration: The provision includes a limitation on the interests a third party funder can have in the arbitration proceedings. Specifically, the third party funder is not allowed to have any interest recognised by law in the arbitration other than what is outlined in the funding agreement. This ensures that the third party funder’s involvement is solely through the funding agreement and does not extend to any other legal interests or rights in the arbitration itself.

In summary, section 98J(1) defines a “third party funder” as an entity that enters into a funding agreement to provide arbitration funding to a funded party. The provision also places a restriction on the funder’s interests in the arbitration, emphasising that their involvement is limited to the terms and conditions of the funding agreement and does not extend to other legal interests in the arbitration proceedings.

(2) In subsection (1)(b), the reference to a person who does not have an interest in an arbitration includes—

- (a) a person who does not have an interest in the matter about which an arbitration is yet to commence; and**
- (b) a person who did not have an interest in an arbitration that has ended.**

Section 98J(2) of the Hong Kong Arbitration Ordinance provides further clarification regarding the definition of “third party funder” as described in subsection (1)(b). This subsection elaborates on the concept of a person who does not have an interest in an arbitration. Let us break down the elements of this provision:

1. Interest in the Matter About to Commence: Subsection (2)(a) explains that a person is considered a third party funder (as defined in subsection (1)(b)) if they do not have an interest in the subject matter for which an arbitration is anticipated to begin. In other words, if a person is not already involved or vested in the matter that is likely to be the subject of an arbitration proceeding, they can still be considered a third party funder.
2. Lack of Interest in Ended Arbitration: Subsection (2)(b) stipulates that a person can also be regarded as a third party funder if they did not have any interest in an arbitration that has already concluded. This emphasises that a person who did not have any vested interest in the concluded arbitration and is now involved solely through a funding agreement is to be classified as a third party funder.

In summary, section 98J(2) of the Hong Kong Arbitration Ordinance explains that the term “person who does not have an interest in an arbitration” (as mentioned in subsection 1(b)) includes those who lack an interest in the matter about which an arbitration is expected to take place and those who had no interest in an arbitration that has already concluded. This helps to clarify the scope of individuals who can be considered third party funders.

Division 3—Third Party Funding of Arbitration Not Prohibited by Particular Common Law Offences or Tort

Editorial Note:

This Division has yet to apply in relation to a mediation mentioned in section 7A of the Mediation Ordinance (Cap. 620) (see L.N. 260 of 2018).

98K. Particular common law offences do not apply

The common law offences of maintenance (including the common law offence of champerty) and of being a common barrator do not apply in relation to third party funding of arbitration.

Section 98K of the Hong Kong Arbitration Ordinance addresses the application of certain common law offenses in the context of third party funding of arbitration. This provision essentially excludes the application of specific offenses related to maintenance and champerty, as well as the offense of being a common barrator, concerning third party funding in arbitration proceedings. Let us break down the key points of this section:

1. **Maintenance and Champerty:** The term “maintenance” refers to an unlawful support or assistance of another party’s legal proceedings by a person who has no legitimate interest in the case. “Champerty” is a particular form of maintenance where a person provides financial support to another party’s litigation in exchange for a share of the proceeds if the case is successful. Historically, these practices were prohibited due to concerns about encouraging litigation for personal gain rather than for justice.
2. **Common Barratry:** The offense of being a “common barrator” refers to engaging in vexatious and repeated legal actions or stirring up disputes for personal gain.
3. **Section 98K clarifies that the common law offenses of maintenance (including champerty) and being a common barrator do not apply to situations involving third party funding of arbitration.** This means that parties participating in arbitration proceedings can engage in third party funding arrangements without being subject to the historical legal restrictions placed on maintenance, champerty, or the offense of common barratry.

This provision aligns with the modern approach to arbitration, where third party funding can play a valuable role in enabling parties to access justice without shouldering the full financial burden of proceedings. By excluding these common law offenses in the context of arbitration funding, the law seeks to facilitate a more flexible and accessible environment for parties involved in arbitration cases.

98L. Particular tort does not apply

The tort of maintenance (including the tort of champerty) does not apply in relation to third party funding of arbitration.

Section 98L of the Hong Kong Arbitration Ordinance addresses the applicability of the tort of maintenance and champerty in the context of third party funding of arbitration. This provision clarifies

that these legal doctrines do not apply to situations involving third party funding of arbitration proceedings. Let us break down the key points of this section:

1. Tort of Maintenance: The tort of maintenance refers to the wrongful interference by a third party in another party's legal proceedings. It involves providing support or assistance to one of the parties in a lawsuit without any legitimate interest in the case.
2. Tort of Champerty: Champerty is a specific form of maintenance where a person provides financial assistance to another party's litigation in exchange for a share of the proceeds if the case is successful.
3. Section 98L clearly states that the tort of maintenance (including champerty) does not apply in relation to third party funding of arbitration. This means that parties participating in arbitration proceedings can engage in third party funding arrangements without being subject to the historical legal restrictions placed on maintenance and champerty.

By excluding these torts in the context of arbitration funding, the law aims to provide parties with more flexibility and options when seeking financial assistance to support their arbitration cases. This approach is in line with the modern trend in various jurisdictions to encourage access to justice and promote alternative dispute resolution methods such as arbitration.

98M. Other illegality not affected

Sections 98K and 98L do not affect any rule of law as to the cases in which a contract is to be treated as contrary to public policy or otherwise illegal.

Section 98M of the Hong Kong Arbitration Ordinance addresses the interaction between Sections 98K and 98L and the broader legal principles related to contracts that might be considered contrary to public policy or otherwise illegal. Here is a breakdown of this section:

1. Sections 98K and 98L: Sections 98K and 98L pertain to the impact of common law doctrines (maintenance, champerty, and the tort of champerty) on third-party funding of arbitration. These sections essentially clarify that these common law doctrines do not apply in the context of third-party funding of arbitration.
2. Public Policy and Illegal Contracts: Section 98M clarifies that the exclusion of maintenance, champerty, and the tort of champerty (as stated in Sections 98K and 98L) does not alter or affect any legal principles or rules that determine when a contract might be deemed contrary to public policy or otherwise illegal.
3. In other words, while Sections 98K and 98L allow for more flexibility in third-party funding of arbitration by excluding certain historical legal restrictions, Section 98M emphasises that these exclusions do not override broader legal principles that govern the validity and enforceability of contracts. Contracts that are still contrary to public policy or otherwise illegal under applicable law would not be saved from such invalidity or illegality solely due to the exclusions of maintenance, champerty, and the tort of champerty in the context of arbitration funding.

This provision ensures that the legal framework surrounding contract enforceability and public policy considerations remains intact, while also providing specific exceptions for third-party funding in the realm of arbitration. It maintains a balance between encouraging access to justice and upholding the integrity of contract law.

98N. Limited application of Part 10A for non-Hong Kong arbitration

Despite section 5, this Part applies in relation to an arbitration for which the place of arbitration is outside Hong Kong or there is no place of arbitration as if—

- (a) the place of arbitration were in Hong Kong; and**
- (b) the definition of costs in section 98F were replaced by the following—**

“costs (費用), in relation to an arbitration, means only the costs and expenses of services that are provided in Hong Kong in relation to the arbitration;”

Section 98N of the Hong Kong Arbitration Ordinance introduces specific provisions that modify the application of the Part concerning third-party funding of arbitration when the place of arbitration is outside Hong Kong or when there is no designated place of arbitration. Here is an analysis of this section:

1. **Applicability to Arbitrations Outside Hong Kong or Without a Designated Place:** Despite Section 5 of the ordinance, which generally stipulates that the ordinance applies only to arbitrations having their seat in Hong Kong, Section 98N extends the application of the Part related to third-party funding of arbitration to cases where the place of arbitration is outside Hong Kong or where there is no designated place of arbitration.
2. **Fictional Application of Place of Arbitration:** Subsection (a) of Section 98N creates a legal fiction by treating the place of arbitration as if it were in Hong Kong. This means that even if the actual place of arbitration is outside Hong Kong, for the purposes of this Part, it will be treated as if the arbitration were taking place within Hong Kong.
3. **Definition of Costs for Foreign Arbitrations:**
 - a. Subsection (b) of Section 98N modifies the definition of “costs” in Section 98F specifically for arbitrations with a place of arbitration outside Hong Kong or without a designated place of arbitration.
 - b. It narrows down the scope of “costs” to only include the costs and expenses of services that are provided in Hong Kong in relation to the arbitration. This adjustment ensures that the definition of costs is limited to services rendered within Hong Kong’s jurisdiction for arbitrations taking place elsewhere.

The purpose of Section 98N is to provide clarity and specific guidelines when it comes to applying the provisions related to third-party funding of arbitration to cases involving arbitrations that are situated outside Hong Kong or have no designated place of arbitration. It allows the incorporation of these provisions while making necessary adjustments to accommodate international arbitration scenarios. This provision aims to facilitate the use of third-party funding arrangements for arbitrations that might

not necessarily have a direct connection to Hong Kong but still involve Hong Kong-based services or parties.

980. Part 10A not applicable to lawyers acting for parties in arbitration

(1) This Part does not apply in relation to the provision of arbitration funding to a party by a lawyer who, in the course of the lawyer’s legal practice, acts for any party in relation to the arbitration.

Section 980(1) of the Hong Kong Arbitration Ordinance establishes an exception to the application of the provisions regarding third-party funding of arbitration in cases involving lawyers providing arbitration funding to parties. Here is an analysis of this section:

1. **Exemption for Lawyers Providing Arbitration Funding:** Section 980(1) states that the provisions of this Part, which deal with third-party funding of arbitration, do not apply to situations where a lawyer, as part of their legal practice, offers arbitration funding to a party involved in the arbitration.
2. **Scope of the Exemption:** The exemption applies when a lawyer who is practicing law professionally, and who represents or acts for any party involved in the arbitration, provides arbitration funding to that same party.
3. **Rationale for the Exemption:** The exemption recognises that legal professionals often provide financial assistance or other support to their clients as part of their legal representation. In the context of arbitration, a lawyer may provide financial support to a client who might otherwise seek third-party funding. Given the close relationship between legal representation and funding in such cases, this section allows lawyers to continue offering financial assistance within their professional engagement without being subject to the specific requirements and regulations outlined in the Part related to third-party funding.

The purpose of Section 980(1) is to acknowledge the unique role lawyers play in representing and assisting their clients, including providing financial support when necessary. This provision ensures that the existing practice of lawyers providing financial assistance as part of their professional representation is not disrupted by the provisions of the Part concerning third-party funding of arbitration. It also helps strike a balance between the interests of legal practitioners and the regulatory framework for third-party funding.

(2) If a lawyer works for, or is a member of, a legal practice (however described or structured), the references in subsection (1) to “lawyer” include the legal practice and any other lawyer who works for, or is a member of, the legal practice.

Section 980(2) of the Hong Kong Arbitration Ordinance provides further clarification and extension to the exemption outlined in Section 980(1) regarding the provision of arbitration funding by lawyers. Here is an analysis of this section:

1. **Extension of the Exemption to Legal Practices:** Section 98O(2) states that if a lawyer works for, or is a member of, a legal practice (which may have different structures or designations), the references to “lawyer” in subsection (1) will also include the legal practice itself and any other lawyer who is part of or works for that legal practice.
2. **Scope of the Extension:** This subsection aims to extend the exemption granted to individual lawyers in Section 98O(1) to include situations where the provision of arbitration funding is carried out by a legal practice as a whole, rather than solely by individual lawyers within that practice.
3. **Recognition of Collective Efforts and Practices:** By including the legal practice and its members, this subsection acknowledges that in certain cases, the provision of arbitration funding could be a collaborative effort within a legal practice. It recognises that the practice as a whole, along with its lawyers, may collectively provide financial support to clients without being subject to the specific regulations outlined in the Part regarding third-party funding of arbitration.

The intention behind Section 98O(2) is to ensure that the exemption for lawyers extends to encompass the dynamics of legal practices. This recognises that the provision of arbitration funding could involve the collective efforts of a legal practice and its members, allowing for a broader and more flexible approach to financial assistance in arbitration proceedings. This clarification aims to accommodate various structures and practices within the legal profession while ensuring that the exemption remains consistent and effective.

(3) In this section—

lawyer (律師) means—

- (a) **a person who is enrolled on the roll of barristers kept under section 29 of the Legal Practitioners Ordinance (Cap. 159);**
- (b) **a person who is enrolled on the roll of solicitors kept under section 5 of that Ordinance; or**
- (c) **a person who is qualified to practise the law of a jurisdiction other than Hong Kong, including a foreign lawyer as defined by section 2(1) of that Ordinance;**

party (一方) means a party to an arbitration within the meaning of section 98I.

Section 98O(3) of the Hong Kong Arbitration Ordinance provides definitions for key terms used in Section 98O(1) and (2), which pertain to the exemption from the provisions of the ordinance relating to third-party funding of arbitration when provided by lawyers. Here is an analysis of this section:

1. **Definition of “Lawyer”:** The term “lawyer” is defined comprehensively in this section, encompassing individuals with various qualifications and roles in the legal profession. It includes:
 - a. A person enrolled on the roll of barristers under section 29 of the Legal Practitioners Ordinance (Cap. 159).

- b. A person enrolled on the roll of solicitors under section 5 of the same Ordinance.
 - c. A person qualified to practice law in a jurisdiction other than Hong Kong, which also includes foreign lawyers as defined by section 2(1) of the Legal Practitioners Ordinance.
2. Definition of “Party”: The term “party” is defined as a party to an arbitration, as defined in Section 98I of the ordinance. This definition serves to clarify the scope of the term and its relevance to the exemption from third-party funding provisions.
 3. Clarity in Terminology: This section aims to provide clarity by defining terms used in Section 98O(1) and (2), ensuring that the interpretation of “lawyer” and “party” aligns with their meanings as intended in the broader context of the ordinance.

The intention behind Section 98O(3) is to ensure that the definitions of “lawyer” and “party” used in the exemption from third-party funding provisions are clear and consistent. This ensures that the exemption accurately applies to individuals with different legal qualifications and roles and to the specific parties involved in arbitration proceedings. By providing these definitions, the section seeks to avoid ambiguity and promote a precise understanding of the terms used in the context of third-party funding of arbitration by lawyers.

980A.Part 10A not applicable to ORFS agreements for arbitration

This Part does not apply to an ORFS agreement for arbitration within the meaning of Part 10B.

Section 980A of the Hong Kong Arbitration Ordinance stipulates that the provisions outlined in the preceding sections, which pertain to third-party funding of arbitration, do not apply to an ORFS (Outcome-Related Fee Structures) agreement for arbitration as defined in Part 10B of the ordinance. Here is an analysis of this section:

1. Exclusion of ORFS Agreements: Section 980A serves as an exclusionary provision by specifying that the regulations and requirements detailed in the previous sections regarding third-party funding of arbitration do not extend to ORFS agreements for arbitration.
2. Reference to Part 10B: The section refers to Part 10B of the ordinance, which is likely dedicated to regulations concerning ORFS agreements for arbitration. An ORFS agreement typically involves an arrangement where a party’s fee or compensation is contingent upon the outcome of the arbitration, often based on the successful result achieved.
3. Clarifying Scope: By excluding ORFS agreements from the scope of the provisions related to third-party funding of arbitration, this section aims to clarify that a different set of rules or regulations apply to ORFS agreements. The distinction highlights that such agreements have their own unique regulatory framework within the ordinance.
4. Preventing Overlap and Confusion: The inclusion of this provision is likely intended to prevent overlap or confusion between the provisions governing third-party funding of arbitration and those specific to ORFS agreements. By clearly delineating the scope of

each regulatory framework, this section helps to maintain clarity and consistency in the application of the ordinance.

In summary, Section 98OA of the Hong Kong Arbitration Ordinance ensures that the provisions related to third-party funding of arbitration do not apply to ORFS agreements for arbitration as defined in Part 10B of the ordinance. This section helps maintain a clear and distinct regulatory framework for these different types of agreements within the context of arbitration in Hong Kong.

Division 4—Code of Practice

98P. Code of practice may be issued

- (1) The authorized body may issue a code of practice setting out the practices and standards with which third party funders are ordinarily expected to comply in carrying on activities in connection with third party funding of arbitration.**

Section 98P(1) of the Hong Kong Arbitration Ordinance empowers the authorised body to issue a code of practice that outlines the practices and standards that third-party funders should generally adhere to when engaging in activities related to third party funding of arbitration. Here is an analysis of this section:

1. **Empowering the Authorised Body:** This provision grants authority to the authorised body to create and issue a code of practice. The authorised body likely refers to the entity appointed by the Secretary for Justice under Section 98X(2) of the ordinance, which is responsible for overseeing and regulating third-party funding activities.
2. **Code of Practice:** The code of practice is a set of guidelines that establishes the expected practices and standards for third-party funders engaged in activities related to funding arbitration proceedings. The code is designed to provide clarity, consistency, and ethical guidance for these funders, ensuring they operate in a transparent and responsible manner.
3. **Ordinarily Expected Practices and Standards:** The code of practice is intended to outline practices and standards that third-party funders are generally expected to follow. It helps set a baseline for ethical behaviour and professional conduct in the context of third-party funding of arbitration.
4. **Carrying on Activities in Connection with Funding:** The practices and standards specified in the code of practice are related to the various activities that third-party funders undertake in connection with funding arbitration proceedings. This can include assessing cases for funding, providing funding, and managing the financial aspects of arbitration cases.
5. **Guidance and Regulatory Framework:** The issuance of a code of practice provides guidance to third-party funders on how they should conduct their activities in a manner consistent with established ethical and professional standards. It also serves as a regulatory framework to ensure that third-party funders operate responsibly and transparently within the arbitration ecosystem.
6. **Benefit to All Parties Involved:** By establishing a code of practice, this section benefits all parties involved in arbitration, including parties seeking funding, funders themselves, and the broader arbitration community. It promotes fair and ethical behaviour, enhances the credibility of third-party funding, and contributes to maintaining the integrity of arbitration proceedings.

In summary, Section 98P(1) of the Hong Kong Arbitration Ordinance empowers the authorised body to issue a code of practice that outlines expected practices and standards for third-party funders engaged in activities related to funding arbitration. The code of practice is designed to promote

transparency, ethical conduct, and responsible behaviour in the context of third-party funding of arbitration proceedings.

(2) The authorized body may amend or revoke the code of practice.

Section 98P(2) of the Hong Kong Arbitration Ordinance empowers the authorised body to make amendments to or revoke the code of practice that was issued under Section 98P(1). Here is an analysis of this section:

1. **Flexibility in Regulation:** This provision acknowledges that the regulatory landscape and best practices in third-party funding of arbitration may evolve over time. By allowing the authorised body to amend or revoke the code of practice, the ordinance ensures that the regulatory framework remains adaptable to changes and developments in the industry.
2. **Responsive to Emerging Issues:** As the arbitration landscape and third-party funding practices develop, new issues or challenges may arise that necessitate updates to the code of practice. The authorised body's ability to amend the code enables it to address emerging concerns and ensure that the regulatory framework remains effective and relevant.
3. **Ensuring Effectiveness:** Regular review and potential revision of the code of practice reflect the authorised body's commitment to maintaining the effectiveness of the regulatory framework. Changes to the code can help enhance the quality and integrity of third-party funding activities, ultimately benefiting all stakeholders involved in arbitration proceedings.
4. **Regulatory Oversight:** The power to amend or revoke the code of practice demonstrates the oversight role of the authorised body in regulating third-party funding activities. It underscores the importance of regulatory bodies in maintaining ethical standards and promoting responsible conduct within the arbitration community.
5. **Transparency and Communication:** The authorised body is likely to follow a transparent process when making amendments or revoking the code of practice. This can involve consultations with stakeholders, including third-party funders, parties to arbitration, and other relevant entities, to ensure that changes align with the needs and concerns of the industry.
6. **Adherence to Changing Standards:** The authorised body's ability to revise the code of practice reflects the commitment to upholding the highest standards in third-party funding of arbitration. As industry norms and expectations evolve, the code can be updated to align with new standards of transparency, fairness, and ethical conduct.

In summary, Section 98P(2) of the Hong Kong Arbitration Ordinance grants the authorised body the authority to amend or revoke the code of practice issued under Section 98P(1). This provision ensures that the regulatory framework for third-party funding of arbitration remains flexible, responsive, and effective in promoting ethical behaviour and maintaining the integrity of arbitration proceedings.

(3) Section 98R applies in relation to an amendment or revocation of the code of practice in the same way as it applies in relation to the code of practice.

Section 98P(3) of the Hong Kong Arbitration Ordinance establishes a connection between Section 98R and the process of amending or revoking the code of practice issued under Section 98P(1). Let us analyse this section:

1. **Reference to Section 98R:** Section 98R is likely a provision that outlines the procedures and requirements for issuing, amending, or revoking a code of practice related to third-party funding of arbitration. Section 98P(3) refers to Section 98R to emphasise that the same procedures and requirements that apply to the initial issuance of the code of practice also apply when making amendments or revocations to it.
2. **Uniform Application of Regulations:** By applying the same procedures outlined in Section 98R to amendments or revocations of the code of practice, the ordinance ensures consistency and predictability in the regulatory framework. It prevents discrepancies in how the authorised body handles changes to the code, promoting fairness and clarity for all stakeholders involved in third-party funding of arbitration.
3. **Procedural Safeguards:** Section 98R may lay out specific requirements that the authorised body must fulfil when amending or revoking the code of practice. These requirements could include steps such as consultation with relevant parties, transparency in the process, and the provision of appropriate notice. The application of Section 98R safeguards the rights of stakeholders and ensures a structured and accountable approach to changes in the regulatory framework.
4. **Accountability and Transparency:** Ensuring that Section 98R applies equally to amendments and revocations of the code of practice underscores the importance of maintaining transparency and accountability in the regulatory process. This provision helps prevent arbitrary changes and promotes a systematic approach to updating the code based on well-defined procedures.
5. **Adaptability of Regulations:** The requirement for Section 98R to apply to amendments and revocations highlights the flexibility of the regulatory framework. It acknowledges that changes in the code of practice may be necessary to address evolving challenges or developments in the industry and that these changes should be carried out with the same level of care and adherence to procedures.
6. **Protections for Stakeholders:** By referencing Section 98R in relation to amendments or revocations, the provision ensures that stakeholders, including third-party funders and parties to arbitration, have a clear understanding of the process involved. This clarity fosters trust in the regulatory framework and allows stakeholders to engage constructively in the process.

In summary, Section 98P(3) of the Hong Kong Arbitration Ordinance establishes that Section 98R, which likely outlines procedures for issuing, amending, or revoking a code of practice, applies in the same manner to amendments or revocations of the code of practice related to third-party funding of arbitration. This provision ensures consistency, transparency, and procedural safeguards when making changes to the regulatory framework.

98Q. Content of code of practice

- (1) Without limiting section 98P, the code of practice may, in setting out practices and standards, require third party funders to ensure that—**
- (a) any promotional material in connection with third party funding of arbitration is clear and not misleading;**
 - (b) funding agreements set out their key features, risks and terms, including—**
 - (i) the degree of control that third party funders will have in relation to an arbitration;**
 - (ii) whether, and to what extent, third party funders (or persons associated with the third party funders) will be liable to funded parties for adverse costs, insurance premiums, security for costs and other financial liabilities; and**
 - (iii) when, and on what basis, parties to funding agreements may terminate the funding agreements or third party funders may withhold arbitration funding;**
 - (c) funded parties obtain independent legal advice on funding agreements before entering into them;**
 - (d) third party funders provide to funded parties the name and contact details of the advisory body;**
 - (e) third party funders have a sufficient minimum amount of capital;**
 - (f) third party funders have effective procedures for addressing potential, actual or perceived conflicts of interest and the procedures enhance the protection of funded parties;**
 - (g) third party funders have effective procedures for addressing complaints against them by funded parties and the procedures allow funded parties to obtain and enforce meaningful remedies for legitimate complaints;**
 - (h) third party funders follow the procedures mentioned in paragraphs (f) and (g);**
 - (i) third party funders submit annual returns to the advisory body on—**
 - (i) any complaints against them by funded parties received during the reporting periods; and**
 - (ii) any findings by a court or arbitral tribunal of their failure to comply with the code of practice or Division 5; and**
 - (j) third party funders provide to the advisory body any other information it reasonably requires.**

Section 98Q(1) of the Hong Kong Arbitration Ordinance outlines the potential provisions that may be included in the code of practice issued by the authorised body, specifying the practices and standards

that third-party funders should follow in connection with third-party funding of arbitration. Let us analyse this section:

1. **Code of Practice Content:** The section highlights that the code of practice can address a range of practices and standards that third-party funders should adhere to in the context of third-party funding of arbitration.
2. **Clarity and Non-Misleading Promotion:** The code of practice can require third-party funders to ensure that any promotional material related to third-party funding of arbitration is clear and not misleading. This provision aims to prevent deceptive marketing practices.
3. **Transparency in Funding Agreements:** The code of practice can mandate that funding agreements clearly set out key features, risks, and terms, including the degree of control third-party funders will have in arbitration, liability for adverse costs, insurance premiums, and termination conditions. This promotes transparency and helps funded parties make informed decisions.
4. **Independent Legal Advice for Funded Parties:** The code of practice can stipulate that funded parties must obtain independent legal advice before entering into funding agreements. This requirement safeguards the interests of funded parties and helps them understand the implications of the agreement.
5. **Advisory Body Contact Information:** Third-party funders may be required to provide funded parties with the contact details of the advisory body appointed under Section 98X(1). This facilitates communication and ensures parties have access to information about third-party funding.
6. **Minimum Capital Requirements:** The code of practice can specify that third-party funders must maintain a minimum amount of capital. This requirement aims to ensure the financial stability of funders and their ability to fulfil their obligations.
7. **Conflict of Interest Procedures:** The code of practice can mandate that third-party funders establish effective procedures to address potential, actual, or perceived conflicts of interest. This ensures that funders act impartially and in the best interest of funded parties.
8. **Complaint Handling Procedures:** Third-party funders may be required to develop effective procedures to address complaints by funded parties. These procedures should offer meaningful remedies and contribute to resolving disputes fairly.
9. **Reporting Requirements:** Third-party funders could be required to submit annual returns to the advisory body, disclosing complaints received from funded parties and any court or arbitral tribunal findings of non-compliance with the code of practice or Division 5.
10. **Submission of Information:** The code of practice may require third-party funders to provide any other information reasonably requested by the advisory body. This ensures that the authorised body can effectively oversee and regulate third-party funding activities.

11. **Enhanced Protection for Funded Parties:** The provisions in this section are designed to enhance protection for funded parties in arbitration by promoting transparency, fair practices, and accountability among third-party funders.

In summary, Section 98Q(1) of the Hong Kong Arbitration Ordinance outlines the practices and standards that may be included in the code of practice issued by the authorised body. These provisions aim to establish transparency, fairness, and accountability in third-party funding of arbitration, ultimately protecting the interests of funded parties and maintaining the integrity of the arbitration process.

(2) Without limiting subsection (1), the code of practice may—

- (a) specify terms to be included, or not to be included, in funding agreements; and**
- (b) specify what is to be included, or not to be included, in order to have effective procedures.**

Section 98Q(2) of the Hong Kong Arbitration Ordinance provides additional guidance on the potential content of the code of practice issued by the authorised body for third-party funding of arbitration. Let us analyse this section:

1. **Code of Practice Flexibility:** This section emphasises that subsection (1) does not impose limitations on the content of the code of practice. It grants the authorised body flexibility to include various provisions beyond those mentioned in subsection (1).
2. **Specification of Terms in Funding Agreements:** The code of practice can specify terms that should be included or excluded in funding agreements. This provision aims to ensure that funding agreements are comprehensive, fair, and provide adequate protection to all parties involved.
3. **Effective Procedures for Conflict Resolution:** The authorised body may specify what should be included or excluded to establish effective procedures for addressing conflicts of interest or handling complaints. This ensures that third-party funders have clear guidelines for managing potential conflicts and resolving disputes with funded parties.
4. **Balancing Interests:** By allowing the authorised body to specify terms and procedures, the section ensures that the interests of both third-party funders and funded parties are balanced. The provisions aim to promote fairness, transparency, and accountability in the third-party funding process.
5. **Enhancing Regulatory Framework:** This provision reflects the intention to create a regulatory framework that guides the conduct of third-party funders, ensuring that they operate within ethical boundaries and uphold the integrity of the arbitration process.

In summary, Section 98Q(2) of the Hong Kong Arbitration Ordinance highlights the flexible nature of the code of practice by allowing the authorised body to include provisions that specify terms in funding agreements and effective procedures for conflict resolution. This flexibility aims to enhance the regulatory framework for third-party funding of arbitration, ensuring fair practices and balanced protection for all parties involved.

(3) The code of practice—

- (a) may be of general or special application; and**
- (b) may make different provisions for different circumstances and provide for different cases or classes of cases.**

Section 98Q(3) of the Hong Kong Arbitration Ordinance provides additional details about the nature and scope of the code of practice for third-party funding of arbitration. Let us analyse this section:

1. **General and Special Application:** This provision states that the code of practice can have both general and special applications. In the context of general application, the code sets out practices and standards that apply broadly to third-party funders engaging in arbitration funding activities. Special application could involve specific guidelines or requirements tailored to certain types of arbitration or funding arrangements.
2. **Flexibility for Different Circumstances:** The section recognises that different circumstances may require varying approaches. This flexibility allows the authorised body to develop provisions that are suitable for various contexts, ensuring that the code remains adaptable and relevant across a range of scenarios.
3. **Variations for Different Cases or Classes:** This provision permits the code of practice to include provisions that address different cases or classes of cases. These variations could reflect the diverse nature of arbitration proceedings, funding arrangements, or parties involved, thereby allowing for more nuanced and tailored guidance.
4. **Responsive and Context-Specific:** By allowing the code to cater to specific circumstances and cases, the section emphasises the importance of providing context-specific guidance. This enhances the effectiveness of the regulatory framework by accommodating the unique features and requirements of different arbitration situations.
5. **Balancing Uniformity and Flexibility:** The provision strikes a balance between establishing a common set of standards (general application) while also acknowledging the need for flexibility to address specific scenarios. It recognises that a one-size-fits-all approach may not be suitable for the complex and varied landscape of arbitration and funding agreements.

In summary, Section 98Q(3) of the Hong Kong Arbitration Ordinance underscores the adaptable nature of the code of practice for third-party funding of arbitration. It allows for both general and specialised applications, as well as variations for different cases or classes of cases. This approach ensures that the code remains responsive to the dynamic and diverse nature of arbitration scenarios, while still upholding standards and promoting fairness in the third-party funding process.

98R. Process for issuing code of practice

(1) Before issuing a code of practice, the authorized body must—

- (a) consult the public about the proposed code of practice; and**
- (b) publish a notice to inform the public of the proposed code of practice.**

Section 98R(1) of the Hong Kong Arbitration Ordinance outlines the procedural steps that the authorised body must follow before issuing a code of practice for third-party funding of arbitration. Let us analyse this section:

1. **Consultation with the Public:** Subsection (a) mandates that the authorised body engage in a consultation process with the public before finalising the code of practice. This ensures transparency, inclusiveness, and the opportunity for stakeholders to provide input, feedback, and suggestions regarding the proposed code’s content and provisions.
2. **Publication of Notice:** Subsection (b) requires the authorised body to publish a notice that informs the public about the proposed code of practice. This notice serves as an announcement that the authorised body is seeking public input and engagement on the upcoming code. It provides a mechanism for interested parties to be aware of the development and to participate in the consultation process.
3. **Promoting Accountability and Public Participation:** By requiring public consultation and notice publication, this section promotes accountability and democratic participation in the creation of the code of practice. It ensures that the regulatory framework is developed in a transparent and open manner, allowing the public and stakeholders to voice their opinions and concerns.
4. **Balancing Regulatory Needs:** This section strikes a balance between the need for regulatory oversight in third-party funding of arbitration and the importance of involving the public in the regulatory process. It reflects a thoughtful approach to establishing regulatory standards that are informed by the perspectives of various stakeholders.
5. **Enhancing Legitimacy:** The consultation process and public notice enhance the legitimacy of the code of practice. It provides assurance that the code has been developed through a fair and inclusive process, addressing concerns and incorporating diverse viewpoints.
6. **Stakeholder Involvement:** This provision encourages input not only from the authorised body but also from legal professionals, arbitration practitioners, third-party funders, funded parties, and the public at large. This way, the code of practice is more likely to be comprehensive, relevant, and effective.

In summary, Section 98R(1) of the Hong Kong Arbitration Ordinance establishes a consultative process that the authorised body must follow when developing a code of practice for third-party funding of arbitration. By involving the public and stakeholders in the regulatory process, this section contributes to the transparency, accountability, and legitimacy of the regulatory framework for third-party funding in arbitration.

- (2) In preparing the proposed code of practice for public consultation, the authorized body may consult a person with knowledge or experience of arbitration or third party funding of arbitration.**

Section 98R(2) of the Hong Kong Arbitration Ordinance outlines a provision related to the preparation of the proposed code of practice for public consultation. Let us analyse this section:

1. **Expertise and Consultation:** This subsection empowers the authorised body to consult a person who possesses knowledge or experience in arbitration or third-party funding of arbitration. By seeking input from individuals with expertise in these areas, the authorised body can ensure that the proposed code of practice is well-informed, comprehensive, and aligned with industry best practices.
2. **Informed Development:** Consulting individuals with knowledge or experience in arbitration or third-party funding enhances the credibility and relevance of the proposed code. These experts can provide insights into the practical considerations, challenges, and nuances of the arbitration process and third-party funding arrangements, helping the authorised body craft effective and well-balanced regulatory provisions.
3. **Balancing Interests:** By seeking input from experts, the authorised body can strike a balance between the interests of different stakeholders, such as third-party funders, funded parties, arbitration practitioners, and the public. This ensures that the code of practice addresses various perspectives and concerns.
4. **Enhancing Quality:** Consulting individuals with relevant expertise adds depth and accuracy to the development process. Their insights can help identify potential gaps, challenges, and emerging issues that might need to be addressed in the regulatory framework.
5. **Industry Relevance:** Given that arbitration and third-party funding are specialised areas, involving experts ensures that the regulatory provisions are relevant, practical, and tailored to the specific needs of the industry.
6. **Public Confidence:** Engaging experts in the development process increases public confidence in the code of practice. It demonstrates a commitment to ensuring that the regulatory framework is based on well-researched and well-considered insights.

In summary, Section 98R(2) of the Hong Kong Arbitration Ordinance allows the authorised body to consult individuals with knowledge or experience in arbitration or third-party funding when preparing the proposed code of practice for public consultation. This provision promotes informed and balanced regulatory development, enhancing the quality, relevance, and credibility of the code of practice for third-party funding of arbitration.

(3) The notice must state the following information—

- (a) the purpose and general effect of the proposed code of practice;**
- (b) how a copy of the proposed code of practice may be inspected; and**
- (c) that written submissions by any person about the proposed code of practice may be made to the authorized body before a specified time.**

Section 98R(3) of the Hong Kong Arbitration Ordinance outlines the requirements for the notice that must be published to inform the public about the proposed code of practice. Let us analyse this section:

1. **Transparency and Communication:** This subsection emphasises transparency and effective communication by mandating that the notice includes specific information about the proposed code of practice. Transparency ensures that stakeholders and the public are well-informed about the regulatory changes and their potential implications.
2. **Purpose and Effect:** The notice must clearly state the purpose and general effect of the proposed code of practice. This ensures that the public understands the rationale behind the code and its intended impact on the practice of third-party funding of arbitration.
3. **Access to Information:** The notice must provide information about how interested parties can access a copy of the proposed code of practice. This ensures that stakeholders have the opportunity to review the content of the proposed code in detail, enabling them to provide informed feedback during the consultation process.
4. **Submission of Feedback:** The notice must inform individuals that they have the option to submit written submissions about the proposed code of practice to the authorised body. This encourages active participation and input from stakeholders, allowing them to express their views, concerns, and suggestions.
5. **Timely Engagement:** The notice must specify a deadline or a specified time by which written submissions must be made. This promotes a timely and organised consultation process, ensuring that the authorised body receives feedback within a manageable timeframe.
6. **Public Participation:** By requiring the authorised body to publish a notice that includes these key pieces of information, the provision encourages public engagement and participation in the regulatory process. It provides a structured way for stakeholders to provide their input on the proposed code of practice.
7. **Accountability and Fairness:** The provision promotes accountability by ensuring that the public has the opportunity to understand and comment on the proposed regulatory changes. This helps ensure that the code of practice is developed in a fair and inclusive manner.

In summary, Section 98R(3) of the Hong Kong Arbitration Ordinance mandates that the notice about the proposed code of practice must include information about its purpose, effect, access to the code, and the process for submitting written feedback. This provision promotes transparency, public

engagement, and effective communication during the regulatory development process for third-party funding of arbitration.

(4) After considering all written submissions made before the specified time, the authorized body may issue the code of practice (with or without revision) by publishing it in the Gazette.

Section 98R(4) of the Hong Kong Arbitration Ordinance outlines the process for the authorised body to consider written submissions and issue the code of practice. Let us analyse this section:

1. **Inclusive Decision-Making:** This subsection highlights the importance of considering all written submissions made during the public consultation process. By doing so, the authorised body ensures that a variety of perspectives, concerns, and suggestions are taken into account before finalising the code of practice.
2. **Responsive Governance:** After considering the written submissions, the authorised body has the discretion to decide whether to issue the code of practice as proposed or with revisions. This flexibility enables the authorised body to address any valid concerns or suggestions raised during the consultation, promoting a responsive and adaptable regulatory framework.
3. **Publication in the Gazette:** Once the decision is made to issue the code of practice, the subsection stipulates that the code will be published in the Gazette. Publication in the official Gazette ensures that the code becomes legally effective and is accessible to the public.
4. **Transparent Implementation:** Publishing the code of practice in the Gazette ensures transparency in the implementation of the regulatory changes. This official publication mechanism serves as a reference for all stakeholders, including third-party funders, funded parties, legal professionals, and the general public.
5. **Balancing Stakeholder Interests:** By providing the authorised body with the discretion to issue the code of practice with or without revisions, this subsection acknowledges the need to balance different stakeholders' interests. It enables the authorised body to strike a balance between promoting third-party funding of arbitration while ensuring appropriate safeguards and standards.
6. **Quality Assurance:** The provision underscores the importance of informed decision-making by requiring the authorised body to consider all written submissions before finalising the code of practice. This process enhances the quality and effectiveness of the regulatory framework.

In summary, Section 98R(4) of the Hong Kong Arbitration Ordinance establishes the process by which the authorised body considers written submissions, decides whether to issue the code of practice with or without revisions, and publishes the code in the Gazette. This provision promotes inclusive governance, responsiveness to stakeholder feedback, transparency, and the establishment of an effective and balanced regulatory framework for third-party funding of arbitration.

(5) The code of practice comes into operation on the day on which it is published in the Gazette under subsection (4).

Section 98R(5) of the Hong Kong Arbitration Ordinance specifies the commencement date for the code of practice and its connection to the publication in the Gazette. Let us analyse this subsection:

1. **Clarity of Commencement:** This provision unequivocally establishes the commencement date for the code of practice as the day on which it is published in the Gazette under subsection (4). This clear and direct connection between publication and commencement ensures that stakeholders, including third-party funders, funded parties, and legal practitioners, are aware of when the code becomes effective.
2. **Legally Binding Date:** By tying the commencement of the code of practice to its publication in the official Gazette, this subsection solidifies the legal force of the code. It clarifies that the code becomes legally binding and enforceable on the specified date.
3. **Promotion of Legal Certainty:** Determining the commencement date based on the publication in the Gazette enhances legal certainty. It avoids ambiguity and provides a fixed point of reference for all parties affected by the code of practice.
4. **Consistency with Regulatory Process:** This provision aligns with the general regulatory practice of making new rules or regulations effective upon publication in official government sources. It follows the standard procedure for ensuring that legal changes are widely known and applicable to the relevant parties.
5. **Timely Implementation:** By ensuring that the code of practice comes into operation promptly after publication, this subsection facilitates the timely implementation of the regulatory framework. This approach avoids unnecessary delays and allows stakeholders to adapt to the new requirements in a timely manner.

In summary, Section 98R(5) of the Hong Kong Arbitration Ordinance establishes that the code of practice for third-party funding of arbitration comes into operation on the day of its publication in the Gazette under subsection (4). This provision enhances legal certainty, promotes timely implementation, and ensures that all affected parties are aware of the code's effective date.

(6) The code of practice is not subsidiary legislation.

Section 98R(6) of the Hong Kong Arbitration Ordinance clarifies the status of the code of practice in relation to subsidiary legislation. Let us analyse this subsection:

1. **Distinct Legal Status:** This provision explicitly states that the code of practice is not considered subsidiary legislation. Subsidiary legislation typically refers to regulations or rules that are created under the authority of a higher legislative act, often by government officials or agencies. By emphasising that the code of practice is not subsidiary legislation, this subsection distinguishes its nature from formal regulations or rules.
2. **Informal Regulatory Framework:** The provision suggests that the code of practice operates within a framework that is not as legally binding as formal subsidiary legislation. Instead, it may represent guidelines, recommendations, or best practices that stakeholders are

encouraged to follow. While not legally binding in the same way as subsidiary legislation, the code of practice can still have practical and ethical significance.

3. **Flexibility and Adaptability:** By stating that the code of practice is not subsidiary legislation, the provision underscores the potential flexibility of the code. It might allow for more adaptable responses to evolving circumstances, without the need for formal legislative processes. This flexibility could be beneficial for addressing emerging issues and maintaining relevance in a changing legal landscape.
4. **Informative and Persuasive Influence:** Although the code of practice is not considered subsidiary legislation, it can still carry significant weight in practice. It may serve as a valuable source of guidance for third-party funders, funded parties, and other stakeholders engaged in arbitration proceedings. While not legally enforceable in the same manner as subsidiary legislation, the code can have persuasive and informative influence.
5. **Clarification for Interpretation:** This provision helps to clarify the status of the code of practice, reducing potential confusion or misinterpretation regarding its legal nature. It ensures that stakeholders understand the level of formal legal authority carried by the code.

In summary, Section 98R(6) of the Hong Kong Arbitration Ordinance explicitly states that the code of practice for third-party funding of arbitration is not subsidiary legislation. This provision clarifies its distinct legal status, which is not as formally binding as subsidiary legislation but can still hold practical significance and serve as a valuable guide for stakeholders involved in arbitration processes.

98S. Non-compliance with code of practice

(1) A failure to comply with a provision of the code of practice does not, of itself, render any person liable to any judicial or other proceedings.

Section 98S(1) of the Hong Kong Arbitration Ordinance addresses the legal consequences of failing to comply with a provision of the code of practice for third-party funding of arbitration. Let us analyse this subsection:

1. **Limited Liability for Non-Compliance:** This provision makes it clear that a mere failure to comply with a provision of the code of practice does not, by itself, result in legal liability for any person. In other words, non-compliance with the code does not automatically give rise to legal action or proceedings against the person who failed to comply.
2. **Emphasis on Consequences:** By stating that non-compliance “does not, of itself, render any person liable to any judicial or other proceedings”, the provision emphasises that the failure to adhere to the code of practice does not trigger legal consequences on its own. This means that the failure to comply with the code is not, in itself, a sufficient ground for initiating legal action.
3. **Focus on Other Consequences:** While non-compliance with the code of practice may not lead directly to legal liability, it is important to note that other consequences could still arise. For instance, failure to comply with the code might affect a third-party funder’s

reputation or relationship with funded parties, other stakeholders, or regulatory authorities. Additionally, it might be considered as a factor in a broader legal context if it contributes to other issues or breaches.

4. **Practical Considerations:** The provision acknowledges that the code of practice may be more focused on guiding and encouraging best practices rather than imposing strict legal penalties. It reflects a recognition that a measured approach is appropriate for dealing with breaches of the code.
5. **Overall Intent:** Section 98S(1) reflects an understanding that non-compliance with the code of practice should not immediately result in litigation or legal proceedings. It suggests that other mechanisms, such as corrective actions, rectification, or alternative dispute resolution methods, might be more appropriate for addressing violations of the code.

In summary, Section 98S(1) of the Hong Kong Arbitration Ordinance clarifies that a failure to comply with a provision of the code of practice for third-party funding of arbitration does not, on its own, lead to legal liability or initiate judicial or other proceedings. The provision focuses on clarifying the direct legal consequences of non-compliance with the code while recognising that there may be other practical or reputational consequences to consider.

(2) However—

- (a) the code of practice is admissible in evidence in proceedings before any court or arbitral tribunal; and**
- (b) any compliance, or failure to comply, with a provision of the code of practice may be taken into account by any court or arbitral tribunal if it is relevant to a question being decided by the court or arbitral tribunal.**

Section 98S(2) of the Hong Kong Arbitration Ordinance specifies the admissibility and relevance of the code of practice for third-party funding of arbitration in legal proceedings. Let us analyse this subsection:

1. **Admissibility in Evidence:** The provision states that the code of practice is admissible as evidence in proceedings before any court or arbitral tribunal. This means that the code can be presented and considered as part of the evidence in legal disputes related to arbitration or third-party funding. The code's contents can be introduced to provide context, guidance, or standards relevant to the case.
2. **Relevance in Court or Arbitral Proceedings:** Subsection (2)(b) emphasises that compliance or failure to comply with a provision of the code can be taken into account by a court or arbitral tribunal. The extent to which compliance with or violation of the code may be relevant will depend on the specific question or issue being decided by the court or tribunal.
3. **Case-by-Case Relevance:** The provision's wording "if it is relevant to a question being decided" underscores that the court or arbitral tribunal will evaluate the significance of

the code's provisions in the specific context of the case. The code's relevance will be determined based on its applicability to the issues at hand.

4. **Guidance for Legal Proceedings:** Section 98S(2) aims to ensure that the code of practice is not only relevant but can also provide valuable guidance for legal proceedings. The code's provisions may serve as reference points for determining the standard of conduct, industry practices, or parties' obligations related to third-party funding of arbitration.
5. **Balancing Relevance and Discretion:** While the code's provisions can be considered, the decision to take them into account rests with the court or arbitral tribunal. They have the discretion to determine how much weight to give to compliance or non-compliance with the code based on the specific circumstances of the case.
6. **Enhancing Accountability:** By allowing the code of practice to be admissible in evidence and considered for its relevance, the provision reinforces the importance of adhering to the standards set by the code. Parties engaging in third-party funding of arbitration are incentivised to comply with the code to avoid potential consequences in legal proceedings.

In summary, Section 98S(2) of the Hong Kong Arbitration Ordinance establishes that the code of practice for third-party funding of arbitration is admissible as evidence in legal proceedings before courts or arbitral tribunals. It also indicates that compliance or failure to comply with the code's provisions may be taken into account if relevant to the questions or issues being decided. The provision seeks to balance the use of the code as guidance while respecting the discretion of the judicial bodies in determining its relevance in specific cases.

Division 5—Other Measures and Safeguards

Editorial Note:

This Division has yet to apply in relation to a mediation mentioned in section 7A of the Mediation Ordinance (Cap. 620) (see L.N. 260 of 2018).

98T. Communication of information for third party funding of arbitration

(1) Despite section 18(1), information referred to in that section may be communicated by a party to a person for the purpose of having, or seeking, third party funding of arbitration from the person.

Section 98T(1) of the Hong Kong Arbitration Ordinance provides an exception to the general prohibition outlined in Section 18(1). Let us analyse this subsection:

1. **Exception to Section 18(1):** Section 18(1) of the Arbitration Ordinance generally restricts the communication of confidential information acquired in arbitration proceedings. Section 98T(1) creates an exception to this rule specifically in the context of third-party funding of arbitration.
2. **Purpose and Scope:** The subsection allows a party involved in arbitration proceedings to communicate information referred to in Section 18(1) to a person for the purpose of seeking or obtaining third-party funding of the arbitration from that person.
3. **Facilitating Third-Party Funding:** The provision recognises that parties involved in arbitration may require third-party funding to cover the costs of the proceedings. By permitting the communication of relevant confidential information, parties can share necessary details with potential funders to facilitate the assessment and provision of funding.
4. **Balancing Confidentiality and Funding Needs:** Section 98T(1) strikes a balance between maintaining the confidentiality of arbitration proceedings and enabling parties to secure necessary funding. It acknowledges that parties should be able to access funding options without violating the general rule of confidentiality.
5. **Narrow Purpose and Use:** The provision is tailored to a specific purpose: seeking or obtaining third-party funding. It does not create a blanket exception for unrestricted communication of confidential information.
6. **Protection Against Misuse:** While the provision allows communication of information for the purpose of third-party funding, it is likely subject to safeguards to prevent the misuse of confidential information for unauthorised purposes. This could include provisions ensuring that the shared information is used solely for funding evaluation.
7. **Promotion of Access to Justice:** By allowing parties to share necessary information with potential funders, Section 98T(1) contributes to promoting access to justice. Parties who might not have sufficient resources to pursue arbitration proceedings can explore funding options that may help them proceed.

In summary, Section 98T(1) of the Hong Kong Arbitration Ordinance creates an exception to the general rule of confidentiality under Section 18(1). It allows parties involved in arbitration proceedings to communicate confidential information to potential third-party funders for the purpose of seeking or obtaining funding. The provision is designed to balance the need for confidentiality with the practicalities of securing third-party funding to support arbitration proceedings.

- (2) However, the person may not further communicate anything communicated under subsection (1), unless—**
- (a) the further communication is made—**
 - (i) to protect or pursue a legal right or interest of the person; or**
 - (ii) to enforce or challenge an award made in the arbitration,**

in legal proceedings before a court or other judicial authority in or outside Hong Kong;
 - (b) the further communication is made to any government body, regulatory body, court or tribunal and the person is obliged by law to make the communication; or**
 - (c) the further communication is made to a professional adviser of the person for the purpose of obtaining advice in connection with the third party funding of arbitration.**

Section 98T(2) of the Hong Kong Arbitration Ordinance provides limitations on further communication of confidential information shared under Section 98T(1). Let us analyse this subsection:

1. **Limitations on Further Communication:** Section 98T(2) sets restrictions on the person to whom confidential information is communicated under Section 98T(1). It specifies when and under what circumstances this person can further communicate the shared information.
2. **Scope of Further Communication:** The subsection outlines three specific scenarios under which further communication of the shared information is allowed.
3. **Legal Proceedings:** Subsection (a) permits further communication if it has made to protect or pursue a legal right or interest of the person, or to enforce or challenge an award made in the arbitration. However, this further communication must occur in legal proceedings before a court or other judicial authority, either within or outside Hong Kong.
4. **Obligation under Law:** Subsection (b) allows further communication to any government body, regulatory body, court, or tribunal if the person is obligated by law to make such communication. This recognises that certain legal obligations may override confidentiality concerns.
5. **Professional Adviser:** Subsection (c) permits further communication to a professional adviser of the person. This is specifically for obtaining advice in connection with the third-party funding of arbitration. It acknowledges the need for expert guidance while safeguarding the confidential nature of the information.

6. **Protection of Confidentiality:** While Section 98T(1) allows limited communication of confidential information for third-party funding purposes, Section 98T(2) ensures that any further communication is carefully circumscribed. It is intended to prevent the unauthorised or unnecessary dissemination of confidential information shared for funding purposes.
7. **Balancing Interests:** Section 98T(2) aims to balance the need for confidentiality with other legitimate interests, such as protecting legal rights, complying with legal obligations, and obtaining professional advice.
8. **Enhancing Transparency and Compliance:** The subsection is designed to provide clarity on permissible further communication and to ensure that parties and individuals involved in third-party funding of arbitration adhere to established legal boundaries.

In summary, Section 98T(2) of the Hong Kong Arbitration Ordinance outlines the specific circumstances under which the person who received confidential information under Section 98T(1) can further communicate that information. The limitations provided in this subsection strike a balance between the need for confidentiality and other legitimate concerns, such as legal proceedings, legal obligations, and obtaining professional advice.

(3) If a further communication is made by a person to a professional adviser under subsection (2)(c), subsection (2) applies to the professional adviser as if the professional adviser were the person.

Section 98T(3) of the Hong Kong Arbitration Ordinance introduces a provision that addresses the extension of limitations on further communication to a professional adviser. Let us analyse this subsection:

1. **Application of Subsection (2) to Professional Adviser:** Section 98T(3) states that if a person makes a further communication to a professional adviser under subsection (2)(c), then the limitations on further communication outlined in subsection (2) will apply to the professional adviser as if they were the person who originally received the confidential information.
2. **Ensuring Consistency and Control:** This provision is designed to ensure consistency in the application of limitations on further communication. It prevents a scenario where a person could indirectly circumvent the restrictions by communicating confidential information to a professional adviser who would then be able to further communicate the information without being subject to the limitations.
3. **Protection of Confidentiality:** By extending the limitations to the professional adviser, Section 98T(3) aims to maintain the confidentiality of the shared information even when it is shared with a qualified professional for obtaining legal advice related to third-party funding of arbitration.
4. **Preserving the Original Intent:** This subsection reinforces the underlying intention of Section 98T(2)(c) to allow communication to a professional adviser for the purpose of obtaining advice while still ensuring that the restrictions on further communication are upheld.

5. Preventing Indirect Loopholes: The inclusion of Section 98T(3) prevents potential loopholes that could arise from attempting to evade the limitations on further communication by involving a professional adviser as an intermediary.
6. Balancing Confidentiality and Legal Counsel: By subjecting the professional adviser to the same restrictions, Section 98T(3) strikes a balance between maintaining the confidentiality of the shared information and allowing parties to seek professional legal advice when engaging in third-party funding of arbitration.

In summary, Section 98T(3) of the Hong Kong Arbitration Ordinance ensures that if a person communicates confidential information to a professional adviser under subsection (2)(c), the same limitations on further communication that apply to the person will also apply to the professional adviser. This provision aims to prevent potential misuse of professional advisers as intermediaries to circumvent the restrictions on further communication while maintaining the intended balance between confidentiality and legal counsel.

(4) In this section—

communicate (傳達) includes publish or disclose.

Section 98T(4) of the Hong Kong Arbitration Ordinance provides a definition for the term “communicate” as used in Section 98T. Let us analyse this definition:

1. Definition Clarification: This subsection defines the term “communicate” within the context of Section 98T. It specifies that “communicate” includes the actions of publishing or disclosing.
2. Broad Interpretation: By including “publish” and “disclose”, the definition of “communicate” is expanded to encompass a range of actions beyond mere verbal or written transmission. This broader interpretation ensures that the term is not limited to a specific mode of communication.
3. Encompassing Various Forms of Sharing: The definition recognises that information can be communicated in various ways, such as through written documents, public announcements, or making information available for public access. The inclusion of “publish” and “disclose” covers both intentional sharing and making information available for others to access.
4. Consistency with Legal Language: The definitions of terms within legal provisions are important for maintaining clarity and consistency in interpretation. By providing a specific definition for “communicate”, the section ensures that its usage is understood consistently throughout the ordinance.
5. Supporting the Purpose of Section 98T: The definition of “communicate” helps ensure that the limitations on further communication described in Section 98T(2) are clear and encompass a wide range of actions that involve sharing confidential information.

In summary, Section 98T(4) of the Hong Kong Arbitration Ordinance provides a definition for the term “communicate”, which includes the actions of “publish” and “disclose”. This definition serves to clarify

the scope of the term as used within Section 98T and ensures a consistent interpretation of the provision.

98U. Disclosure about third party funding of arbitration

(1) If a funding agreement is made, the funded party must give written notice of—

- (a) the fact that a funding agreement has been made; and**
- (b) the name of the third party funder.**

Section 98U(1) of the Hong Kong Arbitration Ordinance pertains to the obligation of a funded party to provide written notice when a funding agreement is made. Let us analyse this provision:

1. **Obligation for Notification:** This subsection mandates that when a funding agreement is entered into, the funded party must provide written notice to certain recipients about the existence of the funding agreement and the identity of the third party funder involved.
2. **Contents of Notice:** The notice must include two key pieces of information:
 - a. The fact that a funding agreement has been established.
 - b. The name of the third party funder who is providing funding for the arbitration.
3. **Transparency and Disclosure:** The requirement for the funded party to provide written notice is designed to enhance transparency and ensure that all relevant parties are informed about the funding arrangement. This allows for an open and informed environment in the arbitration process.
4. **Enhancing Accountability:** By notifying relevant parties about the funding arrangement, the provision contributes to accountability. It helps prevent any potential conflicts of interest or undue influence that may arise from undisclosed funding arrangements.
5. **Legal Consequences of Non-Compliance:** While this subsection does not explicitly mention consequences for non-compliance, failure to provide the required notice could potentially result in legal or procedural implications. It is important for funded parties to fulfil this notification obligation to avoid any issues.
6. **Promoting Transparency in Arbitration:** Transparency is crucial in arbitration proceedings, as it ensures fairness, proper disclosure of interests, and minimises potential conflicts. This provision aligns with the broader efforts to promote transparency and integrity within the arbitration process.

In summary, Section 98U(1) of the Hong Kong Arbitration Ordinance mandates that a funded party must give written notice to relevant parties about the existence of a funding agreement and the identity of the third party funder. This requirement is designed to promote transparency, disclosure, and accountability in the context of third party funding of arbitration proceedings.

(2) The notice must be given—

- (a) for a funding agreement made on or before the commencement of the arbitration—on the commencement of the arbitration; or**
- (b) for a funding agreement made after the commencement of the arbitration—within 15 days after the funding agreement is made.**

Section 98U(2) of the Hong Kong Arbitration Ordinance outlines the timing requirements for providing the written notice regarding a funding agreement. Let us analyse this provision:

1. **Two Scenarios:** This subsection addresses two different scenarios based on the timing of the funding agreement in relation to the commencement of the arbitration proceedings.
2. **(a) Funding Agreement Made on or before Commencement:** In cases where the funding agreement is already in place on or before the commencement of the arbitration, the notice must be given at the time when the arbitration proceedings begin.
3. **(b) Funding Agreement Made after Commencement:** If the funding agreement is entered into after the arbitration proceedings have commenced, the funded party has a window of 15 days from the date of making the funding agreement to provide the notice.
4. **Promoting Timely Disclosure:** The requirement for prompt notice serves to ensure that all relevant parties are informed in a timely manner about the funding arrangement. This allows parties to have the necessary information from the outset of the arbitration proceedings.
5. **Ensuring Transparency:** Timely disclosure enhances transparency by providing parties with early information about the involvement of a third party funder. This can help prevent any potential issues or conflicts that may arise due to undisclosed funding arrangements.
6. **Consistency with Arbitration Process:** Requiring notice within 15 days after a funding agreement is made ensures that parties have adequate time to learn about the funding arrangement without causing unnecessary delays in the arbitration process.
7. **Legal Consequences of Non-Compliance:** Failure to adhere to the specified timeframes for providing notice could potentially lead to legal or procedural consequences. Parties should ensure that they meet these timing requirements to avoid any issues.
8. **Balancing Interests:** This provision strikes a balance between the interests of parties involved in the arbitration process, ensuring that relevant parties are informed while not unduly burdening the proceedings.

In summary, Section 98U(2) of the Hong Kong Arbitration Ordinance establishes clear timing requirements for providing written notice about a funding agreement. The timing depends on whether the funding agreement was made before or after the commencement of the arbitration. These requirements are designed to promote transparency, timely disclosure, and accountability in the context of third party funding of arbitration proceedings.

- (3) The notice must be given to—**
- (a) each other party to the arbitration; and**
 - (b) the arbitration body.**

Section 98U(3) of the Hong Kong Arbitration Ordinance specifies to whom the written notice regarding a funding agreement must be provided. Let us analyse this provision:

1. **Recipient Parties:** The subsection identifies two categories of recipients for the notice: other parties involved in the arbitration and the arbitration body overseeing the proceedings.
2. **(a) Each Other Party to the Arbitration:** The notice must be given to all other parties that are participants in the arbitration proceedings. This includes both claimants and respondents who are parties to the dispute.
3. **(b) The Arbitration Body:** The notice must also be provided to the arbitration body. This includes the arbitral tribunal or court, depending on the nature of the arbitration, which is responsible for overseeing and conducting the arbitration proceedings.
4. **Promoting Transparency:** Requiring notice to be given to both the other parties and the arbitration body serves to promote transparency and ensure that all relevant parties are informed about the funding arrangement.
5. **Avoiding Bias or Misunderstanding:** Providing notice to all parties and the arbitration body helps prevent potential biases, misunderstandings, or disputes that may arise due to a lack of knowledge about third party funding.
6. **Facilitating Informed Decisions:** By ensuring that all participants and the decision-making body are aware of the funding arrangement, the parties can make informed decisions and the arbitration process can proceed without any hidden factors.
7. **Enforcement of Code of Practice:** This notice requirement aligns with the regulatory framework established by the code of practice for third party funding of arbitration. The code of practice may require such disclosure as a part of good practices and standards for third party funders.
8. **Minimising Potential Challenges:** Requiring notice to be given to both parties and the arbitration body helps minimise potential challenges to the validity or enforceability of the arbitration proceedings based on lack of disclosure.
9. **Compliance and Consequences:** Parties should ensure they comply with this notice requirement within the specified timeframe to avoid any potential legal consequences or procedural issues.

In summary, Section 98U(3) of the Hong Kong Arbitration Ordinance outlines the recipients to whom the written notice regarding a funding agreement must be provided. The provision aims to ensure transparency, prevent biases, and facilitate well-informed decisions by requiring notice to be given to all other parties involved in the arbitration and the arbitration body overseeing the proceedings.

- (4) For subsection (3)(b), if there is no arbitration body for the arbitration at the time, or at the end of the period, specified in subsection (2) for giving the notice, the notice must instead be given to the arbitration body immediately after there is an arbitration body for the arbitration.**

Section 98U(4) of the Hong Kong Arbitration Ordinance provides guidance on what to do in cases where there is no arbitration body at the time or by the end of the specified period for giving notice of a funding agreement. Let us analyse this provision:

1. **Contextual Background:** Section 98U(2) mandates that a funded party must give notice of a funding agreement to specific recipients, including the arbitration body, within a certain timeframe depending on when the funding agreement was made.
2. **Addressing Situations with No Arbitration Body:** Section 98U(4) comes into play when there is no arbitration body for the arbitration at the time when notice is required to be given or when the specified period for giving notice ends.
3. **Ensuring Compliance Even in Such Scenarios:** This subsection underscores the importance of notice even if an arbitration body is not initially present, emphasising that the obligation to give notice should still be fulfilled.
4. **Subsequent Provision of Notice:** If there is no arbitration body initially, but one is subsequently established, the notice must be provided to the arbitration body immediately after it comes into existence.
5. **Preserving Transparency and Accountability:** This provision aligns with the overarching goal of transparency and accountability in third party funding of arbitration. It ensures that relevant parties are informed about funding arrangements as soon as an arbitration body is in place.
6. **Compliance with Regulatory Framework:** The requirement to provide notice to the arbitration body aligns with the regulatory framework established by the code of practice, ensuring that all necessary parties are aware of the funding arrangement.
7. **Potential Consequences for Non-Compliance:** Failing to provide notice as required may have implications for the validity of the arbitration proceedings or the enforceability of the funding agreement, so compliance is crucial.
8. **Administrative Efficiency:** Requiring notice to be provided promptly after the establishment of an arbitration body ensures that administrative procedures are streamlined and that all relevant parties are kept informed.

In summary, Section 98U(4) of the Hong Kong Arbitration Ordinance addresses scenarios in which there is no arbitration body at the time when notice of a funding agreement is required. It ensures that notice obligations are met once an arbitration body is established, promoting transparency and compliance with regulatory standards.

98V. Disclosure about end of third party funding of arbitration

- (1) If a funding agreement ends (other than because of the end of the arbitration), the funded party must give written notice of—**
- (a) the fact that the funding agreement has ended; and**
 - (b) the date the funding agreement ended.**

Section 98V(1) of the Hong Kong Arbitration Ordinance outlines the requirements for giving notice when a funding agreement ends for reasons other than the conclusion of the arbitration. Let us analyse this provision:

1. **End of Funding Agreement:** Section 98V(1) is concerned with cases where a funding agreement terminates or concludes due to reasons other than the end of the arbitration itself.
2. **Obligation to Provide Notice:** The provision places an obligation on the funded party to give written notice to specified recipients when the funding agreement comes to an end.
3. **Details to be Included in the Notice:** The notice should include two key pieces of information:
 - a. The fact that the funding agreement has ended.
 - b. The specific date on which the funding agreement ended.
4. **Transparency and Accountability:** The notice requirement contributes to the transparency and accountability of the third party funding arrangement. It ensures that relevant parties are aware when the funding agreement is no longer in effect.
5. **Protection of Parties' Interests:** Providing notice of the end of a funding agreement allows other parties involved in the arbitration to have a clear understanding of the change in circumstances. This information can be important for decision-making, especially if the funded party's ability to continue with the arbitration is affected.
6. **Relevance to Regulatory Framework:** The notice requirement aligns with the regulatory framework established by the code of practice for third party funding of arbitration. This framework aims to maintain fair and ethical practices within the context of funding agreements.
7. **Compliance with Statutory Obligations:** By requiring written notice to be provided, the provision emphasises the importance of adhering to statutory obligations related to transparency and communication.
8. **Maintaining the Integrity of the Arbitration Process:** Giving notice of the end of a funding agreement helps maintain the integrity of the arbitration process. It ensures that all parties are kept informed and can plan accordingly, especially in situations where a change in funding might impact the proceedings.

9. Potential Legal Consequences of Non-Compliance: Failing to provide notice as required by Section 98V(1) could potentially lead to legal consequences, highlighting the seriousness of this obligation.

In summary, Section 98V(1) of the Hong Kong Arbitration Ordinance mandates the provision of written notice when a funding agreement ends for reasons other than the conclusion of the arbitration. This notice requirement is in line with the overall objective of transparency, accountability, and fair practices in third party funding of arbitration.

(2) The notice must be given within 15 days after the funding agreement ends.

Section 98V(2) of the Hong Kong Arbitration Ordinance sets a specific timeframe within which the notice of the end of a funding agreement must be provided. Let us analyse this provision:

1. Timely Notice Requirement: Section 98V(2) establishes a clear and specific timeframe within which the funded party must give notice of the end of the funding agreement. This timeframe is set at 15 days.
2. Importance of Timeliness: The provision recognises the importance of promptly communicating the termination of a funding agreement. Timely notice ensures that parties involved in the arbitration are promptly informed about changes in funding arrangements.
3. Alignment with Efficient Proceedings: Timely notice helps maintain the efficiency of the arbitration process. Parties need to be aware of any changes that might impact the funding, especially within a reasonable period after the funding agreement has ended.
4. Adherence to Statutory Obligations: The 15-day timeframe sets a clear expectation for compliance with the notice requirement. It underscores the statutory obligation of the funded party to provide timely information about the termination of the funding agreement.
5. Balancing Practicality and Accountability: While the provision requires prompt notice, the 15-day window strikes a balance between providing adequate time for the funded party to gather necessary information and promptly informing relevant parties about the funding agreement's termination.
6. Ensuring Transparency and Clarity: Requiring notice within 15 days ensures that other parties have access to up-to-date information about the funded party's financial arrangements. This transparency helps maintain the integrity of the arbitration process.
7. Avoiding Uncertainty: Prompt notice helps avoid uncertainty and confusion among parties involved in the arbitration. It allows them to make informed decisions based on accurate and current information.
8. Potential Consequences of Non-Compliance: Non-compliance with the 15-day timeframe could have implications for the transparency and fairness of the arbitration proceedings. It could also potentially lead to legal consequences.

In summary, Section 98V(2) of the Hong Kong Arbitration Ordinance sets a clear timeframe of 15 days within which the funded party must provide notice of the end of the funding agreement. This provision reinforces the importance of timely and transparent communication regarding changes in funding arrangements and contributes to the overall fairness and efficiency of the arbitration process.

(3) The notice must be given to—

- (a) each other party to the arbitration; and**
- (b) the arbitration body (if any).**

Section 98V(3) of the Hong Kong Arbitration Ordinance outlines the recipients to whom the notice of the end of a funding agreement must be given. Let us analyse this provision:

1. **Communication of Information:** Section 98V(3) requires the funded party to communicate the termination of the funding agreement to specific parties involved in the arbitration process.
2. **Ensuring Transparency:** The provision promotes transparency within the arbitration process. Allowing each party to the arbitration and, if applicable, the arbitration body to be informed of the termination of the funding agreement helps ensure that all relevant parties have up-to-date information regarding the financial aspects of the arbitration.
3. **Maintaining Fairness:** By notifying each party to the arbitration, the provision helps maintain a level playing field among the parties. It prevents any party from being disadvantaged due to a lack of information about the funding arrangement.
4. **Enabling Informed Decisions:** Informing each party and the arbitration body about the end of the funding agreement enables them to make informed decisions moving forward. Parties can consider the implications of the change in funding on their respective positions in the arbitration.
5. **Consistency and Accountability:** By requiring notice to be given to both other parties and the arbitration body (if any), the provision ensures consistency and accountability in communicating such significant changes in funding arrangements.
6. **Fulfilment of Legal Requirements:** Section 98V(3) emphasises the legal obligation of the funded party to notify the relevant parties in a timely manner. Compliance with this requirement contributes to the integrity and fairness of the arbitration process.
7. **Clarity of Communication:** The provision's clarity regarding the recipients of the notice helps prevent any ambiguity or confusion about who needs to be informed about the end of the funding agreement.
8. **Potential Consequences of Non-Compliance:** Failure to comply with the notice requirement as outlined in Section 98V(3) could impact the transparency and fairness of the arbitration proceedings. It may also lead to legal implications if parties are not adequately informed.

In summary, Section 98V(3) of the Hong Kong Arbitration Ordinance specifies the recipients to whom the notice of the end of a funding agreement must be provided. By mandating communication to each party to the arbitration and, if applicable, the arbitration body, the provision contributes to transparency, fairness, and informed decision-making within the arbitration process.

98W. Non-compliance with Division 5

(1) A failure to comply with this Division does not, of itself, render any person liable to any judicial or other proceedings.

Section 98W(1) of the Hong Kong Arbitration Ordinance addresses the issue of non-compliance with the provisions in Division 5 of the ordinance, which pertains to third-party funding of arbitration. Let us analyse this provision:

1. **Legal Consequence of Non-Compliance:** This provision states that a failure to comply with the requirements and obligations set out in Division 5 does not automatically subject any person to legal liability or proceedings. In other words, the failure to adhere to the provisions of this Division does not, by itself, trigger legal action against the non-compliant party.
2. **Protection from Automatic Liability:** By clarifying that non-compliance with Division 5 does not result in immediate legal consequences, the provision aims to prevent undue harshness or inadvertent legal liability that may arise from accidental breaches or misunderstandings of the regulations.
3. **Balancing Regulation and Consequences:** The provision strikes a balance between the need to regulate third-party funding activities for transparency and fairness within the arbitration process and the recognition that not all failures to comply warrant legal penalties.
4. **Focus on Improvement and Rectification:** The absence of automatic liability encourages parties to take corrective measures when non-compliance occurs. Instead of immediately facing legal consequences, parties are encouraged to rectify their actions and adhere to the requirements moving forward.
5. **Adjudication Based on Merits:** This provision prevents an overemphasis on technical non-compliance from detracting parties and authorities from focusing on the merits of the arbitration case itself. Legal action related to third-party funding should be rooted in substantial breaches or misconduct.
6. **Enhancing Clarity and Confidence:** By assuring parties that non-compliance alone does not result in automatic liability, the provision may contribute to greater clarity and confidence among those involved in third-party funding arrangements.
7. **Encouraging Participation in Funding:** The absence of automatic liability may encourage parties to engage in third-party funding arrangements without excessive fear of inadvertent legal consequences. This could support the growth of third-party funding as an option for parties seeking financial assistance for arbitration.

8. Potential for Additional Consequences: While the provision states that non-compliance does not automatically render a person liable, it does not exclude the possibility of other consequences or actions being taken based on the specific circumstances of the non-compliance.

In summary, Section 98W(1) of the Hong Kong Arbitration Ordinance clarifies that a failure to comply with Division 5's provisions does not, in itself, lead to automatic legal liability or proceedings. This provision aims to strike a balance between regulation and the potential consequences of non-compliance, encouraging parties to rectify their actions and focus on the merits of the arbitration process.

(2) However, any compliance, or failure to comply, with this Division may be taken into account by any court or arbitral tribunal if it is relevant to a question being decided by the court or arbitral tribunal.

Section 98W(2) of the Hong Kong Arbitration Ordinance addresses the impact of compliance or non-compliance with the provisions of Division 5 in relation to third-party funding of arbitration on judicial or arbitral proceedings. Let us analyse this provision:

1. Relevance to Court or Arbitral Proceedings: This provision emphasises that compliance or non-compliance with the regulations outlined in Division 5, which pertain to third-party funding of arbitration, may be considered as evidence in judicial or arbitral proceedings. Such considerations would be relevant only if they bear a direct connection to the question being decided by the court or arbitral tribunal.
2. Factor in Decision-Making: This provision highlights that courts or arbitral tribunals have the discretion to take into account parties' adherence or non-adherence to the rules and standards established in Division 5 when making their decisions. The weight given to this compliance or non-compliance depends on its relevance to the specific issue being adjudicated.
3. Balancing Interests: By allowing courts and arbitral tribunals to consider compliance or non-compliance, the provision aims to strike a balance between transparency, fairness, and due process in the arbitration process. It ensures that parties adhering to the rules are not disadvantaged, and that those disregarding the regulations do not gain an undue advantage.
4. Holistic Decision-Making: This provision encourages a comprehensive and contextual approach to decision-making. Courts and arbitral tribunals can consider whether a party's compliance or non-compliance affects the overall fairness of the arbitration proceedings or its impact on the rights and interests of other parties involved.
5. Incentive for Compliance: The prospect of compliance or non-compliance being taken into account in proceedings could encourage parties to adhere to the regulations outlined in Division 5. This may enhance transparency and encourage parties to operate within the bounds of the law.
6. Applying Standards Consistently: By allowing consideration of compliance or non-compliance, this provision reinforces the consistent application of the rules and standards

established in Division 5. It ensures that parties are held accountable for their actions and decisions in the context of third-party funding of arbitration.

7. Practical Implications: Parties should be aware that their actions in relation to third-party funding can have implications on the outcome of judicial or arbitral proceedings. Compliance can bolster credibility, while non-compliance may affect the perception of a party's conduct.

In summary, Section 98W(2) of the Hong Kong Arbitration Ordinance emphasises that courts and arbitral tribunals have the discretion to consider compliance or non-compliance with the provisions of Division 5 in their decision-making processes. This provision aims to ensure fairness, transparency, and consistent application of the regulations related to third-party funding of arbitration, while also encouraging parties to adhere to these rules.

Division 6—Miscellaneous

98X. Appointment of advisory body and authorized body

- (1) **The Secretary for Justice may, by notice published in the Gazette, appoint as the advisory body a person the Secretary for Justice considers appropriate to monitor and review the operation of this Part.**

Section 98X(1) of the Hong Kong Arbitration Ordinance pertains to the appointment of an advisory body by the Secretary for Justice in relation to the operation of the provisions within the Part that concern third-party funding of arbitration. Let us analyse this provision:

1. Appointment and Authority:
 - a. The provision empowers the Secretary for Justice to appoint an advisory body through a notice published in the Gazette.
 - b. The advisory body's primary role is to monitor and review the operation of the provisions set out in the Part of the Ordinance related to third-party funding of arbitration.
2. Expertise and Independence:
 - a. The advisory body is expected to be an individual or entity possessing suitable expertise and knowledge in the field of arbitration and third-party funding.
 - b. This provision underscores the importance of appointing an impartial and qualified body to ensure effective oversight and monitoring.
3. Transparency and Accountability: By publishing the appointment notice in the Gazette, the provision ensures transparency in the selection process and informs the public and stakeholders about the entity tasked with monitoring and reviewing the operation of the Part.
4. Safeguarding Compliance:

- a. The appointment of an advisory body reflects the government’s commitment to enforcing and maintaining compliance with the regulations related to third-party funding of arbitration.
 - b. The advisory body’s role is to ensure that practices and standards set out in the Part are adhered to and that the rights and interests of all parties involved are protected.
5. Operational Oversight:
- a. The advisory body’s role extends beyond initial implementation; it involves ongoing assessment of how the provisions are functioning in practice.
 - b. The body’s monitoring and review activities contribute to the effective functioning of third-party funding in the context of arbitration.
6. Regulatory Flexibility: By granting the Secretary for Justice the authority to appoint an appropriate person or entity as the advisory body, the provision ensures flexibility in adapting to changing circumstances or requirements.
7. Public Confidence: This provision fosters public confidence in the regulatory framework governing third-party funding of arbitration by ensuring that an independent body oversees its implementation.
8. Advisory Nature: The provision describes the body as an “advisory” entity, suggesting that its role might encompass offering guidance, suggestions, and recommendations to enhance the effectiveness of the regulatory framework.

In summary, Section 98X(1) of the Hong Kong Arbitration Ordinance establishes the Secretary for Justice’s authority to appoint an advisory body responsible for monitoring and reviewing the operation of the Part related to third-party funding of arbitration. The advisory body plays a crucial role in ensuring compliance, transparency, and the effective implementation of the regulatory framework, contributing to the overall integrity of the arbitration process involving third-party funding.

(2) The Secretary for Justice may, by notice published in the Gazette, appoint as the authorized body a person the Secretary for Justice considers appropriate to exercise the powers under section 98P.

Section 98X(2) of the Hong Kong Arbitration Ordinance deals with the appointment of an authorised body by the Secretary for Justice to exercise specific powers outlined in Section 98P. Let us analyse this provision:

1. Appointment and Authority:
 - a. Similar to Section 98X(1), this provision grants the Secretary for Justice the authority to appoint an authorised body through a notice published in the Gazette.

- b. The authorised body’s primary role is to exercise the powers outlined in Section 98P, which primarily pertain to issuing and amending a code of practice related to third-party funding of arbitration.
2. Code of Practice Oversight: The authorised body’s primary function is to develop, issue, amend, or revoke a code of practice concerning the practices and standards that third-party funders are expected to follow in connection with third-party funding of arbitration.
3. Expertise and Independence:
 - a. As with the advisory body mentioned in Section 98X(1), the authorised body should possess suitable expertise and knowledge in arbitration, third-party funding, and regulatory matters.
 - b. The authorised body’s independence is important to ensure objective decision-making and to maintain credibility.
4. Transparency and Accountability: The requirement to publish the appointment notice in the Gazette ensures transparency in the appointment process, informing the public and stakeholders about the entity responsible for overseeing the code of practice.
5. Standards and Compliance:
 - a. This provision underscores the government’s commitment to ensuring that the practices and standards set out in the code of practice are effectively administered.
 - b. The authorised body’s role is vital in setting and maintaining high standards for third-party funding practices.
6. Flexibility in Appointments: Granting the Secretary for Justice the discretion to appoint an appropriate person or entity as the authorised body provides flexibility to adapt to changing circumstances or requirements.
7. Public Confidence: Similar to Section 98X(1), this provision contributes to public confidence in the regulatory framework governing third-party funding of arbitration by ensuring that an independent and competent body is responsible for overseeing the issuance and amendments of the code of practice.
8. Guidance and Oversight: The authorised body’s role is to guide and oversee third-party funding practices to ensure they align with legal and ethical standards.

In summary, Section 98X(2) of the Hong Kong Arbitration Ordinance authorises the Secretary for Justice to appoint an authorised body responsible for exercising the powers outlined in Section 98P, which primarily concern the issuance, amendment, and revocation of a code of practice related to third-party funding of arbitration. The authorised body plays a crucial role in ensuring the development and maintenance of ethical and regulatory standards for third-party funding practices in the context of arbitration.

Part 10B Outcome Related Fee Structure Agreement for Arbitration

Division 1—Purposes and Application

98Y. Purposes

The purposes of this Part are to—

- (a) provide that an ORFS agreement for arbitration is not prohibited by the common law doctrines of maintenance, champerty and barratry;**
- (b) provide for the validity and enforceability of ORFS agreements for arbitration that meet certain general and specific conditions; and**
- (c) provide for measures and safeguards in relation to ORFS agreements for arbitration.**

Section 98Y of the Hong Kong Arbitration Ordinance outlines the purposes of the Part related to Outcomes-Related Fee Structures (ORFS) agreements for arbitration. Let us analyse this provision:

1. Clarifying Legality and Enforceability:
 - a. Purpose (a) of this section aims to address common law doctrines that historically prohibited certain types of agreements, namely maintenance, champerty, and barratry.
 - b. By providing that ORFS agreements for arbitration are not prohibited by these doctrines, the section seeks to clarify the legality and enforceability of such agreements, thereby promoting their use in arbitration proceedings.
2. Ensuring Validity and Enforceability:
 - a. Purpose (b) focuses on establishing clear conditions that ORFS agreements must meet to ensure their validity and enforceability.
 - b. By setting both general and specific conditions, the section seeks to strike a balance between facilitating outcomes-based fee arrangements and safeguarding against potential abuse or unfair practices.
3. Balancing Interests:
 - a. These purposes reflect a desire to balance the interests of all parties involved in arbitration proceedings:
 - b. To provide parties with more flexible and innovative fee structures, potentially increasing access to justice.
 - c. To ensure that ORFS agreements are not exploitative or unscrupulous, which could undermine the integrity of arbitration proceedings.

4. Supporting the Arbitration Framework: By recognising and providing measures for ORFS agreements, the legislation acknowledges the evolving landscape of arbitration and the need to adapt to new methods of funding and compensation.
5. Enhancing Predictability:
 - a. By outlining specific conditions that ORFS agreements must meet, the section enhances predictability for parties entering into such agreements.
 - b. This predictability can help parties make informed decisions regarding fee structures and understand the terms and limitations of their agreements.
6. Promoting Fairness and Transparency:
 - a. The section's emphasis on measures and safeguards (purpose c) reflects a commitment to ensuring that ORFS agreements do not undermine fairness and transparency in arbitration proceedings.
 - b. These measures aim to prevent conflicts of interest, excessive risk, and unethical practices that could arise from inappropriate fee arrangements.
7. Contributing to Confidence in Arbitration: The overall objective of these purposes is to promote confidence in arbitration as a dispute resolution method by providing a regulatory framework that encourages fair and ethical fee arrangements.
8. Encouraging Access to Justice: The purposes align with the broader goal of increasing access to justice by offering parties a variety of fee structures that can accommodate their financial circumstances.

In summary, Section 98Y of the Hong Kong Arbitration Ordinance articulates the purposes of the Part related to ORFS agreements for arbitration. These purposes highlight the intention to clarify the legality, establish enforceability conditions, and provide safeguards for such agreements while maintaining fairness, transparency, and ethical practices within the arbitration process.

98Z. Part 10B not applicable to funding agreements

This Part does not apply to a funding agreement within the meaning of Part 10A.

Section 98Z of the Hong Kong Arbitration Ordinance specifies that the Part related to Outcomes-Related Fee Structures (ORFS) agreements for arbitration does not extend to funding agreements falling within the scope of Part 10A. Let us analyse this provision:

1. Scope Limitation: The section establishes a clear boundary by stating that the provisions within this Part related to ORFS agreements for arbitration are not applicable to funding agreements as defined under Part 10A.
2. Distinguishing between ORFS and Funding Agreements:

- a. Part 10A likely addresses a distinct type of funding agreement, and the lawmakers intend to differentiate these agreements from ORFS agreements for arbitration.
 - b. This differentiation may be based on the nature of the funding arrangement, its purpose, or other specific characteristics.
3. **Clarity and Legal Certainty:** By excluding funding agreements under Part 10A from the scope of this Part, the law provides clarity and legal certainty about which type of agreements are covered by the specific provisions relating to ORFS agreements for arbitration.
 4. **Addressing Different Types of Agreements:** Different types of funding agreements may serve different purposes and involve different considerations. This section acknowledges that the regulatory framework for ORFS agreements may not be appropriate or necessary for funding agreements falling under Part 10A.
 5. **Promoting Effective Regulation:** The differentiation between ORFS agreements and funding agreements ensures that each type of agreement receives relevant and targeted regulatory treatment.
 6. **Avoiding Duplication:** This section prevents duplication of regulatory measures, which could arise if the same set of provisions applied to both ORFS agreements and funding agreements within the scope of Part 10A.
 7. **Acknowledging Diversity:** By excluding Part 10A funding agreements, this provision recognises the diverse landscape of funding arrangements in arbitration, each of which may warrant specific regulatory considerations.
 8. **Ensuring Coherence:** This section contributes to the coherence of the overall legal framework by appropriately segregating different types of agreements under their respective parts.

In summary, Section 98Z of the Hong Kong Arbitration Ordinance serves to clearly delineate the boundary between the Part dealing with ORFS agreements for arbitration and other types of funding agreements defined under Part 10A. This distinction helps ensure that the regulatory framework is tailored to the specific characteristics and purposes of each type of agreement.

Division 2—Interpretation

98ZA. Interpretation

In this Part—

advisory body (諮詢機構) means the person appointed by the Secretary for Justice under section 98ZT(1);

arbitration (仲裁) includes the following proceedings under this Ordinance—

- (a) court proceedings;
- (b) proceedings before an emergency arbitrator;
- (c) mediation proceedings;

arbitration body (仲裁機構)—

- (a) in relation to an arbitration (other than the proceedings mentioned in paragraphs (b) and (c))—means the arbitral tribunal or court, as the case may be;
- (b) in relation to proceedings before an emergency arbitrator—means the emergency arbitrator; or
- (c) in relation to mediation proceedings—means the mediator appointed under section 32 or referred to in section 33, as the case may be;

authorized body (獲授權機構) means the person appointed by the Secretary for Justice under section 98ZT(2);

Cap. 159 (《第159章》) means the Legal Practitioners Ordinance (Cap. 159);

client (當事人), in relation to a lawyer, includes—

- (a) a person who retains or employs, or is about to retain or employ, the lawyer; and
- (b) a person who is or may be liable to pay the lawyer's costs;

code of practice (實務守則) means the code of practice issued under section 98ZN and as amended from time to time;

conditional fee agreement (按條件收費協議)—see section 98ZC;

damages-based agreement (按損害賠償收費協議)—see section 98ZD;

emergency arbitrator (緊急仲裁員) has the meaning given by section 22A;

expenses (開支) means—

- (a) disbursements incurred by a lawyer, or directly by a client of the lawyer, in a matter; or
- (b) any legal expenses insurance premium incurred by a client;

financial benefit (財務利益)—

- (a) means any money or money's worth; but
- (b) does not include—
 - (i) any sum awarded in respect of a lawyer's costs; and
 - (ii) any sum awarded in respect of expenses;

hybrid damages-based agreement (混合式按損害賠償收費協議)—see section 98ZE;

lawyer (律師) means—

- (a) a person who is enrolled on the roll of barristers kept under section 29 of Cap. 159;
- (b) a person who is enrolled on the roll of solicitors kept under section 5 of Cap. 159; or
- (c) a person who is qualified to practise the law of a jurisdiction other than Hong Kong, including a foreign lawyer as defined by section 2(1) of Cap. 159;

legal expenses insurance (法律開支保險) means a contract of insurance that provides reimbursement to a client or a lawyer for some or all of the legal fees, adverse costs or disbursements incurred in respect of a matter;

mediation proceedings (調解程序) means mediation proceedings referred to in section 32(3) or 33;

money or money's worth (金錢或金錢的等值)—

- (a) means—
 - (i) any money, assets, security, tangible or intangible property or services;
 - (ii) any amount owed under an award, settlement agreement or otherwise; or
 - (iii) any other consideration reducible to a monetary value; and
- (b) includes any avoidance or reduction of a potential liability;

ORFS means outcome related fee structure;

ORFS agreement (ORFS協議)—see section 98ZB.

Section 98ZA of the Hong Kong Arbitration Ordinance provides definitions for various terms used within the Part related to Outcome Related Fee Structures (ORFS) agreements for arbitration. Let us analyse these definitions:

1. **Advisory Body (諮詢機構):** Refers to the person appointed by the Secretary for Justice under section 98ZT(1). Likely responsible for monitoring and reviewing the operation of the Part related to ORFS agreements.
2. **Arbitration (仲裁):** Includes various proceedings under the Ordinance, such as court proceedings, proceedings before an emergency arbitrator, and mediation proceedings.
3. **Arbitration Body (仲裁機構):**
 - a. In the context of an arbitration (other than emergency arbitrator or mediation proceedings), refers to the arbitral tribunal or court, as relevant.
 - b. For proceedings before an emergency arbitrator, refers to the emergency arbitrator.
 - c. For mediation proceedings, refers to the mediator appointed under section 32 or referred to in section 33.
4. **Authorised Body (獲授權機構):** Refers to the person appointed by the Secretary for Justice under section 98ZT(2). Likely responsible for exercising the powers under section 98P, which relates to issuing a code of practice for third-party funders.
5. **Cap. 159 (《第159章》):** Refers to the Legal Practitioners Ordinance (Cap. 159), a legislation in Hong Kong governing the legal profession.
6. **Client (當事人):** In relation to a lawyer, includes a person who retains or employs the lawyer, and a person who is liable to pay the lawyer's costs.
7. **Code of Practice (實務守則):** Refers to the code of practice issued under section 98ZN, which sets out practices and standards for third-party funders.
8. **Conditional Fee Agreement (按條件收費協議):** The meaning of this term is found in section 98ZC of the ordinance.
9. **Damages-Based Agreement (按損害賠償收費協議):** The meaning of this term is found in section 98ZD of the ordinance.
10. **Emergency Arbitrator (緊急仲裁員):** Has the meaning given by section 22A of the ordinance.
11. **Expenses (開支):** Refers to disbursements incurred by a lawyer or client in a matter, or legal expenses insurance premium incurred by a client.
12. **Financial Benefit (財務利益):** Includes money or money is worth, excluding certain sums awarded for lawyer's costs and expenses.
13. **Hybrid Damages-Based Agreement (混合式按損害賠償收費協議):** The meaning of this term is found in section 98ZE of the ordinance.

14. Lawyer (律師): Includes a person enrolled on the roll of barristers, solicitors, or qualified to practice law in a jurisdiction other than Hong Kong, including foreign lawyers.
15. Legal Expenses Insurance (法律開支保險): Refers to a contract of insurance providing reimbursement for legal fees, adverse costs, or disbursements incurred in a matter.
16. Mediation Proceedings (調解程序): Refers to mediation proceedings as mentioned in section 32(3) or 33.
17. Money or Money's Worth (金錢或金錢的等值): Inclusive of various forms of value, including money, assets, security, property, services, and amounts owed under awards or settlement agreements.
18. ORFS (Outcome Related Fee Structure): Represents the acronym for outcome related fee structures.
19. ORFS Agreement (ORFS協議): The meaning of this term is found in section 98ZB of the ordinance.

These definitions set the foundation for understanding the terminology used within the Part relating to ORFS agreements for arbitration, helping to ensure clarity and consistency in interpretation.

98ZB. Meaning of ORFS agreement

- (1) An ORFS agreement is any of the following agreements made between a client and a lawyer of the client—**
- (a) a conditional fee agreement;**
 - (b) a damages-based agreement;**
 - (c) a hybrid damages-based agreement.**

Section 98ZB(1) of the Hong Kong Arbitration Ordinance defines an “ORFS agreement” as a type of agreement between a client and their lawyer. The section outlines three specific types of agreements that fall under the definition of an ORFS agreement:

1. **Conditional Fee Agreement:** A conditional fee agreement is an agreement in which a lawyer agrees to provide legal services to a client in return for a fee that becomes payable only if the case is successful. In other words, the lawyer’s fee is contingent upon a successful outcome, and if the outcome is not successful, the fee may not be payable or may be reduced.
2. **Damages-Based Agreement:** A damages-based agreement is an agreement in which a lawyer agrees to provide legal services to a client in return for a percentage of the amount recovered in the case. The lawyer’s fee is calculated based on the amount of damages or monetary award obtained by the client as a result of the legal action.

3. **Hybrid Damages-Based Agreement:** A hybrid damages-based agreement is a combination of the features of both conditional fee agreements and damages-based agreements. It may involve a mix of fixed fees, contingent fees, and a percentage of damages recovered.

Overall, section 98ZB(1) defines an ORFS agreement as any of the three specific types of agreements mentioned above, all of which involve an innovative fee structure where the lawyer’s compensation is linked to the outcome of the case. This allows clients and lawyers to share the risks and rewards of the legal proceedings, potentially increasing access to justice and aligning the interests of both parties in pursuing successful outcomes.

(2) A reference to an ORFS agreement for arbitration in this Part is a reference to an ORFS agreement—

- (a) made between a client and a lawyer of the client for an arbitration; and**
- (b) made on or after the day on which Divisions 3, 4 and 7 have all come into operation.**

Section 98ZB(2) of the Hong Kong Arbitration Ordinance further clarifies the scope of an “ORFS agreement for arbitration” within the context of this part of the ordinance. The section specifies the conditions that need to be met for an agreement to be considered an ORFS agreement for arbitration:

1. **Made Between a Client and a Lawyer for an Arbitration:** The agreement must be between a client and a lawyer representing that client in relation to an arbitration. In other words, it pertains to legal services provided in the context of arbitration proceedings.
2. **Made on or After the Specified Date:** The agreement must be made on or after a specified date. This date is contingent on the commencement of three specific divisions within the ordinance: Divisions 3, 4, and 7. These divisions likely include provisions related to third party funding, code of practice, and other aspects that are relevant to the regulation and operation of ORFS agreements for arbitration.

By outlining these conditions, section 98ZB(2) ensures that only agreements that meet the specified criteria are considered as ORFS agreements for arbitration within the context of the ordinance. This helps to provide clarity and a clear framework for the application and regulation of these innovative fee structures in the context of arbitration proceedings.

(3) To avoid doubt, an ORFS agreement for arbitration is not to be construed to include a funding agreement within the meaning of Part 10A.

Section 98ZB(3) of the Hong Kong Arbitration Ordinance provides additional clarity by explicitly excluding “funding agreements” within the meaning of Part 10A from being considered as “ORFS agreements for arbitration”. This section aims to eliminate any potential confusion or misinterpretation that might arise from the similarities or overlaps between these two types of agreements.

By making it clear that ORFS agreements for arbitration and funding agreements are distinct and separate categories, the section helps prevent any unintended consequences that could arise from

applying regulations meant for one type of agreement to the other. This clarification contributes to the precise and effective regulation of both ORFS agreements and funding agreements under their respective parts of the ordinance.

98ZC. Meaning of conditional fee agreement

(1) A conditional fee agreement is an agreement, made for a matter between a client and a lawyer of the client, under which the lawyer agrees with the client to be paid a success fee for the matter only in the event of a successful outcome for the client in the matter.

Section 98ZC(1) of the Hong Kong Arbitration Ordinance defines a “conditional fee agreement” (CFA) in the context of arbitration funding. A CFA is an agreement between a client and their lawyer, where the lawyer agrees to be paid a success fee for a legal matter only if the client achieves a successful outcome in that matter. Key points in this definition include:

1. Agreement between Client and Lawyer: A CFA is an arrangement made directly between the client seeking legal representation and the lawyer providing legal services.
2. Payment Based on Success Fee: The distinctive characteristic of a CFA is that the lawyer’s fee is contingent on the successful outcome of the matter. If the client does not achieve a favourable result, the lawyer will not receive the success fee.
3. Successful Outcome: The success fee is payable only if the client obtains a successful outcome in the legal matter. This means that the fee is linked to the results achieved by the client.

Overall, this definition outlines the basic nature of a conditional fee agreement in the context of arbitration, where lawyers may agree to provide legal services with the expectation of receiving a success fee only if the client prevails in the case. This can provide an alternative fee structure that aligns the interests of both the client and the lawyer and can incentivise lawyers to take on cases that they might otherwise not consider due to the uncertainty of the outcome.

(2) In subsection (1)—

success fee (成功收費), in relation to a matter, means a payment calculated by reference to the fee that a lawyer of a client would have charged the client for the matter if no ORFS agreement had been made for the matter;

successful outcome (成果), in relation to a client in a matter—

- (a) means any outcome of the matter falling within the description of being successful as agreed to between the client and a lawyer of the client; and**
- (b) includes any financial benefit that is obtained by the client in the matter.**

Section 98ZC(2) of the Hong Kong Arbitration Ordinance further clarifies terms used in the definition of a “conditional fee agreement” (CFA). This subsection provides specific definitions for the terms “success fee” and “successful outcome”.

1. **Success Fee:** In relation to a matter, a “success fee” is defined as a payment calculated by referencing the fee that a lawyer of a client would have charged the client for the matter if no ORFS (Outcome Related Fee Structure) agreement had been made. This means that the success fee is calculated based on a predetermined rate or percentage of what the lawyer’s regular fee for the matter would have been. It reflects an additional fee that is contingent on achieving a successful outcome.
2. **Successful Outcome:** The definition of a “successful outcome” is outlined as follows:
 - a. It refers to any outcome of the matter that aligns with the agreed-upon description of success between the client and their lawyer.
 - b. This outcome includes any financial benefit gained by the client in the matter. This broadens the definition to encompass not only specific outcomes but also any financial gains obtained by the client, even if they fall outside the agreed-upon description of success.

These definitions clarify the terms used in the context of conditional fee agreements, providing a framework for understanding how success fees are calculated and what constitutes a successful outcome for the purposes of such agreements.

98ZD. Meaning of damages-based agreement

A damages-based agreement is an agreement, made between a client and a lawyer of the client for a matter, under which—

- (a) the lawyer agrees with the client to be paid for the matter only in the event the client obtains a financial benefit in the matter (DBA payment); and**
- (b) the DBA payment is calculated by reference to the financial benefit that is obtained by the client in the matter.**

Section 98ZD of the Hong Kong Arbitration Ordinance defines a “damages-based agreement” (DBA) within the context of arbitration. A DBA is an agreement made between a client and their lawyer for a specific matter. The key elements of a DBA are as follows:

1. **DBA Payment:** In a damages-based agreement, the lawyer agrees to be paid for their legal services only if the client obtains a financial benefit in the matter. This means that the lawyer’s payment is contingent upon the client’s success in the case, emphasising a performance-based compensation structure.
2. **Calculation of DBA Payment:** The DBA payment, which the lawyer is entitled to if the client secures a financial benefit, is determined based on the financial benefit obtained by the client in the matter. This links the lawyer’s compensation directly to the outcome achieved for the client. The precise method for calculating the DBA payment is based on the financial gains obtained by the client.

Overall, section 98ZD establishes the concept of a damages-based agreement as an arrangement wherein a lawyer’s payment is tied to the client’s successful outcome in a matter. This aligns the interests of both parties and encourages lawyers to provide effective legal representation, as their payment is directly linked to achieving favourable results for their clients.

98ZE. Meaning of hybrid damages-based agreement

A hybrid damages-based agreement is an agreement, made between a client and a lawyer of the client for a matter, under which the lawyer agrees with the client to be paid for the matter—

- (a) in the event the client obtains a financial benefit in the matter—a payment calculated by reference to the financial benefit; and**
- (b) in any event—a fee, which may or may not be calculated at a discount, for the legal services rendered by the lawyer for the client during the course of the matter.**

Section 98ZE of the Hong Kong Arbitration Ordinance introduces the concept of a “hybrid damages-based agreement” (hybrid DBA) within the framework of arbitration. A hybrid DBA is an agreement made between a client and their lawyer for a specific matter, which combines elements of both a damages-based payment and a traditional fee arrangement. The key components of a hybrid DBA are as follows:

1. **Payment Based on Outcome:** Under a hybrid DBA, the lawyer agrees to be paid based on the outcome achieved by the client in the matter. If the client obtains a financial benefit as a result of the legal action, the lawyer's payment is calculated by reference to this financial benefit. This aligns the lawyer's compensation with the successful outcome for the client.
2. **Fixed Fee Component:** Additionally, a hybrid DBA includes a fixed fee component. Regardless of the outcome achieved by the client, the lawyer is entitled to receive a fee for the legal services rendered during the course of the matter. This fee may be calculated at a discount from the lawyer's usual rates, but it remains a fixed amount that the lawyer is guaranteed to receive.

The introduction of hybrid DBAs allows for a blend of performance-based compensation tied to the outcome and a fixed fee for the legal services provided. This arrangement can provide flexibility in terms of payment structure and may suit cases where the outcome is uncertain, or where clients want to combine performance-based payment with the predictability of a fixed fee for the lawyer's services.

Division 3—ORFS Agreements for Arbitration Not Prohibited by Particular Common Law Offences or Tort

98ZF. Particular common law offences do not apply

The common law offences of maintenance (including the common law offence of champerty) and of being a common barrator do not apply in relation to an ORFS agreement for arbitration.

Section 98ZF of the Hong Kong Arbitration Ordinance addresses the legal implications of outcome related fee structure (ORFS) agreements for arbitration in relation to common law offenses. The section stipulates that the common law offenses of maintenance, champerty, and being a common barrator do not apply to ORFS agreements for arbitration.

1. **Maintenance and Champerty:** Historically, maintenance and champerty were common law offenses that prohibited third parties from financially supporting litigation in exchange for a share of the proceeds of a successful lawsuit. These rules aimed to prevent unscrupulous practices that could potentially compromise the integrity of legal proceedings. However, section 98ZF explicitly excludes ORFS agreements for arbitration from being subject to these offenses. This means that such agreements, which involve the payment of fees based on the outcome of arbitration, are not considered illegal on the grounds of maintenance or champerty.
2. **Common Barratry:** Common barratry refers to the offense of frequently and persistently inciting or stirring up others to initiate legal actions for personal gain. Section 98ZF also exempts ORFS agreements for arbitration from the application of this offense. This ensures that lawyers and clients engaging in legitimate arbitration proceedings under ORFS agreements are not wrongly accused of common barratry.

Overall, this section ensures that ORFS agreements for arbitration are not hindered by historical common law prohibitions and are recognised as valid and lawful arrangements for structuring legal fees based on the outcome of arbitration cases.

98ZG. Particular tort does not apply

The tort of maintenance (including the tort of champerty) does not apply in relation to an ORFS agreement for arbitration.

Section 98ZG of the Hong Kong Arbitration Ordinance addresses the legal implications of the tort of maintenance and champerty in the context of outcome related fee structure (ORFS) agreements for arbitration.

1. **Tort of Maintenance and Champerty:** The tort of maintenance and champerty historically prohibited individuals from financially supporting or assisting litigation in exchange for a share of the proceeds of a successful lawsuit. These doctrines aimed to prevent improper interference with the judicial process and to maintain the integrity of legal proceedings.
2. **Exclusion of the Tort in Relation to ORFS Agreements:** Section 98ZG makes it clear that the tort of maintenance (including champerty) does not apply in relation to ORFS agreements

for arbitration. This means that parties entering into ORFS agreements, where lawyers are compensated based on the outcome of arbitration cases, are not subject to claims of maintenance or champerty. This provision removes potential legal obstacles that could otherwise arise from these historical doctrines.

By excluding the tort of maintenance and champerty from applying to ORFS agreements for arbitration, section 98ZG provides legal clarity and assurance to parties engaging in such fee arrangements, allowing for more flexibility in structuring legal fees based on the outcome of arbitration cases without concerns about violating these outdated torts.

98ZH. Other illegality not affected

Sections 98ZF and 98ZG do not affect any rule of law as to the cases in which a contract is to be treated as contrary to public policy or otherwise illegal.

Section 98ZH of the Hong Kong Arbitration Ordinance provides a specific limitation to the scope of sections 98ZF and 98ZG, which deal with the exclusion of the common law offenses of maintenance, champerty, and the tort of maintenance (including champerty) in relation to outcome related fee structure (ORFS) agreements for arbitration.

1. **Contractual Validity and Public Policy:** While sections 98ZF and 98ZG create exceptions to the historical doctrines of maintenance and champerty for ORFS agreements for arbitration, section 98ZH clarifies that these exclusions do not impact the broader legal principles related to contractual validity and public policy.
2. **Contractual Enforcement:** Section 98ZF and 98ZG ensure that ORFS agreements are not invalidated purely due to concerns related to maintenance, champerty, or the tort of maintenance. However, section 98ZH underscores that other aspects of contract law, particularly those related to public policy or legality, are unaffected.
3. **Preservation of Legal Safeguards:** By emphasising that these sections do not impact broader principles of public policy and contract legality, section 98ZH ensures that despite the exclusions provided by the preceding sections, courts can still consider other factors that might render a contract, including an ORFS agreement, unenforceable due to reasons of public interest or other legal considerations.

In summary, section 98ZH is intended to maintain a balance between modernising fee arrangements in arbitration through ORFS agreements and preserving the fundamental principles of contract law and public policy. It clarifies that while the specific torts and offenses related to maintenance and champerty are addressed by sections 98ZF and 98ZG, the overall legal landscape regarding contract validity and public policy remains unchanged.

98ZI. Application of Part 10B for non-Hong Kong arbitration

Despite section 5, this Part applies in relation to an arbitration for which the place of arbitration is outside Hong Kong or there is no place of arbitration as if the place of arbitration were in Hong Kong.

Section 98ZI of the Hong Kong Arbitration Ordinance is a legal provision that addresses the territorial scope of the ordinance concerning arbitration. Let us break down this section for a clearer understanding:

1. “Despite section 5”: This phrase indicates that Section 98ZI takes precedence over Section 5 of the Arbitration Ordinance, regardless of any conflicting provisions in Section 5.
2. “This Part applies”: “This Part” refers to the relevant part or division of the Arbitration Ordinance. Without knowing the specific part number, it is challenging to provide a detailed analysis, as the content and context may vary depending on the part in question. However, this section signifies that the rules and regulations mentioned in “This Part” apply to the subject matter under discussion.
3. “in relation to an arbitration”: This phrase clarifies that Section 98ZI pertains to matters related to arbitration proceedings.
4. “for which the place of arbitration is outside Hong Kong or there is no place of arbitration”: This part of the section specifies two scenarios:
 - a. Arbitration with a place of arbitration outside Hong Kong: If the arbitration proceedings are conducted in a location outside Hong Kong, the section treats them as if they were taking place in Hong Kong. In other words, certain provisions of the Arbitration Ordinance that might otherwise apply only to arbitrations within Hong Kong will be applied to arbitrations conducted abroad.
 - b. Arbitration with no designated place of arbitration: In cases where there is no specified place of arbitration mentioned in the arbitration agreement or proceedings, Section 98ZI treats it as if the place of arbitration were in Hong Kong. This implies that the relevant provisions of the Arbitration Ordinance applicable to Hong Kong arbitrations will apply to such cases.

In summary, Section 98ZI of the Hong Kong Arbitration Ordinance extends the application of certain parts of the ordinance to arbitrations that either take place outside Hong Kong or do not specify a place of arbitration. It effectively brings these arbitrations under the jurisdiction of Hong Kong law, ensuring that certain legal provisions and protections available for arbitrations within Hong Kong also apply to these situations. The specific rules and implications would depend on the relevant part of the ordinance being referred to in this section.

Division 4—General Provisions for ORFS Agreements for Arbitration**98ZJ. Application of Division 4****This Division applies in relation to an ORFS agreement for arbitration.**

Section 98ZI of the Hong Kong Arbitration Ordinance serves to extend the applicability of the provisions within the Part of the ordinance that pertains to outcome related fee structures (ORFS) agreements for arbitration. This section specifically addresses scenarios where the arbitration is conducted outside Hong Kong or where no specific place of arbitration is designated. Key points to consider in the analysis of Section 98ZI:

1. **Jurisdictional Scope:** This section clarifies that the provisions relating to ORFS agreements for arbitration, regardless of the physical location of the arbitration proceedings or the absence of a designated place of arbitration, will apply as if the arbitration were taking place in Hong Kong. This is significant as it enables the regulatory framework established by the ordinance to have extraterritorial applicability.
2. **Uniform Regulation:** By treating arbitrations conducted outside Hong Kong or those without a specified place of arbitration as if they were occurring within Hong Kong, the section aims to ensure a consistent regulatory approach to ORFS agreements. This approach underscores the legislative intent to provide a standardised framework for ORFS agreements regardless of the geographical location of the arbitration proceedings.
3. **Protection of Interests:** The inclusion of this provision can be seen as a measure to protect parties engaged in arbitration agreements involving Hong Kong-based lawyers or entities, ensuring that the benefits and safeguards provided by the ordinance extend even if the arbitration proceedings themselves are located elsewhere.
4. **Harmonisation of Standards:** By applying the same standards to both domestic and international arbitrations, the section reinforces Hong Kong's commitment to maintaining a high level of professional standards and ethical conduct within its legal and arbitration community.

In summary, Section 98ZI aims to create a uniform regulatory environment for ORFS agreements for arbitration, even in cases where the arbitration is conducted outside Hong Kong or lacks a specific place of arbitration. This approach aligns with the ordinance's overall objective of providing a comprehensive legal framework for arbitration-related matters, including fee arrangements, regardless of the jurisdiction in which the arbitration takes place.

98ZK. Validity and enforceability of ORFS agreements for arbitration

(1) An ORFS agreement for arbitration that meets—

- (a) all general conditions specified in the rules; and**
- (b) all specific conditions specified in the rules for the kind of ORFS agreement to which the agreement belongs,**

is not void or unenforceable only because of its being an ORFS agreement for arbitration.

Section 98ZK(1) of the Hong Kong Arbitration Ordinance establishes the criteria under which an outcome related fee structure (ORFS) agreement for arbitration can be considered valid and enforceable. The section outlines the necessary conditions that such an agreement must meet in order to avoid being rendered void or unenforceable solely due to its nature as an ORFS agreement for arbitration. Key points to consider in the analysis of Section 98ZK(1):

1. **General and Specific Conditions:** This provision divides the conditions that must be satisfied into two categories: general conditions and specific conditions. General conditions are those that apply broadly to all ORFS agreements, while specific conditions are tailored to the type of ORFS agreement in question.
2. **Rules:** The section refers to “the rules”, which are not specified in this extract but likely pertain to regulations or guidelines issued by relevant authorities, possibly the authorised body mentioned elsewhere in the ordinance. These rules are expected to provide detailed criteria for both general and specific conditions that ORFS agreements must meet.
3. **Validity and Enforceability:** Section 98ZK(1) establishes that as long as an ORFS agreement for arbitration meets all the general and specific conditions set out in the rules, it will not be considered void or unenforceable based solely on the fact that it is an ORFS agreement.
4. **Encouraging Use of ORFS Agreements:** By ensuring that properly structured ORFS agreements are valid and enforceable, this provision aims to promote the use of innovative fee arrangements in arbitration proceedings, while simultaneously safeguarding the rights and interests of parties involved.
5. **Balancing Legal Certainty and Flexibility:** While ORFS agreements offer parties more flexible payment structures that align incentives between lawyers and clients, they also require a clear legal framework to avoid disputes. This provision strikes a balance by providing a clear set of criteria that, if met, ensures the enforceability of such agreements.

In summary, Section 98ZK(1) serves to legitimise and encourage the use of outcome related fee structure agreements in arbitration by outlining the conditions that must be met for such agreements to be valid and enforceable. This supports the goals of transparency and predictability in fee arrangements while maintaining a level of regulatory oversight to protect parties’ interests.

(2) In subsection (1)—

rules (規則) means rules made by the advisory body under section 98ZM.

Section 98ZK(2) of the Hong Kong Arbitration Ordinance provides a definition for the term “rules” as used in subsection (1) of the same section. The definition clarifies that the term “rules” refers to rules that are made by the advisory body under section 98ZM of the ordinance. Key points to consider in the analysis of Section 98ZK(2):

1. **Advisory Body:** The term “advisory body” is introduced here, although the detailed functions and responsibilities of this body are not elaborated on in the given text. It is likely that the advisory body plays a significant role in establishing the rules that govern the validity and enforceability of outcome related fee structure (ORFS) agreements for arbitration.
2. **Rules as Regulatory Mechanism:** The advisory body is empowered to create rules that define the conditions an ORFS agreement must meet to be considered valid and enforceable. These rules provide the regulatory framework necessary to ensure that ORFS agreements adhere to specified criteria, maintaining a balance between innovative fee structures and legal certainty.
3. **Legal Certainty:** By clarifying that the term “rules” refers to those established by the advisory body, this provision ensures that the criteria for valid and enforceable ORFS agreements are well-defined and consistent. This contributes to legal certainty for parties entering into such agreements.
4. **Importance of Regulatory Oversight:** ORFS agreements introduce innovative fee arrangements that can impact the financial aspects of arbitration. The involvement of an advisory body in creating rules is aimed at ensuring that parties are protected and that agreements are structured in a fair and transparent manner.

In summary, Section 98ZK(2) of the Hong Kong Arbitration Ordinance defines “rules” as those made by the advisory body under section 98ZM. This definition is essential for understanding the regulatory framework surrounding the validity and enforceability of ORFS agreements for arbitration, ensuring that such agreements adhere to established criteria.

98ZL. ORFS agreement for arbitration void and unenforceable to extent relating to personal injuries claim

(1) Despite section 98ZK, an ORFS agreement for arbitration is void and unenforceable to the extent that it relates to a personal injuries claim.

Section 98ZL(1) of the Hong Kong Arbitration Ordinance introduces a limitation on the enforceability of outcome related fee structure (ORFS) agreements for arbitration. This section states that despite the provisions of Section 98ZK, an ORFS agreement for arbitration will be void and unenforceable if it pertains to a personal injuries claim. Key points to consider in the analysis of Section 98ZL(1):

1. **Scope of Application:** This provision focuses specifically on ORFS agreements that relate to personal injuries claims. Personal injuries claims involve cases where individuals seek

compensation for injuries suffered due to negligence, accidents, or other forms of harm caused by others.

2. **Public Policy Considerations:** The prohibition on using ORFS agreements for personal injuries claims may be rooted in public policy considerations. Such agreements may be seen as potentially influencing legal strategies in a way that prioritises financial gain over the well-being of individuals seeking compensation for their injuries.
3. **Balancing Access to Justice and Financial Interests:** The restriction on using ORFS agreements for personal injuries claims aims to strike a balance between allowing innovative fee arrangements and ensuring that parties' rights are protected, particularly in cases where vulnerable individuals are seeking compensation for personal injuries.
4. **Maintaining Ethical Standards:** The provision may be designed to prevent conflicts of interest that could arise from fee arrangements based on the outcome of personal injuries claims. Such arrangements could potentially lead to lawyers pursuing cases based on their financial interests rather than the best interests of their clients.

In summary, Section 98ZL(1) of the Hong Kong Arbitration Ordinance prohibits the use of ORFS agreements for arbitration in relation to personal injuries claims. This limitation appears to be grounded in public policy considerations and the need to maintain ethical standards and protect the interests of individuals seeking compensation for injuries.

(2) In this section—

personal injuries (人身傷害) includes any disease and any impairment of a person's physical or mental condition;

personal injuries claim (人身傷害申索) means a claim brought under the common law for damages in respect of personal injuries to the claimant or any other person or in respect of a person's death.

Section 98ZL(2) of the Hong Kong Arbitration Ordinance provides definitions for terms used within Section 98ZL(1), which pertains to the voiding and unenforceability of certain ORFS agreements for arbitration related to personal injuries claims. The definitions clarify the scope and context of the terms "personal injuries" and "personal injuries claim".

1. **Personal Injuries:** The term "personal injuries" is defined broadly in this context to encompass not only physical injuries but also any disease and any impairment of a person's physical or mental condition. This inclusive definition recognises that harm or damage can extend beyond physical injuries and includes mental and emotional well-being.
2. **Personal Injuries Claim:** "Personal injuries claim" refers to a claim brought under common law seeking damages. This claim can relate to personal injuries suffered by the claimant or any other person. Additionally, it includes claims seeking damages in cases of death resulting from personal injuries. The definition highlights the breadth of claims that are covered under the term "personal injuries claim".

These definitions serve to ensure clarity and precision in the application of Section 98ZL(1). By encompassing diseases, impairments, and damages for death, the definitions reflect the comprehensive nature of personal injuries claims, thereby facilitating proper interpretation and enforcement of the section.

Division 5—Power to Make Rules

98ZM. Power of advisory body to make rules for matters under Part 10B

- (1) **The advisory body may, in consultation with the Secretary for Justice and with the prior approval of the Chief Justice, make rules for any or all of the following purposes—**
- (a) **to specify the general conditions for the purposes of section 98ZK(1)(a);**
 - (b) **to specify the specific conditions for the purposes of section 98ZK(1)(b);**
 - (c) **to generally provide for the effective implementation of the purposes and provisions of this Part.**

Section 98ZM(1) of the Hong Kong Arbitration Ordinance empowers the advisory body to create rules with the consultation of the Secretary for Justice and the prior approval of the Chief Justice. These rules serve several purposes related to ORFS agreements for arbitration under this Part of the ordinance:

1. **Specifying General Conditions:** The advisory body has the authority to outline and define the general conditions that must be met for an ORFS agreement for arbitration to qualify as valid and enforceable under section 98ZK(1)(a). These conditions likely encompass overarching requirements that all such agreements must satisfy.
2. **Specifying Specific Conditions:** The advisory body is also empowered to define specific conditions that need to be met for an ORFS agreement for arbitration to be valid and enforceable under section 98ZK(1)(b). These conditions would pertain to the particular kind of ORFS agreement to which the agreement belongs, addressing unique aspects of different types of agreements.
3. **Effective Implementation:** The rules formulated by the advisory body should facilitate the smooth and effective implementation of the provisions and purposes outlined in this Part of the ordinance. These rules aim to ensure that the framework for ORFS agreements is applied in a coherent and consistent manner.

The involvement of the Secretary for Justice and the prior approval of the Chief Justice underscore the importance and significance of these rules in maintaining the integrity and fairness of the arbitration process. By specifying general and specific conditions and ensuring effective implementation, these rules contribute to a comprehensive regulatory framework for ORFS agreements in arbitration, fostering clarity, consistency, and legal certainty for all parties involved.

(2) Any rules made under subsection (1)—

- (a) may be of general application or make different provisions for different cases or classes of cases; and**
- (b) may include the incidental, supplementary and consequential provisions that the advisory body considers necessary or expedient.**

Section 98ZM(2) of the Hong Kong Arbitration Ordinance provides additional details about the nature and scope of the rules that the advisory body can formulate under subsection (1). These rules serve to regulate ORFS agreements for arbitration in accordance with the broader framework outlined in this Part of the ordinance. This section highlights the following aspects:

1. **General or Specific Application:** The rules created by the advisory body can have either general applicability or cater to specific cases or classes of cases. This flexibility enables the rules to accommodate varying circumstances and complexities arising from different types of ORFS agreements and arbitration proceedings.
2. **Incidental, Supplementary, and Consequential Provisions:** The rules can encompass not only the core conditions and requirements but also include additional provisions that are incidental, supplementary, or consequential to the main regulatory framework. These provisions are meant to address practical and procedural aspects that may arise during the course of implementing and enforcing ORFS agreements.

This section underscores the adaptability and comprehensiveness of the rules that the advisory body is empowered to create. By allowing for both general and specific applications and including provisions that address a range of potential scenarios, these rules can effectively cater to the diverse needs and complexities that may arise in the context of ORFS agreements for arbitration. This flexibility is crucial in providing a well-rounded and robust regulatory framework for these agreements, ensuring fairness, transparency, and consistency.

Division 6—Code of Practice

98ZN. Code of practice may be issued

- (1) The authorized body may issue a code of practice setting out the practices and standards with which lawyers who enter into ORFS agreements for arbitration are ordinarily expected to comply in connection with those agreements.**

Section 98ZN(1) of the Hong Kong Arbitration Ordinance empowers the authorised body to establish a code of practice that outlines the expected practices and standards for lawyers who engage in ORFS agreements for arbitration. This provision emphasises the need for transparency, professionalism, and ethical conduct in the context of these agreements. Here is an analysis of this section:

1. **Authorised Body’s Authority:** The authorised body, as appointed by the Secretary for Justice, holds the responsibility for formulating and implementing the code of practice. This body ensures that lawyers who enter into ORFS agreements for arbitration adhere to established practices that are in line with legal and ethical standards.
2. **Practices and Standards:** The code of practice is designed to cover both practices (actions or behaviours) and standards (set criteria or benchmarks) that lawyers are expected to follow when entering into ORFS agreements for arbitration. This encompasses various aspects, including how lawyers interact with clients, structure their agreements, and ensure transparency throughout the arbitration process.
3. **Ordinarily Expected Compliance:** The code of practice establishes the normative expectations for lawyers’ conduct, implying that these practices and standards are the baseline for professional behaviour. This ensures consistency and predictability in the interactions between lawyers and their clients within the scope of ORFS agreements for arbitration.
4. **Enhancing Accountability:** By creating a code of practice, the authorised body enhances the accountability of lawyers who engage in ORFS agreements. Lawyers are expected to uphold these practices and standards, and their adherence can be evaluated against the code’s guidelines.
5. **Transparency and Fairness:** The code of practice contributes to transparency and fairness in the realm of ORFS agreements for arbitration. It ensures that clients have a clear understanding of what to expect from their lawyers and the terms of their agreements, promoting informed decision-making.
6. **Ethical Considerations:** The code of practice may also incorporate ethical considerations and professional responsibilities that lawyers owe to their clients. This reinforces the ethical integrity of lawyers’ actions and interactions in the context of ORFS agreements.

Overall, Section 98ZN(1) reflects the intention to establish a framework for lawyers engaging in ORFS agreements for arbitration that aligns with legal and ethical principles. It seeks to promote professionalism, transparency, and fair dealing, ultimately enhancing the quality of legal services provided within the scope of these agreements.

(2) The authorized body must publish the code of practice in the Gazette.

Section 98ZN(2) of the Hong Kong Arbitration Ordinance mandates that the authorised body, which is responsible for formulating the code of practice for lawyers entering into ORFS agreements for arbitration, must publish the code in the Gazette. This provision serves as a mechanism to ensure transparency, accessibility, and official recognition of the code. Here is an analysis of this section:

1. **Publication Requirement:** The provision makes it a requirement for the authorised body to publish the code of practice in the Gazette. This formal publication is essential to communicate the content and guidelines of the code to the legal community, stakeholders, and the public at large.
2. **Accessibility:** The Gazette is a well-established official publication that provides wide accessibility to legal and regulatory information. By publishing the code in the Gazette, the authorised body ensures that the code is easily accessible to lawyers, clients, and anyone interested in the regulations governing ORFS agreements for arbitration.
3. **Official Recognition:** Publishing the code in the Gazette lends official recognition and legitimacy to the code of practice. The Gazette is recognised as a credible source of legal information, and publishing the code there signifies its endorsement by relevant authorities.
4. **Legal Authority:** The publication in the Gazette carries legal weight, as it signifies that the code of practice has been officially promulgated by the authorised body in accordance with its mandate. Lawyers and clients can rely on the code's provisions as official guidelines for ethical and professional behaviour in the context of ORFS agreements for arbitration.
5. **Transparency and Accountability:** The publication of the code of practice in the Gazette enhances transparency and accountability in the legal profession. It makes the expectations and standards of conduct explicit and widely known, allowing lawyers and clients to hold each other accountable for adhering to the code.
6. **Consistency:** Publishing the code of practice in the Gazette ensures that all stakeholders have access to the same set of guidelines. This fosters consistency in the interpretation and application of the code across the legal community.

Overall, Section 98ZN(2) underscores the importance of making the code of practice for ORFS agreements for arbitration widely accessible and officially recognised. By publishing the code in the Gazette, the authorised body ensures that the legal community and the public have clear access to the established practices and standards for lawyers engaging in such agreements.

(3) The code of practice comes into operation on the day on which it is published in the Gazette.

Section 98ZN(3) of the Hong Kong Arbitration Ordinance specifies that the code of practice for lawyers entering into ORFS agreements for arbitration comes into operation on the day it is published in the Gazette. This provision carries significant implications for the enforceability and applicability of the code. Here is an analysis of this section:

1. **Immediate Effectiveness:** The provision ensures that the code of practice takes effect immediately upon its publication in the Gazette. This means that the guidelines, practices, and standards outlined in the code become applicable and binding on lawyers entering into ORFS agreements for arbitration from the moment of publication.
2. **Clarity and Predictability:** By stipulating the exact date of effectiveness, Section 98ZN(3) provides clarity and predictability to lawyers and clients who are subject to the code of practice. This prevents any ambiguity regarding the timeline for compliance and adherence to the standards outlined in the code.
3. **Regulatory Compliance:** The immediate effect of the code upon publication emphasises the urgency of adhering to the prescribed practices and standards. Lawyers who enter into ORFS agreements for arbitration must ensure their compliance with the code as soon as it is published to avoid potential violations or disputes related to non-compliance.
4. **Enforceability:** The provision strengthens the enforceability of the code of practice. Lawyers, clients, and relevant authorities can rely on the effective date specified in the provision to hold individuals accountable for any deviations from the code's provisions after its publication.
5. **Legal Certainty:** The provision contributes to legal certainty by eliminating any confusion or ambiguity surrounding the effective date of the code. This allows lawyers and clients to plan their actions and agreements accordingly, based on the knowledge of when the code becomes operational.
6. **Immediate Guidance:** The immediate effect of the code upon publication ensures that lawyers have access to guidance and standards as soon as they start engaging in ORFS agreements for arbitration. This facilitates ethical and professional conduct in a timely manner.

In conclusion, Section 98ZN(3) establishes the date of effectiveness for the code of practice for lawyers entering into ORFS agreements for arbitration. By ensuring that the code becomes operational immediately upon publication in the Gazette, this provision enhances compliance, enforceability, and clarity regarding the expected practices and standards for the legal community involved in such agreements.

(4) The code of practice is not subsidiary legislation.

Section 98ZN(4) of the Hong Kong Arbitration Ordinance clarifies the legal nature of the code of practice for lawyers entering into ORFS (Outcome Related Fee Structure) agreements for arbitration. Here is an analysis of this section:

1. **Non-Subsidiary Legislation:** This provision explicitly states that the code of practice is not considered subsidiary legislation. Subsidiary legislation typically refers to regulations or rules that are enacted by an authority under the authority of a primary law. Instead, the code of practice operates independently and does not possess the same legal characteristics as regulations or rules that fall under the category of subsidiary legislation.

2. **Distinct Status:** By specifying that the code of practice is not subsidiary legislation, Section 98ZN(4) highlights that the code holds a distinct legal status. It is not formally enacted as law through the same legislative process as statutory instruments or regulations, but rather serves as a set of guidelines, practices, and standards for lawyers.
3. **Practical Guidance:** The provision reinforces that the code of practice is designed to offer practical guidance to lawyers who engage in ORFS agreements for arbitration. It does not carry the same binding force as laws enacted through legislative processes but is meant to guide ethical and professional behaviour within the context of these specific agreements.
4. **Flexibility and Interpretation:** By clarifying that the code is not subsidiary legislation, the provision emphasises that the code's guidelines and standards may have a certain level of flexibility and may not be as rigidly enforced as formal legal statutes. It could allow for more context-specific interpretation and application by legal professionals.
5. **Advisory Nature:** The code of practice's non-subsiary legislation status underscores that its provisions are advisory rather than legally mandatory. Lawyers entering into ORFS agreements should consider the code's recommendations and best practices as part of their professional conduct, but non-compliance with the code might not result in the same legal consequences as non-compliance with statutory laws.

In summary, Section 98ZN(4) of the Hong Kong Arbitration Ordinance establishes that the code of practice for lawyers entering into ORFS agreements for arbitration is not considered subsidiary legislation. This distinction reinforces the advisory and practical nature of the code, emphasising its role in guiding ethical behaviour and professional standards without being subject to the same formal legal enforcement mechanisms as statutory regulations.

(5) The authorized body may amend or revoke the code of practice.

Section 98ZN(5) of the Hong Kong Arbitration Ordinance grants the authorised body the authority to amend or revoke the code of practice for lawyers entering into ORFS (Outcome Related Fee Structure) agreements for arbitration. Here is an analysis of this section:

1. **Flexibility and Adaptability:** This provision reflects the dynamic nature of the legal profession and the need for the code of practice to remain relevant and up-to-date. By allowing the authorised body to make amendments, the provision acknowledges that the legal landscape can change over time, and the code should be able to adapt to new developments, practices, and challenges.
2. **Continuous Improvement:** The ability to amend the code of practice demonstrates a commitment to continuous improvement in the regulation of ORFS agreements. As the arbitration environment evolves, the authorised body can refine the code to address emerging issues, improve clarity, and enhance its effectiveness in guiding lawyers' behaviour.
3. **Responsive to Feedback:** The provision suggests that the authorised body is open to feedback from legal professionals, stakeholders, and the public. If concerns, ambiguities, or practical challenges arise in relation to the code's existing provisions, the authorised

body can use its amendment authority to address these issues and improve the code's overall utility.

4. **Balancing Interests:** While the authorised body can amend the code, it is expected to strike a balance between maintaining consistency and responding to changing circumstances. Frequent amendments could potentially create uncertainty or confusion among legal practitioners, so any changes should be carefully considered and communicated.
5. **Revocation Possibility:** In addition to amendments, the authorised body also has the power to revoke the code of practice if it becomes outdated, ineffective, or if circumstances change significantly. This could be especially relevant if there is a need for a comprehensive overhaul or if the code's underlying principles are deemed no longer applicable.
6. **Authorised Body's Role:** The provision underscores the important role of the authorised body in overseeing the ethical and professional conduct of lawyers involved in ORFS agreements. It empowers the authorised body to make necessary adjustments to the code of practice to ensure that it remains a valuable tool for maintaining high standards in legal practice.

In summary, Section 98ZN(5) of the Hong Kong Arbitration Ordinance grants the authorised body the power to amend or revoke the code of practice for lawyers entering into ORFS agreements for arbitration. This authority supports the code's adaptability, responsiveness, and effectiveness in guiding lawyers' behaviour while ensuring a balance between stability and necessary changes.

(6) Subsections (2), (3) and (4) apply in relation to an amendment or revocation of the code of practice in the same way as they apply in relation to the code of practice.

Section 98ZN(6) of the Hong Kong Arbitration Ordinance establishes the application of certain provisions to the process of amending or revoking the code of practice for lawyers entering into ORFS (Outcome Related Fee Structure) agreements for arbitration. Here is an analysis of this section:

1. **Consistency and Clarity:** This provision ensures consistency in the procedural aspects of amending or revoking the code of practice with those relating to the code itself. By referencing the application of specific subsections (2), (3), and (4), the provision clarifies that the same procedural requirements and principles that apply to the code of practice's initial issuance also apply to its amendment or revocation.
2. **Procedural Safeguards:** The referenced subsections (2), (3), and (4) are likely to contain procedural safeguards, consultation requirements, and mechanisms for publication, similar to those applicable to the initial code of practice. This ensures that any changes or revocations to the code are subject to the same level of transparency, consultation, and accountability as the original issuance.
3. **Public Participation:** If the amendment or revocation process involves consultation with the public or stakeholders, as indicated by the referenced subsections, this provision emphasises the importance of involving relevant parties in the decision-making process.

It underscores the need for transparency and public input in shaping the code of practice and its updates.

4. **Legal and Ethical Considerations:** Subsections (2), (3), and (4) are likely to incorporate legal and ethical considerations related to amending or revoking the code of practice. By extending these provisions to the amendment and revocation process, the section emphasises that any changes must still adhere to legal standards and ethical principles.
5. **Uniform Process:** The provision contributes to the uniformity of the process for both the issuance and any subsequent changes to the code of practice. This uniformity helps maintain clarity and predictability for legal practitioners and stakeholders who interact with the code.
6. **Advisory Body's Role:** The advisory body responsible for issuing the code of practice is likely to play a similar role in amending or revoking it. This continuity ensures that the same body overseeing the code's content also guides its changes, enhancing consistency and expertise.

In summary, Section 98ZN(6) of the Hong Kong Arbitration Ordinance ensures that the procedural aspects of amending or revoking the code of practice for lawyers entering into ORFS agreements for arbitration mirror those applied to the code's original issuance. This provision maintains transparency, consultation, and accountability while ensuring that any changes to the code follow the same procedural standards as its creation.

98ZO. Non-compliance with code of practice

(1) A failure to comply with a provision of the code of practice does not, of itself, render any person liable to any judicial or other proceedings.

Section 98ZO(1) of the Hong Kong Arbitration Ordinance addresses the legal implications of non-compliance with the code of practice for lawyers entering into ORFS (Outcome Related Fee Structure) agreements for arbitration. Here is an analysis of this section:

1. **Non-Liability Clause:** This provision establishes that a failure to adhere to a provision within the code of practice does not automatically result in a person being held liable for any form of legal or judicial proceedings. In other words, mere non-compliance with the code of practice, on its own, does not give rise to legal action or liability.
2. **Clarifying Legal Consequences:** By explicitly stating that non-compliance does not lead to liability, this provision provides clarity to legal practitioners and stakeholders who might otherwise be concerned about potential legal repercussions due to inadvertent breaches of the code.
3. **Emphasis on Regulatory Nature:** The focus of this section is on regulatory and compliance matters rather than creating a basis for legal claims. It underscores the advisory and guidance nature of the code of practice, which aims to encourage best practices among lawyers entering into ORFS agreements.

4. **Avoiding Excessive Legal Actions:** The inclusion of this clause can help prevent an excessive influx of legal actions based solely on minor or technical breaches of the code. This is particularly relevant in situations where breaches might be unintentional or minor.
5. **Promoting Cooperation and Resolution:** Instead of immediately resorting to legal action, non-compliance with the code of practice might lead to cooperation and resolution efforts between the parties involved. This aligns with the goal of resolving disputes in a more constructive and collaborative manner.
6. **Ensuring Reasonable Accountability:** While this section shields against automatic liability, it does not mean that no consequences can arise from non-compliance. The code of practice might include mechanisms for addressing breaches, such as rectification, remediation, or engagement with the advisory body.
7. **Balancing Regulation and Flexibility:** By not automatically imposing liability, the provision strikes a balance between regulating lawyer conduct and allowing flexibility in interpreting and implementing the code's provisions.

In conclusion, Section 98ZO(1) of the Hong Kong Arbitration Ordinance establishes that failing to comply with a provision of the code of practice does not, by itself, result in liability for any judicial or other proceedings. This provision highlights the regulatory nature of the code while providing clarity and balance regarding the legal consequences of non-compliance.

(2) However—

- (a) the code of practice is admissible in evidence in proceedings before any court or arbitral tribunal; and**
- (b) any compliance, or failure to comply, with a provision of the code of practice may be taken into account by any court or arbitral tribunal if it is relevant to a question being decided by the court or arbitral tribunal.**

Section 98ZO(2) of the Hong Kong Arbitration Ordinance addresses the admissibility and potential impact of the code of practice in legal proceedings. Here is an analysis of this section:

1. **Admissibility of Code of Practice:** Subsection (2)(a) specifies that the code of practice issued for lawyers entering into ORFS (Outcome Related Fee Structure) agreements is admissible as evidence in proceedings before any court or arbitral tribunal. This means that the code itself can be presented and referred to during legal proceedings to provide context, guidance, and standards related to the conduct of lawyers in such agreements.
2. **Relevance in Legal Proceedings:** Subsection (2)(b) outlines that compliance with or failure to comply with a provision of the code of practice can be taken into account by any court or arbitral tribunal when making decisions that are relevant to the ongoing legal proceedings. This indicates that courts and arbitral tribunals may consider the extent to which a lawyer has adhered to or deviated from the code of practice when assessing the validity, fairness, or reasonableness of ORFS agreements.

3. **Guiding Judicial and Arbitral Decisions:** By allowing the code of practice to be admissible and compliance with it to be considered, this provision aims to ensure that the standards and practices set out in the code are taken into consideration when legal decisions are made. It can influence the evaluation of conduct, agreements, and disputes related to ORFS agreements in a more consistent and informed manner.
4. **Balancing Professional Accountability:** This section balances the principle of not automatically rendering a person liable for breaches of the code (as stated in subsection (1)) with the need for transparency and accountability. It allows legal professionals to be held accountable for deviations from the code that might have bearing on the fairness and validity of agreements.
5. **Enhancing the Regulatory Framework:** This subsection contributes to the overall regulatory framework by establishing that the code of practice has practical relevance in legal proceedings, enhancing the effectiveness of its provisions in guiding lawyer conduct.
6. **Preserving Legal Integrity:** This provision preserves the integrity of legal proceedings by ensuring that relevant factors, such as compliance with professional standards, are taken into account when determining legal rights and responsibilities.

In conclusion, Section 98ZO(2) of the Hong Kong Arbitration Ordinance ensures that the code of practice for ORFS agreements is admissible as evidence in legal proceedings and that compliance or non-compliance with its provisions can be considered by courts and arbitral tribunals when relevant to the issues being decided. This strengthens the regulatory framework, guiding legal professionals and informing decisions while preserving fairness in legal proceedings.

Division 7—Other Measures and Safeguards

98ZP. Communication of information for ORFS agreements for arbitration

- (1) Despite section 18(1), information referred to in that section may be communicated by a party to a lawyer for the purpose of entering into, or seeking to enter into, an ORFS agreement for arbitration with the lawyer.**

Section 98ZP(1) of the Hong Kong Arbitration Ordinance addresses the communication of information between parties and lawyers in the context of entering into Outcome Related Fee Structure (ORFS) agreements for arbitration. Here is an analysis of this section:

1. **Exception to Section 18(1):** Section 18(1) of the Arbitration Ordinance generally restricts the communication of confidential information between parties involved in arbitration. However, Section 98ZP(1) carves out an exception to this rule, allowing parties to communicate information that is subject to the confidentiality requirement under section 18(1) to their respective lawyers. This exception specifically applies when the communication is intended for the purpose of entering into, or seeking to enter into, an ORFS agreement for arbitration with the lawyer.
2. **Promoting Transparency and Legal Services:** This section acknowledges that communication of information between a party and their lawyer is essential for the purpose of negotiating and forming ORFS agreements. ORFS agreements involve the financial aspects of legal representation and can be intricate, making clear communication between parties and lawyers crucial for transparently defining terms and expectations.
3. **Facilitating Agreements:** By allowing parties to share confidential information with their lawyers to discuss and negotiate ORFS agreements, this provision aims to facilitate the formation of these agreements. Parties can make informed decisions about fee structures and success-based payments without concerns about violating the confidentiality provisions.
4. **Preserving Attorney-Client Privilege:** While this section permits communication of confidential information, it does so in a way that respects the attorney-client privilege. Parties can freely share information with their lawyers without risking the breach of confidentiality obligations.
5. **Supporting Legal Practices:** This provision indirectly supports the legal profession by encouraging clients to openly communicate financial and strategic information with their lawyers in the context of ORFS agreements. Lawyers can better understand their clients' needs and circumstances, thereby providing more tailored advice and fee structures.
6. **Enhancing Access to Justice:** Enabling parties to communicate confidential information to lawyers for the purpose of forming ORFS agreements can contribute to more flexible fee arrangements. This, in turn, can improve access to justice for parties who might have limited financial resources.
7. **Specific Focus on ORFS Agreements:** It is important to note that Section 98ZP(1) specifically addresses communication related to ORFS agreements. This indicates that the

legislature recognised the unique nature of ORFS agreements and the necessity for parties and lawyers to discuss and negotiate terms that may vary significantly from standard fee arrangements.

In conclusion, Section 98ZP(1) of the Hong Kong Arbitration Ordinance carves out an exception to the confidentiality requirement in section 18(1), allowing parties to communicate information to their lawyers for the purpose of entering into ORFS agreements. This exception aims to facilitate transparent communication, negotiation, and formation of such agreements while preserving the attorney-client privilege and promoting access to justice.

- (2) However, the lawyer may not further communicate anything communicated under subsection (1), unless—**
- (a) the further communication is made—**
- (i) to protect or pursue a legal right or interest of the lawyer; or**
 - (ii) to enforce or challenge an award made in the arbitration,**
- in legal proceedings before a court or other judicial authority in or outside Hong Kong;**
- (b) the further communication is made to any government body, regulatory body, court or tribunal, and the lawyer is obliged by law to make the communication; or**
- (c) the further communication is made to a professional adviser of the lawyer for the purpose of obtaining advice in connection with the ORFS agreement for arbitration.**

Section 98ZP(2) of the Hong Kong Arbitration Ordinance elaborates on the limitations placed on lawyers regarding the communication of information that has been shared with them by parties for the purpose of entering into Outcome Related Fee Structure (ORFS) agreements for arbitration. Let us analyse this section:

1. **Restricted Further Communication:** This subsection restricts lawyers from further communicating the information received under Section 98ZP(1), which allows parties to share confidential information with their lawyers for the purpose of forming ORFS agreements. While parties are allowed to share such information, this provision ensures that the information remains confidential and is not disclosed without valid reasons.
2. **Legal Proceedings:** The subsection outlines three specific scenarios in which a lawyer may further communicate the information without violating confidentiality:
 - a. **Protecting Legal Rights:** A lawyer may communicate the information to protect or pursue their own legal rights or interests. This could include situations where the lawyer needs to assert a claim or defence related to the ORFS agreement or their legal services.
 - b. **Enforcing or Challenging Awards:** A lawyer may communicate the information to enforce or challenge an award made in the arbitration. This aligns with the principle

that lawyers should have the ability to advocate for their clients' interests in legal proceedings.

3. **Legal Obligations:** The subsection also allows further communication when there is a legal obligation to do so:
 - a. **Government Bodies and Regulatory Bodies:** If the lawyer is obligated by law to communicate the information to any government body, regulatory body, court, or tribunal, they are permitted to do so. This recognises situations where disclosure is legally mandated.
 - b. **Professional Advisers:** A lawyer may communicate the information to a professional adviser for the purpose of obtaining advice in connection with the ORFS agreement for arbitration. This acknowledges that lawyers may seek advice from colleagues or consultants to ensure that their actions comply with ethical standards and legal requirements.
4. **Balancing Confidentiality and Legal Obligations:** The subsection establishes a balance between the confidentiality of information shared by parties and the lawyer's legal obligations. It ensures that while lawyers must keep confidential information private, they are also empowered to fulfil their professional and legal responsibilities.
5. **Protection of Clients' Interests:** This provision aims to protect clients' interests by ensuring that lawyers do not misuse or disclose the confidential information shared by parties during discussions about ORFS agreements.
6. **Preserving Ethical Standards:** By specifying circumstances under which lawyers can further communicate the information, this provision safeguards ethical standards and ensures that lawyers act in the best interests of their clients.

In summary, Section 98ZP(2) of the Hong Kong Arbitration Ordinance delineates the circumstances under which a lawyer may further communicate confidential information shared by parties for the purpose of forming ORFS agreements. It outlines scenarios where communication is allowed, such as protecting legal rights, enforcing or challenging awards, meeting legal obligations to government or regulatory bodies, or seeking advice from professional advisers. The provision maintains a balance between confidentiality and legal obligations, ultimately preserving the interests of both parties and lawyers involved in ORFS agreements for arbitration.

(3) If a further communication is made by a lawyer to a professional adviser under subsection (2)(c), subsection (2) applies to the professional adviser as if the professional adviser were the lawyer.

Section 98ZP(3) of the Hong Kong Arbitration Ordinance addresses a scenario where a lawyer makes a further communication to a professional adviser under the circumstances specified in subsection (2)(c). This subsection clarifies the status and responsibilities of the professional adviser in such situations. Let us analyse this provision:

1. **Communication to Professional Adviser:** Subsection (2)(c) allows a lawyer to communicate the information to a professional adviser for the purpose of obtaining

advice in connection with the ORFS agreement for arbitration. This recognises that lawyers often seek guidance from other experienced professionals to ensure compliance with ethical standards, legal requirements, and best practices.

2. **Application of Subsection (2) to Professional Adviser:** Section 98ZP(3) extends the application of subsection (2) to the professional adviser. In other words, the same limitations and conditions that apply to the lawyer’s further communication as outlined in subsection (2) will also apply to the professional adviser.
3. **Confidentiality Continues:** By treating the professional adviser as if they were the lawyer in terms of further communication, the provision ensures that the confidentiality of the shared information remains intact. This means that the professional adviser is subject to the same restrictions on communicating the information to others, except in the specified circumstances outlined in subsection (2).
4. **Legal and Ethical Consistency:** The application of the same rules to both the lawyer and the professional adviser maintains legal and ethical consistency. It prevents the potential situation where a professional adviser might be able to communicate the shared information more freely than the lawyer who initially received it.
5. **Preservation of Client-Professional Privilege:** This subsection underscores the importance of client-professional privilege, which ensures that discussions between lawyers and professional advisers are protected from disclosure in legal proceedings. This privilege encourages open and candid communication between legal professionals and their advisers.
6. **Professional Responsibility and Accountability:** By holding the professional adviser to the same standards as the lawyer in terms of further communication, the provision encourages professional responsibility and accountability. This ensures that both lawyers and their advisers act in the best interests of their clients and adhere to ethical and legal guidelines.

In summary, Section 98ZP(3) of the Hong Kong Arbitration Ordinance ensures that the same rules regarding further communication apply to a professional adviser as they do to the lawyer under the circumstances outlined in subsection (2)(c). This provision upholds confidentiality, client-professional privilege, and ethical standards while facilitating effective collaboration between legal professionals and their advisers in the context of ORFS agreements for arbitration.

(4) In this section—

communicate (傳達) includes publish or disclose.

Section 98ZP(4) of the Hong Kong Arbitration Ordinance provides a definition for the term “communicate” as used within the context of Section 98ZP. This definition is essential for understanding the scope of what actions fall under the term “communicate” within the provisions of this section. Let us analyse this definition:

1. **Broad Interpretation of “Communicate”:** The definition states that the term “communicate” includes two specific actions: “publish” and “disclose”. This suggests that

the term should be interpreted broadly and encompasses a range of actions beyond just verbal or written communication.

2. **Covering Various Forms of Communication:** The inclusion of “publish” suggests that any public dissemination of information, whether through traditional publishing methods or modern digital platforms, falls under the definition of “communicate”. This could include sharing information on websites, social media, newsletters, press releases, and more.
3. **“Disclose” Encompassing Sharing Information:** The term “disclose” is often used in legal contexts to refer to revealing or making known certain information. This inclusion ensures that actions such as sharing or making available information to a specific audience, even if not made public like publishing, also fall under the definition of “communicate”.
4. **Applicability to Subsection (2) and (3):** Since the term “communicate” is used in both subsections (2) and (3) of Section 98ZP, this definition clarifies that the actions of “publishing” or “disclosing” information, as outlined in this definition, are relevant to the restrictions and conditions detailed in those subsections.
5. **Language Consideration:** The inclusion of the Chinese translation “傳達” emphasises that the definition applies to both the English and Chinese versions of the law, ensuring consistency and clarity across both languages.

In summary, Section 98ZP(4) of the Hong Kong Arbitration Ordinance provides a clear and inclusive definition of the term “communicate”, specifying that it includes actions such as “publish” and “disclose”. This definition helps in interpreting the scope of actions that are subject to the restrictions and conditions mentioned in subsections (2) and (3) of the same section.

98ZQ. Disclosure about ORFS agreement for arbitration

- (1) If an ORFS agreement for arbitration is made between a client and a lawyer of the client, the lawyer must give written notice of—**
- (a) the fact that an ORFS agreement for arbitration has been made; and**
 - (b) the name of the client.**

Section 98ZQ(1) of the Hong Kong Arbitration Ordinance outlines a requirement for lawyers who enter into Outcome Related Fee Structure (ORFS) agreements for arbitration with their clients. Let us break down the key components and implications of this section:

1. **Purpose of the Notice Requirement:** The purpose of this provision is to ensure transparency and disclosure in the context of ORFS agreements for arbitration. It aims to provide relevant parties, including other stakeholders in the arbitration process, with information about the existence of such agreements and the identity of the client involved.
2. **Mandatory Notice Requirement:** The section places a mandatory obligation on lawyers to provide written notice in cases where they have entered into an ORFS agreement for

arbitration with a client. The notice must contain two essential pieces of information: the fact that the ORFS agreement has been made and the name of the client.

3. **Disclosure and Clarity:** By requiring the disclosure of the existence of the ORFS agreement, the section ensures that other parties involved in the arbitration process are aware of the financial arrangement between the lawyer and the client. This promotes transparency and helps avoid any potential conflicts of interest or misunderstandings.
4. **Prescribed Information:** The notice must contain specific information, i.e., the name of the client and the fact that an ORFS agreement for arbitration has been established. This specificity ensures that the notice is clear and directly addresses the relevant aspects of the agreement.
5. **Form and Timing of Notice:** The section does not explicitly specify the form of notice, but as it requires “written notice”, it can be inferred that the notice should be provided in written form. The timing of providing the notice is not mentioned explicitly either, so lawyers should ensure compliance as soon as the ORFS agreement is made.
6. **Relevance to Other Parties:** The notice requirement is not limited to the client alone. Other parties involved in the arbitration process, including the arbitral tribunal, opposing parties, and any relevant authorities, may also benefit from this information to understand the financial arrangement between the lawyer and the client.

In summary, Section 98ZQ(1) of the Hong Kong Arbitration Ordinance establishes a requirement for lawyers to provide written notice when they enter into ORFS agreements for arbitration with clients. This ensures transparency, disclosure, and clarity about the financial arrangement, benefiting all parties involved in the arbitration process.

(2) The notice must be given—

- (a) for an ORFS agreement for arbitration made on or before the commencement of the arbitration—on the commencement of the arbitration; or**
- (b) for an ORFS agreement for arbitration made after the commencement of the arbitration—within 15 days after the agreement is made.**

Section 98ZQ(2) of the Hong Kong Arbitration Ordinance specifies the timing requirements for giving notice regarding Outcome Related Fee Structure (ORFS) agreements for arbitration. Let us examine the key elements and implications of this section:

1. **Timely Notice Requirement:** The section establishes a clear and specific timeline within which lawyers are required to provide the notice regarding ORFS agreements for arbitration. The timing requirement is designed to ensure that relevant parties are promptly informed of the existence of such agreements.
2. **Different Timing Scenarios:** The section outlines two different scenarios based on when the ORFS agreement for arbitration is made:

- a. Scenario (a): If the ORFS agreement is made on or before the commencement of the arbitration, the notice must be given on the commencement of the arbitration. This ensures that all parties involved are informed from the very beginning of the arbitration process.
 - b. Scenario (b): If the ORFS agreement is made after the commencement of the arbitration, the notice must be given within 15 days after the agreement is made. This ensures that parties are informed promptly after the agreement is established, allowing for transparency throughout the arbitration proceedings.
3. Promoting Transparency and Avoiding Delays: By imposing these specific timing requirements, the section aims to achieve transparency and avoid any unnecessary delays in informing relevant parties about the existence of ORFS agreements. This information is essential for parties to understand the financial arrangements and make informed decisions throughout the arbitration process.
 4. Potential Impact on Arbitration Process: Timely notice allows other parties, including the arbitral tribunal and opposing parties, to be aware of the financial arrangement between the lawyer and the client. This information could be relevant to understanding any potential conflicts of interest or issues related to costs.
 5. Legal and Procedural Compliance: Lawyers and clients must ensure compliance with the specified timing requirements to adhere to the law and facilitate a smooth arbitration process.

In summary, Section 98ZQ(2) of the Hong Kong Arbitration Ordinance establishes clear timing requirements for providing notice about ORFS agreements for arbitration. This provision aims to promote transparency, avoid delays, and ensure that all relevant parties are informed in a timely manner about the financial arrangements in place for the arbitration proceedings.

(3) The notice must be given to—

- (a) each other party to the arbitration; and**
- (b) the arbitration body.**

Section 98ZQ(3) of the Hong Kong Arbitration Ordinance outlines the recipients to whom the notice regarding Outcome Related Fee Structure (ORFS) agreements for arbitration must be given. Let us analyse the key elements and implications of this section:

1. Specific Recipients: The section specifies two categories of recipients to whom the notice must be given:
 - a. Recipient (a): Each other party to the arbitration. This includes all parties involved in the arbitration process alongside the lawyer and client who entered into the ORFS agreement. Providing notice to other parties ensures transparency and allows all participants to be aware of the financial arrangement.

- b. Recipient (b): The arbitration body. This refers to the entity or individuals overseeing the arbitration proceedings, such as the arbitral tribunal or court. The notice to the arbitration body ensures that the overseeing authority is informed about the financial arrangements between the lawyer and the client.
2. Ensuring Transparency: By mandating the notice to be given to both other parties and the arbitration body, the section aims to maintain transparency and facilitate a fair arbitration process. Transparency in financial arrangements can help prevent conflicts of interest or misunderstandings during the proceedings.
3. Effective Communication: The requirement to provide notice to all relevant parties, including the arbitration body, enables all parties to have a comprehensive understanding of the financial aspects of the arbitration. This helps in making informed decisions and potentially addressing any issues that may arise related to the financial arrangement.
4. Legal Compliance: Providing notice to the specified recipients is a legal requirement under the ordinance. Adhering to this requirement ensures compliance with the law and prevents any potential issues that could arise from failing to notify the necessary parties.
5. Promoting Fairness: By ensuring that all parties are aware of the financial arrangement, this section contributes to a fair arbitration process where all participants are informed and can take appropriate actions as needed.

In summary, Section 98ZQ(3) of the Hong Kong Arbitration Ordinance establishes the recipients to whom notice regarding ORFS agreements for arbitration must be given. By notifying each other party to the arbitration and the arbitration body, the section promotes transparency, effective communication, legal compliance, and fairness in the arbitration process.

(4) For subsection (3)(b), if there is no arbitration body for the arbitration at the time, or at the end of the period, specified in subsection (2) for giving the notice, the notice must instead be given to the arbitration body immediately after there is an arbitration body for the arbitration.

Section 98ZQ(4) of the Hong Kong Arbitration Ordinance provides a specific provision regarding the situation where an arbitration body is not in place or identifiable within the prescribed timeframe for providing notice of an Outcome Related Fee Structure (ORFS) agreement for arbitration. Here is an analysis of this subsection:

1. Time and Recipients: Subsection (4) refers back to the requirements outlined in subsections (2) and (3), which specify the timing and recipients for giving notice of an ORFS agreement for arbitration.
2. Absence of Arbitration Body: This subsection addresses a scenario where there is no identifiable arbitration body at the time when the notice should be provided, or when the period specified in subsection (2) for giving the notice ends.
3. Immediate Notice upon Appointment: In this situation, the subsection stipulates that if an arbitration body is established or appointed after the prescribed period has elapsed, the notice must be given to the arbitration body immediately upon its appointment. This

requirement emphasises prompt communication of the ORFS agreement once the relevant arbitration body is established.

4. **Ensuring Information Flow:** The provision aims to ensure that once an arbitration body is in place, they are promptly informed of any ORFS agreements that have been made. This allows the arbitration body to have a complete picture of the financial arrangements and legal relationships involved in the arbitration process.
5. **Addressing Delays:** Delays in appointing an arbitration body may occur for various reasons, such as administrative procedures, scheduling conflicts, or the complexity of the case. This provision ensures that even if the appointment of the arbitration body is delayed, they are made aware of the ORFS agreement as soon as they assume their role.
6. **Facilitating Transparency and Accountability:** By requiring the notice to be provided to the arbitration body as soon as it is established, the provision supports transparency and accountability in the arbitration process. All relevant parties, including the arbitration body, can make informed decisions and address any potential issues related to the financial arrangement.

In summary, Section 98ZQ(4) of the Hong Kong Arbitration Ordinance addresses the scenario where there is no arbitration body in place within the prescribed timeframe for giving notice of an ORFS agreement for arbitration. In such cases, the notice must be promptly provided to the arbitration body once it is established to ensure transparency, accountability, and effective communication in the arbitration process.

98ZR. Disclosure about end of ORFS agreement for arbitration

- (1) If an ORFS agreement for arbitration ends (other than because of the end of the arbitration), the client must give written notice of—**
- (a) the fact that the agreement has ended; and**
 - (b) the date the agreement ended.**

Section 98ZR(1) of the Hong Kong Arbitration Ordinance outlines the requirement for a client to provide written notice when an Outcome Related Fee Structure (ORFS) agreement for arbitration comes to an end for reasons other than the conclusion of the arbitration itself. Let us analyse this provision:

1. **Notice Requirement:** This subsection establishes an obligation on the part of the client to provide written notice in specific circumstances, namely when the ORFS agreement for arbitration concludes before the end of the arbitration proceedings.
2. **End of the Agreement:** The requirement is triggered when the ORFS agreement ends for reasons other than the natural conclusion of the arbitration process. This could include various scenarios, such as the agreement being terminated, revoked, or otherwise coming to an end before the resolution of the underlying dispute.
3. **Content of Notice:** The notice must contain two essential pieces of information:

- a. The fact that the ORFS agreement has ended.
 - b. The date on which the agreement officially came to an end.
4. **Promoting Transparency:** By mandating that the client provide notice about the conclusion of the ORFS agreement, the provision promotes transparency and clarity among the parties involved in the arbitration process. This ensures that all parties are aware of any changes in the financial arrangement related to legal representation.
 5. **Timeframe for Notice:** Unlike some other provisions related to notice, Section 98ZR(1) does not specify a specific timeframe within which the notice must be provided. However, the general principle of timeliness would likely apply, requiring the client to provide the notice as soon as practicable after the agreement has ended.
 6. **Importance of Timely Notice:** Timely notice is important to ensure that all parties involved, including the arbitration body and other parties to the arbitration, are informed of any changes in the financial arrangement. This enables them to adjust their expectations and make informed decisions accordingly.

In summary, Section 98ZR(1) of the Hong Kong Arbitration Ordinance requires clients to provide written notice when an ORFS agreement for arbitration ends for reasons other than the conclusion of the arbitration proceedings. The notice must include details about the termination of the agreement and the date on which it occurred. This provision serves to promote transparency and ensure that all relevant parties are informed about changes in the financial arrangement associated with the arbitration process.

(2) The notice must be given within 15 days after the ORFS agreement for arbitration ends.

Section 98ZR(2) of the Hong Kong Arbitration Ordinance specifies a time limit within which the notice regarding the end of an Outcome Related Fee Structure (ORFS) agreement for arbitration must be given. Let us break down this provision:

1. **Timeframe for Notice:** This subsection establishes a clear and specific timeframe within which the client must provide the notice about the conclusion of the ORFS agreement. The notice must be given within 15 days after the agreement comes to an end.
2. **Prompt Notification:** The requirement for notice to be given within 15 days underscores the importance of promptly informing all relevant parties about changes in the financial arrangement related to legal representation in the arbitration process. This timeframe is intended to ensure that parties receive timely information and can adjust their expectations accordingly.
3. **Clarity in Timely Communication:** By imposing a specific time limit, Section 98ZR(2) aims to prevent delays or potential disputes arising from late notifications. This ensures that any necessary actions or adjustments can be made promptly after the termination of the ORFS agreement.
4. **Enforcement of Timely Notice:** Failure to provide the notice within the stipulated 15-day period could potentially have implications in terms of the enforceability of the notice.

requirement. However, the provision does not explicitly specify any consequences for failing to meet the deadline.

5. **Balancing Client’s and Other Parties’ Interests:** The provision aims to balance the interests of the client with the need for transparency and informed decision-making by all parties involved in the arbitration. Prompt notification helps to maintain clear lines of communication and prevents any surprises regarding the financial arrangement.
6. **Consistency with Other Notice Provisions:** The 15-day timeframe aligns with the notice requirements outlined in other sections of the ordinance, creating consistency in terms of the timing for providing notifications related to ORFS agreements.

In summary, Section 98ZR(2) of the Hong Kong Arbitration Ordinance mandates that the client must provide notice about the end of an ORFS agreement for arbitration within 15 days after the agreement concludes. This provision emphasises the importance of prompt communication to ensure that all relevant parties are informed of changes in the financial arrangement and can make necessary adjustments in a timely manner.

(3) The notice must be given to—

- (a) each other party to the arbitration; and**
- (b) the arbitration body (if any).**

Section 98ZR(3) of the Hong Kong Arbitration Ordinance outlines the recipients to whom the notice about the end of an Outcome Related Fee Structure (ORFS) agreement for arbitration must be provided. Let us analyse this provision:

1. **Required Recipients:** This subsection specifies that the notice must be sent to two categories of recipients:
 - a. **Each other party to the arbitration:** This ensures that all parties involved in the arbitration are informed about the termination of the ORFS agreement. By notifying other parties, transparency is maintained, and everyone can adjust their expectations accordingly.
 - b. **The arbitration body (if any):** If there is an arbitration body overseeing the proceedings, the notice must be given to them. This provision recognises the potential role of an arbitration body in resolving disputes and maintaining a record of the agreement’s conclusion.
2. **Promoting Transparency:** The requirement to notify each party involved in the arbitration and, if applicable, the arbitration body, emphasises transparency in the process. All parties are entitled to be aware of the changes in the agreement, ensuring that they can effectively manage their legal and financial obligations.
3. **Communication of Relevant Information:** The notice serves as a means of communicating relevant information about the end of the ORFS agreement. This is particularly important

in the context of legal proceedings, where financial arrangements can impact the course of action and decision-making.

4. **Potential for Dispute Prevention:** By ensuring that all relevant parties are informed, Section 98ZR(3) seeks to prevent potential disputes or misunderstandings that might arise due to a lack of information regarding the termination of the ORFS agreement.
5. **Consistency with Legal Notice Principles:** This provision aligns with legal principles surrounding the importance of timely and proper notice in contractual relationships. It aims to ensure that parties have the information they need to make informed decisions and respond appropriately.
6. **Applicability to Different Situations:** The subsection does not differentiate between the reason for the agreement's end, whether due to successful resolution, mutual termination, or other circumstances. It applies regardless of the cause of termination, ensuring consistency in communication regardless of the situation.

In summary, Section 98ZR(3) of the Hong Kong Arbitration Ordinance mandates that the notice about the conclusion of an ORFS agreement must be provided to each other party involved in the arbitration and, if relevant, to the arbitration body overseeing the proceedings. This provision aims to promote transparency, prevent disputes, and ensure that all parties are adequately informed about changes in the financial arrangement.

98ZS. Non-compliance with Division 7

(1) **A failure to comply with this Division does not, of itself, render any person liable to any judicial or other proceedings.**

Section 98ZS(1) of the Hong Kong Arbitration Ordinance addresses the legal consequences of failing to comply with the provisions outlined in the preceding division of the ordinance. Here is an analysis of this provision:

1. **Limited Consequence:** This subsection explicitly states that a failure to comply with the rules and requirements set out in the relevant division does not automatically result in a person becoming liable to judicial or other legal proceedings. In other words, non-compliance with the provisions alone does not subject the person to legal penalties or liabilities.
2. **Intention of the Provision:** The provision appears to be designed to avoid overly punitive consequences for non-compliance. It acknowledges that there may be instances where individuals or entities inadvertently or unintentionally fail to adhere to the division's requirements. The aim is to prevent undue harshness for minor or technical breaches.
3. **Balancing the Interests:** This provision strikes a balance between encouraging compliance with the rules while recognising that rigid enforcement may not always be appropriate. It acknowledges that some flexibility should be allowed, particularly if the non-compliance does not result in any harm or negative impact on the parties involved.

4. Encouraging Voluntary Adherence: By not imposing immediate legal liability for failure to comply, the ordinance may encourage more parties to voluntarily follow the rules and requirements. This approach may foster a cooperative environment rather than one driven solely by fear of legal consequences.
5. Assessment of Cases: The provision does not absolve non-compliant parties from any potential legal consequences altogether. Instead, it implies that non-compliance alone is not a sufficient ground for initiating legal action. If a dispute or issue arises due to non-compliance, it would need to be evaluated within the context of the broader legal framework.
6. Safeguarding Parties' Rights: While the provision prevents immediate legal action solely based on non-compliance, parties who believe they have been adversely affected by the failure to comply still have avenues to address their grievances through appropriate legal processes.

In summary, Section 98ZS(1) of the Hong Kong Arbitration Ordinance stipulates that failing to comply with the relevant division's provisions does not, by itself, make a person liable to judicial or other legal proceedings. This approach recognises that strict penalties for non-compliance may not always be proportionate and allows for more nuanced assessments of situations where non-compliance occurs.

(2) However, any compliance, or failure to comply, with this Division may be taken into account by any court or arbitral tribunal if it is relevant to a question being decided by the court or arbitral tribunal.

Section 98ZS(2) of the Hong Kong Arbitration Ordinance addresses the potential impact of compliance or non-compliance with the provisions outlined in the preceding division of the ordinance on court or arbitral tribunal proceedings. Here is an analysis of this provision:

1. Relevance to Proceedings: This subsection acknowledges that any compliance or failure to comply with the rules and requirements of the relevant division may have an impact on court or arbitral tribunal proceedings. It emphasises that the court or tribunal can consider such compliance or non-compliance when making decisions related to the case before them.
2. Evidentiary Value: The provision establishes that the court or arbitral tribunal is allowed to take into account both compliance and non-compliance with the division's provisions as evidence during their proceedings. This indicates that parties can introduce evidence of their adherence or non-adherence to these rules to support their arguments, claims, or defences.
3. Decision-Making Considerations: The provision implies that the court or arbitral tribunal has discretion in assessing the significance of compliance or non-compliance. It suggests that they can weigh this information when determining issues, such as the validity of agreements, the behaviour of parties, or the overall fairness of the process.
4. Contextual Interpretation: The phrase "if it is relevant to a question being decided" indicates that the court or tribunal will not automatically consider every instance of

compliance or non-compliance. Instead, they will evaluate whether it has a bearing on the specific matter being adjudicated.

5. **Influence on Outcomes:** This subsection has the potential to influence the outcomes of court or arbitral tribunal proceedings. For example, if one party alleges that another party's non-compliance with the division's provisions prejudiced their position, the court or tribunal might consider this in their judgment.
6. **Balancing Interests:** By allowing the consideration of compliance or non-compliance, the provision strikes a balance between not imposing immediate legal liability for minor breaches and allowing the judicial process to incorporate relevant information that may impact the case's outcome.

In summary, Section 98ZS(2) of the Hong Kong Arbitration Ordinance indicates that compliance or non-compliance with the relevant division's provisions can be taken into account by courts or arbitral tribunals if it is deemed relevant to the matter being decided. This provision underscores the significance of adherence to these rules and allows the court or tribunal to consider such information when evaluating disputes or making determinations in a case.

Division 8—Miscellaneous

98ZT. Appointment of advisory body and authorized body

- (1) The Secretary for Justice may, by notice published in the Gazette, appoint as the advisory body a person the Secretary for Justice considers appropriate to monitor and review the operation of this Part and exercise the power under section 98ZM.**

Section 98ZT(1) of the Hong Kong Arbitration Ordinance deals with the appointment of the advisory body responsible for overseeing and reviewing the operation of the provisions outlined in the Part related to Outcome-Related Fee Structures (ORFS) agreements for arbitration. Here is an analysis of this provision:

1. **Appointment Authority:** The provision grants the Secretary for Justice the authority to appoint the advisory body. This individual or entity will have the responsibility to monitor and review how the regulations and provisions in this Part are functioning.
2. **Advisory Body's Role:** The primary role of the advisory body is to assess and observe the implementation and operation of the provisions pertaining to ORFS agreements for arbitration. This includes reviewing how lawyers and clients are adhering to the regulations and standards set out in the Part.
3. **Independence and Impartiality:** The provision does not specify the qualifications of the advisory body. However, the Secretary for Justice is likely to consider appointing someone with relevant expertise in arbitration, legal practice, and regulatory matters. The selection of an appropriate individual or entity is crucial to ensure that the advisory body operates independently and impartially.
4. **Publication in the Gazette:** The advisory body's appointment is formalised by publishing a notice in the Gazette, which is the official government publication. This ensures transparency and informs the public about the identity of the advisory body responsible for overseeing this aspect of the law.
5. **Scope of Responsibility:** The advisory body has a dual responsibility: to monitor and review the operation of the Part related to ORFS agreements for arbitration, and to exercise the powers under section 98ZM. Section 98ZM deals with the authority of the advisory body to make rules specifying conditions for ORFS agreements and other related purposes.
6. **Government Oversight:** By granting the Secretary for Justice the authority to appoint the advisory body, the provision maintains a level of government oversight in the functioning of the advisory body. This helps ensure that the body acts in accordance with its designated role and responsibilities.
7. **Checks and Balances:** The requirement of public notice in the Gazette adds a layer of transparency to the appointment process. It allows interested parties, including legal professionals, clients, and the general public, to be aware of who is overseeing the implementation of these regulations.

In summary, Section 98ZT(1) of the Hong Kong Arbitration Ordinance empowers the Secretary for Justice to appoint an advisory body responsible for monitoring and reviewing the implementation of

the Part related to ORFS agreements for arbitration. The appointment aims to ensure proper oversight, compliance, and effectiveness of the regulatory framework within this area of arbitration practice.

(2) The Secretary for Justice may, by notice published in the Gazette, appoint as the authorized body a person the Secretary for Justice considers appropriate to exercise the powers under section 98ZN.

Section 98ZT(2) of the Hong Kong Arbitration Ordinance pertains to the appointment of the authorised body responsible for exercising specific powers under section 98ZN. Here is an analysis of this provision:

1. **Appointment Authority:** Similar to the appointment of the advisory body discussed in the previous section, this provision grants the Secretary for Justice the authority to appoint the authorised body. The authorised body is tasked with specific responsibilities related to the administration and enforcement of provisions outlined in section 98ZN.
2. **Authorised Body's Role:** The authorised body's primary role is to administer and enforce the regulations and standards outlined in section 98ZN. This section relates to the issuance, amendment, revocation, and compliance with a code of practice for lawyers entering into ORFS agreements for arbitration.
3. **Independence and Expertise:** The Secretary for Justice has the discretion to select an appropriate individual or entity to serve as the authorised body. It is likely that the appointed person should possess relevant expertise in arbitration, legal practice, and regulatory matters to effectively exercise the powers outlined in section 98ZN.
4. **Publication in the Gazette:** Similar to the appointment of the advisory body, the appointment of the authorised body is formalised through a notice published in the Gazette. This ensures transparency and informs the public about the entity or individual responsible for overseeing the regulatory aspects of ORFS agreements for arbitration.
5. **Code of Practice Oversight:** One of the key powers exercised by the authorised body under section 98ZN is the issuance, amendment, and revocation of a code of practice for lawyers entering into ORFS agreements for arbitration. This code of practice sets out the practices and standards with which lawyers are expected to comply. The authorised body ensures that lawyers adhere to these standards.
6. **Ensuring Compliance:** By appointing the authorised body, the government ensures that there is an entity actively overseeing the adherence of legal professionals to the code of practice. This helps maintain ethical and professional standards in the realm of arbitration agreements.
7. **Coordination with Advisory Body:** The roles of the advisory body and the authorised body might intersect, as both are involved in monitoring and enforcing different aspects of ORFS agreements for arbitration. This could potentially lead to cooperation between these bodies to ensure comprehensive oversight.

In conclusion, Section 98ZT(2) of the Hong Kong Arbitration Ordinance grants the Secretary for Justice the power to appoint an authorised body responsible for administering and enforcing the regulations

outlined in section 98ZN. The authorised body’s role includes overseeing the issuance, amendment, and revocation of a code of practice for lawyers entering into ORFS agreements for arbitration, ensuring compliance with ethical and professional standards in the field of arbitration practice.

98ZU. Limitation on award of costs by arbitral tribunal

(1) Despite section 74(3), an arbitral tribunal may not order costs specified in subsection (3) to be paid to a party to an arbitration if an ORFS agreement for arbitration has been entered into between the party and a lawyer of the party for the arbitration.

Section 98ZU(1) of the Hong Kong Arbitration Ordinance addresses the issue of costs in arbitrations where an Outcome Related Fee Structure (ORFS) agreement for arbitration has been entered into between a party and their legal representative. Here is an analysis of this provision:

1. **Scope of the Provision:** Section 98ZU(1) is intended to override the provisions outlined in section 74(3) of the Arbitration Ordinance in specific circumstances involving ORFS agreements for arbitration.
2. **ORFS Agreements for Arbitration:** An ORFS agreement for arbitration is a specific type of fee arrangement where the lawyer’s payment is contingent upon the successful outcome of the arbitration. It includes conditional fee agreements, damages-based agreements, and hybrid damages-based agreements, as defined earlier in the Ordinance.
3. **Limitation on Costs Orders:** This provision limits the ability of an arbitral tribunal to order certain costs to be paid to a party when that party has entered into an ORFS agreement for arbitration with their legal representative. The intention is to prevent double recovery of costs—both through the ORFS agreement and the costs ordered by the tribunal.
4. **Avoiding Double Recovery:** The purpose of this provision is to avoid situations where a party benefits from a successful arbitration outcome while also receiving costs ordered by the tribunal. This is intended to ensure that parties do not receive a financial windfall beyond the agreed terms of the ORFS agreement.
5. **Balancing Interests:** This section reflects a balance between the interests of parties, legal representatives, and the principles of fairness and reasonableness in the context of arbitration. It prevents parties from exploiting both the contingency fee arrangement and the costs awarded by the tribunal.
6. **Clarification of Costs Liability:** By clarifying that certain costs specified in subsection (3) of section 74 cannot be ordered to be paid to a party when an ORFS agreement for arbitration is in place, the provision contributes to the transparency and predictability of arbitration proceedings.
7. **Incentive for ORFS Agreements:** The provision also encourages the use of ORFS agreements by assuring parties that they will not be subject to both costs awarded by the tribunal and the fees under the ORFS agreement. This could promote the adoption of such agreements as a viable fee structure for arbitration.

In summary, Section 98ZU(1) of the Hong Kong Arbitration Ordinance establishes that, despite section 74(3), an arbitral tribunal is restricted from ordering certain costs to be paid to a party if that party has entered into an ORFS agreement for arbitration with their legal representative. This limitation is designed to prevent parties from receiving double recovery of costs and to promote fairness and predictability in arbitration proceedings.

(2) However, the arbitral tribunal may still order those costs to be paid to a party to the arbitration if satisfied that there are exceptional circumstances justifying the ordering of those costs.

Section 98ZU(2) of the Hong Kong Arbitration Ordinance introduces a qualification to the limitation outlined in the preceding subsection (98ZU(1)). This provision allows the arbitral tribunal to exercise discretion in exceptional circumstances where it deems it appropriate to order costs that would otherwise be restricted due to the presence of an Outcome Related Fee Structure (ORFS) agreement for arbitration. Here is an analysis of this provision:

1. **Exceptional Circumstances:** Section 98ZU(2) introduces a flexibility mechanism in situations where the arbitral tribunal believes that there are exceptional circumstances warranting an exception to the general rule specified in section 98ZU(1).
2. **Balancing Interests:** This subsection strikes a balance between providing a clear rule that limits cost recovery under certain circumstances (section 98ZU(1)) and acknowledging that unique situations might require the tribunal's intervention in terms of costs.
3. **Discretion of the Tribunal:** By allowing the arbitral tribunal to order costs specified in subsection (3) of section 74 to be paid to a party despite the existence of an ORFS agreement, the provision acknowledges the tribunal's role as an adjudicator and decision-maker in cases involving arbitration costs.
4. **Exceptional Circumstances Requirement:** The provision emphasises that exceptional circumstances must be present to justify deviating from the general rule. This requirement sets a high standard and aims to prevent arbitrary or routine exceptions.
5. **Flexibility and Fairness:** This provision ensures that the tribunal has the flexibility to address unique situations where an ORFS agreement's restrictions on cost recovery might lead to inequitable outcomes. It takes into account the complexity and variability of arbitration cases.
6. **Preservation of Tribunal's Discretion:** Section 98ZU(2) safeguards the tribunal's authority to determine costs by allowing it to weigh the specifics of each case. This approach aligns with arbitration's principles of flexibility, party autonomy, and efficiency.
7. **Transparency and Predictability:** Despite allowing for exceptions, the provision's requirement for "exceptional circumstances" maintains the predictability of the overall legal framework by preventing the arbitrary application of the provision.

In summary, Section 98ZU(2) of the Hong Kong Arbitration Ordinance provides the arbitral tribunal with discretion to order costs that would otherwise be limited due to an ORFS agreement if there are

exceptional circumstances justifying such an order. This provision balances the need for predictable rules with the tribunal’s ability to address unique cases and ensures fairness in arbitration proceedings.

(3) The costs are those that fall within any of the following descriptions—

- (a) if the ORFS agreement for the arbitration is a conditional fee agreement—the success fee as defined by section 98ZC(2);**
- (b) any legal expenses insurance premium;**
- (c) any part of the fee that is in excess of the fee that the lawyer would have been entitled to be paid by the party if there had been no ORFS agreement for the arbitration (normal fee).**

Section 98ZU(3) of the Hong Kong Arbitration Ordinance outlines the types of costs that are subject to the limitations imposed by an Outcome Related Fee Structure (ORFS) agreement for arbitration. Here is an analysis of this provision:

1. **Costs Descriptions:** The provision enumerates the specific types of costs that fall under the scope of section 98ZU(3). These costs are subject to potential restrictions due to the presence of an ORFS agreement.
2. **Conditional Fee Agreement Success Fee:** Subsection (a) of section 98ZU(3) refers to the success fee, as defined by section 98ZC(2), in the case of an ORFS agreement that is a conditional fee agreement. This refers to the additional payment that the lawyer is entitled to receive upon achieving a successful outcome for the client.
3. **Legal Expenses Insurance Premium:** Subsection (b) includes any legal expenses insurance premium as one of the costs that are subject to the limitations imposed by an ORFS agreement. Legal expenses insurance provides coverage for legal costs, disbursements, and other related expenses.
4. **Excess Fee Over Normal Fee:** Subsection (c) encompasses any part of the fee that exceeds the fee the lawyer would have been entitled to receive if there were no ORFS agreement for the arbitration. This refers to the difference between the fee under the ORFS agreement and what would have been charged under a traditional fee arrangement, known as the “normal fee”.
5. **Purpose of the Section:** Section 98ZU(3) serves to clarify and specify which costs are subject to the limitation imposed by an ORFS agreement. It ensures transparency and predictability regarding the types of costs that parties should consider when entering into such agreements.
6. **Alignment with the ORFS Framework:** The provision aligns with the overall structure of ORFS agreements, which focus on tying lawyer fees to the outcome of the arbitration. By enumerating the specific costs that are limited under an ORFS agreement, the provision reinforces the legislative intent of the ordinance.

7. Protecting Parties' Interests: By including legal expenses insurance premiums and excess fees as subject to the limitations of an ORFS agreement, the provision prevents excessive costs and ensures that parties are not burdened with unforeseen expenses.

In summary, Section 98ZU(3) of the Hong Kong Arbitration Ordinance delineates the types of costs that are affected by an ORFS agreement for arbitration. By outlining the success fee, legal expenses insurance premium, and excess fees over normal fees, the provision brings transparency and clarity to the cost limitations imposed by such agreements.

(4) To avoid doubt, this section does not prevent the arbitral tribunal from ordering a party to the arbitration to pay costs in an amount not exceeding the amount of the normal fee.

Section 98ZU(4) of the Hong Kong Arbitration Ordinance provides clarification and exceptions regarding the ability of an arbitral tribunal to order costs in the context of Outcome Related Fee Structure (ORFS) agreements for arbitration. Here is an analysis of this provision:

1. Scope of the Section: Section 98ZU(4) addresses a specific scenario where an arbitral tribunal has the authority to order costs to be paid by a party to the arbitration.
2. Costs Exceeding Normal Fee: The provision acknowledges that the section (section 98ZU) as a whole, including its limitations on certain types of costs, should not be interpreted to restrict an arbitral tribunal's ability to order a party to pay costs. Specifically, the provision clarifies that an arbitral tribunal can order a party to pay costs in an amount that does not exceed the amount of the normal fee.
3. Definition of Normal Fee: The "normal fee" is the fee that the lawyer would have been entitled to be paid by the party if there were no ORFS agreement for the arbitration. This concept is essential to the calculation of costs in the context of an ORFS agreement.
4. Flexibility of the Arbitral Tribunal: Despite the limitations and restrictions on success fees, insurance premiums, and excess fees, the provision ensures that the arbitral tribunal retains the authority to exercise its discretion in awarding costs, even if such costs may exceed the amounts specified in an ORFS agreement.
5. Balancing Interests: The provision reflects a balance between the cost limitations of ORFS agreements and the arbitral tribunal's discretion in awarding costs that align with the overall principles of justice and fairness.
6. Preserving Tribunal's Discretion: The provision aims to prevent any misconception that the cost limitations under ORFS agreements would restrict the arbitral tribunal's power to order costs. It reaffirms the tribunal's authority to make appropriate determinations based on the specific circumstances of the case.

In summary, Section 98ZU(4) of the Hong Kong Arbitration Ordinance ensures that the power of an arbitral tribunal to order costs remains intact, even in the context of ORFS agreements for arbitration. It clarifies that the section's provisions do not prevent the tribunal from ordering costs in an amount not exceeding the normal fee, providing flexibility to address the unique aspects of each arbitration case.

Part 11 Provisions that may be Expressly Opted for or Automatically Apply

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

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

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

Section 99 of the Hong Kong Arbitration Ordinance introduces the concept that an arbitration agreement can expressly incorporate certain provisions from Schedule 2 of the ordinance. These provisions pertain to matters related to the arbitral process and are designed to facilitate the effective and fair conduct of arbitration proceedings. Here is an analysis of Section 99:

1. **Scope of Section:** Section 99 provides parties to an arbitration agreement with the flexibility to incorporate specific provisions from Schedule 2 into their arbitration agreement. This allows the parties to tailor the procedural framework of their arbitration to meet their specific needs and preferences.
2. **Incorporation of Schedule 2 Provisions:** The provisions listed in subsections (a) to (e) are sections from Schedule 2 of the Arbitration Ordinance. These sections cover various aspects of the arbitral process, such as the appointment of arbitrators, the power of the court to grant interim measures, the tribunal's power to order discovery, and the confidentiality of arbitral proceedings.
3. **Customisation of Arbitration Agreement:** By expressly including any of the listed provisions in their arbitration agreement, parties can effectively customise their arbitration process. This ensures that their arbitration proceedings are conducted in line with the selected provisions, thereby enhancing procedural clarity and predictability.
4. **Flexibility and Party Autonomy:** Section 99 underscores the principle of party autonomy in arbitration. Parties are given the freedom to choose which specific provisions from Schedule 2 they wish to incorporate into their arbitration agreement, allowing them to create a process that suits their preferences and requirements.
5. **Procedural Efficiency:** The provisions listed in Schedule 2 are designed to promote procedural efficiency, fairness, and consistency in arbitration proceedings. By incorporating these provisions, parties can benefit from established and recognised standards in the conduct of arbitrations.
6. **Certainty and Predictability:** Incorporating specific provisions from Schedule 2 can provide greater certainty and predictability to the arbitration process. This is particularly important when parties come from different legal systems and jurisdictions.

7. **Transparency and Avoidance of Disputes:** By explicitly specifying the incorporated provisions, parties can minimise potential disputes that may arise during the course of the arbitration regarding procedural matters. This transparency contributes to a smoother arbitration process.
8. **Balance Between Standardisation and Customisation:** While Section 99 allows parties to incorporate certain provisions, it is worth noting that parties should carefully consider the provisions they choose to include to strike a balance between standardisation and customisation based on their unique circumstances.

In summary, Section 99 of the Hong Kong Arbitration Ordinance empowers parties to tailor their arbitration proceedings by expressly incorporating specific provisions from Schedule 2. This reflects the principles of party autonomy and procedural efficiency while enhancing transparency and predictability in the arbitration process.

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.**

Section 100 of the Hong Kong Arbitration Ordinance establishes the applicability of the provisions in Schedule 2 to certain arbitration agreements. It specifies the circumstances under which the provisions in Schedule 2 apply to arbitration agreements that have been entered into before or after the commencement of the Ordinance. Here is an analysis of Section 100:

1. **Application of Schedule 2 Provisions:** Section 100 states that all the provisions in Schedule 2 of the Arbitration Ordinance apply to certain arbitration agreements, subject to the provisions of Section 102. These provisions cover various aspects of the arbitral process, such as the appointment of arbitrators, interim measures, discovery, confidentiality, and other procedural matters.
2. **Timeframes for Applicability:** The section outlines two specific timeframes during which the Schedule 2 provisions may apply to arbitration agreements:
 - a. **Subsection (a):** For arbitration agreements entered into before the commencement of the Ordinance, the Schedule 2 provisions apply if the agreement explicitly provides that arbitration under the agreement is a “domestic arbitration”.
 - b. **Subsection (b):** For arbitration agreements entered into within a period of 6 years after the commencement of the Ordinance, the Schedule 2 provisions apply if the agreement specifies that arbitration under the agreement is a “domestic arbitration”.

3. Definition of “Domestic Arbitration”: The term “domestic arbitration” is not defined in Section 100 itself. However, it refers to the concept that an arbitration is conducted within Hong Kong and governed by Hong Kong law. It may involve disputes that have a connection to Hong Kong or parties that are domiciled or have assets within Hong Kong.
4. Transition Period: Subsection (b) creates a transition period of 6 years from the commencement of the Ordinance. During this period, arbitration agreements entered into that explicitly provide for “domestic arbitration” will be subject to the Schedule 2 provisions.
5. Party Autonomy and Clarity: Section 100 underscores the principle of party autonomy in arbitration by allowing parties to determine whether their arbitration agreement falls within the ambit of “domestic arbitration” and thereby subject to the Schedule 2 provisions. The section also enhances clarity by specifying the timeframes during which these provisions may apply.
6. Certainty and Predictability: The application of Schedule 2 provisions to specific categories of arbitration agreements contributes to legal certainty and predictability in the conduct of arbitration proceedings. Parties and practitioners can anticipate the procedural framework that will govern their arbitration agreements based on the criteria outlined in the section.
7. Interaction with Section 102: The applicability of Schedule 2 provisions is subject to Section 102, which provides a mechanism for parties to exclude or vary certain Schedule 2 provisions by agreement.

In summary, Section 100 of the Hong Kong Arbitration Ordinance establishes the circumstances under which the provisions in Schedule 2 apply to arbitration agreements that involve domestic arbitration. It provides clarity on the timeframes and criteria for the applicability of these provisions, contributing to party autonomy, predictability, and transparency in the arbitration process.

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

- (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.

Section 101(1) of the Hong Kong Arbitration Ordinance introduces a scenario where the provisions in Schedule 2 apply to a subcontracting parties' arbitration agreement in the context of construction contracts. This provision outlines the circumstances under which the provisions in Schedule 2, which cover various aspects of the arbitral process, are extended to arbitration agreements in subcontracting situations. Here is an analysis of Section 101(1):

1. **Scope of Application:** Section 101(1) addresses a specific scenario involving construction contracts and their associated arbitration agreements. It extends the application of Schedule 2 provisions to arbitration agreements in subcontracting arrangements within the context of construction projects.
2. **Triggering Conditions:** The provision outlines three essential conditions that must be met for the Schedule 2 provisions to apply to a subcontracting parties' arbitration agreement:
 - a. **Subsection (a):** The main construction contract, which includes an arbitration agreement, is subject to the application of Schedule 2 provisions under Section 100(a) or (b). This indicates that the arbitration agreement within the main construction contract must explicitly provide for "domestic arbitration".
 - b. **Subsection (b):** A relevant operation, or a part of the construction operations, is subcontracted to another party under a separate subcontract. This suggests that certain aspects of the construction work are delegated to subcontractors.
 - c. **Subsection (c):** The subcontract between the parties (subcontracting parties) must also include an arbitration agreement, which falls within the scope of forms referred to in Section 19 of the Ordinance. This ensures that the arbitration agreement in the subcontract is a valid and enforceable agreement.
3. **Extension of Schedule 2 Provisions:** Once these conditions are met, the provision stipulates that all the provisions in Schedule 2 (subject to Section 102) will also apply to the arbitration agreement between the subcontracting parties.
4. **Purpose and Effect:** The purpose of Section 101(1) is to ensure consistency and alignment in the application of arbitration procedures across the different levels of contractual relationships within a construction project. This helps maintain predictability and uniformity in the arbitration process across the various parties involved.
5. **Impact on Subcontracting Parties' Arbitration Agreement:** By extending the application of Schedule 2 provisions to the subcontracting parties' arbitration agreement, the provision ensures that the procedural framework, including matters related to arbitrator appointment, interim measures, and confidentiality, among others, are uniformly applied across both the main construction contract and its associated subcontracts.
6. **Interaction with Section 102:** The extension of Schedule 2 provisions to the subcontracting parties' arbitration agreement is subject to Section 102. Section 102 provides parties with the ability to exclude or vary certain Schedule 2 provisions by agreement.

In summary, Section 101(1) of the Hong Kong Arbitration Ordinance addresses the extension of Schedule 2 provisions to arbitration agreements in subcontracting situations within the context of

construction contracts. It aims to promote consistency and harmonisation in arbitration procedures across different levels of contractual relationships within a construction project.

- (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**
 - (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.**

Section 101(2) of the Hong Kong Arbitration Ordinance provides exceptions to the application of Section 101(1) in cases where the subcontracting parties' arbitration agreement is not subject to certain conditions. This section establishes criteria under which the extension of Schedule 2 provisions to subcontracting agreements within construction contracts does not apply. Here is an analysis of Section 101(2):

1. **Introduction of Exceptions:** Section 101(2) introduces exceptions to the general rule outlined in Section 101(1), which extends the application of Schedule 2 provisions to subcontracting parties' arbitration agreements in construction contracts. The exceptions outlined in this subsection specify situations where this extension does not apply.
2. **Non-Application in Specific Scenarios:** The exceptions outlined in Section 101(2) prevent the extension of Schedule 2 provisions to subcontracting parties' arbitration agreements under certain circumstances:
3. **Subsection (a):** The extension does not apply if the person to whom the relevant operation is subcontracted is a natural person, body corporate, or association that falls under any of the categories specified in subparagraphs (i), (ii), and (iii). This includes

persons who are ordinarily resident outside Hong Kong, bodies corporate with incorporation or central management outside Hong Kong, and associations formed or managed outside Hong Kong.

4. Subsection (b): The extension does not apply if the person to whom the relevant operation is subcontracted has no place of business in Hong Kong.
5. Subsection (c): The extension does not apply if a substantial part of the subcontracted relevant operation is intended to be performed outside Hong Kong.
6. Protecting Certain Categories of Cases: The exceptions in Section 101(2) aim to address situations where the application of Schedule 2 provisions might not be appropriate due to the international nature of the parties involved or the performance of work outside of Hong Kong. These exceptions consider factors like the residence of the parties, the location of their operations, and the nature of the work being performed.
7. Effect on Application of Schedule 2 Provisions: In cases where any of the exceptions outlined in Section 101(2) apply, the extension of Schedule 2 provisions to the subcontracting parties' arbitration agreement under Section 101(1) is precluded. This means that the arbitration agreement between the subcontracting parties will not be subject to the procedural framework provided by Schedule 2.
8. Objective of Exceptions: The exceptions specified in Section 101(2) aim to recognise and accommodate cases where international considerations, such as residence, incorporation, or the location of operations, may impact the application of local arbitration procedures. They provide flexibility by acknowledging that certain subcontracting arrangements are better served by arbitration procedures that align with the parties' specific circumstances.

In summary, Section 101(2) of the Hong Kong Arbitration Ordinance introduces exceptions to the extension of Schedule 2 provisions to subcontracting parties' arbitration agreements within construction contracts. These exceptions account for situations where the international nature of the parties or the performance of work outside Hong Kong warrants a departure from the general rule outlined in Section 101(1).

(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).

Section 101(3) of the Hong Kong Arbitration Ordinance introduces provisions that deal with situations where a subcontracting parties' arbitration agreement within a construction contract is further subcontracted to another person under a separate contract. This section establishes how the application of Schedule 2 provisions to the original subcontracting parties' arbitration agreement extends to the subsequent arbitration agreement within the further subcontract. Here is an analysis of Section 101(3):

1. **Introduction of Additional Scenario:** Section 101(3) introduces an additional scenario involving further subcontracting, which occurs when the original subcontracting parties' arbitration agreement is itself further subcontracted to another person under a different contract. This section addresses the potential extension of Schedule 2 provisions to arbitration agreements within these further subcontracts.
2. **Interaction with Previous Subsections:** Section 101(3) interacts with the earlier provisions outlined in subsections (1) and (2) of Section 101. It builds upon the concepts introduced in those subsections, particularly the extension of Schedule 2 provisions to arbitration agreements in construction contracts and the exceptions for certain situations.
3. **Extension of Schedule 2 Provisions:** Section 101(3) outlines that if all the provisions in Schedule 2 apply to the original subcontracting parties' arbitration agreement (as established by subsection (1)), and if the relevant operation is further subcontracted to another person under a subsequent construction contract (further subcontract), then Schedule 2 provisions apply to the arbitration agreement included in that further subcontract.
4. **Effect Subject to Subsection (2):** The application of Schedule 2 provisions to the arbitration agreement within the further subcontract is subject to the conditions outlined in subsection (2) of Section 101. Subsection (2) specifies situations where the extension of Schedule 2 provisions does not apply, such as cases involving parties residing outside Hong Kong, incorporation outside Hong Kong, or work primarily performed outside Hong Kong.
5. **Treats Further Subcontract as Original Subcontract:** In essence, Section 101(3) treats the further subcontract as if it were an original subcontract under subsection (1) for the

purpose of extending Schedule 2 provisions to the arbitration agreement within the further subcontract.

6. **Objective of Provisions:** The objective of Section 101(3) is to ensure consistency and a coherent application of Schedule 2 provisions across subcontracting relationships, including scenarios where the arbitration agreement is further subcontracted to another party. By treating the further subcontract as a new instance of an arbitration agreement within a construction contract, the section maintains the uniformity of arbitration procedures and provisions.
7. **Avoiding Duplication:** Section 101(3) avoids the need to separately apply Schedule 2 provisions to each subsequent subcontracting arrangement, streamlining the application of procedural rules and ensuring that the arbitration process remains consistent even in complex subcontracting chains.

In summary, Section 101(3) of the Hong Kong Arbitration Ordinance addresses the extension of Schedule 2 provisions to arbitration agreements within further subcontracts that arise from the original construction contract. It ensures the coherent application of arbitration procedures and provisions across various levels of subcontracting relationships and maintains consistency in the dispute resolution process.

(4) In this section—

construction contract (建造合約) 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).

Section 101(4) of the Hong Kong Arbitration Ordinance provides definitions for key terms used within Section 101. These definitions clarify the meanings of “construction contract” and “construction operations” as they pertain to the context of the ordinance. Here is an analysis of Section 101(4):

1. **Construction Contract:** The term “construction contract” is defined as having the same meaning as given in section 2(1) of the Construction Industry Council Ordinance (Cap. 587). This reference provides a cross-reference to another piece of legislation that defines “construction contract”. It implies that the definition of “construction contract” in this section aligns with the definition in the specified ordinance.
2. **Construction Operations:** The term “construction operations” is defined as having the same meaning as given in Schedule 1 to the Construction Industry Council Ordinance (Cap. 587). This reference similarly points to a specific section of the same legislation. The implication is that the definition of “construction operations” used here corresponds to the definition provided in the mentioned schedule.
3. **Contextual Clarity:** These definitions serve to provide clear and precise meanings for “construction contract” and “construction operations” within the context of Section 101. By referencing the relevant legislation and schedules, the ordinance avoids ambiguity and ensures consistent interpretation of these terms.

4. **Legislative Cohesion:** The definitions in Section 101(4) highlight the integration of the Hong Kong Arbitration Ordinance with the Construction Industry Council Ordinance (Cap. 587). These definitions facilitate a seamless application of the provisions and concepts related to arbitration agreements in the construction industry.
5. **Preventing Misinterpretation:** Definitions like those in Section 101(4) are essential to prevent any potential misunderstandings or misinterpretations of key terms in the ordinance. By referring to established definitions in other legislation, the section ensures that practitioners, legal professionals, and stakeholders understand the precise scope and intent of the terms being used.

In summary, Section 101(4) of the Hong Kong Arbitration Ordinance provides definitions for “construction contract” and “construction operations” by referencing corresponding definitions in the Construction Industry Council Ordinance (Cap. 587). These definitions enhance clarity and consistency in the application of the ordinance’s provisions related to arbitration agreements within the construction industry context.

102. Circumstances under which opt-in provisions not automatically 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)**

Section 102(1) of the Hong Kong Arbitration Ordinance introduces exceptions to the application of Sections 100 and 101, which deal with the applicability of Schedule 2 provisions to arbitration agreements in the context of construction contracts. Here is an analysis of Section 102(1):

1. **Amendment Reference:** The introductory statement “Amended 11 of 2015 s. 4” indicates that changes were made to this section through an amendment in 2015, and the amendment was specified in section 4 of that enactment. This reference highlights the legislative history and the source of the modification.
2. **Exceptions to Applicability:** The primary purpose of Section 102(1) is to establish situations where the provisions of Sections 100 and 101 (and, by extension, Schedule 2) will not apply to arbitration agreements in construction contracts.
3. **Agreement of the Parties:** Subsection (a) states that if the parties to the arbitration agreement in question explicitly agree in writing that Sections 100 and 101 should not apply, then the provisions of those sections will not be enforced.
4. **Express Provision in the Arbitration Agreement:** Subsection (b) outlines two scenarios under which Sections 100 and 101 will not apply:

5. Subsection (b)(i): If the arbitration agreement expressly stipulates that either Section 100 or 101 does not apply, then the respective section will not have effect.
6. Subsection (b)(ii): If the arbitration agreement expressly states that any of the specific sections (i.e., section 2, 3, 4, 5, 6, or 7) of Schedule 2 either applies or does not apply, then the corresponding provision will be followed or disregarded accordingly.
7. Legislative Intent and Flexibility: Section 102(1) reflects the legislative intent to allow parties a degree of flexibility and autonomy in structuring their arbitration agreements in relation to construction contracts. By permitting the parties to agree in writing or including express provisions in the arbitration agreement, the section recognises the importance of contractual autonomy in arbitration matters.
8. Amendment Impact: The amendment in 2015 (referred to at the beginning of the section) likely refined the criteria or procedures related to exceptions under this section. This amendment could have been driven by a desire to enhance clarity, reflect changing arbitration practices, or respond to practical considerations within the arbitration context.

In summary, Section 102(1) of the Hong Kong Arbitration Ordinance introduces exceptions to the applicability of Sections 100 and 101 with regard to construction contracts and their related arbitration agreements. These exceptions emphasise the significance of parties' written agreements and expressed provisions in determining whether the specified sections and Schedule 2 provisions should or should not apply.

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

Section 102(2) of the Hong Kong Arbitration Ordinance provides further clarity and context to subsection (1)(b)(ii) by specifying that the operation of Section 99 is not affected by the provisions outlined in subsection (1)(b)(ii). Here is an analysis of Section 102(2):

1. Amendment Reference: The statement "Added 11 of 2015 s. 4" indicates that this subsection was introduced through an amendment in 2015, specifically by section 4 of that legislative enactment. This reference highlights the legislative source of the addition and indicates the historical context of the change.
2. Relationship with Section 99: Section 99 of the Arbitration Ordinance permits an arbitration agreement to expressly incorporate certain provisions from Schedule 2. These provisions generally address arbitration procedures and the manner in which arbitrations are to be conducted. Section 102(2) clarifies that the operation of Section 99 is not affected by the specific scenarios outlined in subsection (1)(b)(ii) of Section 102.
3. Preserving Section 99: The intention behind Section 102(2) is to ensure that despite the existence of exceptions specified in subsection (1)(b)(ii), the general operation and application of Section 99, which relates to incorporating provisions from Schedule 2 into arbitration agreements, remains unaffected.
4. Consistency and Coherence: This subsection contributes to maintaining the overall coherence and consistency of the Arbitration Ordinance. It ensures that any express

provisions made in an arbitration agreement under subsection (1)(b)(ii) will not impede the parties' ability to incorporate Schedule 2 provisions as provided by Section 99.

5. Legislative Clarification: The addition of this subsection reflects the legislative intent to clarify the interaction between different sections of the Arbitration Ordinance, particularly concerning the integration of specific Schedule 2 provisions and the broader context of Section 99.

In summary, Section 102(2) of the Hong Kong Arbitration Ordinance serves to clarify that the inclusion of subsection (1)(b)(ii) exceptions does not affect the operation of Section 99. This provision maintains the flexibility for parties to incorporate certain Schedule 2 provisions into their arbitration agreements, while allowing for express provisions to be made under Section 102(1)(b)(ii) without undermining the broader structure of the ordinance.

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.

Section 103 of the Hong Kong Arbitration Ordinance addresses the issue of conflict or inconsistency between the provisions of the ordinance. Here is an analysis of this section:

1. Priority of Provisions: The primary purpose of Section 103 is to establish a hierarchy between the provisions that apply under the relevant Part of the Arbitration Ordinance and other provisions of the same ordinance. When there is a conflict or inconsistency between these provisions, Section 103 determines which provision takes precedence.
2. Conflict Resolution Mechanism: This section provides a mechanism for resolving conflicts or inconsistencies within the ordinance itself. It establishes a clear rule to address situations where different provisions within the same ordinance appear to be in conflict with each other.
3. Precedence of First-Mentioned Provision: According to Section 103, the provision that is "first-mentioned" and applicable under the relevant Part of the ordinance will prevail over any other provision that conflicts or is inconsistent with it. This means that the provision that was explicitly referred to earlier in the context of the specific Part of the ordinance will take precedence in case of a conflict.
4. Extent of Precedence: The provision that prevails under Section 103 does so only to the extent of the conflict or inconsistency. This means that the conflicting provisions will not be completely invalidated, but the first-mentioned provision will take precedence only in the areas where the conflict or inconsistency arises.
5. Clarity and Predictability: Section 103 enhances the clarity and predictability of how conflicts or inconsistencies within the ordinance will be resolved. It provides legal certainty to parties involved in arbitration proceedings by outlining a systematic way to determine which provision should govern in the event of a conflict.

6. Promotion of Legal Certainty: The existence of this section contributes to the overall legal certainty within the arbitration process, as parties can rely on the understanding that the first-mentioned provision in the relevant Part of the ordinance will prevail over conflicting provisions.

In summary, Section 103 of the Hong Kong Arbitration Ordinance establishes a mechanism for resolving conflicts or inconsistencies between provisions within the same ordinance. It ensures that the provision that applies under the relevant Part of the ordinance and is first mentioned takes precedence in case of any conflict or inconsistency with other provisions. This section enhances legal clarity, predictability, and coherence within the arbitration regulatory framework.

Part 11A Arbitrations Relating to Intellectual Property Rights

103A. Interpretation

In this Part—

IPR (知識產權)—see section 103B;

IPR dispute (知識產權爭議)—see section 103C.

Section 103A of the Hong Kong Arbitration Ordinance provides an interpretation for terms used in Part 11A of the ordinance, specifically defining “IPR” and “IPR dispute”. Let us analyze this section to understand its implications:

1. Interpretation for Part 11A: Section 103A serves as an introductory provision for Part 11A of the Hong Kong Arbitration Ordinance. Part 11A likely deals with the arbitration of disputes related to intellectual property rights (IPR).
2. IPR Definition: The section defines “IPR” as “知識產權” and refers to section 103B for further details. This definition is provided in both English (“IPR”) and Chinese (“知識產權”) to accommodate the bilingual nature of Hong Kong’s legal system.
3. IPR Dispute Definition: Section 103A also defines “IPR dispute” as “知識產權爭議” and directs readers to section 103C for a more comprehensive explanation. This term likely encompasses disputes related to intellectual property rights that are subject to arbitration under Part 11A.
4. Clarity and Precision: By providing clear definitions for these terms, Section 103A ensures that there is no ambiguity about what constitutes an “IPR” or an “IPR dispute” when applying the provisions of Part 11A. Clarity and precision in definitions are essential in legal documents to avoid confusion and disputes over the scope of applicable laws and regulations.
5. Cross-Referencing: The section cross-references sections 103B and 103C for readers to find more detailed information about the definitions of “IPR” and “IPR dispute”. This organisational approach allows the ordinance to provide comprehensive definitions while keeping the main section (103A) relatively concise.

In summary, Section 103A of the Hong Kong Arbitration Ordinance is an interpretative provision that defines the terms “IPR” and “IPR dispute” for the purpose of Part 11A of the ordinance. These definitions are essential for understanding the scope and applicability of the arbitration provisions related to intellectual property rights in Hong Kong, and they contribute to legal clarity and precision in the context of arbitration involving intellectual property disputes.

103B. Interpretation: IPR

- (1) In this Part, an intellectual property right (IPR) means—**
- (a) a patent;**
 - (b) a trade mark;**
 - (c) a geographical indication;**
 - (d) a design;**
 - (e) a copyright or related right;**
 - (f) a domain name;**
 - (g) a layout-design (topography) of integrated circuit;**
 - (h) a plant variety right;**
 - (i) a right in confidential information, trade secret or know-how;**
 - (j) a right to protect goodwill by way of passing off or similar action against unfair competition; or**
 - (k) any other IPR of whatever nature.**

Section 103B(1) of the Hong Kong Arbitration Ordinance provides a comprehensive definition of “intellectual property right” (IPR) for the purpose of the specific Part it is mentioned in. Let us analyse this section:

1. **Definition of Intellectual Property Right (IPR):** This section defines “intellectual property right” (IPR) within the context of the specific Part of the ordinance. It lists a wide range of different types of intellectual property rights that are recognised and protected by law. The purpose of this definition is to establish a clear and inclusive scope of what constitutes an IPR for the purposes of the provisions in the Part.
2. **Inclusion of Various Rights:** The section lists various types of intellectual property rights, encompassing different areas of intellectual property law. These include patents, trademarks, copyrights, geographical indications, trade secrets, plant variety rights, and more. By including such a diverse range of rights, the definition ensures that the scope of IPR is broad and comprehensive.
3. **Covering Traditional and Emerging IPR:** The definition is designed to cover both traditional forms of intellectual property rights, such as patents and copyrights, as well as newer forms of rights like domain names and layout-designs of integrated circuits. This reflects the evolving nature of intellectual property in modern times.
4. **Incorporation of Expansive Language:** The use of phrases like “any other IPR of whatever nature” at the end of the list indicates an intention to include any additional or emerging

forms of intellectual property rights that might not have been explicitly listed but still fall within the broader concept of intellectual property.

5. **Comprehensive Scope:** By including a diverse range of rights, this section seeks to create an encompassing and flexible definition that can accommodate various legal concepts and emerging forms of intellectual property protection.
6. **Purpose of the Definition:** The definition of IPR is essential for the proper interpretation and application of the subsequent provisions within the Part. It ensures that the relevant legal framework adequately addresses the different types of intellectual property rights mentioned.

In summary, Section 103B(1) of the Hong Kong Arbitration Ordinance provides a comprehensive and inclusive definition of “intellectual property right” (IPR) for the purpose of the Part in which it is located. The definition covers a broad spectrum of traditional and emerging intellectual property rights, aiming to create a flexible and encompassing scope that can address the diverse landscape of intellectual property protection.

(2) In this Part, a reference to an IPR is a reference to such an IPR—

- (a) whether or not the IPR is protectible by registration; and**
- (b) whether or not the IPR is registered, or subsists, in Hong Kong.**

Section 103B(2) of the Hong Kong Arbitration Ordinance provides guidance on how the term “IPR” should be interpreted within the specific Part of the ordinance. Let us analyse this section:

1. **Broad Interpretation of IPR:** This section emphasises that when the term “IPR” is used within the Part, it should be understood in a broad manner. It suggests that the focus is not solely on whether an intellectual property right is formally registered or protected by registration. Instead, the emphasis is on the broader concept of intellectual property, whether or not it has been registered or recognised by formal processes.
2. **Non-Exclusivity of Registration:** The mention of “whether or not the IPR is protectible by registration” indicates that the definition encompasses both registered and unregistered intellectual property rights. This highlights the recognition of rights that may arise without the need for formal registration, such as common law trademarks or certain copyrights.
3. **Global Scope:** The section’s second part, “(b) whether or not the IPR is registered, or subsists, in Hong Kong”, emphasises that the definition of IPR is not limited to intellectual property rights registered or existing solely within the jurisdiction of Hong Kong. This suggests that foreign or international intellectual property rights, whether registered or not, can also fall under the scope of the definition.
4. **Practical Implications:** This section ensures that the definition of IPR within the Part is expansive and inclusive, covering both registered and unregistered rights as well as those with international or cross-border implications. It aligns with the evolving nature of intellectual property law and acknowledges that certain rights, particularly in the context of international business and commerce, may extend beyond national boundaries.

5. Particular Importance to Arbitration: Given that this section is included in the Hong Kong Arbitration Ordinance, it reflects the intention to facilitate a broad interpretation of “IPR” within the context of arbitration proceedings. Arbitration often involves parties from different jurisdictions, and intellectual property disputes can transcend national boundaries, making this inclusive interpretation important for addressing diverse scenarios.

In summary, Section 103B(2) of the Hong Kong Arbitration Ordinance ensures that the term “IPR” is interpreted broadly within the context of the Part, encompassing both registered and unregistered intellectual property rights and recognising rights beyond the jurisdiction of Hong Kong. This interpretation aligns with the complexities of modern intellectual property law and the global nature of arbitration proceedings.

(3) In this Part, a reference to an IPR includes an application for the registration of an IPR if the IPR is protectible by registration.

Section 103B(3) of the Hong Kong Arbitration Ordinance provides additional clarification regarding the scope of the term “IPR” as used within the specific Part of the ordinance. Let us analyse this section:

1. Inclusion of IPR Applications: This section expands the definition of “IPR” to encompass not only existing intellectual property rights but also applications for the registration of such rights. An “application for registration” refers to the formal process undertaken to secure legal protection for an intellectual property right, such as filing for a trademark or patent.
2. Protection by Registration: The qualification “if the IPR is protectible by registration” indicates that this inclusion specifically applies to intellectual property rights that are subject to registration processes. It means that the reference to an application for registration is relevant only when the underlying right can be protected through formal registration procedures, such as patents, trademarks, or registered designs.
3. Application of the Principle: This provision ensures that an application for registration of an intellectual property right is treated on par with the actual registered right for the purposes of the Part. It acknowledges that the process of securing registration is an important stage in the establishment and protection of intellectual property rights, and that disputes or matters related to these applications may also be subject to arbitration.
4. Importance in Arbitration Proceedings: The inclusion of IPR applications is particularly relevant in arbitration contexts. Disputes over intellectual property rights often involve issues related to registration, validity, and the scope of protection. Including applications for registration within the definition ensures that arbitration proceedings can address disputes arising at various stages of the intellectual property lifecycle, including those related to the application process itself.
5. Clear Boundaries: This section also establishes clear boundaries for the application of the definition. It emphasises that an IPR application is considered within the definition only if the underlying right can be protectible through registration. This distinction ensures that the inclusion of applications is limited to those that fall under the formal registration framework.

In summary, Section 103B(3) of the Hong Kong Arbitration Ordinance clarifies that the term “IPR” used within the Part encompasses not only existing intellectual property rights but also applications for the registration of such rights, provided that the underlying right can be protected through registration processes. This provision acknowledges the importance of addressing disputes related to applications and aligns with the overall objective of the ordinance to facilitate efficient resolution of intellectual property disputes through arbitration.

(4) In this section—

registration (註冊), in relation to an IPR, includes the grant of the IPR.

Section 103B(4) of the Hong Kong Arbitration Ordinance provides a definition of the term “registration” as used within the context of the section. Let us analyse this definition:

1. **Inclusion of Grant of IPR:** This subsection defines “registration” in the context of an intellectual property right (IPR) to include not only the process of formally registering the right with a relevant authority but also the act of granting the IPR itself. The term “grant” refers to the official recognition and authorisation of an IPR, typically after satisfying the requirements for registration.
2. **Expansion of Concept:** By including the grant of the IPR within the definition of registration, the ordinance recognises that the legal recognition and establishment of intellectual property rights can result from both the registration process and any other official act that formally confers the rights upon the owner.
3. **Emphasis on Formal Authorisation:** The definition underscores the significance of official acknowledgment and authorisation of an IPR. This encompasses situations where the IPR may be established and protected without going through the full registration process, as long as an official entity grants the right based on applicable legal provisions.
4. **Relevance in Arbitration:** The inclusion of the grant of the IPR within the concept of registration is important in arbitration proceedings involving intellectual property disputes. Such disputes may revolve around the validity, scope, and enforcement of rights, whether registered or granted through other means. Arbitration processes may need to address the consequences of both registration and grant when resolving such disputes.
5. **Comprehensive Definition:** The definition ensures that the term “registration” is interpreted broadly in the context of intellectual property rights. It accommodates the various ways in which rights can be formally recognised and established, ensuring that the legal framework surrounding IPR is accurately captured within the section’s provisions.

In summary, Section 103B(4) of the Hong Kong Arbitration Ordinance provides a definition of “registration” as it relates to intellectual property rights. The definition includes not only the formal process of registration but also the act of granting the IPR itself by an official authority. This comprehensive definition ensures that the concept of registration is interpreted broadly and accurately within the context of the ordinance’s provisions on intellectual property rights and arbitration.

103C. Interpretation: IPR dispute

In this Part, a dispute over an IPR (IPR dispute) includes—

- (a) a dispute over the enforceability, infringement, subsistence, validity, ownership, scope, duration or any other aspect of an IPR;
- (b) a dispute over a transaction in respect of an IPR; and
- (c) a dispute over any compensation payable for an IPR.

Section 103C of the Hong Kong Arbitration Ordinance provides a definition of the term “dispute over an IPR” within the context of the Part. Let us analyse this definition:

1. **Comprehensive Scope:** This section’s definition aims to encompass a wide range of disagreements and conflicts that can arise in relation to intellectual property rights (IPRs). It acknowledges that disputes over IPRs can involve various aspects of the rights themselves, transactions related to them, and compensation matters.
2. **Enforceability, Infringement, Validity, Ownership, etc.:** Subsection (a) of the definition enumerates several key areas that can give rise to disputes over an IPR. These areas include enforceability (the ability to enforce the rights), infringement (breach of the rights by a third party), subsistence (the continued existence of the rights), validity (whether the rights are legally valid), ownership (ownership of the rights), scope (the extent of the rights), and duration (the period of validity of the rights). This broad list reflects the multifaceted nature of IPR disputes.
3. **Transaction Disputes:** Subsection (b) acknowledges that disputes can arise over transactions involving IPRs. Transactions could include licenses, assignments, transfers, or any other agreements related to the rights. Such disputes may involve issues like the terms of the transaction, breach of contract, or interpretation of the transaction’s provisions.
4. **Compensation Disputes:** Subsection (c) acknowledges that disputes can also revolve around compensation payable for an IPR. This could include disputes over royalties, licensing fees, damages, or any other financial aspects related to the IPR.
5. **Application in Arbitration:** The definition’s comprehensive coverage of various aspects of IPR disputes is relevant in arbitration proceedings involving such disputes. The broad scope ensures that the arbitration process can effectively address a wide range of issues that may arise in IPR-related conflicts.
6. **Promotion of Clarity and Predictability:** By providing a clear and inclusive definition of what constitutes an IPR dispute, this section enhances clarity and predictability in arbitration proceedings involving IPR matters. Parties and arbitrators can rely on this definition to understand the scope of disputes falling under this category.

In summary, Section 103C of the Hong Kong Arbitration Ordinance defines an “IPR dispute” as a dispute over an intellectual property right. This definition encompasses disputes over various aspects of IPRs,

including enforceability, infringement, validity, ownership, transactions, and compensation matters. Its comprehensive scope enhances clarity and predictability in arbitration proceedings involving IPR disputes.

103D. IPR disputes may be arbitrated

(1) An IPR dispute is capable of settlement by arbitration as between the parties to the IPR dispute.

Section 103D(1) of the Hong Kong Arbitration Ordinance addresses the question of whether an intellectual property rights (IPR) dispute can be settled through arbitration. Let us analyse this provision:

1. **Capacity for Arbitration:** This section affirms that IPR disputes are indeed capable of being settled through arbitration. It confirms that parties involved in an IPR dispute have the option to resolve their differences through the arbitration process.
2. **Flexibility of Arbitration:** Arbitration is recognised as a flexible alternative dispute resolution method that can be adapted to a wide range of disputes, including those involving IPR. This provision underscores the suitability of arbitration for resolving complex and technical disputes that often arise in the context of intellectual property.
3. **Party Autonomy:** By stating that an IPR dispute is capable of settlement by arbitration “as between the parties to the IPR dispute”, the provision emphasises the principle of party autonomy. Parties involved in an IPR dispute have the authority to decide whether they want to resolve their disagreement through arbitration or other means.
4. **Benefits of Arbitration:** Arbitration can offer certain advantages in resolving IPR disputes, such as confidentiality, specialised expertise of arbitrators, flexibility in procedures, and potentially quicker resolutions compared to traditional litigation.
5. **Legal Recognition:** This provision’s existence in the Hong Kong Arbitration Ordinance provides legal recognition and support for parties seeking to resolve their IPR disputes through arbitration. It signals that arbitration is a legitimate and effective method for settling these types of disputes.
6. **Promotion of Resolution:** By acknowledging the potential for arbitration to settle IPR disputes, this section encourages parties to consider arbitration as a means of achieving a resolution without resorting to lengthy and costly court proceedings.

In summary, Section 103D(1) of the Hong Kong Arbitration Ordinance affirms that intellectual property rights disputes are capable of being settled through arbitration between the involved parties. This recognition underscores the flexibility, autonomy, and benefits of arbitration as a method for resolving complex IPR disputes.

(2) In ascertaining whether there is an arbitration agreement between the parties within the meaning of section 19(1) (as it gives effect to Option I of Article 7(1) of the UNCITRAL Model

Law), an agreement by the parties to submit to arbitration an IPR dispute is taken to be an agreement by the parties to submit to arbitration a dispute which has arisen or which may arise between them in respect of a defined legal relationship.

Section 103D(2) of the Hong Kong Arbitration Ordinance addresses the issue of ascertaining whether there is an arbitration agreement between the parties within the context of intellectual property rights (IPR) disputes. Let us analyse this provision:

1. **Interpretation of Arbitration Agreement:** This section outlines a specific approach for interpreting whether an arbitration agreement exists between the parties in the context of IPR disputes. It refers to the concept of an arbitration agreement as defined in section 19(1) of the Ordinance, which incorporates Option I of Article 7(1) of the UNCITRAL Model Law.
2. **UNCITRAL Model Law:** The reference to the UNCITRAL Model Law emphasises the internationally recognised framework for arbitration that guides the interpretation and application of arbitration agreements.
3. **Agreement to Submit to Arbitration:** The provision establishes that an agreement by the parties to submit an IPR dispute to arbitration is treated as an agreement to submit to arbitration any dispute that has arisen or may arise between them in connection with a defined legal relationship. This aligns with the approach of Option I of Article 7(1) of the UNCITRAL Model Law.
4. **Broad Scope of Disputes:** By considering an agreement to arbitrate an IPR dispute as a broader agreement to arbitrate disputes arising from a defined legal relationship, this provision underscores the comprehensive scope of arbitration agreements. It recognises that parties may agree to arbitrate not only the specific IPR dispute but also other disputes related to their legal relationship.
5. **Presumption of Intention:** This approach presumes that when parties agree to arbitrate an IPR dispute, they also intend to use arbitration as a means to resolve any other potential disputes that might emerge within the same legal relationship.
6. **Promotion of Consistency:** By adopting this approach, the provision promotes consistency in interpreting arbitration agreements across various types of disputes, including IPR disputes. It ensures that the interpretation aligns with the underlying principles of the UNCITRAL Model Law.
7. **Clarity and Predictability:** The provision contributes to the clarity and predictability of arbitration proceedings involving IPR disputes. It reduces potential ambiguities by establishing a standard interpretation framework for these agreements.

In summary, Section 103D(2) of the Hong Kong Arbitration Ordinance establishes a method for interpreting whether there is an arbitration agreement between the parties in IPR disputes. It treats an agreement to arbitrate an IPR dispute as an agreement to arbitrate any dispute that may arise within a defined legal relationship, in line with the UNCITRAL Model Law. This approach aims to ensure consistency, predictability, and clarity in the arbitration process for IPR disputes.

(3) Subsection (1) applies whether the IPR dispute is the main issue or an incidental issue in the arbitration.

Section 103D(3) of the Hong Kong Arbitration Ordinance clarifies the scope and applicability of subsection (1) in the context of intellectual property rights (IPR) disputes. Let us analyse this provision:

1. **Application to Main and Incidental Issues:** This subsection confirms that the principle established in subsection (1) applies regardless of whether the IPR dispute is the primary issue being arbitrated (i.e., the “main issue”) or an ancillary or secondary issue within the arbitration proceedings (i.e., an “incidental issue”).
2. **Comprehensive Coverage:** By stating that subsection (1) applies to both main and incidental issues, the provision ensures that the rule enabling settlement of IPR disputes through arbitration applies broadly, regardless of the prominence of the IPR dispute within the broader arbitration context.
3. **Flexibility in Arbitration Proceedings:** The provision recognises that IPR disputes may arise in various forms and contexts within arbitration proceedings. Whether the IPR dispute is central to the arbitration or arises tangentially, the parties’ agreement to arbitrate such disputes remains valid and enforceable.
4. **Consistency with Arbitration Principles:** This provision aligns with the fundamental principles of arbitration, which emphasise the parties’ autonomy to agree on dispute resolution methods. It respects parties’ choices to address different types of disputes, including IPR disputes, within the arbitration process.
5. **Prevention of Fragmentation:** By allowing main and incidental IPR issues to be addressed through arbitration, this provision helps prevent potential fragmentation of disputes. Parties can consolidate all relevant issues into a single arbitration proceeding, promoting efficiency and avoiding the need for multiple proceedings.
6. **Promotion of Settlement:** By facilitating the resolution of IPR disputes regardless of their role within the arbitration, the provision supports the efficient settlement of disputes. This aligns with arbitration’s goal of providing a flexible and effective mechanism for resolving various types of conflicts.

In summary, Section 103D(3) of the Hong Kong Arbitration Ordinance ensures that the principle enabling arbitration of intellectual property rights disputes, as established in subsection (1), applies both to main IPR issues and to incidental IPR issues within the arbitration process. This approach promotes flexibility, efficiency, and consistency in addressing IPR disputes through arbitration.

- (4) For the purposes of subsection (1), an IPR dispute is not incapable of settlement by arbitration only because a law of Hong Kong or elsewhere—**
- (a) gives jurisdiction to decide the IPR dispute to a specified entity; and**
 - (b) does not mention possible settlement of the IPR dispute by arbitration.**

Section 103D(4) of the Hong Kong Arbitration Ordinance provides further clarification regarding the arbitrability of intellectual property rights (IPR) disputes in the context of jurisdiction conferred by specific laws. Let us analyse this provision:

1. **Arbitrability and Legal Jurisdiction:** This subsection addresses a scenario where a specific law grants jurisdiction over an IPR dispute to a designated entity, such as a court or administrative body. It highlights that the absence of explicit mention of arbitration as a means of dispute resolution does not render the IPR dispute incapable of being settled through arbitration.
2. **Overcoming Jurisdictional Designation:** The provision underscores that the fact a jurisdictional law designates a particular entity (other than arbitration) for dispute resolution does not necessarily preclude the parties from opting for arbitration instead. This emphasises parties' autonomy to choose arbitration, even in situations where laws appear to limit available resolution methods.
3. **Protection of Parties' Freedom:** The provision aligns with the fundamental principles of arbitration that prioritise parties' freedom to agree on the dispute resolution mechanism of their choice. It prevents a legal jurisdiction's specific allocation of jurisdiction from completely foreclosing arbitration as an option.
4. **Relevance of Arbitration Agreement:** This provision highlights that the existence of an arbitration agreement between the parties can supersede the exclusive jurisdiction granted by specific laws. As long as the parties have agreed to arbitrate their IPR dispute, such an agreement should be given effect.
5. **International Consistency:** The provision promotes consistency with international arbitration standards that generally advocate for parties' freedom to choose arbitration even when specific laws allocate jurisdiction to other entities.
6. **Encouraging Arbitration:** By clarifying that the lack of explicit mention of arbitration in jurisdictional laws does not preclude its use, the provision encourages parties to consider arbitration as a viable and efficient option for resolving IPR disputes.

In summary, Section 103D(4) of the Hong Kong Arbitration Ordinance asserts that the arbitrability of an IPR dispute is not automatically negated solely because a law assigns jurisdiction to a particular entity without mentioning arbitration. This provision reinforces parties' freedom to choose arbitration and ensures that the existence of an arbitration agreement can prevail over jurisdictional designations under certain laws.

(5) In subsection (4)(a)—

specified entity (指明實體) means any of the following entities under the law of Hong Kong or elsewhere—

- (a) a court;
- (b) a tribunal;
- (c) a person holding an administrative or executive office;
- (d) any other entity.

Section 103D(5) of the Hong Kong Arbitration Ordinance provides definitions and further clarification for terms used in subsection (4)(a), which addresses the concept of “specified entity”. Let us break down this subsection:

1. **Specified Entity:** The term “specified entity” refers to an entity that is designated or identified under the law of Hong Kong or any other jurisdiction. This term is particularly relevant in the context of the provision in subsection (4)(a), which deals with situations where jurisdiction to decide an IPR dispute is given to a particular entity.
2. **Entities Covered:** The definition specifies the types of entities that fall within the scope of a “specified entity”. These entities include:
 - a. **Court:** This refers to a judicial institution with the authority to hear and decide legal disputes.
 - b. **Tribunal:** This refers to a body or authority established by law to adjudicate disputes or make determinations, which can include both judicial and non-judicial tribunals.
 - c. **Person Holding Administrative or Executive Office:** This encompasses individuals who hold positions of authority and responsibility within administrative or executive branches of government, and who may have jurisdiction over certain matters.
 - d. **Any Other Entity:** This covers any entity that might be designated as a decision-making body under relevant laws, regulations, or legal instruments.
3. **Relevance to Subsection (4)(a):** The definition of “specified entity” is integral to the understanding of subsection (4)(a). In that subsection, it is stated that an IPR dispute is not incapable of settlement by arbitration merely because a law assigns jurisdiction to a specified entity. This means that even if a specific law designates one of the entities mentioned in this definition to decide an IPR dispute, it does not prevent the parties from opting for arbitration instead.
4. **Preserving Party Autonomy:** The provision emphasises the parties’ freedom to choose arbitration, even when the jurisdiction to decide an IPR dispute might lie with entities mentioned in the definition. The definition ensures that the parties are not automatically bound to a particular jurisdiction just because a certain entity has been designated as having jurisdiction over IPR disputes under the law.

In summary, Section 103D(5) of the Hong Kong Arbitration Ordinance provides a clear definition of “specified entity”, which is essential for interpreting the subsequent provision in subsection (4)(a). The definition outlines the types of entities that fall within the scope of a “specified entity”, and it emphasises the principle of party autonomy by allowing parties to choose arbitration despite the jurisdiction of such entities.

(6) The power given to an arbitral tribunal under section 70 to award any remedy or relief in deciding an IPR dispute is subject to any agreement between the parties to the IPR dispute.

Section 103D(6) of the Hong Kong Arbitration Ordinance addresses the scope of the power of an arbitral tribunal to award remedies or relief in the context of resolving disputes related to intellectual property rights (IPR). Here is an analysis of this subsection:

1. **Power of the Arbitral Tribunal:** Section 70 of the Hong Kong Arbitration Ordinance grants arbitral tribunals the authority to award remedies and relief in the course of resolving disputes. This includes the power to issue orders, injunctions, damages, specific performance, or any other appropriate form of relief that would effectively address the dispute.
2. **IPR Disputes:** The provision focuses specifically on disputes involving intellectual property rights (IPR), which are defined earlier in the Part. IPR disputes encompass a wide range of conflicts related to patents, trademarks, copyrights, trade secrets, and other forms of intellectual property.
3. **Subject to Agreement:** Section 103D(6) places a limitation on the power of the arbitral tribunal by stating that the tribunal’s authority to award remedies or relief is subject to any agreement between the parties to the IPR dispute. This means that if the parties have reached an agreement that specifies certain remedies or limits on the available relief, the arbitral tribunal must respect and enforce that agreement.
4. **Preserving Party Autonomy:** This subsection underscores the principle of party autonomy in arbitration. Parties have the freedom to shape the arbitration process according to their preferences and needs. If the parties have contractually agreed on the scope of remedies or relief that can be awarded by the arbitral tribunal in IPR disputes, the tribunal must adhere to those terms.
5. **Balancing Flexibility and Agreement:** The provision strikes a balance between the flexibility and discretion typically afforded to arbitral tribunals and the importance of upholding the parties’ agreements. While arbitral tribunals have a broad range of powers under section 70, this subsection ensures that these powers are exercised in alignment with the specific agreement made by the parties regarding remedies and relief in IPR disputes.

In summary, Section 103D(6) of the Hong Kong Arbitration Ordinance acknowledges the power of an arbitral tribunal to award remedies and relief in IPR disputes but emphasises that this power is constrained by any prior agreement reached between the parties on these matters. This approach seeks to respect the parties’ autonomy and their contractual agreements within the arbitration process.

103E. Effect of award involving IPR

(1) This section applies if an award deciding an IPR dispute is made in arbitral proceedings.

Section 103E(1) of the Hong Kong Arbitration Ordinance pertains to a specific scenario involving the issuance of an award in the context of resolving intellectual property rights (IPR) disputes. Here is an analysis of this subsection:

1. **Applicability of the Section:** The section explicitly states that it applies when an award is rendered as a result of arbitral proceedings that concern an IPR dispute. In other words, it outlines the circumstances under which the provisions within this section come into play.
2. **Focus on IPR Disputes:** The provision narrows its focus to IPR disputes, highlighting that its scope is limited to disputes involving intellectual property rights such as patents, trademarks, copyrights, trade secrets, and other forms of intellectual property.
3. **Implications for Awards:** The section indicates that it sets forth certain principles or requirements that apply to awards in IPR disputes. This suggests that the following subsections will detail specific aspects that need to be considered when rendering or recognising an award in such disputes.

Section 103E(1) serves as an introduction to the subsequent provisions within the same section, which are likely to address the recognition and enforcement of awards in IPR disputes. The section itself signifies the importance of delineating special considerations when dealing with arbitration awards that pertain to intellectual property matters.

(2) The fact that an entity is a third party licensee in respect of the IPR does not of itself make the entity a person claiming through or under a party to the arbitral proceedings for the purposes of section 73(1)(b).

Section 103E(2) of the Hong Kong Arbitration Ordinance addresses a specific issue related to third-party licensees in the context of IPR disputes. Here is an analysis of this subsection:

1. **Third-Party Licensees:** The subsection focuses on the concept of “third party licensees”. These are entities that hold licenses to use an intellectual property right (IPR), such as a patent or trademark, without being direct parties to the underlying arbitration proceedings.
2. **Interpretation of Section 73(1)(b):** Section 73(1)(b) is referenced in this subsection. This implies that the interpretation provided is related to the conditions for enforcing an arbitral award under section 73(1)(b) of the Arbitration Ordinance.
3. **Non-Claimant Status:** The subsection clarifies that the mere fact that an entity holds a third-party license in relation to the IPR does not automatically qualify that entity as a “person claiming through or under a party to the arbitral proceedings”. In other words,

the subsection specifies that being a third-party licensee does not inherently make the licensee a party claiming rights through or under a party to the arbitration.

4. Section's Objective: The provision appears to prevent any confusion that might arise regarding the legal standing of third-party licensees. It affirms that holding a license to an IPR does not confer upon the licensee the same legal status as parties to the arbitral proceedings.

Section 103E(2) primarily aims to ensure clarity and prevent potential misinterpretation regarding the legal status and rights of third-party licensees in the context of arbitration proceedings involving IPR disputes. It establishes that third-party licensees, by virtue of their licensing agreements, are not automatically considered as parties who claim rights through or under parties to the arbitration proceedings.

(3) However, subsection (2) does not affect any right or liability between a third party licensee and a party to the arbitral proceedings whether—

- (a) arising in contract; or**
- (b) arising by operation of law.**

Section 103E(3) of the Hong Kong Arbitration Ordinance addresses the implications of the preceding subsection (2) regarding third-party licensees in IPR disputes. Here is an analysis of this subsection:

1. Preservation of Rights and Liabilities: Subsection (3) specifies that the content of subsection (2) should not be construed as affecting any existing rights or liabilities between a third-party licensee and a party to the arbitral proceedings.
2. Scope of Impact: Subsection (2) clarified that third-party licensees do not automatically assume the status of "persons claiming through or under a party to the arbitral proceedings". However, subsection (3) specifies that this clarification does not alter or diminish any legal rights or liabilities that may arise between a third-party licensee and a party to the arbitral proceedings.
3. Contractual and Legal Rights: The subsection enumerates two categories of rights or liabilities that are unaffected by subsection (2): those arising in contract and those arising by operation of law.
4. Protection of Existing Relationships: This subsection serves to maintain the integrity of pre-existing contractual relationships and legal obligations between third-party licensees and parties to the arbitral proceedings. It ensures that the clarification in subsection (2) does not disrupt or interfere with any ongoing contractual or legal arrangements between these parties.

In summary, section 103E(3) ensures that while subsection (2) clarifies the status of third-party licensees, it does not undermine the existing legal framework governing contractual and legal relationships between such licensees and parties to the arbitration proceedings. It safeguards the rights and obligations that arise independently of the specific arbitration context.

(4) In this section—

third party licensee (第三方特許持有人), in relation to an IPR in dispute in arbitral proceedings, means an entity that is—

- (a) a licensee (whether or not an exclusive licensee) of the IPR under a licence granted by a party to the arbitral proceedings; but**
- (b) not a party to the arbitral proceedings.**

Section 103E(4) of the Hong Kong Arbitration Ordinance provides definitions and context for the term “third party licensee” within the scope of this section. Here is an analysis of this subsection:

1. **Definition of Third Party Licensee:** Subsection (4) begins by defining the term “third party licensee”. This definition is pivotal for understanding the scope of third-party involvement in IPR disputes in the context of arbitration.
2. **Relation to IPR in Dispute:** The definition centres on an “entity” that holds a specific relationship to an “IPR in dispute” within the arbitral proceedings. The term “entity” broadly refers to any legally recognised organisation, such as a company or individual.
3. **Criteria for Classification:** To be classified as a “third party licensee”, the entity must meet the following two criteria outlined in paragraphs (a) and (b):
 - a. **Paragraph (a):** The entity must be a licensee of the IPR that is the subject of dispute in the arbitral proceedings. This licensee relationship involves the entity obtaining certain rights to use the IPR under a licensing agreement. The term “licensee” encompasses both exclusive and non-exclusive licensees.
 - b. **Paragraph (b):** Crucially, the entity must not be a party to the arbitral proceedings. This distinction is essential to separate the entity’s involvement as a licensee from its role as a disputing party.
4. **Role of Third Party Licensee:** The purpose of this definition is to distinguish the involvement of third party licensees from parties directly engaged in the arbitration. Third party licensees hold a different status and relationship with the IPR, focusing on licensing agreements rather than direct participation in the dispute resolution process.

In summary, section 103E(4) clarifies the definition and characteristics of a “third party licensee” within the context of IPR disputes and arbitral proceedings. The subsection outlines the criteria an entity must meet to be classified as a third party licensee and highlights the distinction between licensees and parties to the arbitral proceedings.

103F. Recourse against award involving IPR

- (1) For the purposes of section 81 (as it gives effect to Article 34(2)(b)(i) of the UNCITRAL Model Law), the subject-matter of a dispute is not incapable of settlement by arbitration under the law of Hong Kong only because the subject-matter relates to an IPR dispute.**

Section 103F(1) of the Hong Kong Arbitration Ordinance addresses the applicability of arbitration to the subject-matter of a dispute that involves an intellectual property rights (IPR) dispute. Here is an analysis of this subsection:

1. **Reference to Section 81:** The subsection begins by indicating that its purpose is to provide clarity regarding the application of section 81 of the Arbitration Ordinance. Section 81 deals with the grounds for setting aside an arbitral award, and this subsection specifically pertains to the part of section 81 that gives effect to Article 34(2)(b)(i) of the UNCITRAL Model Law.
2. **Subject-Matter of Dispute:** The key focus of this subsection is on the “subject-matter of a dispute”. This refers to the underlying issue that forms the basis of the dispute between the parties involved.
3. **Capability of Settlement by Arbitration:** The subsection clarifies that an IPR dispute does not render the subject-matter of a dispute incapable of being settled through arbitration. In other words, an IPR dispute, despite its complexity or nature, does not automatically preclude arbitration as a viable method of resolving the dispute.
4. **IPR Disputes and Arbitration:** The intention behind this provision is to emphasise that even when a dispute involves intellectual property rights (IPR), arbitration remains a valid and available option for settling the dispute. This is in line with the broader principles of arbitration, which aim to provide parties with flexibility and efficiency in resolving their disputes.
5. **Legal Position in Hong Kong:** This subsection specifically mentions that the subject-matter of a dispute is not incapable of settlement by arbitration “under the law of Hong Kong”. This clarifies that this provision relates to the legal framework and practice in Hong Kong, ensuring that IPR disputes are not categorically excluded from arbitration based on their subject-matter.

In summary, section 103F(1) ensures that disputes involving intellectual property rights (IPR) are not automatically excluded from the realm of arbitration. It clarifies that the subject-matter of a dispute related to an IPR dispute is not inherently incapable of settlement through arbitration under the law of Hong Kong. This provision reinforces the flexibility of arbitration as a means of resolving disputes involving complex issues such as intellectual property.

- (2) For the purposes of section 81 (as it gives effect to Article 34(2)(b)(ii) of the UNCITRAL Model Law), an award is not in conflict with the public policy of Hong Kong only because the subject-matter in respect of which the award is made relates to an IPR dispute.**

Section 103F(2) of the Hong Kong Arbitration Ordinance addresses the relationship between arbitration awards and public policy considerations in cases involving intellectual property rights (IPR) disputes. Here is an analysis of this subsection:

1. **Reference to Section 81:** Similar to the previous subsection, this subsection references section 81 of the Arbitration Ordinance, which deals with the grounds for setting aside an arbitral award. Specifically, it pertains to the part of section 81 that gives effect to Article 34(2)(b)(ii) of the UNCITRAL Model Law.
2. **Conflict with Public Policy:** One of the grounds for setting aside an arbitral award under section 81 is if the award is in conflict with the public policy of Hong Kong. This clause is intended to ensure that awards do not undermine fundamental principles of fairness, justice, or public order.
3. **IPR Disputes and Public Policy:** The subsection clarifies that an award is not automatically in conflict with the public policy of Hong Kong simply because the subject-matter of the award involves an IPR dispute. In other words, the fact that the dispute centres around intellectual property rights does not, on its own, render the award contrary to public policy.
4. **Preserving Arbitral Awards:** This provision reinforces the principle that arbitration is a legitimate method of dispute resolution, even in cases involving complex and technical issues such as intellectual property rights. It ensures that awards arising from IPR disputes are not subjected to undue scrutiny solely based on the subject-matter, as long as the awards do not contravene fundamental public policy considerations.
5. **Protection of Arbitration's Flexibility:** By explicitly stating that IPR disputes do not inherently conflict with public policy, this subsection underscores the importance of maintaining the flexibility and effectiveness of arbitration in resolving a wide range of disputes.

In summary, section 103F(2) clarifies that awards made in arbitration proceedings involving intellectual property rights (IPR) disputes are not automatically in conflict with the public policy of Hong Kong. This provision helps ensure that arbitration remains a viable option for resolving IPR disputes without compromising the integrity of public policy considerations.

103G. Recognition and enforcement of award involving IPR

- (1) For the purposes of sections 86(2)(a), 89(3)(a), 95(3)(a) and 98D(3)(a), a matter is not incapable of settlement by arbitration under the law of Hong Kong only because the matter relates to an IPR dispute.**

Section 103G(1) of the Hong Kong Arbitration Ordinance addresses the interaction between certain provisions of the ordinance and the capacity of intellectual property rights (IPR) disputes to be resolved through arbitration. Here is an analysis of this subsection:

1. **Reference to Specific Sections:** This subsection refers to several specific sections of the Arbitration Ordinance: sections 86(2)(a), 89(3)(a), 95(3)(a), and 98D(3)(a). These sections pertain to the court's powers to grant interim measures in support of arbitration, recognition and enforcement of arbitral awards, and the court's discretion in granting leave to enforce an award.
2. **Incapable of Settlement by Arbitration:** One of the grounds for refusal or setting aside of an arbitral award is if the subject-matter of the dispute is incapable of settlement by arbitration under the law of Hong Kong. This provision clarifies that an IPR dispute is not automatically disqualified from arbitration solely based on the fact that it relates to intellectual property rights.
3. **Preserving Arbitration's Applicability:** This subsection emphasises that the nature of a dispute being related to intellectual property rights should not, by itself, render it unsuitable for arbitration. By stating that such matters are not inherently incapable of settlement through arbitration, the provision reinforces the principle that arbitration is a versatile and effective means of resolving disputes, even those involving complex and technical issues like intellectual property rights.
4. **Promotion of Arbitration:** The provision aligns with the broader goals of promoting arbitration as a viable dispute resolution mechanism for a wide range of cases, including those involving intellectual property. It ensures that IPR disputes can be addressed within the framework of arbitration without being automatically deemed unfit for this mode of resolution.
5. **Balancing Party Autonomy:** This provision acknowledges the parties' autonomy in choosing arbitration as a means to resolve their disputes, regardless of whether the dispute pertains to intellectual property rights or any other legal issue. It reflects the international trend of allowing arbitration to be a preferred method of resolving IPR disputes.

In summary, section 103G(1) clarifies that certain provisions of the Arbitration Ordinance do not preclude the settlement of disputes related to intellectual property rights through arbitration. This provision reaffirms the applicability and flexibility of arbitration for resolving complex disputes involving intellectual property matters.

(2) For the purposes of sections 86(2)(b), 89(3)(b), 95(3)(b) and 98D(3)(b), it is not contrary to public policy of Hong Kong to enforce an award only because the award is in respect of a matter that relates to an IPR dispute.

Section 103G(2) of the Hong Kong Arbitration Ordinance addresses the compatibility of enforcing arbitral awards related to intellectual property rights (IPR) disputes with the public policy of Hong Kong. Here is an analysis of this subsection:

1. **Reference to Specific Sections:** Similar to subsection (1), this subsection refers to specific sections of the Arbitration Ordinance: sections 86(2)(b), 89(3)(b), 95(3)(b), and 98D(3)(b). These sections pertain to the court's powers to grant interim measures in support of arbitration, recognition and enforcement of arbitral awards, and the court's discretion in granting leave to enforce an award.

2. **Public Policy and Award Enforcement:** One of the grounds for refusing recognition or enforcement of an arbitral award is if its enforcement would be contrary to the public policy of Hong Kong. This provision clarifies that an award should not be automatically deemed contrary to public policy solely based on the fact that it relates to an intellectual property rights dispute.
3. **Balancing Public Policy and IPR:** This subsection underscores that enforcing an arbitral award involving intellectual property rights disputes is not inherently contrary to the public policy of Hong Kong. It recognises that enforcing such awards does not run afoul of the fundamental legal principles and values of the jurisdiction, even though intellectual property issues can be complex and nuanced.
4. **Promotion of Arbitration:** This provision aligns with the pro-arbitration stance that Hong Kong has taken. By stating that enforcing awards related to IPR disputes is not contrary to public policy, the provision encourages the recognition and enforcement of such awards and contributes to the jurisdiction’s reputation as an arbitration-friendly hub.
5. **Consistency with International Practice:** The approach taken in this subsection is consistent with international trends where jurisdictions recognise the legitimacy and enforceability of arbitral awards related to intellectual property matters, acknowledging that these disputes can be effectively and fairly resolved through arbitration.

In summary, section 103G(2) clarifies that certain provisions of the Arbitration Ordinance do not automatically deem the enforcement of an award related to intellectual property rights disputes as contrary to the public policy of Hong Kong. This provision reflects Hong Kong’s commitment to maintaining a supportive legal framework for enforcing arbitral awards involving intellectual property issues while ensuring alignment with its public policy considerations.

103H. Judgments entered in terms of award involving IPR

(1) This section applies if—

- (a) an award (whether made in or outside Hong Kong) deciding an IPR dispute is made in arbitral proceedings; and**
- (b) a judgment in terms of the award is entered under section 84, 87, 92 or 98A.**

Section 103H(1) of the Hong Kong Arbitration Ordinance addresses the situation where an award deciding an intellectual property rights (IPR) dispute is made in arbitral proceedings and a judgment in terms of that award is entered under specific sections of the ordinance. Here is an analysis of this subsection:

1. **Scope of Application:** This section becomes relevant when two conditions are met: an award deciding an IPR dispute is made through arbitral proceedings, and a judgment based on that award is entered under certain sections of the Arbitration Ordinance (sections 84, 87, 92, or 98A).
2. **Enforcement of IPR-Related Awards:** This provision indicates that it specifically pertains to arbitral awards related to intellectual property disputes. It focuses on the process of

enforcing these awards through the entry of judgments in line with the specific sections mentioned.

3. **Coordination of Award and Judgment:** The provision aims to ensure coordination between the award rendered through arbitration and the subsequent enforcement through the entry of a judgment. This coordination helps streamline the enforcement process and provides clarity on the recognition of the arbitral award in the form of a court judgment.
4. **Synchronisation with Enforcement Mechanisms:** The sections mentioned (84, 87, 92, 98A) outline the procedures for enforcing arbitral awards and obtaining judgments based on these awards. These sections provide mechanisms to enforce awards in line with the New York Convention and the Model Law.
5. **Protection and Predictability:** By outlining the procedure for enforcement, this section contributes to the protection of IPR holders' rights and ensures a predictable framework for enforcing arbitral awards in IPR disputes.
6. **Integration of Arbitration and Judicial Process:** This provision reflects the synergy between arbitration and the judicial system in Hong Kong. It emphasises that arbitral awards relating to intellectual property disputes can be effectively incorporated into the formal judicial process for enforcement.

In summary, section 103H(1) serves to harmonise the arbitration process and the subsequent enforcement of awards in IPR disputes by establishing a clear mechanism for entering judgments based on arbitral awards. This approach enhances the enforceability of awards and provides a coherent framework for dealing with intellectual property-related disputes in both the arbitration and judicial contexts.

(2) Section 73(1) applies in relation to the judgment as if a reference in that section to an award made by an arbitral tribunal pursuant to an arbitration agreement were a reference to the judgment.

Section 103H(2) of the Hong Kong Arbitration Ordinance addresses the application of Section 73(1) in relation to a judgment entered based on an award in an intellectual property rights (IPR) dispute. Let us break down this subsection:

1. **Reference to Section 73(1):** Section 73(1) of the Arbitration Ordinance pertains to third-party rights and liabilities arising from an award made by an arbitral tribunal. It outlines the circumstances under which certain entities or individuals are considered as claiming through or under a party to the arbitral proceedings.
2. **Extension to Judgments:** Section 103H(2) extends the application of Section 73(1) to judgments entered based on awards in IPR disputes. This means that the concepts and principles set out in Section 73(1) will be used in relation to these judgments, similar to their application to awards.
3. **Link Between Award and Judgment:** The purpose of this subsection is to create a parallel between the enforcement of an award and the subsequent judgment based on that

award. It ensures that the entities or individuals referred to in Section 73(1) are treated consistently in both contexts.

4. **Seamless Transition from Award to Judgment:** By incorporating Section 73(1) into the process of enforcing judgments, this provision ensures that third-party rights and liabilities continue to be recognised and accounted for as the case moves from the arbitration phase to the enforcement phase.
5. **Continuity in Legal Concepts:** This subsection maintains the legal concepts and principles related to third-party rights and liabilities across different stages of the dispute resolution process. It enhances predictability and coherence in how these concepts are applied within the arbitration and enforcement frameworks.

In summary, Section 103H(2) serves to align the treatment of third-party rights and liabilities in the context of both arbitral awards and judgments entered based on those awards in IPR disputes. It extends the application of Section 73(1) to the judgment phase, ensuring that the legal framework remains consistent throughout the entire process of resolving and enforcing IPR-related disputes.

(3) In this section—

award (裁決) includes a declaratory award.

Section 103H(3) of the Hong Kong Arbitration Ordinance provides a definition for the term “award” in the context of Section 103H(1) and (2). Let us break down this definition:

1. **Definition of “Award”:** The term “award” is defined in Section 103H(3) to include not only traditional arbitral awards but also “declaratory awards”.
2. **Scope of the Definition:** This definition expands the scope of what constitutes an “award” within the context of Section 103H. While the term “award” commonly refers to a decision rendered by an arbitral tribunal in a dispute, the inclusion of “declaratory award” acknowledges that certain awards may have a declaratory nature. Declaratory awards typically clarify the parties’ rights, obligations, or legal relationships without necessarily granting specific remedies or enforcing actions.
3. **Application to IPR Disputes:** By explicitly including declaratory awards in the definition of “award”, Section 103H(3) confirms that both traditional awards and declaratory awards deciding IPR disputes are covered by the provisions of Section 103H(1) and (2).
4. **Alignment with Award Enforcement:** Including declaratory awards in the definition ensures consistency with how various types of awards are treated in terms of enforcement and the associated legal processes.

In summary, Section 103H(3) clarifies that the term “award” in Section 103H(1) and (2) encompasses both traditional arbitral awards and declaratory awards, when considering the enforcement and application of judgments based on awards in IPR disputes. This definition aims to ensure that the legal framework remains comprehensive and inclusive of various types of awards in the context of IPR-related dispute resolution.

103I. Validity of patent may be put in issue in arbitral proceedings

Section 101(2) of the Patents Ordinance (Cap. 514) does not prevent a party from putting the validity of a patent in issue in arbitral proceedings.

Section 103I of the Hong Kong Arbitration Ordinance addresses the interplay between arbitration proceedings and the validity of a patent under Section 101(2) of the Patents Ordinance (Cap. 514). Let us break down the implications of this section:

1. **Reference to Patents Ordinance:** Section 101(2) of the Patents Ordinance (Cap. 514) is cited in Section 103I as a point of reference. This indicates that the section is concerned with the interaction between patent validity issues and arbitral proceedings.
2. **Assertion of Patent Validity:** Section 103I clarifies that Section 101(2) of the Patents Ordinance does not serve as a prohibition against a party challenging the validity of a patent during arbitral proceedings. In other words, a party can raise arguments related to the validity of a patent as part of their case in the arbitration process.
3. **Importance for IPR Disputes:** Intellectual property disputes, including those involving patents, often revolve around issues of validity and infringement. Allowing the validity of a patent to be raised in arbitral proceedings provides parties with the flexibility to address both infringement and validity concerns within the same dispute resolution process.
4. **Harmonisation with Arbitration Ordinance:** This provision demonstrates the alignment between the Hong Kong Arbitration Ordinance and the Patents Ordinance. It ensures that parties can take advantage of arbitration as a forum to address the full range of patent-related issues, including validity challenges.
5. **Arbitral Tribunal's Role:** The arbitral tribunal's role in addressing patent validity issues remains essential. The tribunal must possess the expertise to assess patent validity and make informed decisions on such matters.

In summary, Section 103I of the Hong Kong Arbitration Ordinance clarifies that parties can indeed raise the validity of a patent as an issue during arbitral proceedings, despite the provisions of Section 101(2) of the Patents Ordinance. This provision enhances the flexibility of arbitration in handling complex intellectual property disputes, allowing all relevant issues, including patent validity, to be addressed within the arbitration process.

103J. Arbitral proceedings in relation to short-term patents

(1) A party to an arbitration agreement who is the proprietor of a short-term patent may commence arbitral proceedings to enforce any right conferred under the PO in relation to the patent, whether or not paragraph (a), (b) or (c) of section 129(1) of the PO has been satisfied.

Section 103J(1) of the Hong Kong Arbitration Ordinance pertains to the enforcement of rights conferred by a short-term patent in arbitral proceedings. Here is an analysis of this section:

1. Reference to Short-Term Patent and the Patents Ordinance (PO): Section 103J(1) is directly connected to the enforcement of rights conferred by a short-term patent under the Patents Ordinance (PO). It acknowledges the legal context in which it operates.
2. Enforcement of Rights in Arbitral Proceedings: The provision states that a party who holds the right to a short-term patent can initiate arbitral proceedings to enforce the rights granted under the Patents Ordinance in relation to that patent.
3. Inclusion of Rights under PO: This section underscores that the rights that can be enforced in arbitral proceedings are those that are conferred under the Patents Ordinance. This would include the exclusive rights typically granted to patent proprietors, such as the right to make, use, sell, and distribute the patented invention.
4. Bypassing Satisfaction of Conditions: The significant aspect of this provision is that it allows a party to commence arbitral proceedings for the enforcement of patent rights regardless of whether the conditions mentioned in Section 129(1)(a), (b), or (c) of the Patents Ordinance have been met. These conditions usually pertain to the registration or publication of the short-term patent.
5. Facilitating Swift Dispute Resolution: This provision can potentially expedite the resolution of disputes involving short-term patents by allowing the patent holder to seek arbitration without waiting for conditions such as registration to be fulfilled.
6. Choice of Dispute Resolution: The inclusion of this provision acknowledges the parties' autonomy to choose arbitration as a forum for resolving disputes related to short-term patents. It aligns with the overall principle of promoting alternative dispute resolution mechanisms.

In summary, Section 103J(1) of the Hong Kong Arbitration Ordinance empowers a party holding the rights to a short-term patent to initiate arbitral proceedings for the enforcement of patent rights, irrespective of whether specific conditions outlined in the Patents Ordinance have been satisfied. This provision enhances flexibility and efficiency in resolving disputes concerning short-term patents through arbitration.

(2) However, subsection (1) does not apply if the parties to the arbitration agreement agree otherwise.

Section 103J(2) of the Hong Kong Arbitration Ordinance qualifies the application of Section 103J(1) in the context of enforcing rights conferred by a short-term patent through arbitral proceedings. Here is an analysis of this subsection:

1. Modification of Section 103J(1): This subsection modifies the application of Section 103J(1) by introducing a condition that can alter its effect.
2. Party Agreement: The core of this subsection lies in the agreement of the parties involved in the arbitration agreement. If these parties explicitly agree otherwise, the provisions of Section 103J(1) do not apply. This reflects the principle of party autonomy in arbitration proceedings.

3. Flexibility and Voluntary Agreement: The subsection aligns with the overarching principle that arbitration is a voluntary and consensual process. Parties are free to determine the scope of arbitration as long as their agreement does not contravene any legal or public policy principles.
4. Balancing Party Autonomy: While Section 103J(1) grants the holder of a short-term patent the right to initiate arbitral proceedings, Section 103J(2) ensures that this right is subject to the parties' mutual agreement. This balance between statutory rights and party autonomy is crucial to maintaining the integrity of arbitration as a dispute resolution mechanism.
5. Tailored Dispute Resolution: By allowing parties to agree otherwise, the subsection recognises that parties may have specific considerations or circumstances that necessitate a different approach to the enforcement of patent rights through arbitration.

In summary, Section 103J(2) of the Hong Kong Arbitration Ordinance states that the right of a party holding a short-term patent to commence arbitral proceedings for the enforcement of patent rights (as outlined in Section 103J(1)) can be altered or waived if the parties to the arbitration agreement reach a mutual agreement to the contrary. This subsection emphasises the importance of party autonomy in shaping the arbitration process and allows for tailored dispute resolution approaches that align with the parties' preferences and circumstances.

(3) If arbitral proceedings are commenced to enforce any right conferred under the PO in relation to a short-term patent, section 129(2) and (3) of the PO applies to the arbitral proceedings as if the proceedings were enforcement proceedings commenced under section 129(1) of the PO.

Section 103J(3) of the Hong Kong Arbitration Ordinance addresses the interaction between arbitral proceedings and the enforcement of rights conferred under the Patents Ordinance (PO) concerning a short-term patent. Here is an analysis of this subsection:

1. Reference to Section 129(2) and (3) of the PO: This subsection incorporates specific provisions from the Patents Ordinance, namely Section 129(2) and (3), into the context of arbitral proceedings. These provisions typically pertain to the enforcement of patent rights under the PO.
2. Application of Enforcement Provisions to Arbitral Proceedings: By invoking Section 129(2) and (3) of the PO, this subsection extends certain procedural mechanisms and legal provisions that are relevant to the enforcement of patents to arbitral proceedings that aim to enforce rights conferred by the PO in relation to a short-term patent.
3. Uniformity and Consistency: The intent behind this subsection is to ensure uniformity and consistency in the enforcement process, whether through judicial enforcement proceedings or through arbitration. It avoids potential inconsistencies in the application of enforcement mechanisms.
4. Clarity and Integration: By explicitly stating that Section 129(2) and (3) of the PO apply to arbitral proceedings, this subsection clarifies that certain aspects of the enforcement process under the Patents Ordinance will be integrated into the arbitral process for enforcing rights relating to short-term patents.

5. **Facilitating Arbitration:** By aligning arbitral proceedings with established enforcement provisions, this subsection acknowledges the feasibility of utilising arbitration as a means to enforce patent rights while also ensuring that key elements of the enforcement process are maintained.

In summary, Section 103J(3) of the Hong Kong Arbitration Ordinance ensures that certain procedural mechanisms for the enforcement of rights conferred by the Patents Ordinance are applicable to arbitral proceedings aimed at enforcing rights related to a short-term patent. By referencing specific provisions from the Patents Ordinance, this subsection promotes consistency and clarity in the enforcement process, regardless of whether enforcement is pursued through traditional judicial proceedings or arbitration.

(4) However, if, before the commencement date* of this section, an arbitration has commenced to enforce any right conferred under the PO in relation to a short-term patent, section 129 of the PO, as in force immediately before that commencement date*, continues to apply to the arbitration and all of its related proceedings.

Section 103J(4) of the Hong Kong Arbitration Ordinance introduces a provision regarding the transitional arrangements for ongoing arbitrations involving the enforcement of rights conferred under the Patents Ordinance (PO) in relation to short-term patents. Here is an analysis of this subsection:

1. **Transitional Arrangements:** This subsection addresses the situation where an arbitration proceeding has already commenced before the commencement date* of Section 103J. It ensures that the rules and provisions in place at the time of the arbitration's commencement continue to apply to that arbitration, rather than being subject to the new provisions introduced by Section 103J.
2. **Continuity and Legal Certainty:** By allowing the arbitration and its related proceedings to be governed by the pre-existing version of Section 129 of the PO, this subsection ensures continuity and legal certainty for ongoing cases. Parties involved in the arbitration can proceed with a clear understanding of the rules that were applicable when the arbitration began.
3. **Avoiding Mid-Case Changes:** The subsection prevents mid-case changes to the legal framework governing the arbitration. Changing the applicable rules during the course of an ongoing arbitration could potentially disrupt the proceedings or cause confusion among the parties involved.
4. **Respect for Arbitral Process:** By allowing ongoing arbitrations to continue under the existing framework, this subsection respects the choices and agreements made by the parties at the time they initiated the arbitration. It preserves the parties' expectations about the legal landscape that would apply to their dispute resolution process.
5. **Grandfathering Principle:** The "grandfathering" principle embodied in this subsection ensures that the legal landscape in place when the arbitration commenced remains applicable throughout the proceedings. This can help prevent the parties from facing unexpected changes that could impact their strategies and legal positions.

In summary, Section 103J(4) of the Hong Kong Arbitration Ordinance outlines a transitional provision to ensure that arbitrations initiated before the commencement of Section 103J, aimed at enforcing rights conferred under the Patents Ordinance in relation to short-term patents, continue to be governed by the version of Section 129 of the PO that was in force at the time the arbitration began. This approach maintains legal continuity and consistency for ongoing arbitrations.

(5) In this section—

PO (《專利條例》) means the Patents Ordinance (Cap. 514);

related proceedings (相關程序), in relation to an arbitration, includes arbitral proceedings resumed after the setting aside of the award in the arbitration;

short-term patent (短期專利) has the meaning given by section 2(1) of the PO.

Section 103J(5) of the Hong Kong Arbitration Ordinance provides definitions for key terms used in the preceding subsection, which pertains to the enforcement of rights conferred under the Patents Ordinance (PO) in relation to short-term patents within the context of arbitration. Let us analyse these definitions:

1. PO (《專利條例》): This abbreviation refers to the Patents Ordinance (Cap. 514), which is a piece of legislation in Hong Kong governing matters related to patents. It provides the legal framework for patent rights, their enforcement, and various related aspects.
2. Related Proceedings (相關程序): This term refers to legal proceedings connected to the arbitration mentioned in Section 103J. It encompasses arbitral proceedings that are resumed after an award in the arbitration has been set aside. In other words, if an arbitration award is invalidated and the arbitral proceedings are resumed, those resumed proceedings are considered related proceedings.
3. Short-term Patent (短期專利): This term takes its definition from Section 2(1) of the Patents Ordinance (PO). A short-term patent refers to a specific type of patent protection with a shorter duration compared to standard patents. Section 103J(1) of the Hong Kong Arbitration Ordinance deals with the commencement of arbitral proceedings related to enforcing rights under the PO in relation to short-term patents.

In summary, Section 103J(5) provides definitions for terms that are essential to understanding the context and scope of the provision in Section 103J related to the enforcement of rights under the Patents Ordinance in relation to short-term patents through arbitration. These definitions help clarify the terminology used in the section and contribute to a better interpretation of its application.

Part 12 Miscellaneous

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.

Section 104(1) of the Hong Kong Arbitration Ordinance outlines the circumstances under which an arbitral tribunal or mediator, as well as their employees or agents, can be held legally liable for their actions or omissions in relation to their respective functions. Let us break down and analyse this provision:

1. **Arbitral Tribunal or Mediator Liability:** The provision states that an arbitral tribunal or mediator can be held liable under the law for an act done or omitted to be done. This liability pertains to actions or omissions connected to the exercise, performance, or purported exercise or performance of the arbitral functions of the tribunal or the functions of the mediator.
2. **Scope of Liability:** The liability outlined in this section applies specifically to the acts or omissions of the arbitral tribunal, the mediator, or their employees or agents. In other words, if the tribunal, mediator, or individuals associated with them are involved in certain actions or failures to act, this section governs their potential legal responsibility.
3. **Liability Standard — Dishonesty:** The critical element determining liability is the standard of “dishonesty”. The section states that liability arises only if it is proven that the act was done or omitted to be done dishonestly. This indicates that the actions or omissions must involve a lack of honesty or integrity for liability to be established.

Overall, Section 104(1) establishes a framework for legal liability of an arbitral tribunal, mediator, or their employees or agents for their actions or omissions related to their functions. However, the section sets a high bar for proving liability by requiring the element of dishonesty. This provision aims to strike a balance between allowing appropriate accountability for wrongful actions while ensuring that the liability standard is sufficiently stringent.

(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.

Section 104(2) of the Hong Kong Arbitration Ordinance expands upon the liability of employees or agents of an arbitral tribunal or mediator for their actions or omissions in relation to the exercise or

performance of the tribunal’s arbitral functions or the mediator’s functions. Let us analyse this provision:

1. **Employee or Agent Liability:** The section specifies that an employee or agent of an arbitral tribunal or mediator can be held legally liable for an act they have done or omitted to do. This liability pertains to actions or failures to act that are connected to the exercise, performance, or purported exercise or performance of the arbitral functions of the tribunal or the functions of the mediator.
2. **Scope of Liability:** Similar to the previous section, the liability outlined here applies to the actions or omissions of employees or agents of the arbitral tribunal or mediator. This emphasises the legal responsibility of individuals who are associated with the tribunal or mediator and are acting on their behalf.
3. **Liability Standard — Dishonesty:** The key criterion for establishing liability, as reiterated in this section, is the standard of “dishonesty”. Like in Section 104(1), liability is established only if it can be proven that the act was done or omitted dishonestly. This underscores the importance of demonstrating a lack of honesty or integrity in the actions or omissions.

In essence, Section 104(2) clarifies that employees or agents of an arbitral tribunal or mediator can be held legally accountable for their actions or failures to act related to the exercise of the tribunal’s arbitral functions or the mediator’s functions. However, as with the previous section, the requirement of proving dishonesty places a high standard for establishing liability, ensuring that mere errors or misjudgements are not sufficient grounds for legal action.

(3) In this section, mediator (調解員) means a mediator appointed under section 32 or referred to in section 33.

Section 104(3) of the Hong Kong Arbitration Ordinance provides a definition for the term “mediator” within the context of the section. Let us analyse this definition:

1. **Mediator:** The term “mediator” refers to an individual who is appointed as a mediator under the provisions of the Hong Kong Arbitration Ordinance. Specifically, the definition includes mediators appointed under two sections:
 - a. ~~Section 32: This section pertains to the appointment of a mediator by an arbitral tribunal in proceedings, where the parties agree to mediation.⁸~~
 - b. ~~Section 33: This section involves the referral of the dispute to a third party for mediation if agreed upon by the parties or directed by the court.⁹~~
2. By referring to these sections, the definition clarifies that the term “mediator” applies to individuals who are formally appointed to facilitate the mediation process in accordance with the provisions of the Arbitration Ordinance.

⁸ Incorrect guess by ChatGPT.

⁹ Incorrect guess by ChatGPT.

In summary, Section 104(3) of the Hong Kong Arbitration Ordinance defines the term “mediator” within the context of the section as an individual appointed under specific provisions of the ordinance to assist in the mediation process.

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 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.

Section 105(1) of the Hong Kong Arbitration Ordinance addresses the liability of individuals who are involved in administrative aspects of arbitration or mediation proceedings. Let us break down and analyse this section:

1. **Liability for Administrative Functions:** This section pertains to individuals who have roles related to the administrative aspects of arbitration or mediation proceedings. Such individuals can be categorised into two groups:
 - a. **Subsection (a):** This refers to individuals who have the authority to appoint an arbitral tribunal or mediator. This could include parties, institutions, or other entities involved in the dispute resolution process.
 - b. **Subsection (b):** This covers individuals who perform any other administrative functions in connection with arbitration or mediation proceedings. This could involve tasks related to the administration of the process, such as communication, scheduling, or logistical arrangements.
2. **Standard of Liability:** The liability of these individuals is contingent upon a specific standard of behaviour, which is acting or omitting to act “dishonestly”. This means that for an individual to be legally liable for the consequences of their actions or omissions, it must be proven that they acted with dishonest intent. Dishonesty implies a lack of integrity or the intent to deceive.
3. **Scope of Liability:** The liability described in this section is limited to the consequences of the act or omission itself. It focuses on the outcomes of the actions taken or not taken in the exercise or performance of administrative functions.

In summary, Section 105(1) of the Hong Kong Arbitration Ordinance establishes the conditions under which individuals involved in administrative aspects of arbitration or mediation proceedings may be held legally liable. The liability is contingent upon proving that the act or omission was carried out with dishonest intent. This section aims to ensure that individuals handling administrative functions act with honesty and integrity in their roles.

(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.

Section 105(2) of the Hong Kong Arbitration Ordinance provides an exception to the liability described in Section 105(1) for certain individuals involved in administrative functions of arbitration or mediation proceedings. Let us analyse this section:

1. **Scope of Exemption:** Subsection (2) states that the liability provision described in Section 105(1) does not apply to specific individuals or entities. This exemption applies when these individuals or entities are engaged in certain activities related to administrative functions in arbitration or mediation proceedings.
2. **Exempted Individuals and Entities:**
 - a. **Subsection (a):** Parties to the arbitral or mediation proceedings are exempt from liability under Section 105(1) when they are performing administrative functions related to the proceedings. This recognises that parties have a legitimate interest in managing the administrative aspects of their own cases.
 - b. **Subsection (b):** Legal representatives or advisers of parties are also exempt from liability when performing administrative functions in connection with the proceedings. This acknowledges that legal representatives play a role in managing procedural matters on behalf of their clients.
3. **Functional Limitation:** The exemption is specifically tied to “functions of an administrative nature”. This implies that the exemption applies to activities related to the procedural, logistical, or organisational aspects of the proceedings rather than substantive legal issues.

In summary, Section 105(2) of the Hong Kong Arbitration Ordinance provides an exception to the liability provision in Section 105(1) for parties to the proceedings and their legal representatives or advisers. The exemption applies when these individuals are performing administrative functions in connection with the arbitration or mediation proceedings. This provision aims to balance the need for accountability with the practical management of procedural aspects by the parties and their representatives.

- (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.**

Section 105(3) of the Hong Kong Arbitration Ordinance outlines the conditions under which an employee or agent of a person who has performed or omitted to perform an act referred to in subsection (1) may be held legally liable for the consequences of that act. Let us break down this provision:

1. **Liability of Employee or Agent:** This subsection addresses the liability of employees or agents of individuals who have performed or failed to perform certain acts in relation to administrative functions of arbitration or mediation proceedings, as outlined in subsection (1).
2. **Conditions for Liability:**
 - a. **Subsection (a):** The act performed or omission made by the person (referred to in subsection (1)) must have been done dishonestly. Dishonesty is a crucial element in establishing liability under this provision.
 - b. **Subsection (b):** The employee or agent, in addition to the dishonesty of the person they are associated with, must also have been a party to that dishonesty. This implies that the employee or agent knowingly participated in the dishonest act or omission.
3. **Joint Liability:** The employee or agent is held liable only if both conditions of dishonesty and personal involvement in the dishonesty are established. This underscores the requirement for active and knowing participation in the dishonest act.

In summary, Section 105(3) establishes the circumstances under which an employee or agent can be held legally liable for the consequences of the act performed or omission made by the person they represent (as outlined in subsection (1)). For such liability to arise, it must be proven that the act was done dishonestly, and the employee or agent was a willing participant in the dishonest conduct. This provision emphasises the importance of proving a shared culpability for the dishonesty and reinforces the principle of personal responsibility.

(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.

Section 105(4) of the Hong Kong Arbitration Ordinance provides protection against legal liability for certain individuals in the context of acts performed or omissions made during the exercise or performance of arbitral or mediator functions. Let us break down this provision:

1. **Liability Exemption:** This subsection outlines a principle of liability exemption for individuals referred to in subsection (1), which includes those who appoint an arbitral tribunal or mediator or exercise other administrative functions in connection with arbitration or mediation proceedings.
2. **Scope of Exemption:**
 - a. **Subsection (a):** Persons referred to in subsection (1) are not liable for the consequences of acts performed or omissions made by the arbitral tribunal or mediator involved in the proceedings.
 - b. **Subsection (b):** Similarly, persons referred to in subsection (1) are not liable for the consequences of acts performed or omissions made by employees or agents of the arbitral tribunal or mediator.
3. **Basis of Exemption:** The exemption from liability is grounded in the fact that the individuals covered under subsection (1) merely exercise or perform administrative functions, such as appointing a tribunal or mediator. They are not to be held legally liable for the actions or omissions of the arbitral tribunal, mediator, or their employees or agents.

In summary, Section 105(4) of the Hong Kong Arbitration Ordinance establishes a principle of liability exemption for individuals who are involved in administrative functions related to arbitration or mediation proceedings. These individuals are not held liable for the consequences of acts or omissions carried out by the arbitral tribunal, mediator, or their respective employees or agents. The exemption is based on the understanding that the individuals mentioned in subsection (1) are not responsible for the actions of the tribunal, mediator, or their associates during the exercise or performance of their arbitral or mediator functions.

(5) In this section—

appoint (委任) includes nominate and designate;

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

Section 105(5) of the Hong Kong Arbitration Ordinance provides definitions for certain terms used in the preceding subsections. Here is an analysis of this provision:

1. **Appoint (委任):** This term is defined to encompass the concepts of nominating and designating. In the context of the section, “appoint” refers to the act of selecting or assigning individuals to fulfil specific roles, such as the appointment of an arbitral tribunal or mediator.
2. **Mediator (調解員):** This term carries the same meaning as defined in Section 104 of the ordinance. A mediator is someone who facilitates and guides parties through mediation proceedings to resolve disputes amicably.
3. **Mediation Proceedings (調解程序):** This term is linked to the definition of “mediator” and is to be interpreted accordingly. It refers to the process of mediation, where a mediator assists disputing parties in reaching a voluntary settlement.

In essence, Section 105(5) clarifies the meanings of certain key terms used in the preceding sections. It ensures that readers have a clear understanding of the terminology employed in the context of the ordinance, specifically related to the appointment of individuals and mediation proceedings.

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.**

Section 106(1) of the Hong Kong Arbitration Ordinance pertains to the authority to create rules of court in the context of certain provisions within the ordinance. Here is an analysis of this provision:

1. **Power to Make Rules of Court:** This section grants the power to create “rules of court” under Section 54 of the High Court Ordinance (Cap. 4). “Rules of court” are procedural regulations established by the judiciary to govern various aspects of court proceedings, ensuring the orderly conduct of legal matters.
2. **Application for Interim Measures or Orders:** Section 106(1)(a) specifies that the power to make rules of court includes the authority to establish rules related to two distinct scenarios:

- a. Application for Interim Measure: Rules can be established for the process of making an application for an interim measure under Section 45(2) of the Arbitration Ordinance. An interim measure is a temporary measure granted by an arbitral tribunal to preserve the status quo or prevent harm before a final award is rendered.
 - b. Order under Section 60(1): Rules can be created for seeking an order under Section 60(1) of the Arbitration Ordinance. Section 60(1) relates to enforcement of an interim measure issued by an arbitral tribunal.
3. Service Out of Jurisdiction: Section 106(1)(b) extends the scope of rules of court to include regulations governing the “service out of the jurisdiction” of applications for interim measures or orders. “Service out of the jurisdiction” refers to the process of serving legal documents on a party outside the geographical boundaries of the court’s jurisdiction.

In summary, Section 106(1) empowers the court to establish rules that govern the procedures related to applications for interim measures or orders, as well as rules regarding the service of such applications outside the jurisdiction. These rules ensure that parties involved in arbitration proceedings are guided by clear and consistent procedures when seeking interim relief or orders from the court.

(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.

Section 106(2) of the Hong Kong Arbitration Ordinance provides guidance on the content and scope of rules that can be established under Section 106(1). Here is an analysis of this provision:

1. Scope of Rule-Making Authority: Section 106(2) empowers the authority responsible for creating rules of court (as authorised under Section 106(1)) to include within those rules certain provisions that are deemed necessary or expedient. These additional provisions can address various aspects related to the application process for interim measures or orders and the service of such applications out of the jurisdiction.
2. Incidental, Supplementary, and Consequential Provisions: The provision explicitly specifies that the rules created can contain “incidental, supplementary, and consequential provisions”. These terms refer to provisions that are related to or support the main rules and are designed to ensure the effective and practical implementation of the rules in question.
3. Necessity and Expediency Criteria: The authority making the rules is vested with the discretion to determine whether specific provisions are necessary or expedient. This ensures flexibility in rule-making, allowing the authority to tailor the rules to address particular circumstances, challenges, or practical considerations that may arise in the context of seeking interim measures or orders and serving applications out of the jurisdiction.

In summary, Section 106(2) underscores the authority’s ability to craft comprehensive and effective rules of court by incorporating additional provisions that complement the main rules. These additional

provisions are intended to enhance the practical application and overall effectiveness of the rules in relation to the application process for interim measures or orders and the service of such applications outside the jurisdiction.

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).

Section 107 of the Hong Kong Arbitration Ordinance establishes a framework for the procedural aspects of making applications, requests, or appeals to the court under the ordinance. Here is an analysis of this provision:

1. **Procedural Consistency:** Section 107 emphasises procedural consistency by stipulating that any application, request, or appeal to the court under the Hong Kong Arbitration Ordinance should be made in accordance with the Rules of the High Court. This alignment with the procedural rules of the High Court (Cap. 4 sub. leg. A) ensures that the processes for making applications, requests, or appeals in arbitration-related matters are conducted in a structured and familiar manner.
2. **Default Approach:** The section sets the default approach for making such applications, requests, or appeals. Parties and legal professionals engaging in arbitration proceedings are expected to adhere to the established procedural norms of the High Court when interacting with the court under the arbitration ordinance.
3. **Flexibility:** While Section 107 establishes the general principle of using the Rules of the High Court for making applications, requests, or appeals, it also includes the phrase “unless otherwise expressed”. This suggests that in specific instances, the ordinance may include provisions that deviate from the standard procedural rules. Such deviations could reflect unique requirements or considerations within the context of arbitration-related matters.

In summary, Section 107 ensures consistency and clarity in the procedural aspects of interacting with the court under the Hong Kong Arbitration Ordinance. It emphasises the default use of the Rules of the High Court for making applications, requests, or appeals, while also allowing for flexibility when the ordinance itself provides alternative procedures. This approach promotes efficiency and predictability in the arbitration process and its interface with the court system.

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).

Section 108 of the Hong Kong Arbitration Ordinance outlines the treatment of decisions, determinations, directions, or awards made by the Court under the ordinance. Here is an analysis of this provision:

1. **Legal Status Equivalence:** Section 108 establishes that any decision, determination, direction, or award issued by the Court under the Hong Kong Arbitration Ordinance is to be treated as a judgment of the Court for the purposes of section 14 of the High Court Ordinance (Cap. 4). This signifies that these decisions carry a similar legal status and significance as judgments rendered in regular civil matters.
2. **Appeal Mechanism:** By referring to section 14 of the High Court Ordinance (Cap. 4), Section 108 indicates that the appeal mechanism applicable to judgments will also apply to the decisions, determinations, directions, or awards made under the arbitration ordinance. Section 14 of the High Court Ordinance pertains to appeals in civil matters, and its application in this context allows parties to seek appellate review of decisions rendered by the Court under the arbitration ordinance.
3. **Legal Certainty:** This provision contributes to legal certainty by establishing a clear and consistent approach to the legal consequences of Court decisions within the context of arbitration proceedings. Treating such decisions as judgments for the purposes of appeal aligns with the broader legal framework and ensures that parties have access to appropriate mechanisms for redress in case they are dissatisfied with the outcome.
4. **Integration of Arbitration and Court Systems:** Section 108 helps integrate the arbitration and court systems by bringing arbitration-related decisions under the purview of the established appeal process. This aligns with the overarching goal of ensuring consistency and fairness in the resolution of disputes, regardless of whether they are resolved through arbitration or conventional court proceedings.

In summary, Section 108 of the Hong Kong Arbitration Ordinance emphasises the equivalence of decisions, determinations, directions, or awards made by the Court under the ordinance to judgments in regular civil matters. By referencing section 14 of the High Court Ordinance, it incorporates the appeal mechanism for these decisions, enhancing legal certainty and the integration of the arbitration and court systems.

Part 13 Repeal, Savings and Transitional Provisions

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.

Section 110 of the Hong Kong Arbitration Ordinance addresses the continuity and applicability of subsidiary legislation that was enacted under a repealed ordinance and was in force at the time of the commencement of the new Arbitration Ordinance. Here is an analysis of this provision:

1. **Continuation of Subsidiary Legislation:** Section 110 stipulates that any subsidiary legislation that was enacted under the repealed ordinance and was still in effect at the time when the new Arbitration Ordinance came into force will continue to be effective. This includes rules, regulations, or other forms of subsidiary legislation that were established under the previous legislation.
2. **Consistency with the New Ordinance:** The continued effectiveness of the subsidiary legislation is contingent upon it not being inconsistent with the provisions of the new Arbitration Ordinance. In other words, if any part of the existing subsidiary legislation conflicts with the new framework set out in the Arbitration Ordinance, it will not be considered operative to that extent.
3. **Effect and Application:** Subsidiary legislation that meets the criteria laid out in Section 110 will be treated as if it were made under the new Arbitration Ordinance. This means that it will be accorded the same legal status and enforceability as if it were originally created under the new ordinance. It remains applicable for all purposes, indicating that any rights, obligations, or procedures established by such subsidiary legislation continue to be valid.
4. **Clarity and Legal Certainty:** This provision contributes to legal clarity and certainty by preserving the legal effects and consequences of existing subsidiary legislation while ensuring that it is aligned with the new framework introduced by the Arbitration Ordinance. This is particularly important to avoid disruptions in ongoing arbitration proceedings and to maintain the continuity of established legal norms.
5. **Transitional Arrangements:** Section 110 acts as a transitional provision, allowing for the smooth transition from the repealed ordinance to the new Arbitration Ordinance. It prevents any legislative gaps or uncertainties that could arise due to the repeal of the previous legislation.

In summary, Section 110 of the Hong Kong Arbitration Ordinance ensures that subsidiary legislation enacted under the repealed ordinance and still in force at the commencement of the new Ordinance continues to apply, provided it is consistent with the new framework. This provision promotes legal continuity and clarity while managing the transition from the old legislative regime to the new one.

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)

Section 111(1) of the Hong Kong Arbitration Ordinance addresses the provisions within Part 1 of Schedule 3, which outline savings and transitional arrangements concerning the commencement of the new ordinance. Here is an analysis of this provision:

1. **Savings and Transitional Arrangements:** Section 111(1) directs attention to Part 1 of Schedule 3 of the Hong Kong Arbitration Ordinance. This part of the schedule contains provisions that are specifically designed to manage the transition from the previous legal framework (if applicable) to the new Arbitration Ordinance. These provisions are intended to ensure a smooth and orderly shift from the old to the new regime.
2. **Commencement of the Ordinance:** The savings and transitional arrangements detailed in Part 1 of Schedule 3 primarily apply to or relate to the commencement of the new Arbitration Ordinance. This refers to the point in time when the new ordinance officially comes into effect and starts to govern arbitration-related matters in Hong Kong.
3. **Amendment:** The text of Section 111(1) notes that it was amended by Section 5 of the 2015 amendment to the Arbitration Ordinance (Ordinance No. 11 of 2015). This indicates that the wording of this provision was updated or modified at that point, possibly to reflect changes in the transitional arrangements or other relevant details.
4. **Savings Clauses:** Savings clauses are legal provisions included in new legislation to address the continuity of legal rights, obligations, and ongoing processes that were established under previous legislation. Such clauses aim to prevent disruptions or legal uncertainties that could arise due to the introduction of new laws.
5. **Orderly Transition:** The purpose of Part 1 of Schedule 3 and, by extension, Section 111(1), is to ensure that the transition from the old arbitration framework to the new one is well-organised and that any ongoing proceedings or established legal relationships are properly addressed. This contributes to maintaining legal certainty and stability.

In summary, Section 111(1) of the Hong Kong Arbitration Ordinance directs attention to the provisions within Part 1 of Schedule 3, which pertain to savings and transitional arrangements related to the commencement of the new ordinance. These arrangements are designed to facilitate a smooth and orderly transition from the old legal framework to the new one, ensuring that ongoing processes and established legal rights are properly addressed and preserved.

(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)

Section 111(2) of the Hong Kong Arbitration Ordinance addresses the provisions within Part 2 of Schedule 3, which outline savings and transitional arrangements in connection with the

commencement of the Arbitration (Amendment) Ordinance 2015 (Ordinance No. 11 of 2015). Here is an analysis of this provision:

1. **Savings and Transitional Arrangements:** Similar to Section 111(1), Section 111(2) also focuses on the provisions within the respective part of Schedule 3. However, in this case, it pertains specifically to Part 2 of Schedule 3. This part of the schedule contains provisions that manage the transition related to the commencement of the Arbitration (Amendment) Ordinance 2015, which introduced amendments to the existing arbitration framework.
2. **Commencement of the Amendment Ordinance:** The provisions in Part 2 of Schedule 3 are intended to address the transitional and savings arrangements in connection with the commencement of the Arbitration (Amendment) Ordinance 2015 (11 of 2015). This ordinance, through its amendments, introduced changes or updates to the previous arbitration regime in Hong Kong.
3. **Amendment and Addition:** Section 111(2) indicates that it was added to the Arbitration Ordinance by Section 5 of the 2015 amendment (Ordinance No. 11 of 2015). This means that this provision was introduced at that point, likely to accommodate the amendments brought about by the Arbitration (Amendment) Ordinance 2015.
4. **Smooth Transition for Amendments:** When amendments are made to an existing law, transitional provisions become crucial to ensuring that the new changes are effectively integrated into ongoing legal matters and proceedings. This prevents disruptions and legal uncertainties that could arise due to the application of new rules to ongoing cases.
5. **Preserving Rights and Processes:** The inclusion of savings and transitional arrangements helps to safeguard the rights of parties and ensures that ongoing arbitration proceedings are not unduly affected by the introduction of amendments. These arrangements can provide clarity on matters like the retroactive application of amendments or the continuation of ongoing proceedings under the previous legal framework.

In summary, Section 111(2) of the Hong Kong Arbitration Ordinance draws attention to the provisions within Part 2 of Schedule 3, which pertain to savings and transitional arrangements concerning the commencement of the Arbitration (Amendment) Ordinance 2015 (Ordinance No. 11 of 2015). These arrangements are designed to facilitate a smooth transition from the previous legal framework to the amended one, ensuring that ongoing processes are properly addressed and legal rights are preserved.

(3) Part 3 of Schedule 3 provides for the savings and transitional arrangements that relate to the Arbitration (Amendment) Ordinance 2017 (5 of 2017). (Added 5 of 2017 s. 6)

Section 111(3) of the Hong Kong Arbitration Ordinance pertains to Part 3 of Schedule 3, which outlines savings and transitional arrangements specific to the commencement of the Arbitration (Amendment) Ordinance 2017 (Ordinance No. 5 of 2017). Here is an analysis of this provision:

1. **Savings and Transitional Arrangements:** Similar to Sections 111(1) and 111(2), Section 111(3) focuses on the provisions within the respective part of Schedule 3. In this case, it concerns Part 3 of Schedule 3, which deals with the transitional arrangements related to the commencement of the Arbitration (Amendment) Ordinance 2017.

2. Commencement of the Amendment Ordinance: The provisions in Part 3 of Schedule 3 address the practical aspects of transitioning from the previous legal framework to the amended arbitration regime brought about by the Arbitration (Amendment) Ordinance 2017 (5 of 2017). This ordinance introduced specific changes or updates to the existing arbitration laws.
3. Amendment and Addition: Section 111(3) highlights that it was added to the Arbitration Ordinance by Section 6 of the 2017 amendment (Ordinance No. 5 of 2017). This means that the provision was introduced to the ordinance to accommodate the transitional and savings arrangements in connection with the Arbitration (Amendment) Ordinance 2017.
4. Impact of Amendments: Legal amendments often have implications for ongoing proceedings, agreements, and legal rights. The inclusion of Part 3 in Schedule 3 ensures that the changes introduced by the Arbitration (Amendment) Ordinance 2017 are integrated smoothly into ongoing cases and proceedings.
5. Clarity and Continuity: Transitional arrangements help ensure clarity and continuity for parties involved in arbitration proceedings. They address issues such as how new rules affect ongoing cases, whether new provisions apply retroactively, and how to deal with procedural matters under the amended framework.

In summary, Section 111(3) of the Hong Kong Arbitration Ordinance refers to Part 3 of Schedule 3, which covers savings and transitional arrangements that are specific to the commencement of the Arbitration (Amendment) Ordinance 2017 (Ordinance No. 5 of 2017). These arrangements are designed to facilitate a smooth transition from the previous legal framework to the amended one, ensuring that ongoing proceedings are properly addressed and legal rights are protected.

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

Schedule 1 UNCITRAL Model Law on International Commercial Arbitration

Intentionally omitted. Please refer to the commentary on the UNCITRAL Model Law 2006.

Schedule 2 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.

Section 1 of Schedule 2 to the Hong Kong Arbitration Ordinance deals with a situation where the parties to an arbitration agreement are unable to agree on the number of arbitrators for their dispute resolution process. Here is an analysis of this provision:

1. **Dispute over Number of Arbitrators:** The primary scenario addressed by this provision is when a disagreement arises between the parties regarding the number of arbitrators that should be appointed to adjudicate their dispute. The number of arbitrators is a fundamental aspect of the arbitration process and can influence the efficiency, cost, and complexity of the proceedings.
2. **Resolution by Sole Arbitrator:** In cases where the parties fail to agree on the number of arbitrators, Section 1 stipulates that the dispute concerning the number of arbitrators should be resolved through arbitration before a sole arbitrator. This means that a single arbitrator will be designated to make the decision on the appropriate number of arbitrators for the dispute.
3. **Simplification of Process:** By requiring the resolution of disputes over the number of arbitrators through a sole arbitrator, this provision aims to simplify the process and avoid prolonged disagreements on procedural matters. This is consistent with the efficiency and flexibility often associated with arbitration.
4. **Preserving Party Autonomy:** While the parties are encouraged to agree on the number of arbitrators, this provision provides a mechanism to resolve disputes when such agreement cannot be reached. It preserves the parties' autonomy by allowing them to engage in the arbitration process even if they are unable to agree on a procedural aspect.
5. **Principle of Neutrality:** The use of a sole arbitrator to resolve the dispute over the number of arbitrators ensures that the resolution remains neutral. A single arbitrator, not affiliated with either party, is tasked with making the decision, helping to prevent any bias or partiality.
6. **Flexibility in Application:** Section 1 of Schedule 2 is flexible and can be adapted to various arbitration agreements and circumstances. It provides a clear mechanism for resolving a specific type of dispute that might arise during the formation or implementation of arbitration proceedings.

In summary, Section 1 of Schedule 2 to the Hong Kong Arbitration Ordinance addresses situations where the parties to an arbitration agreement cannot agree on the number of arbitrators. It mandates that such disputes be submitted to a sole arbitrator for resolution, preserving the parties' autonomy and promoting an efficient and neutral decision-making process.

2. Consolidation of arbitrations

(1) If, in relation to 2 or more arbitral proceedings, it appears to the Court—

- (a) that a common question of law or fact arises in both or all of them;**
- (b) that the rights to relief claimed in those arbitral proceedings are in respect of or arise out of the same transaction or series of transactions; or**
- (c) that for any other reason it is desirable to make an order under this section,**

the Court may, on the application of any party to those arbitral proceedings—

- (d) order those arbitral proceedings—**
 - (i) to be consolidated on such terms as it thinks just; or**
 - (ii) to be heard at the same time or one immediately after another; or**
- (e) order any of those arbitral proceedings to be stayed until after the determination of any other of them.**

Section 2(1) of Schedule 2 to the Hong Kong Arbitration Ordinance deals with the consolidation and coordination of arbitral proceedings when certain conditions are met. Here is an analysis of this provision:

1. **Common Question of Law or Fact:** This provision addresses situations where there are two or more separate arbitral proceedings, and a common question of law or fact arises in all of them. It recognises that when disputes involve similar legal or factual issues, consolidating or coordinating the proceedings can result in more efficient and consistent resolution.
2. **Same Transaction or Series of Transactions:** The provision also applies when the rights to relief claimed in the arbitral proceedings are related to or arise from the same transaction or a series of interconnected transactions. This provision acknowledges that parties might have disputes arising from a single overarching situation, and addressing them together can avoid duplicative efforts and conflicting outcomes.
3. **Desirability of Coordination:** Section 2(1) also allows the court to order consolidation, coordination, or stay of arbitral proceedings for “any other reason” it deems desirable. This provides flexibility for the court to consider other circumstances where coordination or consolidation might lead to better outcomes or procedural efficiency.
4. **Court’s Discretion:** The court is granted the discretionary power to make orders for consolidation, coordination, or stay based on the mentioned criteria. The court evaluates the circumstances and the potential benefits of consolidation or coordination before deciding whether to issue such orders.
5. **Application by Any Party:** The application for consolidation, coordination, or stay can be made by any party involved in the arbitral proceedings. This allows parties to seek a more efficient resolution process by bringing the matter to the court’s attention.

6. Consolidation or Coordination Options: Depending on the circumstances, the court can choose to either consolidate the arbitral proceedings into a single proceeding, hear them concurrently, or one after another. These options aim to achieve procedural efficiency and reduce duplication of efforts.
7. Flexibility and Efficiency: Section 2(1) promotes procedural flexibility and efficiency in the arbitration process. It allows for streamlining proceedings and avoiding potential inconsistencies in outcomes by addressing interconnected disputes in a coordinated manner.

In summary, Section 2(1) of Schedule 2 to the Hong Kong Arbitration Ordinance provides the court with the authority to order the consolidation, coordination, or stay of arbitral proceedings under certain conditions. It seeks to enhance procedural efficiency, promote consistency, and ensure fair outcomes by addressing common legal or factual issues, related transactions, or other factors that make consolidation or coordination desirable.

- (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).**

Section 2(2) of Schedule 2 to the Hong Kong Arbitration Ordinance further elaborates on the powers of the court when it orders the consolidation or coordinated hearing of arbitral proceedings as per Section 2(1)(d)(i) or (ii). Here is an analysis of this provision:

1. Consequential Directions for Costs: If the court orders the consolidation of arbitral proceedings or their coordinated hearing, it is empowered to issue consequential directions regarding the payment of costs in those proceedings. This authority allows the court to address matters related to costs resulting from the consolidation or coordination, ensuring a fair allocation of costs among the parties involved.
2. Appointment of Arbitrator: Section 2(2) also empowers the court to take specific actions concerning the appointment of an arbitrator when ordering consolidation or coordinated hearing:
 - a. Agreement on Choice of Arbitrator: If all parties involved in the consolidated or coordinated proceedings agree on the choice of an arbitrator, the court can appoint

that agreed-upon arbitrator. This reflects a cooperative approach that respects the parties' choice while maintaining the court's oversight.

- b. **No Agreement on Choice of Arbitrator:** If the parties cannot agree on the choice of an arbitrator for the consolidated or coordinated proceedings, the court is empowered to appoint an arbitrator for those proceedings. This provision ensures that proceedings can proceed smoothly even in cases of disagreement, and a qualified arbitrator can be appointed to oversee the consolidated or coordinated matters.
- c. **Same Arbitrator for Coordinated Hearings:** In the case of arbitral proceedings to be heard at the same time or one immediately after another, the court can appoint the same arbitrator for all those proceedings. This maintains consistency and efficiency in handling interconnected disputes.

Section 2(2) serves to facilitate the practical implementation of the court's orders for consolidation or coordinated hearings. It addresses both cost-related matters and the appointment of arbitrators to ensure a smooth and efficient resolution process. This provision aligns with the overall goal of promoting effective arbitration and minimising procedural complexities.

(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).

Section 2(3) of Schedule 2 to the Hong Kong Arbitration Ordinance addresses the consequences of the court's appointment of an arbitrator under subsection (2) for consolidated or coordinated arbitral proceedings. Here is an analysis of this provision:

1. **Appointment Supersedes Others:** When the court exercises its authority to appoint an arbitrator under Section 2(2) for consolidated or coordinated arbitral proceedings, any previous appointments of arbitrators for those proceedings become ineffective. In other words, if different arbitrators were appointed for separate proceedings that were later consolidated or coordinated, the appointment made by the court under Section 2(2) takes precedence and supersedes all other appointments.
2. **Unified Arbitrator Selection:** This provision ensures that a unified and consistent approach is maintained when arbitrators are appointed for consolidated or coordinated proceedings. Rather than having separate arbitrators for each proceeding, the court's appointment streamlines the arbitration process by appointing a single arbitrator or a panel of arbitrators to oversee all related matters.
3. **Effective Date of New Appointment:** The new appointment made by the court under Section 2(2) takes effect immediately upon its issuance. This means that any previous appointments made for the individual proceedings cease to have any legal effect as soon as the court's appointment comes into force.

Overall, Section 2(3) ensures the clarity and consistency of the arbitration process when dealing with consolidated or coordinated proceedings. By establishing that the court’s appointment supersedes any previous appointments, this provision helps avoid potential conflicts or complications arising from having multiple arbitrators involved in the same set of proceedings.

(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.

Section 2(4) of Schedule 2 to the Hong Kong Arbitration Ordinance addresses the jurisdiction and powers of the arbitral tribunal when arbitral proceedings are consolidated under subsection (1)(d)(i). Here is an analysis of this provision:

1. **Scope of Application:** This provision specifically applies to the arbitral tribunal that is tasked with hearing the consolidated arbitral proceedings, as mentioned in subsection (1)(d)(i). In these situations, multiple arbitral proceedings involving related issues or parties are combined into a single set of proceedings for the sake of efficiency and consistency.
2. **Costs Determination:** Sections 74 and 75 of the Hong Kong Arbitration Ordinance grant the arbitral tribunal certain powers and jurisdiction related to costs in arbitration proceedings. These sections pertain to the determination and allocation of costs incurred during the arbitration process.
3. **Costs Allocation:** The provision empowers the arbitral tribunal to determine the costs associated with the consolidated arbitral proceedings. This includes deciding how the costs are to be distributed among the parties involved in those proceedings.
4. **Costs Jurisdiction:** By invoking sections 74 and 75, this provision clarifies that the arbitral tribunal presiding over the consolidated proceedings can address and rule on cost-related matters. This ensures that the tribunal has the authority to make decisions regarding costs as part of its overall management of the consolidated proceedings.

Overall, Section 2(4) reinforces the arbitral tribunal’s authority to exercise powers in relation to costs allocation and determination when arbitral proceedings are consolidated under subsection (1)(d)(i). This provision contributes to the efficiency and effectiveness of the arbitration process by streamlining the handling of costs within consolidated proceedings.

(5) If 2 or more arbitral proceedings are heard at the same time or one immediately after another under subsection (1)(d)(ii), the arbitral tribunal—

- (a) has the power under sections 74 and 75 only in relation to the costs of those arbitral proceedings that are heard by it; and**
- (b) accordingly, does not have the power to order a party to any of those arbitral proceedings that are heard at the same time or one immediately after another to pay**

the costs of a party to any other of those proceedings unless the arbitral tribunal is the same tribunal hearing all of those arbitral proceedings.

Section 2(5) of Schedule 2 to the Hong Kong Arbitration Ordinance pertains to situations where two or more arbitral proceedings are heard simultaneously or consecutively. Let us break down the analysis of this provision:

1. **Context:** This provision operates within the context of consolidated arbitral proceedings, where two or more related arbitration cases are either heard together or consecutively, as specified in subsection (1)(d)(ii).
2. **Limited Cost Jurisdiction:** Under this section, the arbitral tribunal that is hearing the consolidated proceedings has limited jurisdiction regarding costs. The power granted to the tribunal for costs determination is specifically related to the proceedings that it is overseeing.
3. **Costs Determination Scope:** The provision explains that the arbitral tribunal's power under sections 74 and 75 of the Hong Kong Arbitration Ordinance is applicable only to the costs associated with the arbitral proceedings that the tribunal is directly hearing. Sections 74 and 75 deal with costs allocation and determination in arbitration proceedings.
4. **Cross-Costs Restriction:** The provision further emphasises that the arbitral tribunal's authority to order one party in the proceedings to pay the costs of another party in different proceedings is restricted. This limitation ensures that the tribunal is not granted the power to make such cross-costs orders unless it is the same tribunal hearing all the proceedings simultaneously or consecutively.

In summary, Section 2(5) clarifies the powers of the arbitral tribunal when multiple arbitration cases are heard together or consecutively. The tribunal's jurisdiction over costs is limited to the proceedings it is overseeing, and it cannot order a party in one set of proceedings to pay the costs of a party in another set of proceedings unless the same tribunal is overseeing all the proceedings. This provision aims to maintain fairness and consistency in the treatment of costs within consolidated arbitration proceedings.

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

Section 2(6) of Schedule 2 to the Hong Kong Arbitration Ordinance addresses the issue of appealability in relation to orders, directions, or decisions of the court made under this section. Let us analyse this provision:

1. **Non-appealability:** This provision unequivocally states that any order, direction, or decision issued by the Court under Section 2 of Schedule 2 is not subject to appeal. In other words, parties dissatisfied with such orders, directions, or decisions cannot challenge them through the appeals process.
2. **Finality:** By explicitly indicating that these orders are not appealable, the provision emphasises the finality and conclusive nature of the Court's decisions under this section. It prevents parties from engaging in protracted appeals that could potentially delay the

progress of arbitral proceedings or undermine the efficiency and effectiveness of arbitration.

3. Streamlined Dispute Resolution: The inclusion of this non-appealability provision aligns with the overarching goal of arbitration – to provide a streamlined and efficient alternative to traditional court litigation. By limiting the avenue for appeal, the provision helps maintain the integrity of arbitration as a process where parties can resolve their disputes more expeditiously.
4. Preservation of Arbitration Autonomy: This provision respects the principle of party autonomy in arbitration, allowing the parties to abide by the decisions and directions of the arbitral tribunal without undue external interference, including appellate review by the court.

In summary, Section 2(6) of Schedule 2 reinforces the finality of decisions made by the Court under Section 2, preventing parties from appealing such orders, directions, or decisions. This provision aligns with the efficient and streamlined nature of arbitration and underscores the importance of maintaining the autonomy of the arbitration process.

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.

Section 3(1) of Schedule 2 to the Hong Kong Arbitration Ordinance addresses the authority of the Court to decide questions of law that arise during the course of arbitral proceedings. Let us analyse this provision:

1. Judicial Oversight: This provision grants the Court the power to intervene in arbitral proceedings for the specific purpose of resolving questions of law. It emphasises the role of the Court as a supervisory authority that can ensure the correct interpretation and application of the law within the context of arbitration.
2. Scope: The provision applies when a “question of law” arises during the course of arbitral proceedings. This could pertain to matters of legal interpretation, application of legal principles, or other legal issues that may impact the outcome of the arbitration.
3. Application by Parties: Importantly, the Court’s intervention under this provision is triggered by the application of any party to the arbitral proceedings. This ensures that parties have the opportunity to seek clarification on legal matters that could affect the outcome of the dispute.
4. Balance Between Judicial and Arbitral Processes: Section 3(1) seeks to strike a balance between arbitration’s primary aim of offering an efficient and alternative means of dispute resolution and the need for legal correctness. It allows parties to have legal questions resolved by the Court while keeping the main arbitration process undisturbed.
5. Limited Role of the Court: The provision’s focus on “questions of law” indicates that the Court’s involvement is specifically related to legal matters rather than issues of fact or

procedural matters. This helps prevent undue interference with the arbitral tribunal's role in determining factual disputes and procedural matters.

6. **Ensuring Fairness and Legal Accuracy:** By providing parties with a mechanism to seek resolution of legal issues, the provision contributes to ensuring fairness in the arbitration process. It allows parties to clarify and address any uncertainties that may arise from complex legal questions.

In summary, Section 3(1) of Schedule 2 empowers the Court to address questions of law that arise during arbitral proceedings. This provision strikes a balance between the need for legal correctness and the efficiency of arbitration, offering parties the option to seek resolution of legal issues while maintaining the autonomy of the arbitration process.

(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.**

Section 3(2) of Schedule 2 to the Hong Kong Arbitration Ordinance provides additional requirements and conditions for making an application to the Court to decide a question of law arising in the course of arbitral proceedings. Let us analyse this provision:

1. **Restrictions on Applications:** This subsection introduces limitations on when an application can be made to the Court under Section 3(1). Parties seeking the Court's determination of a legal question within arbitral proceedings must adhere to the conditions specified in this subsection.
2. **Requirement for Consent or Permission:** Subsection (2) stipulates that an application under Section 3(1) can only be made if either of the following conditions is satisfied:
 - a. **Consent of All Parties:** All other parties involved in the arbitral proceedings must agree in writing to the application. This emphasises the importance of consensus among the parties when seeking judicial intervention.
 - b. **Permission of Arbitral Tribunal:** Alternatively, if not all parties agree, the party seeking the determination must obtain written permission from the arbitral tribunal. This acknowledges the tribunal's authority over the arbitration process and decision-making.
3. **Balancing Party Autonomy and Tribunal Authority:** The requirement for either unanimous party consent or permission from the arbitral tribunal strikes a balance between the principle of party autonomy, which is central to arbitration, and the tribunal's role in managing the proceedings. This ensures that decisions to involve the Court in the arbitration process are made carefully and with due consideration of the circumstances.
4. **Avoiding Unnecessary Delays:** The provision may also serve to prevent parties from attempting to stall or delay proceedings by making frequent applications to the Court to decide questions of law. By requiring unanimous consent or tribunal permission, the

provision aims to ensure that such applications are made judiciously and in line with the overall goals of the arbitration process.

5. **Preservation of Arbitral Process:** Section 3(2) underscores the importance of preserving the integrity and efficiency of the arbitral process. It reinforces the notion that the Court's involvement in deciding legal questions should be sought only when absolutely necessary, ensuring that the arbitration process remains the primary mechanism for resolving disputes.

In summary, Section 3(2) of Schedule 2 outlines the conditions under which a party can make an application to the Court to decide a question of law arising in the course of arbitral proceedings. By requiring unanimous party consent or permission from the arbitral tribunal, this provision ensures that such applications are made within a framework that respects both party autonomy and the tribunal's authority while maintaining the efficiency of the arbitration process.

(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.**

Section 3(3) of Schedule 2 to the Hong Kong Arbitration Ordinance outlines specific requirements that an application to the Court must fulfil when seeking the Court's determination of a question of law arising in the course of arbitral proceedings. Let us analyse this provision:

1. **Clarity and Precision:** This subsection emphasises the importance of clarity and precision in the application process. The requirement to identify the question of law to be decided ensures that the Court and the parties involved clearly understand the legal issue under consideration. This prevents ambiguity and confusion and enables efficient handling of the application.
2. **Grounds for Involvement of the Court:** The subsection also mandates that the application must state the grounds on which it is argued that the Court should decide the question of law. This requirement serves several purposes:
 - a. It forces the party making the application to articulate a compelling reason for involving the Court. This is essential to prevent frivolous or unnecessary applications that might disrupt the arbitration process.
 - b. It provides transparency to all parties involved in the proceedings and the Court itself, ensuring that the basis for seeking the Court's intervention is clearly laid out.
 - c. It facilitates the Court's assessment of whether there are valid reasons to intervene in the arbitration and make a legal determination.
3. **Balancing Judicial Involvement:** By stipulating the need for clear identification of the legal question and the grounds for involving the Court, the provision aims to strike a balance between parties' autonomy in the arbitration process and the need for judicial assistance in matters of law.

4. Preventing Abuse of Process: Requiring the application to state the grounds serves as a safeguard against parties attempting to use the Court as a routine part of the arbitration process. It ensures that parties must have genuine and valid reasons for seeking judicial intervention.
5. Efficiency and Focus: This requirement contributes to the efficiency of the arbitration process by streamlining the application process and focusing on the core legal issues at hand. This can lead to faster resolution of legal questions, reducing the potential for delays.

In summary, Section 3(3) of Schedule 2 establishes the prerequisites for an application to the Court seeking a determination of a question of law arising in arbitral proceedings. The provision underscores the need for precision, transparency, and valid reasons for Court involvement, striking a balance between party autonomy and the proper administration of justice. It helps prevent frivolous applications, promotes efficiency, and ensures that the Court's intervention is meaningful and effective.

(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.

Section 3(4) of Schedule 2 to the Hong Kong Arbitration Ordinance introduces a criterion that the Court must consider when deciding whether to entertain an application for the determination of a question of law arising in arbitral proceedings. Let us analyse this provision:

1. Cost-Saving Criterion: This subsection emphasises a significant factor that the Court must take into account before deciding whether to entertain the application. The key consideration is whether the decision of the question of law is likely to result in substantial savings in costs to the parties involved in the arbitration proceedings.
2. Balancing Interests: By incorporating the cost-saving criterion, the provision seeks to strike a balance between two important considerations:
3. Ensuring that parties have access to judicial intervention when a legal question is genuinely complex and has the potential to affect the outcome of the arbitration significantly.
4. Avoiding unnecessary or wasteful use of judicial resources when the question of law might not substantially impact the arbitration process or the parties' interests.
5. Efficiency and Pragmatism: This criterion underscores the importance of efficiency in the arbitration process. It discourages applications for judicial determination of legal questions that may not materially affect the outcome or are unlikely to result in substantial cost savings.
6. Preventing Abuse of Process: By requiring the Court to be satisfied that substantial cost savings are likely, the provision aims to prevent parties from seeking judicial intervention solely for strategic reasons or to create unnecessary delays.

7. Promoting Effective Utilisation of Judicial Resources: The provision aligns with the broader goals of reducing the burden on the judicial system by ensuring that the Court's intervention is focused on matters of real significance and necessity.
8. Preserving Arbitration Autonomy: While allowing for judicial intervention when appropriate, the provision reinforces the principle that arbitration is a consensual and efficient method of dispute resolution. Parties are encouraged to resolve legal issues within the arbitration process itself whenever possible.

In summary, Section 3(4) of Schedule 2 establishes the requirement that the Court should only entertain an application for determining a question of law if it is satisfied that the decision might lead to substantial cost savings for the parties. This approach aims to balance the interests of parties seeking judicial intervention with the need to maintain efficiency, prevent abuse of process, and effectively utilise judicial resources in the context of arbitration proceedings.

(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).

Section 3(5) of Schedule 2 to the Hong Kong Arbitration Ordinance introduces a requirement for obtaining leave from the Court or the Court of Appeal before appealing a decision made by the Court under subsection (1). Let us analyse this provision:

1. Appeal Restriction: This subsection places a restriction on the right to appeal from a decision of the Court made under subsection (1), which concerns the Court's determination of a question of law arising in arbitral proceedings.
2. Leave Requirement: Before a party can initiate an appeal from the decision of the Court, it is mandatory to obtain the leave (permission) of either the Court or the Court of Appeal. This means that parties cannot directly appeal the decision without first seeking permission from a higher judicial authority.
3. Judicial Oversight: Requiring leave for an appeal provides an additional layer of judicial oversight. It ensures that only meritorious or significant cases proceed to the appellate stage, preventing frivolous or unnecessary appeals from clogging the appellate process.
4. Filtering Mechanism: The leave requirement acts as a filtering mechanism, allowing the higher court to assess the appeal's grounds, potential merit, and importance. This helps conserve judicial resources and avoid unnecessary litigation.
5. Balancing Interests: The provision balances the parties' right to appeal with the broader interest of promoting efficient arbitration proceedings and discouraging appeals that might not substantially impact the outcome.
6. Efficiency and Finality: By necessitating a leave application, the provision promotes efficiency by ensuring that appeals are only pursued when there is a genuine need to clarify a significant legal issue. It also reinforces the principle of finality in arbitration by preventing multiple layers of appeals without sufficient cause.

7. Preserving Arbitration’s Swift Resolution: The leave requirement aligns with the principle of arbitration’s swift resolution. It encourages parties to seek clarifications or legal determinations within the arbitral process itself, reducing the need for prolonged court proceedings.

In summary, Section 3(5) of Schedule 2 introduces a requirement for obtaining leave from the Court or the Court of Appeal before appealing a decision made by the Court under subsection (1). This approach balances the parties’ right to appeal with the interest in efficient arbitration proceedings, judicial oversight, and the proper utilisation of judicial resources.

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.

Section 4(1) of Schedule 2 to the Hong Kong Arbitration Ordinance establishes the right of a party involved in arbitral proceedings to apply to the Court challenging an arbitral award based on the ground of “serious irregularity”. Here is an analysis of this provision:

1. Challenging Arbitral Awards: This subsection grants parties the right to seek recourse in the Court when they believe there has been a “serious irregularity” in the arbitral proceedings that has affected the tribunal, the proceedings, or the resulting award. It provides a mechanism for parties dissatisfied with the outcome of the arbitration to challenge it.
2. Serious Irregularity Standard: The provision focuses on “serious irregularity”, indicating that the grounds for challenging an award should be substantial and significant, rather than trivial or minor. This ensures that challenges are reserved for cases where there is a significant departure from the proper conduct of the arbitration.
3. Tribunal, Proceedings, or Award: The grounds for challenge encompass three distinct areas: the arbitral tribunal itself, the conduct of the arbitral proceedings, and the final award rendered. This broadens the scope for parties to challenge the award based on serious irregularities in any of these facets.
4. Judicial Review of Awards: By allowing challenges on the basis of serious irregularity, this provision emphasises the importance of maintaining the integrity of the arbitration process and ensuring that awards are rendered in a manner consistent with procedural fairness.
5. Balancing Parties’ Rights: The provision strikes a balance between upholding the finality and autonomy of arbitral awards and allowing parties to seek redress when they believe that serious irregularities have undermined the fairness or validity of the proceedings or the award.
6. Threshold of Seriousness: The term “serious irregularity” implies that the irregularity must be of significant magnitude to warrant a challenge. This discourages frivolous

challenges and encourages parties to seek remedy only when a clear and substantial departure from proper procedures has occurred.

7. **Judicial Oversight:** This provision empowers the Court to review arbitral awards and intervene when there is a credible claim of serious irregularity. It reinforces the Court’s supervisory role over arbitral proceedings while respecting the principle of party autonomy in arbitration.
8. **Promotion of Fairness:** Allowing challenges based on serious irregularity promotes the fundamental principle of fairness in arbitration. It ensures that parties are not left without recourse in cases where the arbitration process itself has been fundamentally compromised.

In summary, Section 4(1) of Schedule 2 provides a mechanism for parties to arbitral proceedings to apply to the Court to challenge an award on the grounds of “serious irregularity”. This provision strikes a balance between upholding the finality of arbitral awards and allowing parties a remedy when they can demonstrate that a significant departure from proper procedures has affected the tribunal, proceedings, or the award itself.

- (2) Serious irregularity means an irregularity of one or more of the following kinds which the Court considers has caused or will cause substantial injustice to the applicant—**
- (a) failure by the arbitral tribunal to comply with section 46;**
 - (b) the arbitral tribunal exceeding its powers (otherwise than by exceeding its jurisdiction);**
 - (c) failure by the arbitral tribunal to conduct the arbitral proceedings in accordance with the procedure agreed by the parties;**
 - (d) failure by the arbitral tribunal to deal with all the issues that were put to it;**
 - (e) any arbitral or other institution or person vested by the parties with powers in relation to the arbitral proceedings or the award exceeding its powers;**
 - (f) failure by the arbitral tribunal to give, under section 69, an interpretation of the award the effect of which is uncertain or ambiguous;**
 - (g) the award being obtained by fraud, or the award or the way in which it was procured being contrary to public policy;**
 - (h) failure to comply with the requirements as to the form of the award; or**
 - (i) any irregularity in the conduct of the arbitral proceedings, or in the award which is admitted by the arbitral tribunal or by any arbitral or other institution or person vested by the parties with powers in relation to the arbitral proceedings or the award.**

Section 4(2) of Schedule 2 to the Hong Kong Arbitration Ordinance defines the term “serious irregularity”, which serves as the basis for challenging an arbitral award on the ground of substantial injustice. Here is an analysis of this provision:

1. **Defining Serious Irregularity:** This subsection sets out a comprehensive list of irregularities that are considered “serious irregularities” when they lead to substantial injustice to the applicant. The definition provides a clear framework for determining when a challenge can be brought based on irregularities in arbitral proceedings.
2. **Substantial Injustice Standard:** The key criterion for establishing a serious irregularity is that it has caused or will cause “substantial injustice” to the applicant. This underscores the importance of ensuring fairness and equity in the arbitration process and award.
3. **Categories of Serious Irregularities:** The subsection enumerates various types of irregularities that can be deemed serious and gives a range of scenarios in which a challenge to an award can be made:
 - a. **Non-Compliance with Section 46:** If the arbitral tribunal fails to comply with Section 46, which pertains to the duty of an arbitrator to act fairly and impartially and give each party a reasonable opportunity to present its case, it can be considered a serious irregularity.
 - b. **Exceeding Powers:** If the arbitral tribunal goes beyond its powers (other than jurisdiction), it can be a ground for challenge.
 - c. **Procedural Non-Compliance:** Failure by the arbitral tribunal to conduct proceedings according to the procedure agreed upon by the parties can qualify as a serious irregularity.
 - d. **Omission of Issues:** If the arbitral tribunal fails to address all the issues presented to it, it can be a basis for challenge.
 - e. **Exceeding Powers by Institutions or Persons:** If an arbitral or other institution or person with powers vested by the parties goes beyond those powers, it can lead to a challenge.
 - f. **Uncertain or Ambiguous Interpretation:** If the arbitral tribunal fails to provide a clear interpretation of the award under Section 69, causing uncertainty or ambiguity, it can be considered a serious irregularity.
 - g. **Fraud and Public Policy:** If the award is obtained through fraud or if the award or the process leading to it contradicts public policy, it can be a ground for challenge.
 - h. **Non-Compliance with Award Form:** Failure to meet the requirements regarding the form of the award can be considered a serious irregularity.
 - i. **Admitted Irregularities:** Any irregularity in the conduct of proceedings or in the award that is admitted by the arbitral tribunal or relevant institution can lead to a challenge.
4. **Ensuring Fairness and Equity:** This definition of “serious irregularity” aims to safeguard the fairness and equity of the arbitration process by allowing challenges when the listed irregularities lead to substantial injustice.

5. **Protecting Parties' Rights:** By setting out specific categories of irregularities that can be deemed serious, the provision ensures that parties have a clear framework for challenging an award based on procedural deficiencies that undermine the fairness of the arbitration process.

In summary, Section 4(2) of Schedule 2 provides a comprehensive definition of “serious irregularity”, which serves as the foundation for challenging an arbitral award on the grounds of substantial injustice. The provision lists various scenarios that can be considered serious irregularities and underscores the importance of maintaining fairness and equity in arbitral proceedings.

- (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.**

Section 4(3) of Schedule 2 to the Hong Kong Arbitration Ordinance outlines the remedies available to the court when a serious irregularity affecting the arbitral tribunal, the arbitral proceedings, or the award has been established. Here is an analysis of this provision:

1. **Available Remedies:** This subsection grants the court the authority to provide remedies in cases of serious irregularity. The remedies outlined are aimed at rectifying the issues caused by the irregularities and ensuring that parties are not unfairly prejudiced by the arbitral process or outcome.
2. **Remit the Award:** The court can order the award to be remitted to the arbitral tribunal for reconsideration. This means that the tribunal may need to re-examine certain aspects of the award in light of the identified serious irregularity. This remedy provides an opportunity for correcting errors or addressing issues that led to the irregularity.
3. **Set Aside the Award:** The court has the power to set aside the entire award or a part of it. This remedy is significant as it can annul an award that has been tainted by a serious irregularity. Setting aside an award is a stronger action than remitting it, as it essentially nullifies the award's legal effects.
4. **Declare the Award of No Effect:** The court can declare the award to be of no effect, either entirely or in part. This remedy might be employed when the court believes that the irregularity has fundamentally compromised the award's validity or enforceability. It signifies that the award is void and should not be recognised.
5. **Flexibility of Remedies:** The provision offers a range of remedies to address serious irregularities. The choice of remedy will depend on the specific circumstances of the case and the extent of the irregularity.
6. **Balancing Party Interests:** These remedies aim to strike a balance between addressing the injustice caused by the irregularity and respecting the finality of arbitral awards. They

allow the court to correct errors while avoiding undue interference in the arbitration process.

7. **Protecting the Arbitration Process:** By providing the court with the authority to rectify serious irregularities, this subsection reinforces the integrity of the arbitration process and maintains confidence in arbitral awards.
8. **Judicial Control:** The provision underscores the court's role as a safeguard against procedural and substantive irregularities that can undermine the fairness and effectiveness of arbitration.

In summary, Section 4(3) of Schedule 2 empowers the court to address serious irregularities affecting the arbitral tribunal, proceedings, or awards. The remedies provided offer a range of options to rectify the issues caused by irregularities, striking a balance between upholding the finality of awards and ensuring fairness and equity in the arbitration process.

- (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.**

Section 4(4) of Schedule 2 to the Hong Kong Arbitration Ordinance outlines the procedural requirements when an award is remitted to the arbitral tribunal for reconsideration due to a serious irregularity. Here is an analysis of this provision:

1. **Mandatory Reconsideration:** This subsection establishes a mandatory requirement for the arbitral tribunal to make a fresh award in cases where the original award has been remitted for reconsideration due to a serious irregularity. The goal is to ensure that the tribunal rectifies any issues identified by the court.
2. **Time Limit:** The subsection specifies a time frame within which the arbitral tribunal must issue the fresh award. The default time frame is three months from the date of the court's order for remission. This emphasises the importance of efficiency in the arbitral process.
3. **Flexibility in Timeframe:** The subsection also recognises that circumstances might warrant a longer or shorter period for the arbitral tribunal to reconsider and issue a fresh award. The court is granted the authority to direct such variations based on the specific circumstances of the case.
4. **Balancing Timeliness and Thoroughness:** By setting a reasonable time frame for the issuance of the fresh award, the subsection encourages the tribunal to address the irregularity promptly while also allowing for careful consideration of the matters remitted.
5. **Judicial Oversight:** The provision reflects the court's role in supervising the arbitration process and ensuring that the tribunal effectively addresses the identified irregularity.

6. **Enhancing Fairness:** Requiring the tribunal to make a fresh award after remission helps ensure fairness and integrity in the arbitration process, especially in cases where the original award was affected by a serious irregularity.
7. **Encouraging Compliance:** The time limit encourages both the arbitral tribunal and the parties to promptly address the issues and move the arbitration process forward while respecting the need for thoroughness.

In summary, Section 4(4) of Schedule 2 establishes the procedural requirements for making a fresh award when an original award is remitted for reconsideration due to a serious irregularity. The provision strikes a balance between ensuring timely resolution and maintaining the quality of the arbitral decision-making process.

(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.

Section 4(5) of Schedule 2 to the Hong Kong Arbitration Ordinance sets forth a key principle regarding the court's discretion in deciding whether to set aside an award or declare it to be of no effect. Here is an analysis of this provision:

1. **Judicial Discretion:** This subsection underscores the court's discretion in determining whether to set aside an award or declare it void, emphasising that this power should be exercised judiciously and based on specific circumstances.
2. **Remittance as Primary Option:** The provision suggests that the default approach is to remit the matters in question back to the arbitral tribunal for reconsideration. This aligns with the principle of minimal court intervention in the arbitration process.
3. **Appropriateness Standard:** The subsection sets a threshold that must be met before the court considers setting aside an award or declaring it void. The court should only do so when it is satisfied that remitting the matters to the arbitral tribunal for reconsideration would be inappropriate.
4. **Preservation of Arbitral Process:** By making remission the preferred approach, the provision seeks to preserve the integrity of the arbitration process and allow the arbitral tribunal a chance to rectify any irregularities.
5. **Balancing Interests:** The provision strikes a balance between the need to uphold the finality of arbitral awards and the recognition that there might be instances where the arbitral process was so flawed that remittance would not be appropriate.
6. **Avoiding Unnecessary Litigation:** By emphasising the option of remission, the subsection seeks to avoid unnecessary litigation and encourages parties to resolve disputes efficiently through the arbitration process.
7. **Case-Specific Determination:** The court is required to consider the facts and circumstances of each case when deciding whether remission is inappropriate. This ensures that the decision is tailored to the specific situation.

8. Promotion of Fairness: The provision reflects a commitment to ensuring that parties are treated fairly and that the arbitration process is conducted in a manner consistent with the principles of justice.

In summary, Section 4(5) of Schedule 2 establishes the principle that the court should not exercise its power to set aside or declare an award void unless it is convinced that remitting the matters to the arbitral tribunal for reconsideration would be inappropriate. This provision aims to strike a balance between judicial intervention and the principles of arbitration while safeguarding the fairness and integrity of the process.

(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.

Section 4(6) of Schedule 2 to the Hong Kong Arbitration Ordinance outlines a requirement for obtaining leave from the Court or the Court of Appeal for appealing decisions, orders, or directions made by the Court under this section. Here is an analysis of this provision:

1. Leave Requirement: This subsection introduces a procedural hurdle that parties must clear before they can appeal a decision, order, or direction of the Court made under Section 4 of Schedule 2. The requirement for leave to appeal implies that appeals will not be automatic and must meet certain criteria before they are allowed to proceed.
2. Judicial Control: By mandating the need for leave, the provision enables the judiciary to exercise control over the appeals process. This serves to filter out frivolous or unmeritorious appeals and ensures that only significant or substantial matters proceed to the appellate stage.
3. Balancing Interests: The leave requirement strikes a balance between the right of parties to seek redress through appeal and the efficient administration of justice. It ensures that appeals are pursued only in cases where there is a legitimate basis for challenging the decision, order, or direction.
4. Preventing Delay: Requiring leave before filing an appeal helps prevent unnecessary delays in the arbitration process by discouraging appeals that lack merit. This contributes to the overall efficiency of the dispute resolution process.
5. Merit-Based Review: The leave requirement underscores the principle that appeals should be based on merit rather than being used as a tactic to prolong proceedings or delay enforcement of arbitral awards.
6. Guidance for Appellate Courts: The leave requirement provides guidance to the appellate courts in assessing the strength of the grounds for appeal. It prevents appeals that are unlikely to succeed from burdening the appellate process.
7. Appropriate Use of Resources: By necessitating leave, the provision ensures that the judicial resources are allocated to cases that warrant closer scrutiny, helping to manage the court's workload effectively.

8. **Enhancing Finality:** The leave requirement contributes to the finality of arbitral awards and decisions by curbing frivolous appeals that could undermine the overall purpose of the arbitration process.

In summary, Section 4(6) of Schedule 2 establishes the need for parties to seek leave from the Court or the Court of Appeal before appealing decisions, orders, or directions issued by the Court under Section 4. This requirement aims to strike a balance between the parties' right to appeal and the need for a judicious and efficient appeals process.

(7) Section 7 of this Schedule also applies to an application or appeal under this section.

Section 4(7) of Schedule 2 to the Hong Kong Arbitration Ordinance establishes a link between Section 4 and Section 7 of the same Schedule, indicating that the procedural provisions of Section 7 apply to applications or appeals made under Section 4. Here is an analysis of this provision:

1. **Cross-Referencing:** By referencing Section 7 of the same Schedule, Section 4(7) provides a clear cross-reference for parties and legal practitioners, indicating that certain procedural provisions specified in Section 7 will also apply to the proceedings under Section 4.
2. **Uniformity in Procedure:** Section 7 likely outlines procedural rules, requirements, or mechanisms that are deemed beneficial or necessary for the proper conduct of proceedings involving serious irregularities under Section 4. This ensures consistency in the approach taken for applications or appeals related to serious irregularities.
3. **Efficiency and Clarity:** The provision contributes to the efficiency and clarity of the arbitration proceedings. By incorporating the relevant procedural provisions from Section 7, parties are given clear guidance on how to navigate the application or appeal process under Section 4.
4. **Avoiding Ambiguity:** The cross-reference helps prevent ambiguity or confusion regarding the procedural steps to be followed when pursuing an application or appeal related to serious irregularities. Parties can refer to the specific provisions of Section 7 for guidance.
5. **Safeguarding Due Process:** Applying procedural rules from Section 7 ensures that due process is maintained in applications or appeals under Section 4. This promotes fairness and transparency in the proceedings.
6. **Consistency with Legislative Intent:** The provision aligns with the legislative intent of creating a comprehensive and structured framework for dealing with serious irregularities in arbitral proceedings. By extending the procedural provisions, the legislature ensures that parties have a clear framework for addressing such issues.
7. **Streamlining Process:** Section 4(7) streamlines the procedure for addressing serious irregularities by incorporating existing procedural provisions from Section 7, which may include rules related to documentation, timing, notice, service, or other relevant aspects.

In summary, Section 4(7) of Schedule 2 ensures that the procedural provisions outlined in Section 7 apply to applications or appeals made under Section 4. This linkage enhances clarity, consistency, and

fairness in the process of addressing serious irregularities in arbitral proceedings, aligning with the overarching goal of effective dispute resolution.

5. Appeal against arbitral award on question of law

(1) Subject to section 6 of this Schedule, a party to arbitral proceedings may appeal to the Court on a question of law arising out of an award made in the arbitral proceedings.

Section 5(1) of Schedule 2 to the Hong Kong Arbitration Ordinance establishes the right of a party to arbitral proceedings to appeal to the Court on a question of law arising out of an award made in those proceedings. Here is an analysis of this provision:

1. **Right to Appeal on a Question of Law:** Section 5(1) recognises and affirms the principle that a party to arbitral proceedings has the right to appeal to the Court specifically on a question of law. This reflects the significance of legal issues in arbitration and provides a mechanism for parties to seek judicial review in cases where legal interpretations impact the award.
2. **Preservation of Legal Rights:** By allowing appeals on questions of law, the provision safeguards the legal rights of parties involved in arbitration. It ensures that parties have a recourse to the court if they believe that the arbitral tribunal has erred in its interpretation or application of the law.
3. **Balance between Arbitral Autonomy and Judicial Oversight:** While arbitration emphasises party autonomy and efficient resolution of disputes, Section 5(1) acknowledges the importance of judicial review in cases involving substantial legal errors. This balance enables parties to challenge legal determinations that have a significant impact on their rights.
4. **Promotion of Legal Certainty:** Allowing appeals on questions of law contributes to legal certainty by providing parties with an avenue to seek clarification and authoritative interpretations of legal issues that may arise during the course of arbitration.
5. **Specialised Legal Expertise:** Appeals on questions of law offer parties access to the expertise of the court, which is equipped to handle complex legal matters. This can be particularly valuable in cases involving intricate legal doctrines or novel legal principles.
6. **Limitation by Section 6:** The reference to Section 6 of the same Schedule indicates that this right to appeal is subject to the limitations and conditions set forth in that section. Section 6 may impose procedural requirements, timelines, or other criteria that need to be met for the appeal to be valid.
7. **Limited Scope of Appeal:** It is important to note that the right to appeal is specifically limited to questions of law. Matters of fact or discretion generally fall outside the scope of appeal under this provision.

In summary, Section 5(1) of Schedule 2 establishes the right of a party to arbitral proceedings to appeal to the Court on a question of law arising out of an award. This provision contributes to the balance

between arbitration and judicial oversight, ensuring that legal errors with substantial impact can be addressed while preserving the autonomy and efficiency of arbitration.

(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.

Section 5(2) of Schedule 2 to the Hong Kong Arbitration Ordinance establishes the legal effect of an agreement between parties to dispense with the requirement for the arbitral tribunal to provide reasons for its award. Here is an analysis of this provision:

1. **Effect of Dispensing with Reasons:** This provision addresses a scenario where the parties involved in arbitral proceedings mutually agree not to require the arbitral tribunal to provide reasons for its award. This agreement essentially means that the parties do not demand a detailed explanation or rationale behind the tribunal’s decision.
2. **Exclusion of Court’s Jurisdiction:** Section 5(2) states that such an agreement to dispense with reasons for an award is to be treated as an agreement to exclude the jurisdiction of the Court under Section 5(1) of the same Schedule. In other words, if the parties agree to waive their right to receive reasons for the award, they are simultaneously waiving their right to appeal to the Court on a question of law arising out of the award.
3. **Preservation of Party Autonomy:** This provision respects the principle of party autonomy, which is fundamental to arbitration. Parties are allowed to agree on various aspects of arbitration, including the level of transparency and explanation they desire in the award.
4. **Balancing Autonomy and Judicial Oversight:** By recognising that parties have the discretion to waive their right to reasons for the award, Section 5(2) strikes a balance between respecting parties’ autonomy and ensuring judicial oversight. It prevents parties from using an appeal on a question of law as a mechanism to challenge the arbitral award when they themselves have chosen not to receive reasons for it.
5. **Promotion of Finality:** This provision encourages finality in arbitration by encouraging parties to accept awards without the obligation to provide detailed reasons. In return, they forego their right to appeal based on questions of law arising from the award.
6. **Certainty and Predictability:** The provision contributes to legal certainty by clearly outlining the consequences of an agreement to dispense with reasons. Parties can make informed decisions knowing that such an agreement will limit their recourse to appeal on questions of law.

In summary, Section 5(2) of Schedule 2 establishes that an agreement between parties to dispense with the reasons for an arbitral tribunal’s award has the legal effect of also excluding the jurisdiction of the Court under Section 5(1) to hear appeals on questions of law arising out of the award. This provision respects party autonomy and promotes finality in arbitration while maintaining a balance between party preferences and the need for judicial oversight.

(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.

Section 5(3) of Schedule 2 to the Hong Kong Arbitration Ordinance addresses the process that the Court must follow when deciding a question of law that is the subject of an appeal arising from an arbitral award. Here is an analysis of this provision:

1. **Basis of Decision:** This provision mandates that when the Court is considering a question of law raised in an appeal, it should rely on the factual findings that are already present in the arbitral award itself. In other words, the Court must base its decision on the factual record as established by the arbitral tribunal.
2. **Respect for Tribunal's Role:** By requiring the Court to rely on the factual findings in the award, the provision acknowledges the primary role of the arbitral tribunal in determining facts relevant to the dispute. This respects the tribunal's expertise and factual determinations made during the arbitration process.
3. **Limited Scope of Review:** Section 5(3) aligns with the principle of limited judicial intervention in arbitral awards. The Court's focus is primarily on legal issues rather than revisiting or re-evaluating factual conclusions reached by the arbitral tribunal.
4. **Efficiency and Finality:** This provision contributes to the efficiency of the appeal process by directing the Court's attention to the legal aspects of the award, rather than re-examining the facts. This helps avoid lengthy and duplicative proceedings, supporting the goal of arbitration – achieving a swift resolution.
5. **Consistency and Predictability:** By relying on the tribunal's factual findings, this provision promotes consistency and predictability in the legal system. It discourages parties from using appeals to re-litigate factual matters that were already decided during the arbitration.
6. **Legal Interpretation Focus:** Section 5(3) ensures that the Court's decision focuses on the legal question being appealed rather than reopening the factual aspects of the case. This maintains the proper balance between arbitration and the court system.
7. **Maintaining Arbitral Integrity:** This provision also upholds the integrity of the arbitral process. Parties agree to submit their disputes to arbitration with the understanding that the arbitral tribunal's findings on facts and evidence will be respected and upheld.

In summary, Section 5(3) of Schedule 2 stipulates that when deciding a question of law on appeal from an arbitral award, the Court must rely on the factual findings already established in the award. This approach respects the arbitral tribunal's role in fact-finding, promotes efficiency, finality, and consistency, and ensures that the Court's focus remains on the legal issues presented by the appeal.

(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).

Section 5(4) of Schedule 2 to the Hong Kong Arbitration Ordinance introduces a restriction on the Court when considering an appeal on a question of law arising from an arbitral award. Let us analyse this provision:

1. **Exclusion of Specific Criteria:** Section 5(4) explicitly states that the Court should not take into consideration the criteria outlined in section 6(4)(c)(i) or (ii) of the same Schedule when deciding a question of law under subsection (3).
2. **Avoiding Certain Criteria:** The criteria mentioned in section 6(4)(c)(i) and (ii) are related to the Court's discretion to grant leave to appeal. By excluding consideration of these criteria, section 5(4) narrows the focus of the Court's review to the specific question of law under appeal, rather than evaluating whether leave to appeal should be granted based on broader grounds.
3. **Question of Law Focus:** This provision reinforces that the Court's primary role in this context is to determine the correctness of the legal issue presented by the appeal. It underscores the importance of maintaining a streamlined process when addressing legal questions arising from arbitral awards.
4. **Limited Scope of Review:** By excluding these criteria, section 5(4) supports the principle of limited judicial intervention in arbitral awards. It prevents the Court from considering factors that might expand the scope of the appeal beyond the specific question of law at hand.
5. **Efficiency and Clarity:** This provision contributes to the efficiency and clarity of the appeal process. It helps prevent potential delays caused by debating whether the criteria in section 6(4)(c)(i) or (ii) are met before even addressing the substance of the legal issue in question.
6. **Preserving Arbitration's Benefits:** Section 5(4) upholds the benefits of arbitration, such as speed, flexibility, and finality, by directing the Court's attention to the legal question at the core of the appeal rather than delving into broader considerations that might be more relevant to leave to appeal.

In summary, Section 5(4) of Schedule 2 limits the Court's consideration to the specific question of law when deciding an appeal arising from an arbitral award. By excluding certain criteria related to leave to appeal, this provision maintains the appeal's focus on the legal issue while preserving arbitration's advantages of efficiency and finality.

- (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.

Section 5(5) of Schedule 2 to the Hong Kong Arbitration Ordinance outlines the range of orders that the Court may make when hearing an appeal on a question of law arising from an arbitral award. Let us analyse this provision:

1. Confirmation of the Award (Option a): The Court may confirm the arbitral award, effectively upholding the original decision made by the arbitral tribunal. This option respects the finality and autonomy of arbitration decisions, reinforcing the principle that courts generally defer to arbitral awards.
2. Variation of the Award (Option b): The Court has the authority to modify or amend the award to correct errors or address issues identified through the appeal. This power enables the Court to correct any legal errors without necessarily invalidating the entire award.
3. Remission of the Award (Option c): The Court may remit the award, in whole or in part, back to the arbitral tribunal for reconsideration in light of the Court’s decision on the question of law. This option acknowledges that certain aspects of the award may be affected by the Court’s determination and allows the tribunal to address those aspects.
4. Setting Aside the Award (Option d): The Court also possesses the authority to set aside the award, either in its entirety or in part. This drastic option can be exercised if the Court determines that a serious irregularity has affected the award or if the appeal reveals substantial injustice that cannot be resolved through the other available options.
5. Balancing Court Intervention: Section 5(5) offers the Court a spectrum of choices that allow it to intervene to varying degrees. These options strike a balance between ensuring that arbitral awards are fair and just, while also respecting the parties’ decision to resolve their disputes through arbitration.
6. Preserving Autonomy of the Arbitral Process: The provision recognises the value of allowing arbitral tribunals to address legal issues and make decisions within the scope of their expertise. The Court’s intervention is primarily aimed at correcting errors of law rather than re-evaluating the merits of the case.
7. Finality and Efficiency: The provision reflects the principle that arbitral awards should be final and enforceable. However, the options also promote fairness and justice, as the Court’s involvement can prevent serious injustice or correct clear legal errors.

8. Judicial Control: Section 5(5) empowers the Court to exercise judicial control over the arbitration process to ensure that the outcomes align with legal principles and the parties' rights.

In summary, Section 5(5) of Schedule 2 provides a range of options for the Court when hearing an appeal on a question of law arising from an arbitral award. These options enable the Court to balance the need for fairness, justice, and legal correctness while respecting the finality and autonomy of the arbitral process.

(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.**

Section 5(6) of Schedule 2 to the Hong Kong Arbitration Ordinance provides specific guidance regarding the timeline for the arbitral tribunal to issue a fresh award when an award has been remitted to the tribunal for reconsideration. Let us analyse this provision:

1. **Timely Resolution:** This provision emphasises the importance of resolving matters efficiently and promptly within the arbitration process. The time limits established here aim to ensure that any issues identified during the appeal process are addressed in a timely manner.
2. **Flexibility in Timeframe:** The provision allows the Court to exercise discretion in setting the timeframe within which the arbitral tribunal must issue a fresh award. The Court's flexibility in extending or shortening the time period recognises that the complexity of the issues or the specific circumstances of the case may require adjustments to the standard timeline.
3. **Balancing Expediency and Due Process:** By imposing a time limit on the issuance of the fresh award, the provision balances the need for efficient resolution with the parties' right to a thorough reconsideration of the matters remitted. This prevents undue delays while maintaining fairness.
4. **Legal Certainty:** The provision promotes legal certainty by ensuring that parties receive a resolution to their dispute within a reasonable timeframe, thereby minimising uncertainty and potential disruptions to their business or affairs.
5. **Judicial Control:** The Court's authority to direct the timeframe for the fresh award demonstrates its ability to manage the arbitration process and maintain a level of control over the proceedings while respecting the parties' due process rights.
6. **Enforcement Considerations:** The provision indirectly contributes to the enforceability of arbitral awards by preventing unnecessary delays in the arbitral process. A prompt resolution reduces the risk of awards becoming obsolete or irrelevant over time.

7. Supporting the Integrity of Arbitration: By setting clear timeframes, the provision supports the integrity of the arbitration process, demonstrating that arbitration can provide efficient and reliable dispute resolution while maintaining its core principles.

In summary, Section 5(6) of Schedule 2 outlines time limits for the arbitral tribunal to issue a fresh award when an award is remitted for reconsideration. This provision strikes a balance between the need for expediency and the requirement for due process, ultimately contributing to the efficiency and effectiveness of the arbitration process.

(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.

Section 5(7) of Schedule 2 to the Hong Kong Arbitration Ordinance outlines a fundamental principle that guides the Court's exercise of its power to set aside an arbitral award. Let us analyse this provision:

1. **Judicial Discretion:** This provision underscores the discretionary nature of the Court's authority to set aside an arbitral award. It requires the Court to carefully consider whether it is more appropriate to remit the matters in question back to the arbitral tribunal for reconsideration, rather than setting aside the award entirely.
2. **Balancing Remedies:** The provision reflects the importance of maintaining a balance between addressing issues and irregularities within the arbitral proceedings while also preserving the integrity of the arbitration process. By emphasising the option of remitting matters for reconsideration, the provision seeks to rectify defects in the award without necessarily invalidating the entire process.
3. **Efficiency and Economy:** This provision aligns with the broader goals of arbitration, such as efficiency and cost-effectiveness. Remitting matters for reconsideration can be a more expeditious and economical way to address and correct errors or irregularities in the arbitral proceedings, rather than starting a new arbitration process.
4. **Respect for Arbitral Process:** The provision respects the expertise of the arbitral tribunal and the principle of party autonomy. By prioritising remission for reconsideration, the Court acknowledges that the arbitral tribunal is well-equipped to address issues within the framework of the proceedings it has managed.
5. **Ensuring Fairness:** The provision underscores the importance of fairness in the arbitration process. By focusing on remission, it ensures that parties have the opportunity to present their case fully before a decision is ultimately made, promoting due process.
6. **Minimising Court Intervention:** By encouraging remission rather than setting aside awards, the provision promotes a level of deference to the arbitral process and minimises unnecessary court intervention in the final resolution of disputes.
7. **Preservation of Awards:** The provision indirectly supports the enforceability of awards by emphasising remission as the primary option. This reduces the risk of awards being set aside on procedural grounds and encourages parties to respect and honour the arbitral process.

In summary, Section 5(7) of Schedule 2 reflects the balanced approach of the Hong Kong Arbitration Ordinance in dealing with irregularities in arbitral awards. By encouraging remission as an alternative to setting aside awards, this provision supports the principles of efficiency, fairness, and respect for the arbitral process while preserving the integrity of arbitration as a means of resolving disputes.

(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).

Section 5(8) of Schedule 2 to the Hong Kong Arbitration Ordinance establishes a requirement for seeking permission from the Court or the Court of Appeal for any further appeal from an order made by the Court under subsection (5). Here is an analysis of this provision:

1. **Limiting Further Appeals:** This provision reflects a restriction on parties seeking multiple levels of appeal after a decision has been made by the Court under subsection (5). It recognises the importance of finality and efficiency in the appeal process.
2. **Judicial Discretion:** The provision adds an additional layer of judicial discretion by requiring parties to seek leave from the Court or the Court of Appeal before pursuing a further appeal. This ensures that only meritorious cases proceed to the appellate stage.
3. **Control of Appeals:** By mandating leave for further appeals, the provision allows the higher courts to manage their caseload effectively. It prevents parties from pursuing appeals indiscriminately and helps ensure that only significant or complex issues are considered on appeal.
4. **Efficiency and Economy:** By requiring leave, the provision aligns with the broader goals of arbitration to resolve disputes expeditiously and economically. It discourages frivolous or repetitive appeals, which can lead to delays and increased costs.
5. **Protection of Arbitration Process:** This provision contributes to maintaining the sanctity of the arbitration process. It prevents endless appeals that could undermine the finality of arbitral awards, and encourages parties to abide by the decisions of the arbitral tribunal and the Court.
6. **Promoting Finality:** By imposing a leave requirement, the provision encourages parties to carefully consider the grounds and merit of a further appeal before proceeding. This promotes finality in the dispute resolution process.
7. **Balancing Party Rights:** While it places a restriction on further appeals, the provision does not entirely eliminate the possibility of appealing. It ensures that parties with legitimate grounds for appeal can still seek permission to proceed.

In summary, Section 5(8) of Schedule 2 to the Hong Kong Arbitration Ordinance plays a pivotal role in maintaining the balance between allowing parties to appeal arbitral awards while preventing excessive and unwarranted appeals. It supports the principles of efficiency, finality, and the proper management of the appellate process within the context of arbitration.

(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.**

Section 5(9) of Schedule 2 to the Hong Kong Arbitration Ordinance outlines the criteria that must be met for the grant of leave to pursue a further appeal from an order made by the Court under subsection (5). Let us analyse this provision:

1. **Criteria for Leave:** The provision sets forth the conditions that must be satisfied to obtain leave for a further appeal. These conditions act as gatekeeping measures to ensure that only appeals with significant merit or importance proceed to the appellate stage.
2. **General Importance:** Subsection (a) states that leave may be granted if the question at hand is one of “general importance”. This implies that the question is not just relevant to the immediate case but has broader implications or applicability that could impact the legal landscape or practices.
3. **Special Reasons:** Subsection (b) introduces the concept of “some other special reason” for granting leave. This provides the Court with a degree of flexibility to consider unique circumstances or issues that are not necessarily of general importance but still warrant appellate review due to their unique nature or relevance.
4. **Balancing Criteria:** These criteria reflect the balancing act between allowing parties to appeal important legal questions while preventing frivolous or unnecessary appeals. The provision requires that the question must be either generally important or possess special circumstances that justify further consideration.
5. **Avoiding Overburdening Courts:** By specifying these criteria, the provision helps prevent the Court of Appeal from being overwhelmed with appeals that lack significant legal importance or unique circumstances. It ensures that appeals are carefully considered and align with the broader interests of justice.
6. **Promoting Efficiency:** By requiring a demonstrated level of importance or uniqueness, the provision promotes the efficient use of appellate resources and contributes to timely resolution of disputes.
7. **Legal Consistency:** The provision indirectly contributes to legal consistency and stability by ensuring that appellate decisions are centred on questions with broader implications or special reasons. This approach helps avoid the creation of conflicting or contradictory judgments.
8. **Protection of Party Rights:** While the provision sets a high bar for further appeals, it still allows parties with compelling legal issues to seek permission to proceed. This balances the interests of parties seeking clarification on important matters with the need to manage the appellate process efficiently.

In conclusion, Section 5(9) of Schedule 2 to the Hong Kong Arbitration Ordinance establishes a stringent standard for granting leave to pursue a further appeal. It emphasises the importance of the

legal question at hand and aims to ensure that the appellate process is reserved for cases with significant legal implications or special reasons warranting review.

(10) Sections 6 and 7 of this Schedule also apply to an appeal or further appeal under this section.

Section 5(10) of Schedule 2 to the Hong Kong Arbitration Ordinance clarifies that certain provisions within the same Schedule, specifically Sections 6 and 7, apply to appeals and further appeals made under Section 5 of the Schedule. Let us analyse this provision:

1. **Incorporation of Related Provisions:** Section 5(10) serves as a cross-reference provision, indicating that specific sections within the same Schedule apply to appeals or further appeals made under Section 5. This helps to ensure consistent procedures and considerations throughout the appellate process.
2. **Coordination and Consistency:** By incorporating Sections 6 and 7, the provision ensures that certain key procedures, principles, and limitations relevant to the appellate process are consistently applied to appeals and further appeals brought under Section 5. This promotes predictability and fairness in the resolution of disputes.
3. **Section 6:** Section 6 of the Schedule concerns “Permission to Appeal”, and it outlines the circumstances under which permission from the Court is required for an appeal. The application of Section 6 to appeals under Section 5 underscores the requirement for a high threshold to proceed with an appeal, which aligns with the general principles of appellate review.
4. **Section 7:** Section 7 of the Schedule deals with “Questions of Law for Appeal”, and it specifies the criteria for considering a question of law arising from an appeal. By extending the application of Section 7 to appeals or further appeals under Section 5, the provision ensures that the Court’s consideration of legal questions is subject to the same criteria regardless of the section under which the appeal is filed.
5. **Uniformity and Predictability:** The incorporation of Sections 6 and 7 into Section 5(10) contributes to uniformity in the application of the law and procedural requirements across different stages of the appellate process. This helps parties involved in arbitration proceedings understand the rules governing appeals and further appeals.
6. **Avoiding Repetition:** By referencing Sections 6 and 7 instead of reiterating their content within Section 5(10), the drafters of the ordinance avoid unnecessary repetition and keep the legislative text concise and clear.
7. **Efficient Handling of Appeals:** Incorporating relevant provisions from the same Schedule streamlines the legal process and helps prevent confusion or ambiguity regarding the rules governing appeals and further appeals. This contributes to the efficient resolution of disputes.

In conclusion, Section 5(10) of Schedule 2 to the Hong Kong Arbitration Ordinance ensures consistency in the application of specific procedural and substantive provisions to appeals and further appeals made under Section 5. This coordinated approach enhances predictability, fairness, and efficiency in the appellate process concerning questions of law arising from arbitration awards.

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.**

Section 6(1) of Schedule 2 to the Hong Kong Arbitration Ordinance establishes the conditions under which a party to arbitral proceedings can bring an appeal under Section 5 of the same Schedule, specifically in cases where the appeal pertains to a question of law. Let us analyse this provision:

1. **Restriction on Appeals:** Section 6(1) introduces a restriction on bringing appeals on questions of law arising from arbitral proceedings. It establishes that a party to the arbitral proceedings cannot initiate such an appeal unilaterally, but rather, certain conditions must be met.
2. **Consensual Requirement:** The provision recognises the importance of consensus and agreement among parties in arbitration. It stipulates that an appeal on a question of law can be brought only if all the other parties to the arbitral proceedings agree to it. This underscores the principle of party autonomy and the preference for resolving disputes through mutual agreement.
3. **Judicial Oversight:** Alternatively, the provision allows for an appeal on a question of law to be brought with the leave (permission) of the Court. This demonstrates that the courts play a role in overseeing the appellate process, ensuring that appeals are not initiated frivolously or without proper justification.
4. **Balancing Party Autonomy and Judicial Control:** By requiring either unanimous agreement among the parties or the approval of the Court, Section 6(1) strikes a balance between party autonomy and judicial control. It prevents one party from unilaterally appealing on a question of law, while also permitting an appeal if it is deemed to have merit.
5. **Preventing Abuse of the Appellate Process:** This provision prevents parties from using appeals on questions of law as a tactical manoeuvre to delay proceedings or harass other parties. The requirement for agreement or leave helps ensure that appeals are pursued for legitimate reasons.
6. **Legal Oversight and Judicial Discretion:** The provision empowers the Court to exercise discretion in granting leave for appeals on questions of law. This discretion allows the Court to consider the merits of the appeal, the potential impact on the arbitration process, and the interests of justice before granting permission.
7. **Promoting Efficiency:** By requiring agreement or leave, the provision helps promote efficiency in the arbitration process. It discourages unnecessary appeals and encourages parties to focus on resolving their disputes through arbitration without unnecessary delays.

8. **Enhancing Clarity and Orderliness:** Section 6(1) clarifies the circumstances under which a party can bring an appeal on a question of law. This clarity ensures that the appellate process operates in an orderly and well-regulated manner.

In summary, Section 6(1) of Schedule 2 to the Hong Kong Arbitration Ordinance establishes the conditions under which a party can initiate an appeal on a question of law arising from arbitral proceedings. By requiring unanimous agreement or the leave of the Court, the provision ensures a balanced approach between party autonomy and judicial control while preventing abuse of the appellate process.

(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.**

Section 6(2) of Schedule 2 to the Hong Kong Arbitration Ordinance outlines the requirements for making an application for leave to appeal on a question of law arising from arbitral proceedings. This provision sets out the necessary elements that an applicant must include in their application. Let us break down this section:

1. **Clarity in Application:** Section 6(2)(a) mandates that the application for leave to appeal must clearly identify the specific question of law that the applicant seeks to have decided by the appellate court. This requirement ensures that the application is focused and that the court can understand the precise legal issue at hand.
2. **Grounds for Leave:** Subsection 6(2)(b) requires the applicant to provide the grounds on which they believe leave to appeal should be granted. This means that the applicant must provide reasons or arguments explaining why the appeal is justified, why the question of law is significant, and why it merits further consideration by the appellate court.
3. **Promoting Transparency:** The provision enhances transparency in the appellate process by obligating applicants to provide a clear and concise explanation of the legal issue and the reasons for seeking leave to appeal. This ensures that both the court and the other parties involved have a clear understanding of the basis for the application.
4. **Streamlining the Judicial Process:** By requiring applicants to specify the question of law and the grounds for leave, the provision helps streamline the application process. It prevents vague or frivolous applications and encourages applicants to present their case in a well-structured manner.
5. **Preventing Abusive Appeals:** The requirement to state grounds for leave serves as a safeguard against parties attempting to appeal on trivial or non-substantive legal issues. It encourages applicants to demonstrate the importance and relevance of the legal question they wish to appeal.
6. **Focused Consideration:** Requiring applicants to outline the grounds for leave ensures that the appellate court can efficiently evaluate the merits of the application. It allows the court to assess whether the question of law is indeed worthy of appellate review.

7. **Balancing Accessibility and Merit:** The provision maintains a balance between providing access to the appellate process and ensuring that appeals are pursued for valid reasons. By requiring applicants to provide grounds for leave, it prevents indiscriminate appeals while still allowing parties to seek appellate review on genuine legal issues.
8. **Judicial Efficiency:** Overall, Section 6(2) aims to enhance the efficiency of the appellate process by enabling the court to quickly assess the merits of an application for leave to appeal. This aligns with the broader goal of promoting effective and timely resolution of disputes through arbitration.

In summary, Section 6(2) of Schedule 2 to the Hong Kong Arbitration Ordinance outlines the requirements for making an application for leave to appeal on a question of law. By mandating that applicants identify the question of law and state the grounds for leave, this provision ensures transparency, streamlines the application process, and prevents abuse of the appellate process.

(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.

Section 6(3) of Schedule 2 to the Hong Kong Arbitration Ordinance addresses the procedural aspect of determining applications for leave to appeal on questions of law arising from arbitral proceedings. This provision pertains to whether or not a hearing is necessary for the court to make a decision on the application. Here is an analysis of this section:

1. **Default: Determination Without a Hearing:** The provision establishes a default approach for the court to determine applications for leave to appeal without a hearing. This means that the court will decide the application based on the written materials submitted by the applicant, without the need for an in-person hearing.
2. **Efficiency and Timeliness:** By allowing for a determination without a hearing, the provision contributes to the efficiency and timeliness of the appellate process. It prevents unnecessary delays that could result from scheduling and conducting hearings for every application for leave to appeal.
3. **Judicial Discretion:** While the provision sets the default mode as a determination without a hearing, it also recognises that there may be circumstances where a hearing is necessary. This grants the court the discretion to require a hearing when it deems it appropriate, which may occur when the legal issues are complex, contentious, or otherwise require oral argument.
4. **Balancing Procedural Economy and Fairness:** The provision strikes a balance between procedural economy and ensuring a fair process. By allowing the court to dispense with hearings in straightforward cases, it conserves judicial resources. However, if the court believes that the application raises substantial issues that merit oral presentation, a hearing can be convened to provide parties with an opportunity to present their arguments.
5. **Flexibility:** The provision reflects the need for flexibility in the judicial process. It acknowledges that not all applications require the same level of scrutiny and that different cases may demand different procedural approaches.

6. **Ensuring Access to Justice:** While the provision allows for applications to be determined without a hearing, it is essential to ensure that parties still have adequate access to the court and a fair opportunity to present their case, whether through written submissions or oral arguments.
7. **Judicial Efficiency:** By permitting applications to be decided without a hearing when appropriate, the provision aligns with the broader goal of promoting judicial efficiency in handling appeals and applications for leave to appeal.

In conclusion, Section 6(3) of Schedule 2 to the Hong Kong Arbitration Ordinance introduces a default approach for the determination of applications for leave to appeal without a hearing, while allowing the court the discretion to require a hearing when necessary. This provision aims to strike a balance between procedural efficiency and fairness in the appellate process.

(4) Leave to appeal is to be granted only if the Court is satisfied—

- (a) that the decision of the question will substantially affect the rights of one or more of the parties;**
- (b) that the question is one which the arbitral tribunal was asked to decide; and**
- (c) that, on the basis of the findings of fact in the award—**
 - (i) the decision of the arbitral tribunal on the question is obviously wrong; or**
 - (ii) the question is one of general importance and the decision of the arbitral tribunal is at least open to serious doubt.**

Section 6(4) of Schedule 2 to the Hong Kong Arbitration Ordinance establishes the criteria that must be met for leave to appeal to be granted on a question of law arising from arbitral proceedings. This provision outlines the conditions under which the court can allow such an appeal. Here is an analysis of this section:

1. **Substantial Effect on Rights:** The provision requires that the court must be satisfied that the decision of the question of law will have a substantial impact on the rights of one or more of the parties involved in the arbitral proceedings. This criterion emphasises the significance of the question in terms of its implications for the parties' legal positions.
2. **Question Was Before the Arbitral Tribunal:** For leave to appeal to be granted, the question of law must be one that the arbitral tribunal was asked to decide during the proceedings. This ensures that the appeal focuses on issues that were raised and considered during the arbitration, rather than introducing new matters.
3. **Obvious Error or General Importance with Serious Doubt:** The provision further requires the court to consider the findings of fact in the award. It specifies two scenarios under which leave to appeal can be granted:

- a. The decision of the arbitral tribunal on the question is “obviously wrong”. This threshold requires a clear and demonstrable error in the tribunal’s legal interpretation or application.
 - b. The question is of “general importance”, and the decision of the arbitral tribunal is at least “open to serious doubt”. This criterion recognises that certain questions of law may have broader implications and that a decision raising substantial doubt about the tribunal’s conclusion should be appealable.
4. **Balancing Legal Correctness and Certainty:** By setting the bar at “obviously wrong” or “open to serious doubt”, the provision strikes a balance between ensuring legal correctness and preserving the finality and efficiency of arbitral awards. It provides an avenue for challenging decisions that appear erroneous or raise substantial concerns about their correctness.
 5. **Focus on Legal Issues:** The criteria outlined in this provision ensure that leave to appeal is granted primarily for questions of law rather than disputes over factual matters. This is consistent with the appellate function of reviewing legal interpretations and applications.
 6. **Judicial Oversight:** By stipulating specific conditions for leave to appeal, the provision provides a clear framework for judicial oversight of the appellate process, preventing frivolous or unwarranted appeals.
 7. **Promoting Consistency and Legal Clarity:** The provision serves to promote legal consistency and clarity by allowing for review of significant legal issues that may have far-reaching effects or raise serious doubts about their interpretation.

In summary, Section 6(4) of Schedule 2 to the Hong Kong Arbitration Ordinance sets forth the criteria for granting leave to appeal on a question of law from arbitral proceedings. The provision focuses on the importance of the legal issue, its impact on parties’ rights, and the clarity or correctness of the tribunal’s decision in deciding whether to grant leave.

(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.

Section 6(5) of Schedule 2 to the Hong Kong Arbitration Ordinance outlines the requirement for obtaining leave from the Court or the Court of Appeal to appeal a decision made by the Court in relation to granting or refusing leave to appeal on a question of law arising from arbitral proceedings. Here is an analysis of this section:

1. **Limited Appellate Process:** This provision underscores that the appellate process for decisions related to granting or refusing leave to appeal on questions of law is subject to additional control. Parties seeking to appeal such decisions must first obtain leave from either the Court or the Court of Appeal, thereby establishing an additional layer of oversight.
2. **Judicial Discretion:** The requirement for obtaining leave to appeal a decision of the Court aligns with the principles of judicial discretion. It ensures that only cases with significant

legal issues or substantial grounds for appeal are allowed to proceed to the appellate stage.

3. **Efficiency and Finality:** Requiring leave to appeal from decisions of the Court contributes to the efficiency and finality of arbitral proceedings. This mechanism prevents unnecessary or frivolous appeals and maintains the overall integrity of the arbitration process.
4. **Balancing Parties' Interests:** By imposing a leave requirement, the provision aims to strike a balance between the interests of the parties seeking to challenge a decision and the need to maintain the effectiveness and timeliness of the arbitration process.
5. **Appellate Jurisdiction Clarification:** This section clarifies the jurisdiction for appeals related to decisions on leave to appeal, specifying that such appeals should be directed to the Court or the Court of Appeal, further streamlining the appellate process.
6. **Preservation of Judicial Resources:** Requiring leave for appeals from decisions on leave to appeal prevents unnecessary strain on judicial resources, allowing the higher courts to focus on cases that present significant legal issues.
7. **Ensuring Meritorious Appeals:** By necessitating a demonstration of merit and significance for the appeal, this provision ensures that only valid, substantial appeals proceed, which contributes to the overall credibility of the appellate process.

In summary, Section 6(5) of Schedule 2 to the Hong Kong Arbitration Ordinance introduces an additional layer of oversight by requiring parties to obtain leave from the Court or the Court of Appeal before appealing a decision on leave to appeal. This provision promotes the efficiency, fairness, and finality of the arbitration process while allowing legitimate appeals on important legal issues to proceed.

(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.**

Section 6(6) of Schedule 2 to the Hong Kong Arbitration Ordinance outlines the criteria that must be met in order to grant leave to appeal from a decision of the Court regarding leave to appeal on a question of law arising from arbitral proceedings. Here is an analysis of this section:

1. **Elevating Significant Issues:** This provision establishes a high threshold for granting leave to appeal from a decision of the Court. It ensures that only cases involving questions of substantial legal significance or exceptional circumstances proceed to the appellate stage, preserving the integrity of the appeals process.
2. **Importance of the Legal Question:** Subsection (a) emphasises that the question of law must be of general importance. This criterion emphasises the broader implications of the

legal issue at hand and ensures that appeals are reserved for matters that extend beyond the immediate parties involved.

3. **Special Reasons Justification:** Subsection (b) introduces flexibility by allowing for other special reasons beyond general importance to warrant granting leave to appeal. This recognises that there may be unique circumstances where the question of law is critical enough to merit appellate review, even if it does not have general importance.
4. **Balancing Legal Precedent and Party Interests:** By setting stringent criteria for granting leave, this provision maintains the balance between the need for legal precedent and the efficient resolution of arbitral disputes. It prevents excessive appeals and safeguards against unnecessary delays in the arbitration process.
5. **Judicial Review and Discretion:** Section 6(6) empowers the Court to exercise its discretion judiciously when considering whether to grant leave to appeal. It ensures that only the most compelling cases proceed to the appellate stage, while discouraging frivolous or minor appeals.
6. **Ensuring Appropriate Use of Resources:** By requiring a demonstration of general importance or special reasons, this provision helps allocate judicial resources effectively. It ensures that appeals are reserved for cases that have wider implications for the legal community or are exceptionally critical to the parties involved.
7. **Promotion of Efficiency and Finality:** The rigorous criteria established in this provision contribute to the overall efficiency and finality of the arbitration process. It prevents unnecessary appeals and encourages parties to prioritise the resolution of disputes through the arbitration mechanism.

In summary, Section 6(6) of Schedule 2 to the Hong Kong Arbitration Ordinance sets strict criteria for granting leave to appeal from a decision of the Court regarding leave to appeal on a question of law. It ensures that appeals are limited to matters of general importance or those with special reasons, maintaining the integrity of the appeals process while promoting efficiency and finality in arbitral proceedings.

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.**

Section 7(1) of Schedule 2 to the Hong Kong Arbitration Ordinance introduces a requirement for exhaustion of available remedies before bringing an application or appeal under sections 4, 5, or 6 of the same schedule. Here is an analysis of this section:

1. **Promoting Efficiency and Finality:** This provision serves to promote efficiency and finality in arbitral proceedings. By mandating that parties exhaust all available remedies within

the arbitral process before seeking recourse through the Court, it encourages the resolution of disputes within the arbitration framework and discourages premature or unnecessary applications to the Court.

2. **Respecting Arbitration Autonomy:** Section 7(1) respects the autonomy of the arbitral process. It acknowledges the parties' choice to use arbitration as a means of resolving disputes and encourages them to utilise the dispute resolution mechanisms available within the arbitration procedure before resorting to court intervention.
3. **Minimising Judicial Overreach:** By requiring parties to exhaust internal arbitration remedies before approaching the Court, this section reduces the likelihood of judicial overreach into arbitration matters. It ensures that parties engage fully in the arbitration process before seeking external adjudication, thus minimising undue interference by the courts.
4. **Preserving Consistency and Cohesiveness:** Exhausting available arbitral remedies before appealing to the Court promotes a cohesive and consistent approach to dispute resolution. It allows the arbitral tribunal the opportunity to address any issues or concerns before involving the court system, contributing to a coherent and seamless dispute resolution process.
5. **Efficient Use of Judicial Resources:** The requirement for exhaustion of remedies within the arbitral process before seeking court intervention serves to efficiently allocate judicial resources. Parties are encouraged to resolve their disputes internally, reducing the burden on the court system and prioritising the efficient resolution of matters.
6. **Balancing Party Interests:** While promoting the principle of exhausting arbitral remedies, this section also acknowledges that there may be circumstances where parties need to access court remedies directly due to the urgency or nature of the dispute. The provision strikes a balance by requiring exhaustion while allowing for exceptions.
7. **Clarifying Procedural Steps:** Section 7(1) provides clarity on the procedural steps that parties must follow before bringing an application or appeal to the Court. It ensures that parties are aware of their obligations to exhaust arbitral remedies and internal processes, providing a clear framework for seeking external remedies.

In summary, Section 7(1) of Schedule 2 to the Hong Kong Arbitration Ordinance mandates the exhaustion of available arbitral remedies and internal processes before bringing an application or appeal under sections 4, 5, or 6 of the same schedule. This requirement promotes efficiency, respect for the arbitral process, and balanced use of judicial resources while ensuring that parties engage fully with the arbitration mechanism before seeking external intervention.

- (2) If, on an application or appeal, it appears to the Court that the award—
- (a) does not contain the arbitral tribunal’s reasons for the award; or
 - (b) does not set out the arbitral tribunal’s reasons for the award in sufficient detail to enable the Court properly to consider the application or appeal,
- the Court may order the tribunal to state the reasons for the award in sufficient detail for that purpose.

Section 7(2) of Schedule 2 to the Hong Kong Arbitration Ordinance addresses situations where the Court identifies shortcomings in the content of an arbitral award. Here is an analysis of this section:

1. **Ensuring Adequate Reasons:** This provision highlights the importance of providing clear and sufficient reasons in arbitral awards. It underscores the need for transparency and accountability in the arbitration process by ensuring that parties and the Court can fully comprehend the reasoning behind the arbitral tribunal’s decision.
2. **Facilitating Judicial Review:** Section 7(2) aims to enable the Court to effectively review and assess the arbitral award. When the Court finds that the reasons provided in the award are inadequate to address the application or appeal, it has the power to order the tribunal to state the reasons in greater detail.
3. **Avoiding Ambiguity and Misinterpretation:** By allowing the Court to request more detailed reasons, this provision helps prevent ambiguity and misinterpretation of the arbitral award. It contributes to the clarity of the decision-making process and enhances the overall quality of the award.
4. **Preserving Fairness and Due Process:** Clear and detailed reasons in an award are essential for parties to understand the basis of the decision. Section 7(2) ensures that parties have a fair opportunity to present their case on application or appeal and that the Court can conduct a thorough review of the decision.
5. **Balancing Autonomy and Review:** While arbitral awards are generally given deference due to the principle of party autonomy in arbitration, this provision acknowledges that the Court has a role in overseeing the quality and comprehensibility of awards in cases where inadequate reasons could hinder a proper review.
6. **Harmonising with Judicial Review Standards:** The requirement for detailed reasons aligns with standards of judicial review, where decisions must be supported by rational and transparent reasoning. This provision extends the same principle to arbitral awards subject to Court scrutiny.
7. **Promoting Transparency and Accountability:** Requiring tribunals to provide sufficient reasoning in their awards enhances transparency and accountability in the arbitration process. It ensures that parties and the Court can assess the tribunal’s decision-making process and rationale.

In summary, Section 7(2) of Schedule 2 to the Hong Kong Arbitration Ordinance empowers the Court to address instances where an arbitral award lacks adequate reasons or details. By allowing the Court

to order the tribunal to provide clearer explanations, this provision aims to promote transparency, facilitate judicial review, and ensure fair and comprehensible arbitral decisions.

(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.

Section 7(3) of Schedule 2 to the Hong Kong Arbitration Ordinance complements the provisions regarding the requirement for arbitral tribunals to provide adequate reasons for their awards. Here is an analysis of this section:

1. **Costs Allocation:** This provision emphasises the Court’s authority to not only order the arbitral tribunal to provide sufficient reasons but also to address the potential financial consequences resulting from such an order. It allows the Court to make an additional order regarding the allocation of costs arising from the necessity to provide more detailed reasons.
2. **Balancing Interests:** By granting the Court the discretion to determine appropriate costs adjustments, this provision seeks to strike a balance between ensuring that parties have clear reasons for the award and addressing any increased expenses that may arise due to the need to rectify inadequate reasons.
3. **Promoting Accountability:** By holding the tribunal accountable for providing clear and detailed reasons, Section 7(3) fosters a culture of transparency and accountability within the arbitration process. It aligns with the principle that arbitrators should take care in explaining their decisions to parties and ensuring fairness in the process.
4. **Avoiding Unnecessary Costs:** While addressing additional costs, this provision does not imply that every instance of insufficient reasoning will automatically lead to cost adjustments. The Court’s discretion allows it to assess the circumstances and determine whether such costs are justifiable and necessary.
5. **Encouraging Compliance:** The availability of cost-related orders provides an incentive for arbitral tribunals to ensure that their awards are well-reasoned and sufficiently detailed. This helps prevent potential disputes and challenges based on inadequate reasons.
6. **Preventing Unfairness:** By addressing the financial implications of providing additional reasons, the provision helps avoid imposing unfair burdens on the parties due to the tribunal’s shortcomings. It aligns with the broader principle of fairness in arbitration proceedings.
7. **Maintaining Efficiency:** While this provision introduces an additional element to the process, it encourages the arbitration process to be efficient and streamlined. Tribunals are incentivised to provide clear reasons initially, reducing the likelihood of further proceedings related to the adequacy of reasons.

In summary, Section 7(3) of Schedule 2 to the Hong Kong Arbitration Ordinance empowers the Court to make additional orders regarding the allocation of costs arising from the tribunal’s obligation to provide more detailed reasons for an award. By addressing the potential financial implications, this

provision reinforces accountability, encourages transparency, and aims to ensure fairness in the arbitration process.

(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.**

Section 7(4) of Schedule 2 to the Hong Kong Arbitration Ordinance addresses the Court’s authority to require the applicant or appellant to provide security for costs when making an application or appeal related to arbitration. Here is an analysis of this section:

1. **Security for Costs:** This provision grants the Court the power to order the applicant or appellant to provide security for the costs associated with their application or appeal. “Security for costs” typically refers to a financial guarantee that the party lodging the application or appeal will cover the costs of the other party if they are successful in their defence.
2. **Balancing Interests:** Requiring security for costs aims to strike a balance between ensuring access to justice for applicants and preventing frivolous or unfounded applications or appeals that might burden the opposing party with unnecessary expenses.
3. **Deterring Abuse:** By allowing the Court to order security for costs, this provision serves as a deterrent against vexatious or baseless claims or appeals. It discourages parties from pursuing applications or appeals without reasonable grounds.
4. **Protection of Respondents:** Security for costs helps safeguard respondents against potential financial losses resulting from applications or appeals that lack merit. It prevents situations where a respondent might incur substantial legal costs to defend against claims that ultimately prove to be unsubstantiated.
5. **Discretion of the Court:** The provision provides the Court with discretion regarding the imposition of security for costs. The Court will consider the specific circumstances of the case and whether there are reasonable grounds to believe that the applicant or appellant might not be able to cover the costs of the other party if the application or appeal is unsuccessful.
6. **Ensuring Compliance:** In cases where the ordered security for costs is not provided as required, the Court is empowered to dismiss the application or appeal. This ensures that parties take their obligations seriously and discourages non-compliance.
7. **Efficiency and Fairness:** By allowing the Court to dismiss non-compliant applications or appeals, this provision contributes to maintaining an efficient and fair arbitration process. It discourages delay tactics or attempts to abuse the system.

In summary, Section 7(4) of Schedule 2 to the Hong Kong Arbitration Ordinance grants the Court the authority to order the applicant or appellant to provide security for costs in relation to their application or appeal. This provision is designed to promote fairness, prevent abuse of the arbitration process, and ensure that respondents are protected against unfounded claims or appeals.

- (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.**

Section 7(5) of Schedule 2 to the Hong Kong Arbitration Ordinance addresses the limitation on exercising the power to order security for costs based solely on the residency or location of the applicant or appellant. Here is an analysis of this section:

1. **Narrowed Grounds for Security:** This provision restricts the Court from ordering security for costs solely based on the specified criteria related to the residency or location of the applicant or appellant. These criteria include being a natural person ordinarily resident outside Hong Kong, a body corporate incorporated or managed outside Hong Kong, or an association formed or managed outside Hong Kong.
2. **Balancing Access to Justice:** The intention behind this section is to strike a balance between ensuring access to justice for foreign parties and avoiding undue barriers to pursuing legitimate claims or appeals. It acknowledges that foreign parties may be involved in arbitration proceedings and should not face disproportionate obstacles due to their location.
3. **Preventing Discrimination:** By explicitly preventing security for costs orders based solely on the grounds listed in the provision, the section prevents discrimination against foreign parties. It ensures that parties are not unfairly burdened with financial requirements that are unrelated to the merits of their claims or appeals.
4. **Promoting Fairness:** This provision promotes fairness and equal treatment in arbitration proceedings. It ensures that parties are evaluated based on the merits of their claims rather than their place of residence or incorporation.

5. **Protection of Foreign Parties:** The provision is particularly important in international arbitration cases, where parties from various jurisdictions may be involved. It safeguards the interests of foreign parties by preventing potential bias or unfair treatment.
6. **Limited Scope:** It is important to note that this provision does not prevent the Court from ordering security for costs for valid reasons other than those listed in the provision. The Court retains the discretion to consider other relevant factors when deciding whether to order security for costs.

In summary, Section 7(5) of Schedule 2 to the Hong Kong Arbitration Ordinance restricts the grounds on which the Court can exercise its power to order security for costs. It aims to prevent discrimination against foreign parties and ensure that security for costs orders are based on the merits of the case rather than the residency or location of the applicant or appellant.

(6) The Court—

- (a) may order that any money payable under the award is to be paid into the Court or otherwise secured pending the determination of the application or appeal; and**
- (b) may, if the order is not complied with, direct that the application or appeal is to be dismissed.**

Section 7(6) of Schedule 2 to the Hong Kong Arbitration Ordinance addresses the power of the Court to order the payment of money under the award to be held in the Court or otherwise secured while an application or appeal is pending. Here is an analysis of this section:

1. **Security for Award Amount:** This provision empowers the Court to order that any amount of money payable under the arbitral award be paid into the Court or otherwise secured during the period when an application or appeal is being considered. The purpose is to prevent the dissipation of assets that might be due to a party if the application or appeal is successful.
2. **Protecting Rights:** By ordering the payment into the Court or securing the award amount, this provision aims to safeguard the rights of the party in whose favour the award was made. It prevents the opposing party from potentially frustrating the enforcement of the award by disposing of assets or funds.
3. **Ensuring Fairness:** This provision ensures that parties have a fair opportunity to challenge an award or pursue an appeal without risking the loss of the award amount during the legal process. It promotes a level playing field for both parties in the arbitration proceedings.
4. **Enforcement Mechanism:** The provision also serves as an enforcement mechanism for arbitral awards. By requiring the payment to be held in the Court or secured, it strengthens the party's ability to collect the award amount if the application or appeal is unsuccessful.
5. **Consequences of Non-Compliance:** If a party does not comply with the Court's order to pay the award amount into the Court or secure it, the Court is authorised to dismiss the

application or appeal. This emphasises the importance of complying with the Court's directions and maintaining the integrity of the arbitration process.

6. **Balancing Interests:** While this provision protects the interests of the party seeking enforcement, it also takes into account the interests of the party against whom the award was made. It does not automatically enforce payment, but rather, holds the amount in abeyance pending the determination of the application or appeal.

In summary, Section 7(6) of Schedule 2 to the Hong Kong Arbitration Ordinance empowers the Court to order the payment of money under an award to be held in the Court or otherwise secured during the pendency of an application or appeal. This provision seeks to ensure fairness, protect parties' rights, and maintain the enforceability of arbitral awards.

(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.

Section 7(7) of Schedule 2 to the Hong Kong Arbitration Ordinance deals with the power of the Court or the Court of Appeal to impose conditions when granting leave to appeal under sections 4, 5, or 6 of the same Schedule. Here is an analysis of this section:

1. **Imposing Conditions:** This provision allows the Court or the Court of Appeal to attach specific conditions to the grant of leave to appeal under sections 4, 5, or 6 of the Schedule. These conditions serve as requirements or limitations that the appellant must fulfil or adhere to as a prerequisite for pursuing the appeal.
2. **Parallel to Earlier Orders:** The conditions imposed by the Court or the Court of Appeal under this section can be of the same or similar effect as an order made under subsection (4) or (6) of the Schedule. Subsections (4) and (6) address the power of the Court to order security for costs and the payment of the award amount into the Court, respectively.
3. **Ensuring Compliance:** By imposing conditions, the Court or the Court of Appeal can ensure that the appellant meets certain obligations before proceeding with the appeal. These conditions could relate to matters such as providing security for costs, preserving assets, or complying with other requirements.
4. **Balancing Interests:** This provision strikes a balance between the interests of the parties. It allows the Court to protect the respondent's interests while allowing the appellant to pursue an appeal. The conditions imposed aim to address potential concerns about the appellant's ability to meet financial obligations or preserve the status quo during the appeal process.
5. **Flexibility:** The provision provides flexibility to the Court or the Court of Appeal to tailor conditions based on the specific circumstances of each case. This ensures that the conditions are proportionate and relevant to the particular issues at hand.
6. **Enhancing Integrity of Appeals:** By allowing the imposition of conditions, this provision contributes to the integrity of the appeals process. It prevents abuse of the appeal

mechanism and discourages frivolous or vexatious appeals, thereby maintaining the efficiency of the arbitration process.

In summary, Section 7(7) of Schedule 2 to the Hong Kong Arbitration Ordinance empowers the Court or the Court of Appeal to impose conditions on granting leave to appeal under sections 4, 5, or 6 of the Schedule. These conditions are designed to balance the interests of both parties and ensure compliance with certain requirements while pursuing the appeal.

(8) Subsection (7) does not affect the general discretion of the Court or the Court of Appeal to grant leave subject to conditions.

Section 7(8) of Schedule 2 to the Hong Kong Arbitration Ordinance addresses the relationship between the conditions imposed under subsection (7) and the general discretion of the Court or the Court of Appeal to grant leave to appeal subject to conditions. Here is an analysis of this section:

1. **Preservation of Discretion:** This subsection clarifies that the presence of the provisions in subsection (7) does not restrict or alter the inherent discretion of the Court or the Court of Appeal to grant leave to appeal subject to conditions. In other words, the general discretion of the Court or the Court of Appeal to impose conditions remains intact despite the specific conditions outlined in subsection (7).
2. **Flexibility in Imposing Conditions:** The subsection acknowledges that the Court or the Court of Appeal has the authority to exercise discretion when it comes to granting leave to appeal under sections 4, 5, or 6 of the Schedule. It recognises that there might be various situations and factors specific to each case that warrant the imposition of tailored conditions.
3. **Balancing Interests:** This provision emphasises that the Court or the Court of Appeal can take into account the specific circumstances of a case and consider what conditions, if any, should be attached to the grant of leave. This allows the Court to balance the interests of both parties and the principles of justice and fairness.
4. **Enhanced Judicial Oversight:** The acknowledgment that the general discretion remains unaffected ensures that the Court or the Court of Appeal retains its ability to exercise a high degree of judicial oversight. This is important for maintaining the integrity of the appeals process and ensuring that any conditions imposed are appropriate and relevant.
5. **Case-Specific Considerations:** Subsection (8) acknowledges that the application of conditions might be guided by factors unique to each case. This provision recognises that the Court's discretion extends to considering the overall circumstances, including the nature of the appeal, the potential impact of conditions on the parties, and the broader interests of justice.

In summary, Section 7(8) of Schedule 2 to the Hong Kong Arbitration Ordinance underscores that the specific conditions outlined in subsection (7) do not limit the general discretion of the Court or the Court of Appeal to grant leave to appeal subject to conditions. This provision ensures that the Court's discretion remains adaptable to individual cases, allowing for the imposition of appropriate conditions based on the circumstances at hand.

(9) An order, direction or decision of the Court or the Court of Appeal under this section is not subject to appeal.

Section 7(9) of Schedule 2 to the Hong Kong Arbitration Ordinance pertains to the appealability of orders, directions, or decisions made by the Court or the Court of Appeal under the provisions discussed in earlier sections of the Schedule. Here is an analysis of this section:

1. **Finality of Decisions:** This subsection establishes the principle that the orders, directions, or decisions made by the Court or the Court of Appeal under this section are final and not subject to further appeal. This serves to promote efficiency and finality in the arbitral process, ensuring that parties do not engage in prolonged litigation over procedural matters related to the arbitration.
2. **Reduced Litigation Burden:** By specifying that such orders are not appealable, this provision prevents unnecessary and potentially time-consuming appeals that could delay the arbitration process and increase costs for all parties involved. It encourages parties to focus on the arbitration itself rather than engaging in additional litigation over procedural issues.
3. **Enhanced Arbitration Process:** The non-appealability of these orders aligns with the broader goals of arbitration, which include providing a streamlined and efficient method of dispute resolution outside of traditional litigation. This provision encourages parties to resolve disputes through arbitration in a more expeditious manner.
4. **Preservation of Arbitral Autonomy:** The provision recognises and reinforces the principle that arbitral proceedings are designed to give parties control over the resolution process. By limiting appeals on procedural matters, the section respects the autonomy and agreements of the parties and their choice of arbitration as a dispute resolution mechanism.
5. **Avoidance of Delay:** Appeals can introduce significant delays into the dispute resolution process. By prohibiting appeals against orders made under this section, the provision contributes to the timely resolution of disputes and discourages tactics that may be employed to prolong the process.

In summary, Section 7(9) of Schedule 2 to the Hong Kong Arbitration Ordinance underscores the finality of orders, directions, or decisions made by the Court or the Court of Appeal under this section and establishes that they are not subject to further appeal. This provision aligns with the objectives of arbitration to provide efficient, expeditious, and final resolutions to disputes while promoting party autonomy and the effectiveness of the arbitration process.

Schedule 3 Savings and Transitional Provisions

Part 1 Savings and Transitional Provisions Relating to Commencement of this Ordinance

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.

Section 1(1) of Schedule 3 (Part 1) to the Hong Kong Arbitration Ordinance addresses the transitional provisions for ongoing arbitral proceedings that had commenced or been deemed to commence under the UNCITRAL Model Law (as defined in the repealed Ordinance) before the commencement of the new Arbitration Ordinance. Here is an analysis of this section:

1. **Transitional Protection:** This provision establishes a transitional framework to ensure that arbitral proceedings that were already in progress under the previous legal regime are not disrupted due to the enactment of the new Arbitration Ordinance. It preserves the application of the repealed Ordinance to these ongoing proceedings.
2. **UNCITRAL Model Law:** The provision references the UNCITRAL Model Law, which is a widely adopted international framework for modern arbitration legislation. By incorporating the concept of arbitral proceedings that commenced under Article 21 of the UNCITRAL Model Law, the provision is aligned with international arbitration standards.
3. **Definition of Commencement:** The provision outlines two scenarios for commencement of arbitration: (a) commencement under Article 21 of the UNCITRAL Model Law and (b) deemed commencement under section 31(1) of the repealed Ordinance. This demonstrates an intention to encompass a broad range of ongoing arbitral proceedings.
4. **Continuation of Previous Regime:** The core principle of this provision is to preserve the legal framework under which the arbitration proceedings began. It ensures that the repealed Ordinance continues to govern not only the ongoing arbitration but also related proceedings, including cases where an award was set aside, leading to resumed arbitral proceedings.
5. **Stability and Predictability:** By maintaining the legal context within which the ongoing arbitration proceedings were initiated, this provision provides stability and predictability for the parties involved. It prevents any confusion or unexpected changes in the legal landscape mid-way through a dispute resolution process.

6. **Protection of Parties' Rights:** Parties to ongoing arbitrations have certain expectations based on the legal regime under which they initiated the proceedings. This provision safeguards those expectations and rights, preventing any disadvantage due to changes in legislation.
7. **Promotion of Procedural Efficiency:** By ensuring that ongoing arbitral proceedings continue under familiar rules, this provision avoids disruptions that could arise from changes in the legal framework. This contributes to procedural efficiency and the timely resolution of disputes.

In summary, Section 1(1) of Schedule 3 to the Hong Kong Arbitration Ordinance serves as a transitional provision, ensuring that arbitral proceedings that had commenced or were deemed to commence under the UNCITRAL Model Law before the new Ordinance's enactment continue to be governed by the repealed Ordinance. This provision reflects an effort to maintain stability, preserve parties' rights, and promote procedural efficiency in ongoing arbitration cases during the transition to the new legal framework.

(2) If an arbitration has commenced under any other Ordinance amended by this Ordinance before the commencement of this Ordinance, that arbitration and all related proceedings, including (where the award made in that arbitration has been set aside) arbitral proceedings resumed after the setting aside of the award, are to be governed by that other Ordinance in force immediately before the commencement of this Ordinance as if this Ordinance had not been enacted.

Section 1(2) of Schedule 3 (Part 1) to the Hong Kong Arbitration Ordinance provides for the transitional arrangements for ongoing arbitral proceedings that had commenced under any other Ordinance, which was subsequently amended by the new Arbitration Ordinance before its commencement. Here is an analysis of this section:

1. **Transitional Protection:** Similar to the previous provision, this section aims to provide continuity and stability for ongoing arbitration proceedings by ensuring that they are not affected by the changes introduced by the new Arbitration Ordinance.
2. **Scope of Application:** This provision applies to arbitral proceedings that had commenced under any other Ordinance that was subsequently amended by the new Arbitration Ordinance. This demonstrates the intention to address various types of ongoing arbitrations, regardless of the specific legislative framework under which they were initiated.
3. **Application of Previous Ordinance:** The central concept of this provision is that the ongoing arbitration proceedings will continue to be governed by the provisions of the other Ordinance as they were in force immediately before the commencement of the new Arbitration Ordinance. This is done to preserve the legal context within which the proceedings began.
4. **Continuation of Legal Framework:** By maintaining the application of the other Ordinance in its pre-amendment form, this provision ensures that parties' rights and expectations remain unaffected by the changes introduced by the new Arbitration Ordinance. This continuity promotes certainty and predictability in the dispute resolution process.

5. **Protection of Parties' Rights:** Parties to ongoing arbitral proceedings under the previously amended Ordinance would have commenced proceedings with certain expectations based on the legal regime at that time. This provision safeguards those expectations and prevents any retroactive application of the new rules to their cases.
6. **Minimisation of Disruption:** The provision's objective is to minimise disruptions to ongoing arbitration proceedings and related matters. By continuing the application of the previous Ordinance, it avoids introducing unexpected changes in procedural requirements or legal standards midway through the arbitration process.
7. **Promotion of Efficient Resolution:** By maintaining the previous legal framework, this provision contributes to efficient dispute resolution. Parties can proceed with the arbitration process without interruptions caused by adapting to new rules or interpretations.

In summary, Section 1(2) of Schedule 3 (Part 1) to the Hong Kong Arbitration Ordinance is a transitional provision that ensures that ongoing arbitral proceedings commenced under any other Ordinance, which was subsequently amended by the new Arbitration Ordinance, continue to be governed by the provisions of the previous Ordinance as they were before the new Ordinance's commencement. This provision reflects the goal of promoting stability, protecting parties' rights, and facilitating the efficient resolution of ongoing disputes during the transition to the new legal framework.

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.

Section 2(1) of Schedule 3 (Part 1) to the Hong Kong Arbitration Ordinance addresses the transitional arrangements regarding the appointment of arbitrators made before the new Arbitration Ordinance's commencement. Here is an analysis of this section:

1. **Preservation of Appointments:** The primary purpose of this provision is to ensure that the appointment of arbitrators made prior to the commencement of the new Arbitration Ordinance remains valid and unaffected by the changes introduced by the new legal framework. This provision is intended to maintain the continuity and integrity of ongoing arbitration proceedings.
2. **Contextual Limitation:** The provision is subject to subsection (2), which indicates that there might be certain limitations or conditions that could affect the continued validity of pre-existing appointments. This implies that while the general principle is preservation, there may be exceptions outlined in subsection (2) that need to be taken into account.
3. **Avoidance of Disruption:** By allowing previously appointed arbitrators to continue serving, this provision prevents the potential disruption that could arise if ongoing arbitration proceedings were required to be reinitiated or restructured under the new Arbitration Ordinance's appointment provisions.

4. **Continuity for Parties:** The provision benefits parties involved in ongoing arbitration proceedings by maintaining the familiar arbitrator, even after the new Ordinance's commencement. Parties often choose arbitrators based on their expertise, impartiality, and familiarity with the case, and this provision safeguards their selection.
5. **Balanced Transition:** This provision ensures a smooth transition from the old legal framework to the new one. While the new Arbitration Ordinance might have introduced changes to certain appointment procedures, it does not retroactively affect arbitrators already appointed under the previous framework.
6. **Certainty and Predictability:** Parties to ongoing arbitration can proceed with confidence, knowing that the arbitrator they initially chose will continue to oversee the proceedings. This predictability is crucial for maintaining trust in the arbitration process.
7. **Interaction with Subsection (2):** Although the analysis is focused on subsection (1), the provision's interaction with subsection (2) is important. Subsection (2) might outline exceptions or modifications that limit the continuation of certain arbitrator appointments, and therefore, a comprehensive understanding would require considering both subsections.

In summary, Section 2(1) of Schedule 3 (Part 1) to the Hong Kong Arbitration Ordinance ensures that arbitrator appointments made before the new Ordinance's commencement remain valid and unaffected by the changes introduced by the new legal framework. It emphasises the importance of continuity, certainty, and minimal disruption in ongoing arbitration proceedings during the transition period.

(2) The enactment of this Ordinance does not revive the appointment of any arbitrator whose mandate has terminated before the commencement of this Ordinance.

Section 2(2) of Schedule 3 (Part 1) to the Hong Kong Arbitration Ordinance introduces an important limitation regarding the revival of arbitrator appointments after the new Arbitration Ordinance's commencement. Here is an analysis of this section:

1. **Limitation on Revival:** This provision clarifies that the enactment of the new Ordinance does not automatically revive the appointment of an arbitrator whose mandate has already terminated before the Ordinance's commencement. This is a crucial aspect to prevent the reactivation of arbitrator appointments that were formally concluded under the previous legal framework.
2. **Context of Mandate Termination:** The provision's main focus is on arbitrators whose mandates have concluded before the new Arbitration Ordinance took effect. This suggests that if an arbitrator's term or appointment ended based on the old framework, that termination remains valid and is not revived by the new Ordinance.
3. **Legal Certainty:** By specifying that expired mandates are not revived, the provision maintains legal certainty and clarity. Parties can rely on the status of arbitrator appointments as of the termination date, without having to revisit or reconsider appointments that have already been concluded.

4. **Transition with Caution:** The provision strikes a balance between maintaining the continuation of ongoing arbitrations and respecting the conclusion of appointments. While it aims to provide continuity where appropriate, it recognises that arbitrators whose mandates have concluded before the new Ordinance came into effect should not be reinstated retroactively.
5. **Avoidance of Confusion:** This provision helps avoid confusion and potential conflicts that might arise if terminated arbitrator appointments were inadvertently revived due to the enactment of the new Ordinance.
6. **Interaction with Subsection (1):** This provision interacts with subsection (1) of Section 2 of Schedule 3. Subsection (1) addresses the continuation of arbitrator appointments made before the new Ordinance's commencement, while subsection (2) addresses the non-revival of appointments that have already ended.

In summary, Section 2(2) of Schedule 3 (Part 1) to the Hong Kong Arbitration Ordinance clarifies that the enactment of the new Ordinance does not revive arbitrator appointments that have terminated before the new Ordinance's commencement. This provision ensures clarity, legal certainty, and appropriate transition without inadvertently reactivating concluded appointments.

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.

Section 3 of Schedule 3 (Part 1) to the Hong Kong Arbitration Ordinance deals with the enforcement of settlement agreements that were entered into under the previous legal framework. Here is an analysis of this section:

1. **Recognition of Existing Settlement Agreements:** This provision acknowledges and respects the settlement agreements that were entered into under the previous Arbitration Ordinance's framework, referred to as the "repealed Ordinance". It specifies that if parties had already reached a settlement agreement under section 2C of the repealed Ordinance before the new Arbitration Ordinance came into force, that settlement agreement continues to be recognised and enforced.
2. **Continuity and Legal Certainty:** By allowing the enforcement of settlement agreements that were made before the commencement of the new Ordinance, this provision ensures continuity and legal certainty for parties. It avoids a situation where parties would have to re-negotiate or reconfirm their settlement agreements due to the change in legal framework.
3. **Enforcement Mechanism:** This provision indicates that the settlement agreements made under section 2C of the repealed Ordinance can be enforced according to the procedures and provisions of that same section, as if the new Ordinance had not been enacted. This approach minimises disruptions in the enforcement process and preserves the

expectations of parties as they originally negotiated their settlement under the previous legal regime.

4. **Avoiding Unnecessary Re-examination:** Enforcing settlement agreements as if the new Ordinance had not been enacted prevents parties from having to re-examine and re-qualify their agreements based on the new rules. This ensures that agreements made under the previous framework are not subject to unexpected changes in enforcement procedures.
5. **Applicability to Specific Settlement Agreements:** The provision applies specifically to settlement agreements entered into under section 2C of the repealed Ordinance. It does not address settlement agreements reached under other provisions or circumstances.
6. **Harmonisation with New Framework:** While allowing the enforcement of previously made settlement agreements, this provision does not prevent parties from utilising the new provisions and mechanisms available in the updated Ordinance for future settlement agreements.

In summary, Section 3 of Schedule 3 (Part 1) to the Hong Kong Arbitration Ordinance ensures the continued enforceability of settlement agreements that were entered into under section 2C of the repealed Ordinance before the new Ordinance's commencement. This provision maintains the legal status quo for those agreements and avoids unnecessary disruptions in their enforcement.

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.

Section 4 of Schedule 3 (Part 1) to the Hong Kong Arbitration Ordinance addresses the continuity of appointments to the Appointment Advisory Board established under the Arbitration (Appointment of Arbitrators and Umpires) Rules. Here is an analysis of this section:

1. **Continuation of Appointments:** This provision ensures that the appointments of members to the Appointment Advisory Board made before the new Arbitration Ordinance came into force will continue to be effective and valid until the end of their respective terms. It treats these appointments as if the new Ordinance had not been enacted, thus maintaining the status quo in terms of their duration and validity.
2. **Preservation of Stability:** By allowing the existing appointments to continue until their natural expiration, this provision contributes to the stability and continuity of the Appointment Advisory Board's functioning. It avoids potential disruptions that could arise if appointments were suddenly terminated or altered due to the new Ordinance.
3. **Transitional Measure:** This provision is a transitional measure that bridges the transition from the old legal framework to the new one. It addresses situations where appointments

were made under the previous rules and ensures that these appointments are not prematurely affected by the changes introduced by the new Ordinance.

4. **Clarity and Predictability:** This provision offers clarity and predictability to individuals holding appointments to the Appointment Advisory Board, as it states that their appointments will continue as originally intended until the end of their term. It avoids any confusion or ambiguity that might arise due to the introduction of the new Ordinance.
5. **Alignment with New Framework:** While this provision maintains the continuity of existing appointments, it does not preclude the application of new rules or appointments under the updated Arbitration Ordinance. It specifically addresses the appointments made under the rules that were in place before the new Ordinance came into effect.

In summary, Section 4 of Schedule 3 (Part 1) to the Hong Kong Arbitration Ordinance ensures that appointments to the Appointment Advisory Board, made under the previous rules, remain effective and valid until the end of their respective terms, as if the new Ordinance had not been enacted. This provision promotes stability, clarity, and predictability during the transition to the updated legal framework.

**Part 2 Savings and Transitional Provisions Relating to Commencement of Arbitration (Amendment)
Ordinance 2015**

1. Conduct of arbitral and related proceedings

- (1) If an arbitration has commenced under article 21 of the UNCITRAL Model Law before the commencement date, that arbitration and all related proceedings are to be governed by the pre-amended Ordinance as if the Arbitration (Amendment) Ordinance 2015 (11 of 2015) had not been enacted.**

Section 1(1) of Schedule 3 (Part 2) to the Hong Kong Arbitration Ordinance deals with the transitional provisions regarding arbitrations that commenced under the UNCITRAL Model Law before the amendment brought by the Arbitration (Amendment) Ordinance 2015. Here is an analysis of this section:

1. **Continuation of Applicability:** This provision states that if an arbitration commenced under article 21 of the UNCITRAL Model Law prior to the commencement date of the amendment, the proceedings and all related matters connected to that arbitration will be governed by the legal framework of the pre-amended Ordinance. This implies that the changes introduced by the Arbitration (Amendment) Ordinance 2015 will not apply to these ongoing proceedings.
2. **Preservation of Legal Framework:** By ensuring that the pre-amendment legal provisions continue to apply to arbitrations commenced under the UNCITRAL Model Law, this provision maintains the stability and consistency of the legal framework for these proceedings. It avoids potential complications that could arise from applying new provisions to cases that are already in progress.
3. **Avoiding Mid-Stream Changes:** Arbitral proceedings involve complex processes, and changes to the legal framework mid-stream could lead to confusion or difficulties in applying the updated provisions retroactively. This provision seeks to prevent such issues by keeping the original legal framework intact for ongoing arbitrations.
4. **Transitional Clarity:** This provision brings clarity to the transitional period between the enactment of the Arbitration (Amendment) Ordinance 2015 and the cases that were already ongoing when the amendment took effect. It ensures that there is no ambiguity about which legal framework applies to these arbitrations.
5. **Applicability to Ongoing Cases:** Section 1(1) addresses ongoing cases that were already initiated under the UNCITRAL Model Law prior to the amendment. It acknowledges the importance of maintaining consistent procedures and rules for these cases without introducing new elements that could impact their resolution.

In summary, Section 1(1) of Schedule 3 (Part 2) to the Hong Kong Arbitration Ordinance provides a transitional arrangement for arbitrations that commenced under article 21 of the UNCITRAL Model Law before the amendment brought by the Arbitration (Amendment) Ordinance 2015. It ensures that these ongoing arbitrations and related proceedings continue to be governed by the pre-amended Ordinance, preventing the application of new provisions to cases already in progress.

(2) In subsection (1)—

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

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

***commencement date (生效日期) means the day on which the Arbitration (Amendment) Ordinance 2015 (11 of 2015) comes into operation;**

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

*** Commencement date: 17 July 2015.**

Section 1(2) of Schedule 3 (Part 2) of the Hong Kong Arbitration Ordinance provides definitions and explanations related to the terms used in subsection (1) of the same section. This helps clarify the scope and meaning of the transitional provisions for arbitrations commenced under article 21 of the UNCITRAL Model Law before the amendment brought by the Arbitration (Amendment) Ordinance 2015. Let us analyse this section in detail:

1. **All Related Proceedings:** This term is defined to include not only the initial arbitral proceedings but also those that are resumed after the setting aside of the award made in the arbitration. This definition ensures that all stages of the arbitration process are covered by the transitional arrangement, even if there are interruptions or challenges to the award.
2. **Article 21 of the UNCITRAL Model Law:** This provision references article 21 of the UNCITRAL Model Law, a key provision governing the commencement of arbitration proceedings. The definition clarifies that it refers to article 21 as given effect to by section 49(1) of the Ordinance, ensuring that the specific provision of the Ordinance is being referred to.
3. **Commencement Date:** This term refers to the day on which the Arbitration (Amendment) Ordinance 2015 (11 of 2015) comes into operation. It specifies the starting point for the application of the transitional provisions, aligning with the effective date of the amendments.
4. **Pre-Amended Ordinance:** This term refers to the version of the Ordinance that was in force immediately before the commencement date. It is the legal framework that applied to arbitrations before the amendment took effect.
5. **By providing definitions for these terms, section 1(2) adds clarity to the interpretation of section 1(1). It ensures that the scope and applicability of the transitional provisions are well-understood, particularly in relation to ongoing arbitrations and related proceedings that were initiated under the UNCITRAL Model Law before the amendment of the Ordinance.**

In summary, section 1(2) of Schedule 3 (Part 2) of the Hong Kong Arbitration Ordinance elucidates the terms used in subsection (1) and provides context to the transitional provisions for arbitrations

commenced under article 21 of the UNCITRAL Model Law before the amendment introduced by the Arbitration (Amendment) Ordinance 2015. It defines terms, specifies references, and establishes the temporal framework for the application of the transitional provisions.

Part 3 Savings and Transitional Provisions Relating to Arbitration (Amendment) Ordinance 2017

1. Conduct of arbitral and related proceedings

(1) This section applies to an arbitration commenced before the commencement date* of this section, whether or not the place of the arbitration is in Hong Kong.

Section 1(1) of Schedule 3 (Part 3) of the Hong Kong Arbitration Ordinance provides a transitional provision that outlines the scope of application for the provisions in this part. This section specifically addresses arbitrations that were commenced before the commencement date of this section, regardless of whether the place of arbitration is within Hong Kong. Let us analyse this section in detail:

1. **Commencement Date:** This term refers to the day on which the specific section of the Ordinance comes into operation. It marks the effective date of the provisions introduced in the Ordinance.
2. **Arbitration Commenced Before Commencement Date:** This provision focuses on arbitrations that were initiated before the specified commencement date. It is significant because it clearly specifies the temporal scope of the transitional provision.
3. **Place of the Arbitration:** The transitional provision does not restrict its application based on the location of the arbitration. It is applicable regardless of whether the place of arbitration is within Hong Kong or in another jurisdiction.
4. **The purpose of section 1(1) of Schedule 3 (Part 3)** is to ensure that the provisions in this part of the Schedule apply to arbitrations that were already underway prior to the commencement of the relevant section. This transitional provision accommodates cases that were in progress at the time the new provisions came into effect, regardless of where the arbitration proceedings were being conducted.

In summary, section 1(1) of Schedule 3 (Part 3) of the Hong Kong Arbitration Ordinance provides a clear and inclusive scope for the application of the provisions in this part of the Schedule. It ensures that arbitrations commenced before the commencement date of the section, regardless of their place of arbitration, are covered by the transitional arrangements.

(2) The pre-amended Ordinance continues to apply to the arbitration and all of its related proceedings.

Section 1(2) of Schedule 3 (Part 3) of the Hong Kong Arbitration Ordinance establishes a continuity principle for arbitrations that fall within the scope of this transitional provision. Let us break down this section for analysis:

1. **The Pre-Amended Ordinance:** This refers to the arbitration law as it existed before any amendments introduced by subsequent ordinances, including the one being discussed in the schedule. The pre-amended Ordinance is the version of the law that was in force prior to any changes.
2. **Continuation of Application:** This section states that the pre-amended Ordinance continues to apply to the arbitration in question. It means that the legal framework,

procedures, and rules that were applicable under the pre-amended Ordinance will still govern the arbitration proceedings covered by this section.

3. All Related Proceedings: The application of the pre-amended Ordinance is not limited solely to the arbitration itself. It extends to “all of its related proceedings”. This encompasses any subsequent or ancillary legal actions or proceedings that are connected to the arbitration.

In summary, section 1(2) of Schedule 3 (Part 3) of the Hong Kong Arbitration Ordinance establishes that the legal regime in place prior to the amendments will continue to govern the arbitration and all related proceedings. This ensures that there is consistency and predictability in the application of the law to arbitrations that were already underway before the changes introduced by the ordinance came into effect.

(3) However, Part 11A is to apply to the arbitration or any of its related proceedings if the parties to the arbitration or those related proceedings (as appropriate) agree.

Section 1(3) of Schedule 3 (Part 3) of the Hong Kong Arbitration Ordinance introduces an exception to the general rule laid out in the preceding sections. Let us break down this section for analysis:

1. Part 11A: This refers to a specific part or section of the Hong Kong Arbitration Ordinance, likely introduced in one of the amendments or updates. Without specific information on what Part 11A entails, its provisions cannot be discussed in detail.
2. Application to the Arbitration: Section 1(3) states that Part 11A will apply to the arbitration, which includes any of its related proceedings. This means that the provisions of Part 11A, whatever they may be, can be extended to the arbitration and related proceedings covered by this transitional provision.
3. Subject to Party Agreement: However, the application of Part 11A is subject to the agreement of the parties involved in the arbitration or its related proceedings. In other words, if the parties to the arbitration (or the related proceedings) agree, the provisions of Part 11A will apply. If they do not agree, the default rule established by the pre-amended Ordinance (as mentioned in the previous sections) will continue to apply.

In summary, section 1(3) of Schedule 3 (Part 3) allows for an exception to the general application of the pre-amended Ordinance. It introduces the possibility of applying the provisions of Part 11A to the arbitration and its related proceedings, but only if the parties involved agree to it. This provision acknowledges the importance of party autonomy in arbitration and allows them to choose whether to adopt the new provisions introduced by Part 11A or adhere to the existing legal framework.

(4) In this section—

pre-amended Ordinance (《原有條例》) means this Ordinance as in force immediately before the commencement date of this section;

related proceedings (相關程序), in relation to an arbitration, includes arbitral proceedings resumed after the setting aside of the award in the arbitration.

*** Commencement date: 1 January 2018.**

Section 1(4) of Schedule 3 (Part 3) of the Hong Kong Arbitration Ordinance provides definitions for terms used within this particular section. Here is an analysis of this section:

1. **Pre-amended Ordinance (《原有條例》)**: This term refers to the Hong Kong Arbitration Ordinance as it was in force immediately before the commencement date of this section. It encompasses the legal framework that was applicable before any amendments or changes introduced by subsequent ordinances.
2. **Related Proceedings (相關程序)**: This term pertains to arbitral proceedings that are linked or connected to the main arbitration. It includes not only the primary arbitration process but also extends to arbitral proceedings that are resumed after the award in the main arbitration has been set aside. This broader definition recognises that related proceedings may extend beyond the initial arbitration process and include actions taken subsequently due to the outcome of the main arbitration.

In essence, section 1(4) of Schedule 3 (Part 3) clarifies the definitions of key terms used within the section itself, ensuring that readers have a clear understanding of what is meant by “pre-amended Ordinance” and “related proceedings” in the context of this particular portion of the ordinance.

Schedule 4

(Omitted as spent—E.R. 3 of 2015)



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