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## Settlement of commercial disputes

### Interim measures of protection

#### Note by the Secretariat

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## Introduction

1. At its thirty-seventh session (Vienna, 7-11 October 2002), the Working Group had a brief discussion on the issue of recognition and enforcement of interim measures of protection, based on a note prepared by the Secretariat (A/CN.9/WG.II/WP.119, para. 83), which contained a draft text (also reproduced in A/CN.9/523, para. 78) (hereinafter referred to as “the draft enforcement provision”). The Working Group also heard a brief exchange of views on the possible treatment of interim measures ordered by a court in the context of the revision of article 17 of the UNCITRAL Model Law on International Commercial Arbitration (A/CN.9/523, para. 77) (hereinafter referred to as the “UNCITRAL Model Law”).
2. At its thirty-eighth session (New York, 12-16 May 2003), the Working Group discussed the provision on recognition and enforcement of interim measures of protection on the basis of the draft enforcement provision and later considered a revised draft (reproduced in A/CN.9/524, para. 30) (hereinafter referred to as the “revised draft”). The Working Group also considered a possible draft provision expressing the power of the court to order interim measures of protection in support of arbitration (A/CN.9/524, paras. 76-78).
3. This note has been prepared on the basis of discussions and decisions of the thirty-eighth session of the Working Group and includes two revised versions, one relating to recognition and enforcement of interim measures of protection (Part I), the other relating to the power of courts to order interim measures of protection (Part II).

### **I. Draft provision on the recognition and enforcement of interim measures of protection (for insertion as a new article of the UNCITRAL Model Law on International Commercial Arbitration, tentatively numbered 17 bis)**

4. To facilitate the resumption of discussions, the following text sets out a newly revised version of the provision on recognition and enforcement of interim measures of protection (hereinafter referred to as “draft article 17 bis”):

#### **A. Text of draft article 17 bis**

- (1) An interim measure of protection issued by an arbitral tribunal, that satisfies the requirements of article 17, shall be recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application [in writing] to the competent court, irrespective of the country in which it was issued, subject to the provisions of this article.\*

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\* The conditions set forth in this article are intended to limit the number of circumstances in which the court may refuse to enforce an interim measure of protection. It would not be contrary to the level of harmonization sought to be achieved by these model provisions if a State were to adopt fewer circumstances in which enforcement may be refused.

(2) The court may only refuse to recognize [and][or] enforce an interim measure of protection:

(a) If, at the request of the party against whom it is invoked, the court is satisfied that:

(i) *Variant 1:* There is a substantial issue as to the jurisdiction of the tribunal [[of such a nature as to make recognition or enforcement inappropriate][of such a nature as to make the interim measure unenforceable]][and no appropriate security was ordered by the arbitral tribunal in respect of that interim measure];

*Variant 2:* There is a substantial question relating to any grounds for such refusal set forth in article 36, paragraphs (1)(a)(i), (iii) or (iv); or

(ii) *Variant 1:* That party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings[, in which case the court may suspend the enforcement proceedings [until the parties have been heard by the arbitral tribunal][until the parties have had an opportunity to be heard by the arbitral tribunal][until the parties have been properly notified]];

*Variant 2:* Such refusal is warranted on the grounds set forth in article 36, paragraph (1)(a)(ii); or

(iii) *Variant 1:* That party was unable to present its case with respect to the interim measure [in which case the court [may][shall] suspend the enforcement proceedings until the parties have been heard by the arbitral tribunal]; or

*Variant 2:* Such refusal is warranted on the grounds set forth in article 36, paragraph (1)(a)(ii); or

(iv) The interim measure has been terminated or suspended by the arbitral tribunal or by order of a competent court; or

(b) If the court finds that:

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

(ii) *Variant 1:* The recognition or enforcement of the interim measure would be contrary to the public policy recognized by the court.

*Variant 2:* Any of the grounds set forth in article 36, paragraphs (1)(b)(i) or (ii) apply to the recognition and enforcement of the interim measure.

(3) Any determination made by the court on any ground in paragraph (2) of this article shall be effective only for the purposes of the application to recognize and enforce the interim measure of protection.

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

(5) *Variant A:* The court where recognition or enforcement is sought may, if it considers it proper, order the other party to provide appropriate security for costs [unless the tribunal has already made an order with respect to security for costs] [unless the tribunal has already made an order with respect to security for costs, except when the court finds that the order is inappropriate or insufficient in the circumstances].

*Variant B:* The court where recognition or enforcement is sought may, if it considers it proper, order security for costs.

*Variant C:* The court where recognition or enforcement is sought shall not, in exercising that power, undertake a review of the substance of the interim measure of protection.

*Variant D:* The court where recognition or enforcement is sought may only order security for costs where such an order is necessary to protect the rights of third parties.

(6) Paragraph (2)(a)(ii) does not apply

*Variant X:* To an interim measure of protection that was ordered without notice to the party against whom the interim measure is invoked provided that the interim measure was ordered to be effective for a period not exceeding [thirty] days and the enforcement of the interim measure is requested before the expiry of that period.

*Variant Y:* To an interim measure of protection that was ordered without notice to the party against whom the interim measure is invoked provided that such interim measure is confirmed by the arbitral tribunal after the other party has been able to present its case with respect to the interim measure.

*Variant Z:* If the arbitral tribunal, in its discretion, determines that, in light of the circumstances referred to in article 17(2), the interim measure of protection can be effective only if the enforcement order is issued by the court without notice to the party against whom the interim measure is invoked.

## **B. General remark on the new provisions**

5. The Working Group will note that article 17 bis and the proposed article 17 ter (set out below under paragraphs 40 and 42) are intended for inclusion in the UNCITRAL Model Law following the proposed new article 17 (see A/CN.9/WG.II/WP.123). The Working Group may wish to consider whether these provisions should be grouped together in a new chapter of the UNCITRAL Model Law, for example, Chapter IV bis, which could be entitled “Interim measures of protection”. Alternatively, the current title of Chapter IV, which now reads “Jurisdiction of Arbitral Tribunal” could be modified to better reflect the inclusion of these new provisions.

## C. Notes on draft article 17 bis

### **Paragraph (1) (previously paragraphs 1 and 2 of the revised draft as reproduced in A/CN.9/524, para. 30)**

6. Paragraphs (1) and (2) of the revised draft have been merged into one paragraph to align it more closely with the wording of article 35 of the UNCITRAL Model Law.
7. Paragraph (1) of draft article 17 bis is intended to reflect the decisions of the Working Group that the provision should:
  - First provide a positive statement that an interim measure should be recognized and enforced and then set out the grounds upon which recognition or enforcement could be refused (A/CN.9/524, paras. 28 and 34);
  - Include the following formulation: “An interim measure issued by an arbitral tribunal, that satisfies the requirements of Article 17” (see A/CN.9/524, para. 32); and
  - Also include the words “irrespective of the country in which it was ordered” (see A/CN.9/524, para. 33).
8. The words “Unless otherwise provided by the arbitral tribunal” have been included to reflect the decision that an arbitral tribunal should be able to provide, at the time of ordering the interim measure, that the measure was not to be the subject of an application for court enforcement (A/CN.9/524, paras. 26 and 34).
9. As a matter of drafting, it was suggested that paragraph (2) of the revised draft could omit the words “recognized and” since recognition was implied in enforcement. However, concern was expressed that both these terms should be included for the sake of consistency with other draft provisions as well as articles 34 and 35 of the UNCITRAL Model Law (A/CN.9/524, para. 34). The revised text appears to make this concern redundant.
10. The words “in writing” have been placed in square brackets. When finalizing the text of article 17 bis(1), the Working Group may wish to keep in mind that the term “in writing” is included in a number of provisions in the UNCITRAL Model Law, being articles 7(2), article 31(1) and 35(1). As there is no general definition of the term in the UNCITRAL Model Law, and given that the Working Group is yet to finalize a decision revising article 7(2) of the UNCITRAL Model Law, the Working Group may wish to either avoid a reference to the term unless it is essential, or consider the inclusion of a global definition that would be electronic commerce friendly, in the interest of uniform interpretation.

### **Footnote to paragraph (1)**

11. The Working Group agreed to retain the footnote with the amendment to replace “must”, where it appeared in the footnote, with the word “may” (A/CN.9/524, paras. 64-66).

**Paragraph (2) (previously paragraph (3) of the revised draft)****General remarks**

12. At the close of the discussion regarding the individual grounds for refusing enforcement of an interim measure issued by an arbitral tribunal, it was observed that one of the results achieved by the Working Group had been to bring those various grounds somewhat closer to the grounds listed in articles 35 and 36 of the Model Law and in article V of the New York Convention. It was thus suggested that, instead of formulating each of those individual grounds, the paragraph could be recast in the form of a general reference to “the provisions of articles 35 and 36” (A/CN.9/524, para. 57). The Secretariat was requested to consider the possibility of drafting alternative variants so that the Working Group would have concrete texts before it when discussing the matter further at a future session. Variants 2 under subparagraphs (a) (i), (ii) and (iii) and (b) (ii) provide texts giving effect to these suggestions. The Working Group may wish to note that a reference to article 36, paragraph (1) (a) (ii) is repeated under both subparagraphs (ii) and (iii) of the revised draft as it covers questions of notice and inability to present the case.

13. Another view was that a reference to article 35 and 36 of the Model Law should be avoided to facilitate the use of the draft enforcement provision by those States that might not have already enacted the Model Law. It was said that it was preferable to spell out in the Model Law the provisions applicable to the enforcement of interim measures issued by an arbitral tribunal since the policy and legal considerations governing the enforcement of those measures were sufficiently different from those governing the enforcement of an arbitral award (A/CN.9/524, para. 57). Variants 1 under subparagraphs (a)(i), (ii) and (iii) and (b)(ii) provide texts giving effect to these suggestions.

*Chapeau*

14. To emphasize that the circumstances in which refusal could occur were limited, the word “only” has been included after the word “may” (A/CN.9/524, para. 35). For the sake of consistency with article 36 of the UNCITRAL Model Law, and also to better reflect the options available to the court, the Working Group may wish to decide whether the word “and” could be replaced by “or”.

15. The structure of paragraph (2) reflects the decision of the Working Group (A/CN.9/524, para. 62).

**Subparagraph (a), chapeau (previously paragraph 1(a) of the draft enforcement provision as reproduced in A/CN.9/523, para. 78)**

16. The redraft reflects the decision that no provision should be made regarding the allocation of the burden of proof and that the matter should be left to applicable law (A/CN.9/524, paras. 35-36, 42, 58 and 60). The Working Group may wish to consider that the current text, which omits any reference to the burden of proof, appears to be inconsistent with the approach taken in articles 34 and 36 of the UNCITRAL Model Law. If so, this might lead to different interpretations such as imposing a burden of proof on the party asking for enforcement or implying that it was for the arbitral tribunal to verify these requirements *ex officio*. If the Working Group agrees that this different wording is justified given the different objectives of article 17 bis as compared to articles 34 and 36, the Working Group should seek to

elaborate the reasons for this difference in drafting to avoid uncertainty in interpretation.

**Subparagraph (a)(i) (previously subparagraph (a) of the revised draft and paragraph 1(a)(i) of the draft enforcement provision)**

*Variant 1*

17. Variant 1 spells out the provisions applicable to the enforcement of interim measures issued by an arbitral tribunal based on the approach that the policy and legal considerations governing the enforcement of those measures were sufficiently different from those governing the enforcement of an arbitral award (A/CN.9/524, para. 57).

18. The Working Group agreed that in order for a court to have discretion to refuse to recognize and enforce an interim measure, the court should not only be satisfied that there was a substantial issue but also that that issue was an appropriate basis on which to refuse enforcement and recognition. That broader approach was widely supported (A/CN.9/524, para. 37). To reflect more expressly that approach, the draft text includes alternative bracketed wording providing that the substantial issue should be of such a nature as to either make recognition or enforcement inappropriate or make the interim measure unenforceable (A/CN.9/524, para. 37).

19. It was also noted that any revision of subparagraph (a) of the revised draft should take account of discussions regarding the requirement that security ought to be provided when an interim measure was granted (A/CN.9/524, para. 39). In this context, the Working Group may wish to consider, as has been provided in square brackets in the text, whether subparagraph (a) should be subject to whether or not security was ordered by the arbitral tribunal in respect of the interim measure that is sought to be recognized and enforced.

*Variant 2*

20. For a discussion of this variant, see paragraphs 12 and 13 above.

**Subparagraph (a)(ii) (previously paragraph 1(a)(ii) of the draft enforcement provision)**

*Variant 1*

21. The current text includes several variants to the effect that the court might suspend the enforcement proceedings until the parties have:

- Been heard by the arbitral tribunal;
- Had an opportunity to be heard by the arbitral tribunal;
- Been properly notified (A/CN.9/524, para. 45).

The Working Group may wish to consider whether the first two variants introduce an overly formalistic condition which could result in unnecessary delays to enforcement of an interim measure.

*Variant 2*

22. See comments under paragraphs 12 and 13 above.

**Subparagraph (a)(iii) (previously paragraph (1)(a)(iii) of the draft enforcement provision)**

*Variant 1*

23. The substance of the subparagraph was found to be generally acceptable (A/CN.9/524, para. 46). The text retains the bracketed language “[in which case the court [may][shall] suspend the enforcement proceedings until the parties have been heard by the arbitral tribunal]”. The usefulness of the bracketed language was questioned. It was stated that the bracketed language described only one among many options which would normally be open to a state court under domestic law where a party had not been given full opportunity to present its case under article 18 of the Model Law. From that perspective, the bracketed language would only prove useful in the unlikely situation where the domestic rules of procedural law would not allow a court to order suspension of the proceedings. The Working Group may wish to decide whether or not the text should be retained, and if so, whether to retain the word “shall” or “may”. It should be recalled that a view had been expressed that, in order to preserve the broadest possible discretion for the court, “may” was the preferable option (A/CN.9/524, para. 46).

*Variant 2*

24. See comments under paragraphs 12 and 13 above.

**Subparagraph (a)(iv) (previously paragraph (1)(a)(iv) of the draft enforcement provision)**

25. The substance of this subparagraph was found to be generally acceptable. The words “or by order of a competent court” have been added to deal with a situation where an interim measure has been set aside by a court in the country of the seat of the arbitration (A/CN.9/524, para. 47).

**Subparagraph (b)(i) (previously paragraph (1)(b)(i) of the draft enforcement provision)**

26. As previously drafted, subparagraph (b)(i) referred to “procedural laws”. As decided by the Working Group, the reference to the term “procedural” has been omitted on the basis that there were substantial differences between the content of different procedural laws in different jurisdictions and that boundaries between substantive laws and procedural laws also varied between different jurisdictions (A/CN.9/524, para. 48). As well, it was said that a court may refuse to recognize or enforce an interim measure for the reason that it was incompatible with the powers conferred upon it by its substantive laws.

27. The redraft reflects the decision of the Working Group to combine paragraph 4 of the draft enforcement provision (which read: “in reformulating the measure under paragraph 1(b)(i), the court shall not modify the substance of the interim measure”) with this subparagraph (A/CN.9/524, para. 49).



**Subparagraph (b)(ii) (previously paragraph (1)(b)(ii) of the draft enforcement provision)***Variant 1*

28. As decided by the Working Group, the phrase “this State” has been omitted from the draft paragraph, even though the phrase is used in paragraph 36(1)(b)(ii) of the UNCITRAL Model Law, on the basis that it was considered unnecessary (A/CN.9/524, paras. 50-51).

29. The provision has been revised to refer to “public policy recognized by the court” (A/CN.9/524, paras. 38 and 52). The Working Group will recall that the term “public policy” was regarded as a very vague term that was insusceptible to definition in a number of countries and could encompass at least three different meanings being: domestic public policy understood as covering all mandatory provisions of domestic legislation; public policy rules specifically established in domestic legislation for international relationships and the very limited set of rules established at the transnational level and sometimes referred to as international public policy.

30. The Working Group may wish to consider the consequences of any discrepancies between this subparagraph and other provisions of the UNCITRAL Model Law, namely paragraph (b)(ii) of article 34 and paragraph (b)(ii) of article 36 and to decide whether it would be appropriate, in the interests of uniform interpretation, to define the term “public policy” for the purposes of the UNCITRAL Model Law.

*Variant 2*

31. See comments under paragraphs 12 and 13 above.

**Paragraph (3) (previously paragraph (4) of the revised draft)**

32. The redraft took account of the concern expressed in the Working Group’s discussions on the risk that a court, in considering a request for enforcement of an interim measure, could hinder the arbitral tribunal’s right to determine its own competence (A/CN.9/524, paras. 22 and 40).

33. The Working Group agreed to add the words “by the court” following the word “made” to clarify that the paragraph was addressed to a court and not to an arbitral tribunal, and also to provide a clearer link between that paragraph and paragraph (2) (previously paragraph (3) of the revised draft) (A/CN.9/524, para. 56).

**Paragraph (4) (previously paragraph (3) of the enforcement provision)**

34. Consistent with the decision taken by the Working Group that the obligation to notify also extended to the period after an enforcement order had been granted, the expression “the party who is seeking enforcement” has been replaced with “the party who is seeking or has obtained enforcement” (A/CN.9/524, para. 69).

**Paragraph (5) (new provision)**

35. As requested by the Working Group, this provision addresses the question of whether a court, when faced with an application to enforce an interim measure,

ought to be able to order the applicant to provide security (A/CN.9/524, paras. 72-75).

36. Variant A provides that a court has the power to order security and includes bracketed text that limits such a power to the circumstance where a tribunal has not made an order with respect to security as well as another option extending this power to include a power to order security where an arbitral tribunal has made an order but the court has found that order to be inappropriate or insufficient in the circumstances. Variant B merely provides that a court has the discretion to order security for costs. Under this variant, the scope of the power, as well as any potential conflict with an earlier determination by an arbitral tribunal on security, would be dealt with by the court under a law other than the UNCITRAL Model Law. Variant C has been drafted to cover the suggestion that the power of a court be limited to the question whether or not to enforce an interim measure. The suggested text expressly provides that the power of the court should not extend to reviewing the substance of the interim measure. If this variant is the preferred option, the draft article will contain no provision expressly granting the court the right to order security when recognizing or enforcing an interim measure. Variant D limits the power of the court to order security to protect third party rights. As the term “third party” is not defined, if variant D is the preferred option, the Working Group may wish to clarify the term.

37. The Working Group might be willing to further consider the issue of security for costs ordered by courts in the light of the Hague Conventions on Civil Procedure of 1905 and 1954, which prohibit security for costs being required from nationals of signatory States. Article 17 of the 1954 Hague Convention on Civil Procedure provides as follows:

“No bond, nor deposit, under any denomination whatsoever, may be imposed on the ground, whether of their foreign character or of absence of domicile or residence in the country, upon nationals of one of the contracting States, having their domicile within one of such States, who are plaintiffs or intervene in the tribunals of another of such States.

The same rule applies to payments which may be required of plaintiffs or interveners to guarantee judicial costs.

Conventions by which contracting States may have stipulated on behalf of their nationals exemption from security for costs and damages in proceedings or from payment of judicial costs irrespective of domicile, shall continue to apply.”

**Paragraph (6) of the redraft (previously paragraph 5 of the enforcement provision)**

38. This paragraph was not discussed at the thirty-eighth session of the Working Group.

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39. Article 35(2) of the Model Law provides that “the party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof and the original arbitration agreement ... or a duly

certified copy thereof”. As well the article provides that if “the award or agreement is not made in an official language of this State, the party shall supply a duly certified translation thereof into such language.” At its thirty-eighth session, the Working Group generally agreed that, in drafting paragraph (1) “unnecessary deviation from the text of articles 35 and 36 should be avoided” (A/CN.9/524, para. 57). On that basis, the Working Group may wish to consider whether language along the lines of articles 35(2) should be included in the current text.

## **II. Draft provision on the power of courts to order interim measures of protection in support of arbitration (for insertion as a new article of the UNCITRAL Model Law on International Commercial Arbitration, tentatively numbered 17 ter)**

### **A. Variants for consideration by the Working Group**

40. At its thirty-eighth session, the Working Group considered a possible draft provision expressing the power of the court to order interim measures of protection in support of arbitration on the basis of a Note by the Secretariat (A/CN.9/WG.II/WP.119) and, in particular, the draft provision which read as follows:

“The court shall have the same power of issuing interim measures of protection for the purposes of and in relation to arbitration proceedings as it has for the purposes of and in relation to proceedings in the courts.”

41. General support was expressed in favour of a provision that would give a court power to issue interim measures of protection, irrespective of the country where the arbitration took place. It was pointed out that the scope of the provision was not in line with the rule on territoriality expressed in the Model Law. It was generally agreed that in preparing the revised draft, attention should be given to the possible need of adapting article 1 (2) to extend the exception to the territorial application of the Model Law (A/CN.9/524, para. 78). The Working Group may wish to consider amending article 1(2) to include a reference to any provision conferring upon a court the power to issue interim measures of protection even if the arbitration took place outside the country of that court.

42. The following variants are presented to assist a continuation of discussion on this topic.

#### *Variant 1*

“The court shall have the same power of issuing interim measures of protection for the purposes of and in relation to arbitration proceedings as it has for the purposes of and in relation to proceedings in the courts and shall exercise that power in accordance with its own rules and procedures insofar as these are relevant to the specific features of an international arbitration.

*Variant 2*

“The court shall have the same power of issuing interim measures of protection for the purposes of and in relation to arbitration proceedings as it has for the purposes of and in relation to proceedings in the courts. That power shall be exercised in accordance with the requirements set out under article 17 insofar as these requirements can be applied.”

43. The variants take a different approach as to the criteria and standards that apply to court-ordered interim measures. Variant 1 seeks to give effect to the suggestion that the court should apply its own rules of procedures and standards. Variant 2 reflects the view that the criteria and standards set forth in article 17 should apply to courts. It was generally recognized that any reference to existing standards would have to provide flexibility for the court to adapt to the specific features of international arbitration (A/CN.9/524, para. 77).

**B. Materials as examples to assist in the discussions**

44. The Working Group may wish to consider the following national legislation which provides different approaches to the question of whether to confer a power on courts to order interim measures of protection. Essentially, the issues raised in drafting such a provision include: whether this power should be limited only to arbitral tribunals or whether this power should be one that can be exercised by both an arbitral tribunal and a court. In the latter option, the issues that should be considered are how to balance the power to order interim measures of protection as between the courts and arbitral tribunals, namely: whether the power of the court should be limited to circumstances where the arbitral tribunal has not yet been constituted; whether an application to a court for interim measures should be subject to party consent and notice to the arbitral tribunal; whether the court power should be a secondary option available only where an arbitrator cannot act effectively or the parties have agreed that the arbitrator not be empowered to grant interim measures of protection. Alternatively the balancing of these powers could be left to party choice (for an earlier discussion on court-ordered interim measures, see A/CN.9/WG.II/WP.119, paras. 19-33, 37-40, 44-48 and 75-82).

**1. UK Arbitration Act 1996 (which applies to England and Wales Only)**

“44. - (1) Unless otherwise agreed by the parties, the court has for the purposes of and in relation to arbitral proceedings the same power of making orders about the matters listed below as it has for the purposes of and in relation to legal proceedings.

(2) Those matters are:

- (a) The taking of the evidence of witnesses;
- (b) The preservation of evidence;
- (c) Making orders relating to property which is the subject of the proceedings or as to which any question arises in the proceedings:
  - (i) For the inspection, photographing, preservation, custody or detention of the property, or

- (ii) Ordering that samples be taken from, or any observation be made of or experiment conducted upon, the property;

And for that purpose authorising any person to enter any premises in the possession or control of a party to the arbitration;

- (d) The sale of any goods the subject of the proceedings;
- (e) The granting of an interim injunction or the appointment of a receiver.

(3) If the case is one of urgency, the court may, on the application of a party or proposed party to the arbitral proceedings, make such orders as it thinks necessary for the purpose of preserving evidence or assets.

(4) If the case is not one of urgency, the court shall act only on the application of a party to the arbitral proceedings (upon notice to the other parties and to the tribunal) made with the permission of the tribunal or the agreement in writing of the other parties.

(5) In any case the court shall act only if or to the extent that the arbitral tribunal, and any arbitral or other institution or person vested by the parties with power in that regard, has no power or is unable for the time being to act effectively.

(6) If the court so orders, an order made by it under this section shall cease to have effect in whole or in part on the order of the tribunal or of any such arbitral or other institution or person having power to act in relation to the subject-matter of the order.

(7) The leave of the court is required for any appeal from a decision of the court under this section.”

## **2. German Arbitration Law—Section 1033 (Code of Civil Procedure)**

“Arbitration agreement and interim measures by court

It is not incompatible with an arbitration agreement for a court to grant, before or during arbitral proceedings, an interim measure of protection relating to the subject-matter of the arbitration upon request of a party.”

## **3. Hong Kong Arbitration Ordinance (Chapter 341 of the Law of Hong Kong)**

“(1) The Court or a judge of the Court may, in relation to a particular arbitration proceeding, do any of the following:

- (a) Make an order directing an amount in dispute to be secured;
- (b) In relation to relevant property:
  - (i) Make an order directing the inspection, photographing, preservation, custody, detention or sale of the property by the tribunal, a party to the proceedings or an expert; or
  - (ii) Make an order directing samples to be taken from, observations to be made of, or experiments to be conducted on the property;

- (c) Grant an interim injunction or direct any other interim measure to be taken.
- (2) Property is relevant property for the purposes of subsection (1)(b) if:
  - (a) The property is owned by or is in the possession of a party to the arbitration proceedings concerned; and
  - (b) The property is subject to the proceedings, or any question relating to the property has arisen in those proceedings.
- (3) The Court or a judge of the Court may order a person to attend proceedings before an arbitral tribunal to give evidence or to produce documents or other material evidence.
- (4) The Court or a judge of the Court may also order a writ of habeas corpus ad testificandum to be issued requiring a prisoner to be taken for examination before an arbitral tribunal.
- (5) The powers conferred by this section can be exercised irrespective of whether or not similar powers may be exercised under section 2GB in relation to the same dispute.
- (6) The Court or a judge of the Court may decline to make an order under this section in relation to a matter referred to in subsection (1) on the ground that:
  - (a) The matter is currently the subject of arbitration proceedings; and
  - (b) The Court or the judge considers it more appropriate for the matter to be dealt with by the relevant arbitral tribunal.”

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