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(1) stay under NY law
(2) Exclusion of Model Law
& curial law of

Morrisey
848-8376

IN THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION

Cole J

14 August 1992

AEROSPATIALE HOLDINGS AUSTRALIA PTY LIMITED & ANOR v ELSPAN INTERNATIONAL LIMITED
55053 OF 1992

Application has been made by certain defendants for a stay of these proceedings.

The Parties and the Summons

Aerospatiale Holdings Australia Pty Limited ("Holdings") and Eurocopter International Pacific Limited ("International") are the plaintiffs. They have sued Elspan International Pty Limited ("Elspan"), Peter Ellen and Associates Limited ("Associates"), Peter Ellen ("Ellen"), Elspan (Australia) Pty Limited ("Elspan Australia"), Anthony Grieve Pty Limited ("Grieve Pty Limited") and Anthony Grieve ("Grieve") as the first to sixth defendants respectively.

The claim arises out of alleged breach of contract, negligence, breaches of the Trade Practices Act and of the Fair Trading Act relating to the construction of the hanger and associated buildings upon land at Bankstown Airport, Sydney.

There are two relevant agreements. The first is between Elspan and Holdings dated 19 February 1990. In consideration of approximately $2.4 million Elspan contracted to perform the construction works. By clause 5.4, the design work was noted to be subcontracted to Associates, who were not a party to the agreement. By clause 17.3 Holdings (described as "the Owner') acknowledged that it was Elspan's intention to subcontract the design services to Associates and to appoint Elspan Australia as Elspan's representative "in the performance of the Services in Australia and hereby consents to the same".

Clause 19.1 provided for arbitration in the following terms:

> "Any dispute, controversy or claim arising out of or in connection with this Agreement not settled by agreement between the parties within 30 days of notice by one party to the other of dispute and intention to refer to arbitration shall be referred to arbitration for determination by a single arbitrator to be agreed upon by the Owner and Elspan or failing such agreement by a single arbitrator appointed at the request of either party by the President for the time being of the Institution of Engineers of Australia in accordance with the Commercial Arbitration Act 1986 of New South Wales or any statutory modifications thereof for the time being in force. The costs of any arbitration proceedings shall be borne as the arbitrator may direct."

The parties to the first agreement commenced an arbitration pursuant to that clause.

Thereafter a second agreement dated 5 September 1991 was entered into between International (described as "the Owner") and Holdings on the one part and Elspan on the other. That agreement recited the desire of Holdings and Elspan to terminate the agreement of 19 February 1990. By clause 2.1.1 it was provided that Holdings and Elspan agreed that upon certification by the superintendent that the Remaining Works had attained Practical Completion, each was to release the other from all claims arising out of or in connection with the Original Agreement and the arbitration proceedings then on foot between Holdings and Elspan, which proceedings were to be terminated upon the basis of each party paying its own costs.

By clause 2.1.3 Holdings and Elspan agreed that the obligations under the first agreement were to be suspended subject to the provisions of the second agreement.

Clause 2.2 of the second agreement provided that:

"Upon proper termination of this Agreement by Elspan due to breach or breaches of this Agreement by the Owner (being International) or if this Agreement is frustrated:

(b) Except as provided in clause 11.5 Aerospatiale Holdings and the Owner hereby agree to waive and release all and any claims, suits, causes of action, proceedings or demands of whatever nature which it now has or at any time thereafter might have against Elspan or Elspan's successors or assigns or Elspan's servants or agents in respect of or arising out of the Original Agreement or any breach thereof regardless of whether the existence of such a claim, suit, cause of action, proceeding or demand is now known to Aerospatiale Holdings or the Owner."

By clause 11.5 Elspan acknowledged its liability to International for latent defects and for services undertaken by Elspan, and its obligations to rectify certain defects for a period of seven years from practical completion.

Clause 16.2 provided:

"The Owner hereby acknowledges that it is Elspan's intention to subcontract part of the Remaining Work and to appoint Elspan Australia ... as its representative in the performance of its obligations under this Agreement in Australia and the Owner hereby consents to the same. Elspan is not absolved of it obligations under this agreement by the appointment in this subclause."

Clause 17.1 of the second agreement provided for arbitration in the following terms:

"Any dispute, controversy or claim arising out of or in connection with this Agreement not settled by agreement between the Parties within 10 days of notice by one party to the other of dispute and intention to refer to arbitration shall be referred to arbitration for determination by a single arbitrator to be agreed upon by the Owner and Elspan or failing such agreement within 21 days by a single arbitrator appointed at the request of either party by the President for the time being of the Institution of Engineers of Australia in a accordance with the Commercial Arbitration Act 1984 of New South Wales or any statutory modifications thereof for the time being in force. The costs of any arbitration proceedings shall be borne as the arbitrator may direct."

Under the second agreement Elspan promised completion to lock up stage of certain buildings by 24 December 1991 and practical completion for the remaining works by 24 January 1992. Also by the second agreement Grieve Pty Limited or Mr Grieve was appointed works superintendent.

The plaintiffs allege that progress of the works fell behind the new schedule for completion and that "Elspan effectively abandoned the project by doing no work after 14 December 1991". It alleges that Elspan repudiated the second agreement, that the first agreement was thereby revived, that Elspan also repudiated the first agreement, which repudiations were accepted by Holdings and International thus bringing the agreements to an end.

In addition, Holdings and International allege that they terminated the second agreement for non-performance of it by Elspan in accordance with provisions of that agreement permitting such termination for non-satisfactory performance, or non-compliance with notices requiring rectification of defective works or delinquent progress.

Neither Elspan or the other five defendants have filed a statement of defence. However I understand Elspan wishes to argue that clause 2, and in particular clause 2.2(b) of the second agreement applies in consequence of an alleged "proper termination" of the second agreement by Elspan, or frustration of that agreement, so as to result in a waiver of all claims by Holdings or International against Elspan or "its servants or agents". Elspan wishes to argue that its servants or agents include Associates, Mr Ellen and Elspan Australia. Thus it wishes there to be a preliminary hearing of what it calls a preliminary point. Whilst the preliminary point was not defined with any certainty or clarity I understand it to be the general question of whether Elspan repudiated the second agreement, and the first agreement, or whether there was a termination of the second agreement by Elspan so as to cause clause 2.2 to operate, or whether Holdings or International terminated the second agreement which may have the effect of reviving the first agreement.

In any event, Elspan seeks a stay of the proceedings based, as they are, upon asserted breaches of the first and second agreement, coupled with the other causes of action I have mentioned

The two plaintiffs and Elspan are the parties to the second agreement. They are agreed that clause 17 is an "arbitration agreement" within the meaning of the International Arbitration Act 1974 (Commonwealth) to which clause 7 of that Act applies. Elspan is a company incorporated under the laws of Hong Kong and registered in that territory. Accordingly, pursuant to section 7(2) of the International Arbitration Act it is obligatory upon this court to stay such portion of the proceedings in matter number 55053 of 1992 as are the subject of the arbitration agreement, and to refer that portion to arbitration. The parties are agreed that such matters be referred to the arbitration of The Honourable G Samuels QC. Accordingly I stay that portion of the proceedings in matter number 55053 between Holdings, International and Elspan as fall within the terms of clause 17. I have not been asked to, nor do I pause to determine which portion of the proceedings in that lengthy summons fall within that stay. If the parties are unable to agree upon whether all, or some only, and if so which portion, of such proceedings against Elspan fall within the stay, I will hear further argument upon that matter.

The second, third, fourth, fifth and sixth defendants are not party to any agreement containing an arbitration clause. There is thus no basis for any stay of proceedings number 55053 against them, unless the court were to exercise some inherent jurisdiction related to orderly management of litigation.

So far as claims by Holdings against Elspan arising from the first agreement and being the subject of claim in proceedings number 55053, by parity of reasoning, Elspan is entitled to a stay of such claims arising under the first agreement as fall within clause 19.1 in consequence of section 7(2) International Arbitration Act 1974. I grant such a stay. For similar reasons as above, such portion of the claims, if any, which Holdings assert against the second to sixth defendants are not to be stayed because there is no relevant arbitration clause. I do not understand there to be any claim by either plaintiff against the fifth and sixth defendants (the Grieve interests) arising from the first agreement.

There remain two matters in dispute. The first is the curial law of the arbitration under the first and second agreements presently stayed. I hold a clear view that each of clauses 19 and 17 relate not to the power of appointment of an arbitrator, as the Elspan interests contend, but to the law applicable to the arbitration (section 21 International Arbitration Act 1974). In my view that

necessarily follows from the wording of clauses 19 and 17 respectively because there is no provision in the Commercial Arbitration Act 1984 of New South Wales which provides for an arbitrator to be appointed at the request of either party by the President for the time being of the Institution of Engineers of Australia. In consequence the words"in accordance with the Commercial Arbitration Act 1984 of New South Wales" must relate to the law applicable to an arbitration the subject of clause 19 or 17.

The parties have thus agreed that the Model Law does not apply, they having agreed by clauses 19 and 17, as contemplated by section 21 International Arbitration Act 1974, that the dispute between them is to be settled in accordance with the New South Wales Commercial Arbitration Act. That is entirely understandable in the circumstances where the work related to a construction within New South Wales.

It was suggested that, assuming the model law applied, the court had no power to give directions to the arbitrator. I have found that the New South Wales Commercial Arbitration Act applies and there is thus a power to give directions (section 47). However the first arbitration has been suspended by virtue of the second agreement, and the arbitration under the second agreement has not commenced. In addition, having regard to the persona of the agreed arbitrator, it would be inappropriate for the court now to give any directions. It will be a matter for Mr Samuels QC to determine the appropriate method of determination of the issues in the arbitration, including whether it is convenient that there be first decided the so called "preliminary point".

There remains between the plaintiffs and Elspan interests that which may fall outside the scope of the arbitration clauses, and the claims by the plaintiffs against the second to fourth defendants inclusive in negligence and pursuant to the Trade Practices Act and the Fair Trading Act. As I have said such claims are not subject to any arbitration clause and there is thus no entitlement to a stay. The plaintiffs wish to proceed with those claims. They are entitled to do so.

If common sense had prevailed on the part of the Elspan interests, these matters would also have been referred to Mr Samuels QC either pursuant to an arbitration now agreed between the parties, or pursuant to a consent order for a reference of those issues pursuant to part 72 of the Supreme Court Rules. However,

the common sense has not prevailed, and significant arguments have been addressed to the Court as to why there should not be a concurrent reference of the matters in dispute between the plaintiffs and Elspan of matters outside the arbitration clause, and between the plaintiffs and the second to sixth defendants to Mr Samuels so that all matters could be resolved by the one person at the same time.

Elspan has argued that an arbitration is a private affair into which other parties may not be intruded, even if it be obviously convenient. Reliance was placed upon Oxford Shipping Company v Nippon Yusen Kaisha (The Eastern Saga) 1984 3 All.E.R 835 at 842 where Leggatt J stated:

> "The concept of private arbitrations derives simply from the fact that the parties have agreed to submit to arbitration particular disputes arising between them and only between them. It is implicit in this that strangers shall be excluded from the hearing and conduct of the arbitration and that neither the tribunal nor any of the parties can insist that the dispute shall be heard or determined concurrently with or even in consonance with another dispute, however convenient that course may be to the party seeking it and however closely associated the disputes in question may be. The only powers which an arbitrator enjoys relate to the reference in which he has been appointed. They cannot be extended merely because a similar dispute exists which is capable of being and is referred separately to arbitration under a different agreement." (emphasis added)

His Honour was not dealing with a case such as this. The second, third and fourth defendants are all within the Elspan interests. The fifth and sixth defendants, who acted as certifiers under the second agreement, are closely associated with the very subject matter of the disputes between the plaintiffs and the first to fourth defendants. Although they may technically be "strangers" to that dispute, there is no realistic sense in which that is so. Leggatt J was addressing a question of the power of an arbitrator to order the concurrent hearing of two arbitrations between different parties without the consent of the parties to those arbitrations.

No such questions arises here. There is no reason in principle why an arbitration an a reference dealing with closely associated matters and being principally between the same parties should not be held together. I do not regard there as being any insurmountable barrier to a reference arising from the fifth and sixth defendants being parties to the litigation.

The question of difficulties arising from third party involvement in matters the subject of private arbitrations was addressed by the learned authors of Mustill & Boyd: Commercial Arbitration (2nd edition) at p.143-146. Several solutions to avoid the waste of time, resources and cost, as well as to avoid the possibility of inconsistent findings from different tribunals are also addressed. No consideration was given to a compulsory order of reference by the Court of matters the subject of court proceedings to a referee being the person agreed by the arbitrating parties as arbitrator. That may be because of different legislation or rules governing references to those applicable in New South Wales.

In my view part 72 confers a clear power to appoint a person, agreed as an arbitrator in respect of some issues in dispute between particular parties, as referee to hear and report to the court upon associated matters in dispute between the same parties, and additional parties. The court also has a power to fix the hearing of that reference at the same time as the arbitration (Part 72 r2 and r8). Equally it has a power to give directions to regarding the conduct of an arbitration within the purview of the Commercial Arbitration Act 1984 (s.47). That includes a power to direct when the arbitration is to be heard. It is unnecessary now to decide whether s.47 confers upon the court a power to make orders allowing the joinder of third parties in an arbitration in circumstances where it is convenient to do so. (see generally Johnson & Ors v Macri & Marcellino Pty Limited unreported Cole J 8 June 1990).

Whether the court will exercise its power to order that a reference and an arbitration be heard before an arbitrator/referee at the same time will depend upon consideration of all material circumstances, including the right to privacy which the parties to an arbitration, or at least one of them, claim. It may be expected that where only the same parties are involved in the arbitration and the reference, the reference being necessary only because the arbitration clause is not sufficiently wide to cover all matters in dispute, the court will have little hesitation in ordering the reference and arbitration be heard at the same time. Indeed the court would expect commercial litigants to act sensibly and thus agree to have all matters resolved by an arbitration, or be the subject of a referee's report.

The possible intrusion of additional parties results in the court being required to consider, as an aspect of discretion, the claim for privacy arising as it does from contract between the parties. That claim alone, however, will be but one factor to be

weighed with many others, including the legislative purpose of s.47, the proximity between issues and parties to the arbitration and the litigation, any unfairness to any party flowing from a concurrent hearing, savings of cost and time to the parties, and the desire to avoid duplicity of hearings and the prospect of inconsistent findings of fact or law.

This court is in a different position to that in which Leggatt J found himself in Oxford Shipping which position led his Honour to say at 849:

> "I interpose there to remark that the court in the present case is not put in the position in which Mustill J found himself of being able to attach weight to the desirability of two causes being dealt with together in the exercise of any discretion now available."

Here, the court does have a discretion because of the existence of litigation which encompasses, but goes beyond, the scope and parties to the arbitration, and the existence of Part 72.

The second objection was that as questions of credit may, and probably will arise, there being allegations of misrepresentations, the Elspan interests would wish any such questions to be dealt with in private in the arbitration, rather than in public proceedings. Certainly if the proceedings against the second, third and fourth defendants remained in court, they would be public. I do not pause to consider whether the proceedings before a referee appointed pursuant to Part 72 are public or private, for the reality is that, except for the presence of Mr Grieve, the certifier under the second agreement, the matter would be private.

The third objection was that there may be confusion in one person sitting as an arbitrator and referee such that his award under the arbitration may deal with a dispute not contemplated or falling within the arbitration agreement and thus pursuant to article 34(2)(iii) of the Uncitral Model Law, the award may be invalid. I have found that it is not the Uncitral Model Law which is the applicable law. In any event I have no doubt that Mr Samuels QC could adequately separate those issues within the arbitration from those within the reference.

The fourth objection was that even if the award under the arbitration were to stand, as yet not finally determined principles in relation to the proper approach to

be adopted by a court in considering a referee's report may result in the report either not being adopted, or if adopted, overturned on appeal. Thus it was said there may be the incongruity of the award standing yet a similar finding under a reference being reversed. It is true that different principles may apply in relation to an appeal, or leave to appeal from an award under the Commercial Arbitration Act, to those applicable to a referee's report pursuant to part 72. However that is not a sufficient feature to inhibit the making of a reference of matters which relate so closely to those the subject of the arbitration.

The fifth objection on behalf of the Elspan interests was that the fifth and sixth defendants may be required to be present throughout the whole of the proceedings although they were involved only in relation to the certification under the second agreement. I have no doubt appropriate administrative arrangements can resolve that difficulty.

Accordingly I propose to refer the disputes between the first and second plaintiffs and Elspan which fall outside the scope of the arbitration clauses (if any) and between the first and second plaintiff and the second, third, fourth, fifth and sixth defendants, none of which are the subject of any arbitration agreement, to the Honourable G Samuels QC as referee pursuant to Part 72. It will be a matter for Mr Samuels QC to determine whether he wishes to hear the preliminary point argument in the arbitration, and otherwise to determine the appropriate manner in which both the arbitration and the reference are to be conducted. Subject to such directions as the arbitrator/referee may give, I direct that the arbitration and the reference be heard at the same time.

The entitlement of Elspan to a stay was not in serious dispute. In each other respect the first to fourth defendants have been unsuccessful. Accordingly I order the first to fourth defendants to pay the plaintiffs' costs, and to pay the fifth and sixth defendant costs.

I shall adjourn the matter for seven days to enable the plaintiffs in proceedings number 55053 to bring in short minutes of order consistent with these reasons.

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N Smalley

Dated 14 August 1996

PART II. ENFORCEMENT OF FOREIGN AWARDS

Interpretation

3. (1) In this Part, unless the contrary intention appears:

"agreement in writing" has the same meaning as in the Convention;

"arbitral award" has the same meaning as in the Convention;

"arbitration agreement" means an agreement in writing of the kind refer in sub-article 1 of Article II of the Convention;

"Australia" includes the Territories;

"Convention" means the Convention on the Recognition and Enforcem Foreign Arbitral Awards adopted in 1958 by the United Nations Confere International Commercial Arbitration at its twenty-fourth meeting, a copy o English text of which is set out in Schedule 1;[1]

"Convention country" means a country (other than Australia) that Contracting State within the meaning of the Convention;

"court" means any court in Australia, including a court of a State or Territo

"foreign award" means an arbitral award made in pursuance of an arbitr agreement, in a country other than Australia, being an arbitral award in relati which the Convention applies.

(2) In this Part, where the context so admits, **"enforcement"**, in relation foreign award, includes the recognition of the award as binding for any purp and **"enforce"** and **"enforced"** have corresponding meanings.

(3) For the purposes of this Part, a body corporate shall be taken to be ordi resident in a country if, and only if, it is incorporated or has its principal pla business in that country.

Accession to Convention

4. Approval is given to accession by Australia to the Convention without declaration under sub-article 3 of Article I but with a declaration under Artic that the Convention shall extend to all the external Territories other than P New Guinea.

Enforcement of foreign arbitration agreements

7. (1) Where:

(a) the procedure in relation to arbitration under an arbitration agreeme governed, whether by virtue of the express terms of the agreeme otherwise, by the law of a Convention country;

(b) the procedure in relation to arbitration under an arbitration agreeme governed, whether by virtue of the express terms of the agreeme otherwise, by the law of a country not being Australia or a Conven country, and a party to the agreement is Australia or a State or a pe who was, at the the time when the agreement was made, domiciled ordinarily resident in Australia;

(c) a party to an arbitration agreement is the Government of a Conven country or of part of a Convention country or the Government of a te tory of a Convention country, being a territory to which the Conven extends; or

(d) a party to an arbitration agreement is a person who was, at the ti when the agreement was made, domiciled or ordinarily resident country that is a Convention country;

this section applies to the agreement.

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1. Schedule 1 which contains the text of the New York Convention is not reproduced he

(2) Subject to this Part, where:

(a) proceedings instituted by a party to an arbitration agreement to which this section applies against another party to the agreement are pending in a court; and

(b) the proceedings involve the determination of a matter that, in pursuance of the agreement, is capable of settlement by arbitration;

on the application of a party to the agreement, the court shall, by order, upon such conditions (if any) as it thinks fit, stay the proceedings or so much of the proceedings as involves the determination of that matter, as the case may be, and refer the parties to arbitration in respect of that matter.

(3) Where a court makes an order under subsection (2), it may, for the purpose of preserving the rights of the parties, make such interim or supplementary orders as it thinks fit in relation to any property that is the subject of the matter to which the first-mentioned order relates.

(4) For the purposes of subsections (2) and (3), a reference to a party includes a reference to a person claiming through or under a party.

(5) A court shall not make an order under subsection (2) if the court finds that the arbitration agreement is null and void, inoperative or incapable of being performed.

Recognition of foreign awards

8. (1) Subject to this Part, a foreign award is binding by virtue of this Act for all purposes on the parties to the arbitration agreement in pursuance of which it was made.

(2) Subject to this Part, a foreign award may be enforced in a court of a State or Territory as if the award had been made in that State or Territory in accordance with the law of that State or Territory.

(4) Where:

(a) at any time, a person seeks the enforcement of a foreign award by virtue of this Part; and

(b) the country in which the award was made is not, at that time, a Convention country;

subsections (1) and (2) do not have effect in relation to the award unless that person is, at that time, domiciled or ordinarily resident in Australia or in a Convention country.

(5) Subject to subsection (6), in any proceedings in which the enforcement of a foreign award by virtue of this Part is sought, the court may, at the request of the party against whom it is invoked, refuse to enforce the award if that party proves to the satisfaction of the court that:

(a) that party, being a party to the arbitration agreement in pursuance of which the award was made, was, under the law applicable to him, under some incapacity at the time when the agreement was made;

(b) the arbitration agreement is not valid under the law expressed in the agreement to be applicable to it or, where no law is so expressed to be applicable, under the law of the country where the award was made;

(c) that party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case in the arbitration proceedings;

(d) the award deals with a difference not contemplated by, or not falling within the terms of, the submission to arbitration, or contains a decision on a matter beyond the scope of the submission to arbitration;

(e) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(2) Except so far as the contrary intention appears, a word or expression that is used both in this Part and in the Model Law (whether or not a particular meaning is given to it by the Model Law) has, in this Part, the same meaning as it has in the Model Law.

Division 2 – Model Law

Model Law to have force of law

16. (1) Subject to this Part, the Model Law has the force of law in Australia.

(2) In the Model Law:

"State" means Australia (including the external Territories) and any foreign country;

"this State" means Australia (including the external Territories).

Interpretation of Model Law – use of extrinsic material

17. (1) For the purposes of interpreting the Model Law, reference may be made to the documents of:

(a) the United Nations Commission on International Trade Law; and

(b) its working group for the preparation of the Model Law;

relating to the Model Law.

(2) Subsection (1) does not affect the application of section 15AB of the *Acts Interpretation Act 1901* for the purposes of interpreting this Part.

Courts specified for purposes of Article 6 of Model Law

18. The following courts shall be taken to have been specified in Article 6 of the Model Law as courts competent to perform the functions referred to in that article:

(a) if the place of arbitration is, or is to be, in a State – the Supreme Court of that State;

(b) if the place of arbitration is, or is to be, in a Territory:

(i) the Supreme Court of that Territory; or

(ii) if there is no Supreme Court established in that Territory – the Supreme Court of the State or Territory that has jurisdiction in relation to that Territory.

Articles 34 and 36 of Model Law – public policy

19. Without limiting the generality of subparagraphs 34 (2) (b) (ii) and 36 (1) (b) (ii) of the Model Law, it is hereby declared, for the avoidance of any doubt, that, for the purposes of those subparagraphs, an award is in conflict with the public policy of Australia if:

(a) the making of the award was induced or affected by fraud or corruption; or

(b) a breach of the rules of natural justice occurred in connection with the making of the award.

Chapter VIII of Model Law not to apply in certain cases

20. Where, but for this section, both Chapter VIII of the Model Law and Part II of this Act would apply in relation to an award, Chapter VIII of the Model Law does not apply in relation to the award.

Settlement of dispute otherwise than in accordance with Model Law

21. If the parties to an arbitration agreement have (whether in the agreement or in any other document in writing) agreed that any dispute that has arisen or may

between them is to be settled otherwise than in accordance with the Model the Model Law does not apply in relation to the settlement of that dispute.

ision 3 – Optional provisions

lication of optional provisions

If the parties to an arbitration agreement have (whether in the agreement or other document in writing) agreed that the other provisions, or any of the provisions, of this Division are to apply in relation to the settlement of any ute (being a dispute that is to be settled in accordance with the Model Law) has arisen or may arise between them, those provisions apply in relation to the ement of that dispute.

ers under Article 17 of the Model Law

Chapter VIII of the Model Law applies to orders by an arbitral tribunal er Article 17 of the Model Law requiring a party:

(a) to take an interim measure of protection; or

(b) to provide security in connection with such a measure;

any reference in that chapter to an arbitral award or an award were a reference ch an order.

olidation of arbitral proceedings

(1) A party to arbitral proceedings before an arbitral tribunal may apply to tribunal for an order under this section in relation to those proceedings and r arbitral proceedings (whether before that tribunal or another tribunal or other rals) on the ground that:

(a) a common question of law or fact arises in all those proceedings;

(b) the rights to relief claimed in all those proceedings are in respect of, or arise out of, the same transaction or series of transactions; or

(c) for some other reason specified in the application, it is desirable that an order be made under this section.

(2) The following orders may be made under this section in relation to 2 or arbitral proceedings:

(a) that the proceedings be consolidated on terms specified in the order;

(b) that the proceedings be heard at the same time or in a sequence specified in the order;

(c) that any of the proceedings be stayed pending the determination of any other of the proceedings.

(3) Where an application has been made under subsection (1) in relation to 2 or arbitral proceedings (in this section called the "**related proceedings**"), the owing provisions have effect.

(4) If all the related proceedings are being heard by the same tribunal, the nal may make such order under this section as it thinks fit in relation to those ceedings and, if such an order is made, the proceedings shall be dealt with in rdance with the order.

(5) If 2 or more arbitral tribunals are hearing the related proceedings:

(a) the tribunal that received the application shall communicate the substance of the application to the other tribunals concerned; and

(b) the tribunals shall, as soon as practicable, deliberate jointly on the application.

(6) Where the tribunals agree, after deliberation on the application, that a lar order under this section should be made in relation to the related edings: