LAWS OF HONG KONG
香港法例

CONTROL OF EXEMPTION CLAUSES
ORDINANCE
管制免責條款條例

CHAPTER 71
第71章

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CHAPTER 71
CONTROL OF EXEMPTION CLAUSES ORDINANCE

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CHAPTER 71

CONTROL OF EXEMPTION CLAUSES

To limit the extent to which civil liability for breach of contract, or for negligence or other breach of duty, can be avoided by means of contract terms and otherwise; and to restrict the enforceability of arbitration agreements.

[1 December, 1990]

Originally 59 of 1989 — 76/90

PART I

PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Control of Exemption Clauses Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Governor by notice in the Gazette.

2. Interpretation and application

(1) In this Ordinance—
"business" (業務) includes a profession and the activities of a public body, a public authority, or a board, commission, committee or other body appointed by the Governor or Government;
"goods" (貨品) has the same meaning as in the Sale of Goods Ordinance (Cap. 26);
"negligence" (疏忽) means the breach—
(a) of any obligation, arising from the express or implied terms of a contract, to take reasonable care or exercise reasonable skill in the performance of the contract;
(b) of any common law duty to take reasonable care or exercise reasonable skill (but not any stricter duty);
(c) of the common duty of care imposed by the Occupiers Liability Ordinance (Cap. 314);
"notice" (告示) includes an announcement, whether or not in writing, and any other communication or pretended communication;
第71章

管制免責條款條例

本條例對於可以藉着合約條款或其他方法而逃避民事法律責任(指因違約、疏忽或其他不履行責任的作為所引致的民事法律責任)的程度，加以限制，並對仲裁協議的可執行範圍，加以限制。

原是1989年第59號——

第1部

導言

1. 簡稱及生效日期

(1) 本條例可引稱為《管制免責條款條例》。
(2) 本條例自公布以憲報公告指定的日期起實施。

2. 釋義及適用範圍

(1) 在本條例中——
“人身傷害”(personal injury)包括疾病及任何肉體上或精神上的損傷；
“告示”(notice)包括以書面或並非以書面發出的公告，亦包括任何其他通知或稱為通知者；
“貨品”(goods)的意思，與《售賣貨品條例》(第26章)所界定的相同；
“疏忽”(negligence)指不履行——
(a) 合約上明訂條款或隱含條款所引致的法律義務，即在履行該合約時需要合理程度的謹慎或須運用合理水平的技術的法律義務；
(b) 需要合理程度的謹慎或須運用合理水平的技術的普通法責任(並不包括更為嚴格的責任)；
(c) 《佔用人責任條例》(第314章)所施加的一般謹慎責任；
“personal injury” (人身傷害) includes any disease and any impairment of physical or mental condition.

(2) In the case of both contract and tort, sections 7 to 12 apply (except where the contrary is stated in section 11(4)) only to business liability, that is liability for breach of obligations or duties arising—

(a) from things done or omitted to be done by a person in the course of a business (whether his own business or another’s); or

(b) from the occupation of premises used for business purposes of the occupier,

and references to liability are to be read accordingly; but liability of an occupier of premises for breach of an obligation or duty towards a person obtaining access to the premises for recreational or educational purposes, being liability for loss or damage suffered by reason of the dangerous state of the premises, is not a business liability of the occupier unless granting that person such access for the purposes concerned falls within the business purposes of the occupier.

(3) In relation to any breach of duty or obligation, it is immaterial whether the breach was inadvertent or intentional, or whether liability for it arises directly or vicariously.

[cf. 1977 c. 50 ss. 1 & 14 U.K.]

3. The “reasonableness” test

(1) In relation to a contract term, the requirement of reasonableness for the purposes of this Ordinance and section 4 of the Misrepresentation Ordinance (Cap. 284) is satisfied only if the court or arbitrator determines that the term was a fair and reasonable one to be included having regard to the circumstances which were, or ought reasonably to have been, known to or in the contemplation of the parties when the contract was made.

(2) In determining for the purposes of section 11 or 12 whether a contract term satisfies the requirement of reasonableness, the court or arbitrator shall have regard in particular to the matters specified in Schedule 2; but this subsection does not prevent the court or arbitrator from holding, in accordance with any rule of law, that a term which purports to exclude or restrict any relevant liability is not a term of the contract.

(3) In relation to a notice (not being a notice having contractual effect), the requirement of reasonableness under this Ordinance is satisfied only if the court or arbitrator determines that it would be fair and reasonable to allow reliance on it, having regard to all the circumstances obtaining when the liability arose or (but for the notice) would have arisen.

(4) In determining (under this Ordinance or the Misrepresentation Ordinance (Cap. 284)) whether a contract term or notice satisfies the requirement of reasonableness, the court or arbitrator shall have regard in particular (but without prejudice to subsection (2) to whether (and, if so, to
“業務”(business)包括專業，亦包括公共機構、公共主管當局、由總督或政府委任的各類委員會或其他同類團體的事務。

(2) 無論在合約法或侵權法方面，第 7 至 12 條(除已另作說明的第 11(4) 條外)只適用於業務性法律責任，即——

(a) 因一個人在業務過程中(無論是其本人的或他人的業務)所做的事或沒有做的事而引致的法律義務或責任沒有履行時，所產生的法律責任；或

(b) 因佔用人佔用作業務用途的房產所引致的法律義務或責任沒有履行時，所產生的法律責任。

凡提及法律責任，須作如是解釋；但房產佔用人如對一名獲准為康樂或教育目的而進入房產的人有履行其法律義務或責任，(即進入的人因該房產不安全而遭受損失或損害，)除非准許該人為上述目的而進入房產是屬於該房產佔用人的業務範疇，否則因此引致的佔用人法律責任不屬於業務性法律責任。

(3) 在不履行責任或法律義務方面來說，不論無意或有意，亦不論所產生的法律責任是直接引致的或因他人作為而引致的，並無分別。

【比照 1977 c. 50 ss. 1 及 14 U.K.】

3. “合理標準”的驗證

(1) 在合約條款方面，祇有在法庭或仲裁人在考慮及立約各方在立約時所知悉、預料或理應知悉或理應預料到的情況後，斷定加入該條款是公平合理的，則就本條例及《失實陳述條例》(第 284 章)第 4 條來說，該合約條款才符合合理標準。

(2) 為執行第 11 或 12 條而斷定一項合約條款是否符合合理標準時，法庭或仲裁人須特別考慮附表 2 所列事項；但本款並不阻止法庭或仲裁人按照法律規則，判定一項看來是卸除或限定有關的法律責任的條款，實際並非合約條款。

(3) 在告示方面(指沒有合約效力的告示)，祇有在法庭或仲裁人在考慮及法律責任產生時或可能產生時(祇因有該告示才沒有產生)各方面的情況後，斷定準予以該告示作為依據是屬公平合理的做法，則就本條例來說，該告示才符合合理標準。

(4) 在根據本條例或《失實陳述條例》(第 284 章)斷定一項合約條款或告示是否符合合理標準時，在不影響第 (2) 款的情況下，法庭或仲裁人須特別考慮：試圖以該條款或告示作為依據者對方，是否明白該條款或告示所採用的語文，以及其明白的程度。
what extent) the language in which the term or notice is expressed is a language understood by the person as against whom another person seeks to rely upon the term or notice.

(5) Where by reference to a contract term or notice a person seeks to restrict liability to a specified sum of money, and the question arises (under this Ordinance or the Misrepresentation Ordinance (Cap. 284)) whether the term or notice satisfies the requirement of reasonableness, the court or arbitrator shall have regard in particular (but without prejudice to subsection (2) or (4)) to—

(a) the resources which he could expect to be available to him for the purpose of meeting the liability should it arise; and

(b) how far it was open to him to cover himself by insurance.

(6) It is for the person claiming that a contract term or notice satisfies the requirement of reasonableness to prove that it does.

[cf. 1977 c. 50 s. 11 U.K.]

4. “Dealing as consumer”

(1) A party to a contract “deals as consumer” in relation to another party if—

(a) he neither makes the contract in the course of a business nor holds himself out as doing so;

(b) the other party does make the contract in the course of a business; and

(c) in the case of a contract governed by the law of sale of goods or by section 12, the goods passing under or in pursuance of the contract are of a type ordinarily supplied for private use or consumption.

(2) Notwithstanding subsection (1), on a sale by auction or by competitive tender the buyer is not in any circumstances to be regarded as dealing as consumer.

(3) It is for the person claiming that a party does not deal as consumer to prove that he does not.

[cf. 1977 c. 50 s. 12 U.K.]

5. Varieties of exemption clause

(1) To the extent that this Ordinance prevents the exclusion or restriction of any liability it also prevents—

(a) making the liability or its enforcement subject to restrictive or onerous conditions;

(b) excluding or restricting any right or remedy in respect of the liability, or subjecting a person to any prejudice in consequence of his pursuing any such right or remedy;

(c) excluding or restricting rules of evidence or procedure,
（5）凡任何人試圖藉合約條款或告示，將其法律責任局限於指明的款額內，而根據本條例或《失實陳述條例》（第 284 章），需要斷定該條款或告示是否符合合理標準時，在不影響第（2）或（4）款的情況下，法庭或仲裁人須特別考慮以下事項——
（a）該人可預計能動用的資源，以承擔可能產生的法律責任；及
（b）在保險方面該人能夠受保的程度。
（6）任何人如聲稱合約條款或告示符合合理標準，須負責任證明如是。

[比照 1977 c. 50 s. 11 U.K.]

4. “以消費者身分交易”

（1）在符合以下情況下，立約的一方與立約的另一方交易時，即屬“以消費者身分交易”——
（a）他並非在業務過程中訂立該合約，亦沒有令人以為他在業務過程中立約的表現；
（b）另一方是在業務過程中訂立該合約；及
（c）如合約受售賣貨品的法律或第 12 條管限，根據該合約或依據該合約移轉的貨品，屬於通常供應作私人使用或消費用途的類型。

（2）雖然第（1）款另有規定，但在拍賣或競爭性投標買賣中的買方，在任何情況下均不算作以消費者身分交易。

（3）任何人如聲稱立約的一方並非以消費者身分交易，須負責任證明如是。

[比照 1977 c. 50 s. 12 U.K.]

5. 各類免責條款

（1）本條例防止將法律責任卸除或局限，而在這範圍內，本條例亦防止——
（a）法律責任本身或在執行法律責任方面受到有局限性或鬆弛的條件所限；
（b）免除或局限一個人與法律責任有關的權利或補救機會，或該人在爭取該權利或補救機會時蒙受不利；
（c）免除或局限證據規則或程序規則的運用，
and (to that extent) sections 7, 10, 11 and 12 also prevent excluding or restricting liability by reference to terms and notices which exclude or restrict the relevant obligation or duty.

(2) An agreement in writing to submit present or future differences to arbitration is not to be treated under this Ordinance as excluding or restricting any liability.

[cf. 1977 c. 50 s. 13 U.K.]

6. Power to amend Schedules 1 and 2

The Legislative Council may by resolution amend Schedules 1 and 2.

PART II

CONTROL OF EXEMPTION CLAUSES

Avoidance of liability for negligence, breach of contract, etc.

7. Negligence liability

(1) A person cannot by reference to any contract term or to a notice given to persons generally or to particular persons exclude or restrict his liability for death or personal injury resulting from negligence.

(2) In the case of other loss or damage, a person cannot so exclude or restrict his liability for negligence except in so far as the term or notice satisfies the requirement of reasonableness.

(3) Where a contract term or notice purports to exclude or restrict liability for negligence a person's agreement to or awareness of it is not of itself to be taken as indicating his voluntary acceptance of any risk.

[cf. 1977 c. 50 s. 2 U.K.]

8. Liability arising in contract

(1) This section applies as between contracting parties where one of them deals as consumer or on the other's written standard terms of business.

(2) As against that party, the other cannot by reference to any contract term—

(a) when himself in breach of contract, exclude or restrict any liability of his in respect of the breach; or

(b) claim to be entitled—

(i) to render a contractual performance substantially different from that which was reasonably expected of him; or
另（在上述範圍內）第7、10、11及12條亦防止任何人藉一些卸除或局限有關的法律義務或責任的條款或告示，而得以卸除或局限其法律責任。

(2) 具同意將目前或日後的分歧仲裁方法處理的書面協議，不得根據本條例當作是卸除或局限法律責任的協議。

[比照1977 c. 50 s. 13 U.K.]

6. 修訂附表1及附表2的權力

立法局可藉決議修訂附表1及附表2。

第II部

管制免責條款

逃避因疏忽、違約等而引致的法律責任

7. 疏忽的法律責任

(1) 任何人不得藉合約條款、一般告示或特別向某些人發出的告示，而卸除或局限自己因疏忽引致他人死亡或人身傷害的法律責任。

(2) 至於其他損失或損害方面，任何人亦不得藉上述各項而卸除或局限自己因疏忽而引致的法律責任，但在該條款或告示符合合理標準的範圍內，則不在此限。

(3) 如合約條款或告示看來是用以卸除或局限因疏忽而引致的法律責任，則雖然某人同意或知道該條款或告示的存在，亦不得單憑這點認為該人表示自願承擔任何風險。

[比照1977 c. 50 s. 2 U.K.]

8. 合約引致的法律責任

(1) 如立約一方以消費者身分交易，或按另一方的書面標準業務條款交易，則本條適用於處理立約各方之間的問題。

(2) 對上述的立約一方，另一方不能藉合約條款而——

(a) 在自己違反合約時，卸除或局限與違約有關的法律責任；或

(b) 營稱有權——

(i) 在履行合約時，所履行的與理當期望他會履行的有顚倒的分別；或
(ii) in respect of the whole or any part of his contractual obligation, to render no performance at all, except in so far as (in any of the cases mentioned above in this subsection) the contract term satisfies the requirement of reasonableness.

[cf. 1977 c. 50 s. 3 U.K.]

9. Unreasonable indemnity clauses

(1) A person dealing as consumer cannot by reference to any contract term be made to indemnify another person (whether a party to the contract or not) in respect of liability that may be incurred by the other for negligence or breach of contract, except in so far as the contract term satisfies the requirement of reasonableness.

(2) This section applies whether the liability in question—
   (a) is directly that of the person to be indemnified or is incurred by him vicariously;
   (b) is to the person dealing as consumer or to someone else.

[cf. 1977 c. 50 s. 4 U.K.]

Liability arising from sale or supply of goods

10. “Guarantee” of consumer goods

(1) In the case of goods of a type ordinarily supplied for private use or consumption, where loss or damage—
   (a) arises from the goods proving defective while in consumer use; and
   (b) results from the negligence of a person concerned in the manufacture or distribution of the goods,
liability for the loss or damage cannot be excluded or restricted by reference to any contract term or notice contained in or operating by reference to a guarantee of the goods.

(2) For these purposes—
   (a) goods are to be regarded as “in consumer use” when a person is using them, or has them in his possession for use, otherwise than exclusively for the purposes of a business; and
   (b) anything in writing is a guarantee if it contains or purports to contain some promise or assurance (however worded or presented) that defects will be made good by complete or partial replacement, or by repair, monetary compensation or otherwise.

(3) This section does not apply as between the parties to a contract under or in pursuance of which possession or ownership of the goods passed.

[cf. 1977 c. 50 s. 5 U.K.]
(ii) 完全不履行其依約應承擔的全部或部分法律義務，但在該合約條款(於本款上述的任何情況下)符合合理標準的範圍內，則不在此限。
（比照 1977 c. 50 s. 3 U.K.）

9. 不合理的彌償損失條款

(1) 以消費者身分交易的人，不須因合約條款而就別人(無論是否立約一方)因疏忽或違約所可能引致的法律責任，對該人作出彌償，令他不受損失; 但在該合約條款符合合理標準的範圍內，則不在此限。
(2) 無論有關的法律責任是——
   (a) 可獲彌償者直接引致的，或因別人作為引致而亦須由他承擔的;
   (b) 須向以消費者身分交易的人負的，或須向其他人負的，
本條均適用。
（比照 1977 c. 50 s. 4 U.K.）

因售賣或供應貨品而引致的法律責任

10. 消費貨品的“保證”

(1) 如貨品屬於通常供應作私人使用或消費用途的類型，而有關的損失或損害是——
   (a) 由消費者使用時證實欠妥的貨品所引致的，及
   (b) 因製造或分發貨品的有關人士疏忽引致的，
則有關该项損失或損害的法律責任，不能藉合約條款、貨品保證內所載的告示或簡提及貨品保證而起作用的告示，予以卸除或限制。
(2) 為上述目的——
   (a) 貨品被人使用時，或被人管有以供使用時，即算作“由消費者使用”，但
   單純作業務用途的則不在此列，及
   (b) 任何文字，祇要載有或看來載有某種承諾或擔保(不論如何措辭或表達)，說明會採用全部或部分換換方式，或以修理、金錢賠償或其他方式，解決貨品欠妥的問題，均屬一項保證。
(3) 如貨品的管有權或所有權是根據或依據合約而移轉的，則本條不適用於處理該合約的立約各方之間的問題。
（比照 1977 c. 50 s. 5 U.K.）
11. Seller's liability

(1) Liability for breach of the obligations arising from section 14 of the Sale of Goods Ordinance (Cap. 26) (seller's implied undertakings as to title, etc.) cannot be excluded or restricted by reference to any contract term.

(2) As against a person dealing as consumer, liability for breach of the obligations arising from section 15, 16 or 17 of the Sale of Goods Ordinance (Cap. 26) (seller's implied undertakings as to conformity of goods with description or sample, or as to their quality or fitness for a particular purpose) cannot be excluded or restricted by reference to any contract term.

(3) As against a person dealing otherwise than as consumer, the liability specified in subsection (2) can be excluded or restricted by reference to a contract term, but only in so far as the term satisfies the requirement of reasonableness.

(4) The liabilities referred to in this section are not only the business liabilities defined by section 2(2), but include those arising under any contract of sale of goods.

[cf. 1977 c. 50 s. 6 U.K.]

12. Miscellaneous contracts under which goods pass

(1) Where the possession or ownership of goods passes under or in pursuance of a contract not governed by the law of sale of goods, subsection (2) to (4) apply in relation to the effect (if any) that the court or arbitrator is to give to contract terms excluding or restricting liability for breach of obligation arising by implication of law from the nature of the contract.

(2) As against a person dealing as consumer, liability in respect of the goods' correspondence with description or sample, or their quality or fitness for any particular purpose, cannot be excluded or restricted by reference to any such term.

(3) As against a person dealing otherwise than as consumer, that liability can be excluded or restricted by reference to such a term, but only in so far as the term satisfies the requirement of reasonableness.

(4) Liability in respect of—
   (a) the right to transfer ownership of the goods, or give possession; or
   (b) the assurance of quiet possession to a person taking goods in pursuance of the contract,
   cannot be excluded or restricted by reference to any such term except in so far as the term satisfies the requirement of reasonableness.

[cf. 1977 c. 50 s. 7 U.K.]
11. 買方的法律責任

(1) 如法律責任是因不履行《售賣貨品條例》(第26章)第14條訂定的法律義務(即
賣方對其擁有權的隱含保證等)而產生的，則不能藉合約條款而予以卸除或局限。
(2) 凡對方以消費者身分交易，則法律責任如因不履行《售賣貨品條例》(第26章)
第15、16或17條訂定的法律義務(即賣方保證貨品與其說明或樣本相符、保證其品質
或適合作某種用途等的隱含保證)而產生，不能藉合約條款而予以卸除或局限。
(3) 凡對方並非以消費者身分交易，則第(2)款所指明的法律責任可以藉合約條款
予以卸除或局限，但祇以該合約條款符合合理標準的範圍為限。
(4) 本條所指的法律責任除包括第2(2)條界定的業務性法律責任外，還包括因任
何售賣貨品合約引致的法律責任。

12. 貨品移轉所根據的類類合約

(1) 如貨品的管有權或所有權根據或依據合約移轉，而該合約不受售賣貨品的法
律管限，則第(2)至(4)款適用於法院或仲裁人須給予該等卸除或局限法律責任的合約
條款的效力方面(如有效的話)，上述法律責任指因不履行該合約本質在法律上所隱含
的法律義務而產生的法律責任。
(2) 凡對方以消費者身分交易，則貨品是否與說明或樣本相符，是否適合作某種
用途或貨品的品質方面的法律責任，均不能藉上述合約條款而予以卸除或局限。
(3) 凡對方並非以消費者身分交易，則該法律責任可以藉上述合約條款予以卸除
或局限，但祇以該合約條款符合合理標準的範圍為限。
(4) 如法律責任是關於——
   (a) 移轉貨品所有權或給予貨品管有權的權利；或
   (b) 向依據合約取得貨品的人給予擔保使能有貨品而不受干擾，
則不能藉上述合約條款予以卸除或局限，但在該條款符合条件標準的範圍內，則不在
此限。

[比照1977 c. 50 s. 7 U.K.]
Other provisions about contracts

13. Effect of breach on “reasonableness” test

(1) Where for reliance upon it a contract term has to satisfy the requirement of reasonableness, it may be found to do so and be given effect accordingly notwithstanding that the contract has been terminated either by breach or by a party electing to treat it as repudiated.

(2) Where on a breach the contract is nevertheless affirmed by a party entitled to treat as repudiated, this does not of itself exclude the requirement of reasonableness in relation to any contract term.

[cf. 1977 c. 50 s. 9 U.K.]

14. Evasion by means of secondary contract

A person is not bound by any contract term prejudicing or taking away rights of his which arise under, or in connection with the performance of, another contract, so far as those rights extend to the enforcement of another’s liability which this Ordinance prevents that other from excluding or restricting.

[cf. 1977 c. 50 s. 10 U.K.]

15. Arbitration agreements

(1) As against a person dealing as consumer, an agreement to submit future differences to arbitration cannot be enforced except—

(a) with his written consent signified after the differences in question have arisen; or

(b) where he has himself had recourse to arbitration in pursuance of the agreement in respect of any differences.

(2) Subsection (1) does not affect—

(a) the enforcement of an arbitration agreement to which section 6A of the Arbitration Ordinance (Cap. 341) applies (that is, an arbitration agreement other than a “domestic arbitration agreement” within the meaning of that section);

(b) the resolution of differences arising under any contract so far as it is, by virtue of Schedule 1, excluded from the operation of section 7, 8, 9 or 12.

PART III

CIRCUMSTANCES WHERE CONTROL DOES NOT APPLY

16. International supply contracts

(1) The limits imposed by this Ordinance on the extent to which a person may exclude or restrict liability by reference to a contract term do not apply to liability arising under an international supply contract.
1989年版]

管制免費條款條例

[第71章 19

關於合約的其他條文

13. 違約對“合理標準”驗證的影響

（1）如合約條款須符合合理標準才可作為依據，則縱使有關合約已經因違約而終止，或已由決定將該合約當作已廢除的一方予以終止，該合約條款仍可斷定為符合合理標準，並因此具有效力。

（2）遇有違約事件時，如有權將該合約當作已廢除的一方仍否認承認合約存在，則單憑此事並不使合約內任何條款無須符合合理標準。

[比照1977 c. 50 s. 9 U.K.]

14. 以第二份合約逃避法律責任

任何人根據合約或與履行合約有關而享有權利，只要該等權利並執行他人的法律責任有關，而根據本條例，該法律責任不得藉該合約解除或期限，則無須受另一合約內損及或剝奪該等權利的條款締約。

[比照1977 c. 50 s. 10 U.K.]

15. 仲裁協議

（1）凡對方以消費者身分交易，則任何同意將日後的分歧循仲裁方法處理的協議，一概不得執行，除非有以下情形，則屬例外——

(a) 在所要處理的分歧出現後獲得他的書面同意；或

(b) 他本人曾依據協議採用仲裁方法處理任何分歧。

（2）第（1）款不影響——

(a) 《仲裁條例》(第341章)第6A條所適用的仲裁協議(即該條所界定的“當地仲裁協議”以外的仲裁協議)的執行；

(b) 任何合約所產生的分歧的解決方法，只要該合約是憑藉附表I而無須受第7、8、9或12條所規定的。

第III部

管制不適用於某些情況

16. 國際供應合約

（1）本條例所訂明一個人可藉合約條款解除或局限法律責任的限度，並不適用於

因國際供應合約而產生的法律責任。
(2) The terms of an international supply contract are not subject to any requirement of reasonableness under section 8 or 9.

(3) For the purposes of this section, an international supply contract means a contract—

(a) that is either a contract of sale of goods or a contract under or in pursuance of which the possession or ownership of goods passes;

(b) that is made by parties whose places of business (or, if they have none, habitual residences) are in the territories of different States or are in and outside Hong Kong; and

(c) in the case of which—

(i) the goods in question are, at the time of the conclusion of the contract, in the course of carriage, or will be carried, from the territory of one State to the territory of another, or to or from Hong Kong from or to a place outside Hong Kong; or

(ii) the acts constituting the offer and acceptance have been done in the territories of different States or in and outside Hong Kong; or

(iii) the contract provides for the goods to be delivered to the territory of a State other than that within whose territory the acts constituting the offer and acceptance were done; or

(iv) the acts constituting the offer and acceptance were done in Hong Kong and the contract provides for the goods to be delivered outside Hong Kong; or

(v) the acts constituting the offer and acceptance were done outside Hong Kong and the contract provides for the goods to be delivered to Hong Kong.

[cf. 1977 c. 50 s. 26 U.K.]

17. Choice of law clauses

(1) Where the proper law of a contract is the law of Hong Kong only by choice of the parties (and apart from that choice would be the law of some other country) sections 7 to 12 do not operate as part of the proper law.

(2) This Ordinance has effect notwithstanding any contract term which applies or purports to apply the law of some other country, where (either or both)—

(a) the term appears to the court or arbitrator to have been imposed wholly or mainly for the purpose of enabling the party imposing it to evade the operation of this Ordinance; or

(b) in the making of the contract one of the parties dealt as consumer, and he was then habitually resident in Hong Kong, and the essential steps necessary for the making of the contract were taken there, whether by him or by others on his behalf.

[cf. 1977 c. 50 s. 27 U.K.]
(2) 國際供應合約的條款，無須受第 8 或 9 條的符合合理標準條文規限。
(3) 就本條來說，國際供應合約指符合以下情況的合約——
   (a) 屬於售賣貨品的，或屬於貨品管有權或所有權移轉時所根據或依據的；
   (b) 由業務地址（如無業務地址，則指其慣常住址）位於不同國家領域或位於香港和外地的立約人所訂立；及
   (c) (i) 合約訂立時，有關貨品正在或將由一個國家的領域運載到另一個國家的領域，或由外地運入香港或由香港運往外地；或
        (ii) 構成要約及承約的作為，已在不同國家的領域進行，或分別在香港和外地進行；或
        (iii) 合約訂明貨品須送至某一國家的領域，而構成要約及承約的作為，是在另一個國家的領域內進行的；或
        (iv) 構成要約及承約的作為，是在香港進行的，而該合約訂明貨品須送往外地；或
        (v) 構成要約及承約的作為，是在外地進行的，而該合約訂明貨品須送至香港。

    [比照 1977 c. 50 s. 26 U.K.]

17. 選擇法律條文

    (1) 如合約只是因立約各方的選擇才受香港的法律管限（如不作此選擇便受其他國家的法律管限），第 7 至 12 條不得用作管限法律的一部分。
    (2) 繼有任何合約條款訂明其他國家的法律適用，或看來是這樣訂明，但須要有以下一種或兩種情況，本條例仍然有效——
        (a) 法庭或仲裁人認為該條款是完全或主要為了使訂明條款的一方可逃避本條例的管制而訂明的；或
        (b) 立約時其中一方以消費者身分交易，而他當時慣常在香港居住，而且立約的主要程序，是由他本人或他的代表在香港進行。

    [比照 1977 c. 50 s. 27 U.K.]
18. Saving for other relevant legislation

(1) Nothing in this Ordinance removes or restricts the effect of, or prevents reliance upon, any contractual provision which—
   (a) is authorized or required by the express terms or necessary implication of an enactment; or
   (b) being made with a view to compliance with an international agreement which applies to Hong Kong, does not operate more restrictively than is contemplated by the agreement.

(2) A contract term is to be taken for the purposes of this Ordinance as satisfying the requirement of reasonableness if it is incorporated or approved by, or incorporated pursuant to a decision or ruling of, a competent authority acting in the exercise of any statutory jurisdiction or function and is not a term in a contract to which the competent authority is itself a party.

(3) In this section—
   “competent authority” (具合法裁決權的主管當局) means any court, arbitrator or public body;
   “enactment” (成文法則) means any Ordinance and any instrument having effect by virtue of any Ordinance; and
   “statutory” (法定) means conferred by an enactment.

[cf. 1977 c. 50 s. 29 U.K.]

19. Application

Nothing in this Ordinance applies to contracts made before the date on which it comes into force but, subject to this, it applies to liability for any loss or damage which is suffered on or after that date.

[cf. 1977 c. 50 s. 31(2) U.K.]

PART IV

CONSEQUENTIAL AND OTHER AMENDMENTS

20. Amendment to various Ordinances

The enactments specified in the first column of Schedule 3 are amended in the manner and to the extent set out in the second column of that Schedule.

SCHEDULE 1

[ss. 6, 7, 8, 9, 12 & 15]

SCOPE OF SECTIONS 7, 8, 9 AND 12

1. Sections 7, 8 and 9 do not apply to—
   (a) any contract of insurance (including a contract to pay an annuity on human life);
18. 其他有關法例的保留條文

(1) 本條例的任何條文，不得取消或局限以下合約條文的效力，或令其不能作為依据——

(a) 由成文法則的明訂條款，或因成文法則的必然含義准許或需要所引致的合約條文；或

(b) 為要符合一份適用於香港的國際性協議而訂明的合約條文，而該合約條文運用起來，並不比該協議原意範圍更為局限。

(2) 合約條款如果是由具合法裁判權的主管當局在行使法定裁判權或職能時所訂明或批准的，或是根據具合法裁判權的主管當局在行使法定裁判權或職能時所作出的決定或判決而訂明的，而該具合法裁判權的主管當局並非有關合約的立約一方，則就本條例來說，該合約條款是符合合理標準的。

(3) 在本條中——

"成文法則" (enactment) 指任何條例或任何憑藉條例而有效的法律文件；

"具合法裁判權的主管當局" (competent authority) 指任何法庭、仲裁人或公共機構；及

"法定" (statutory) 指由成文法則所授予的。

[比照 1977 c. 50 s. 29 U.K.]

19. 適用範圍

本條例的任何條文，對於在本條例生效日期前所訂立的合約，概不適用，但在符合這規定的情況下，則適用於本條例生效當日或之後所遭受的損失或損害而引致的法律責任。

[比照 1977 c. 50 s. 31(2) U.K.]

第 IV 部

相應及其他修訂

20. 修訂各條例

附表 3 第一欄內所列的成文法則，按該附表第二欄內所列的方式及範圍修訂。

附表 1

第 7、8、9 及 12 條的適用範圍

1. 第 7、8、9 條並適用於——

(a) 任何保險合約（包括繳付人壽年金的合約）；
(b) any contract so far as it relates to the creation or transfer of an interest in land, or to the termination of such an interest, whether by extinction, merger, surrender, forfeiture or otherwise;
(c) any contract so far as it relates to the creation or transfer of a right or interest in any patent, trade mark, copyright, registered design, technical or commercial information or other intellectual property, or relates to the termination of any such right or interest;
(d) any contract so far as it relates—
   (i) to the formation or dissolution of a company (which means any body corporate or unincorporated association and includes a partnership); or
   (ii) to its constitution or the rights or obligations of its corporators or members;
(e) any contract so far as it relates to the creation or transfer of securities or of any right or interest in securities.

2. Section 7(1) applies to—
(a) any contract of marine salvage or towage;
(b) any charterparty of a ship or hovercraft; and
(c) any contract for the carriage of goods by ship or hovercraft,
but sections 7(2) and (3), 8, 9 and 12 do not apply to any such contract except in favour of a person dealing as consumer.

3. Where goods are carried by ship or hovercraft in pursuance of a contract which either—
(a) specifies that as the means of carriage over part of the journey to be covered; or
(b) makes no provision as to the means of carriage and does not exclude that means, then sections 7(2), 8 and 9 do not, except in favour of a person dealing as consumer, apply to the contract as it operates in relation to the carriage of the goods by that means.

4. Section 7(1) and (2) does not apply to a contract of employment, except in favour of the employee.

[cf. 1977 c. 50 Sch. 1 U.K.]

SCHEDULE 2

[ss. 3(2) & 6]

"GUIDELINES" FOR APPLICATION OF REASONABLENESS TEST

The matters to which the court or arbitrator shall have regard in particular for the purposes of sections 11(3) and 12(3) and (4) are any of the following which appear to be relevant—
(a) the strength of the bargaining positions of the parties relative to each other, taking into account (among other things) alternative means by which the customer’s requirements could have been met;
(b) whether the customer received an inducement to agree to the term, or in accepting it had an opportunity of entering into a similar contract with other persons, but without having to accept a similar term;
(c) whether the customer knew or ought reasonably to have known of the existence and extent of the term (having regard, among other things, to any custom of the trade and any previous course of dealing between the parties);
(d) where the term excludes or restricts any relevant liability if some condition is not complied with, whether it was reasonable at the time of the contract to expect that compliance with that condition would be practicable;
(e) whether the goods were manufactured, processed or adapted to the special order of the customer.

[cf. 1977 c. 50 Sch. 2 U.K.]
(b) 任何合約中關於產生土地權益、移轉土地權益、或終止該等權益（無論以消除、合併、放棄、没收或其他方式而終止）的部分；
(c) 任何合約中關於產生或移轉在專利、商標、版權、註冊商標設計、技術或商業情報或其他知識產權上的權利或權益的部分，或關於終止上述權利或權益的部分；
(d) 任何合約中關於以下事宜的部分——
(i) 公司（即任何法團或非法團組織，亦包括合夥經營）的成立或解散；或
(ii) 公司的組成，或其法團成員或組織成員的權利或法律義務；
(e) 任何合約中關於產生或移轉證券、證券權利或證券權益的部分。

2. 第7(1)條適用於——
(a) 任何海難救助合約或拖船合約；
(b) 任何船舶或氣態航行器的租約；及
(c) 任何訂明以船舶或氣態航行器運載貨品的合約，但第7(2)及(3)、8、9及12條並不適用於上述合約，除非該條文對於以消費者分批交易的人有利，則屬例外。

3. 凡貨品依據合約由船舶或氣態航行器運載，而該合約——
(a) 指明在部分路程採用該種運載工具；或
(b) 沒有訂明運載工具，亦無說明不得採用該種運載工具，則第7(2)、8及9條並不適用於合約中關於採用該種運載工具而運載貨品的部分，除非該等條文對以消費者分批交易的人有利，則屬例外。

4. 第7(1)及(2)條並不適用於僱傭合約，除非該等條文對僱員有利，則屬例外。

附表2
(第3(2)及6條)

運用合理標準驗證的“準則”

法庭或仲裁人為執行第11(3)、12(3)及(4)條而須特別考慮的，是以下任何一項看來有關的事宜——
(a) 立約各方的相對識識能力，考慮的因素中，包括可以滿足顧客要求的其他可行方法；
(b) 顧客是否由於某項誤而同意有關條款，或接受該條款時有機會與他人訂立同類合約而無須接受同類條款；
(c) 顧客是否知道或理應知道該條款的存在及其適用範圍（考慮的因素中，包括有關業界的慣例，以及立約各方之間的以往交易情況）；
(d) 在該條款說明如不附合某項條件，有關法律責任可予免除或解除的情況下，立約時是否理應估計到符合該項條件是實際可行的；
(e) 有關貨品是否依顧客的特別指示而製造、加工或改裝的。

[比照1977 c. 50 Sch. 1 U.K.]
## SCHEDULE 3

### Amendment to Ordinances

<table>
<thead>
<tr>
<th>Enactment</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale of Goods Ordinance (Cap. 26)</td>
<td>(a) Section 2(1) is amended—</td>
</tr>
<tr>
<td></td>
<td>(i) in the definition of “business”, by repealing “any Government Department or the Urban Council or any other statutory body or authority” and substituting—</td>
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<tr>
<td></td>
<td>“a public body, a public authority, or a board, commission, committee or other body appointed by the Governor or Government”;</td>
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<tr>
<td></td>
<td>(ii) by repealing the definition of “contract for the international sale of goods”.</td>
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<tr>
<td></td>
<td>(b) Section 57 is amended—</td>
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<tr>
<td></td>
<td>(i) in subsection (1), by repealing “Subject to subsections (2) to (11)” and by adding after “may”—</td>
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<tr>
<td></td>
<td>“(subject to the Control of Exemption Clauses Ordinance (Cap. 71))”;</td>
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<td></td>
<td>(ii) by repealing subsections (3) to (11).</td>
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<td></td>
<td>(c) Section 57A is repealed.</td>
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<tr>
<td></td>
<td>(d) Section 62(5) is repealed.</td>
</tr>
<tr>
<td>Misrepresentation Ordinance (Cap. 284)</td>
<td>Section 4 is repealed and the following substituted—</td>
</tr>
<tr>
<td></td>
<td>“Avoidance of provision excluding liability for misrepresentation”</td>
</tr>
<tr>
<td></td>
<td>4. If a contract contains a term which would exclude or restrict—</td>
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<tr>
<td></td>
<td>(a) any liability to which a party to a contract may be subject by reason of any misrepresentation made by him before the contract was made; or</td>
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<tr>
<td></td>
<td>(b) any remedy available to another party to the contract by reason of such a misrepresentation,</td>
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<td></td>
<td>that term shall be of no effect except in so far as it satisfies the requirement of reasonableness as stated in section 3(1) of the Control of Exemption Clauses Ordinance (Cap. 71); and it is for the person claiming that the term satisfies that requirement to show that it does.”.</td>
</tr>
<tr>
<td>Arbitration Ordinance (Cap. 341)</td>
<td>Section 6 is amended by adding after subsection (1)—</td>
</tr>
<tr>
<td></td>
<td>“(2) Subsection (1) does not apply to an arbitration agreement to the extent that it cannot be enforced by virtue of section 15 of the Control of Exemption Clauses Ordinance (Cap. 71).”</td>
</tr>
</tbody>
</table>
附表3

條例的修訂

《售賣貨品條例》
(第26章)

(a) 第2(1)條修訂如下——

(i) 在“business”一詞的定義中，廢除“any Government Department or the Urban Council or any other statutory body or authority”而以下文取代——

“a public body, a public authority, or a board, commission, committee or other body appointed by the Governor or Government”；

(ii) 廢除“contract for the international sale of goods”的定義。

(b) 第57條修訂如下——

(i) 在第(1)款廢除“Subject to subsections (2) to (11)”及在“may”之後加入下文——

“(subject to the Control of Exemption Clauses Ordinance (Cap. 71))”；

(ii) 廢除第(3)至(11)款。

(c) 廢除第57A條。

(d) 廢除第62(5)條。

《失實陳述條例》
(第284章)

廢除第4條而以下文取代——

“Avoidance of provision excluding liability for misrepresentation

4. If a contract contains a term which would exclude or restrict——

(a) any liability to which a party to a contract may be subject by reason of any misrepresentation made by him before the contract was made; or

(b) any remedy available to another party to the contract by reason of such a misrepresentation,

that term shall be of no effect except in so far as it satisfies the requirement of reasonableness as stated in section 3(1) of the Control of Exemption Clauses Ordinance (Cap. 71); and it is for the person claiming that the term satisfies that requirement to show that it does.”。

《仲裁條例》
(第341章)

第6條現予修訂，在第(1)款之後加入下文——

“(2) Subsection (1) does not apply to an arbitration agreement to the extent that it cannot be enforced by virtue of section 15 of the Control of Exemption Clauses Ordinance (Cap. 71).”。“