



## **AI COMMENTARY: ICC ARBITRATION RULES 2021**

Prepared by Galadari Advocates & Legal Consultants with ChatGPT

Edited by Abdulla Ziad Galadari, Sergejs Dilevka, and Dimitriy Mednikov

## About Galadari

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

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

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

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

Aligned with our core values, Galadari is committed to being a responsible business. We are actively progressing towards a diverse and inclusive workforce, using our legal capabilities to do good in the community through pro bono work, supporting communities and charities across the UAE, and reducing our environmental impact.

## Galadari's International Arbitration Practice

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

With over four decades of experience in the UAE, our team possesses extensive expertise gained from their involvement in high-profile, intricate disputes worth millions of dollars across the region. Clients rely on our broad-ranging knowledge to guide them on the most suitable strategy for their business when faced with a dispute, whether as the claimant or respondent.

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

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

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

## Galadari's International Arbitration Team



**Abdulla Ziad Galadari**  
Senior Partner  
abdulla@galadarilaw.com

Abdulla is the principal driving force behind the growth strategies of many private and public organisations across the UAE, who continuously develop under his leadership. He is a key influencer across the UAE, supporting a diverse range of businesses and senior dignitaries, helping them to navigate its legal framework. Abdulla has been recognised by The Legal 500 as a “Leading Individual” in the region.



**Sergejs Dilevka**  
Senior Counsel  
s.dilevka@galadarilaw.com

Sergejs is Senior Counsel at the Dispute Resolution department of the Galadari's Dubai office. Sergejs is a dual-qualified lawyer and admitted as a Solicitor of the Senior Courts of England & Wales and as an Attorney and Counsellor of Law in the Courts of the State of New York. Sergejs has over 15 years of experience in advising and representing multinational companies and high-net-worth individuals in a wide range of complex institutional (ICC, LCIA, DIFC-LCIA, LMAA, SCC, SCIA, DIAC, GCC CAC) and *ad hoc* international and domestic arbitration proceedings, and litigation proceedings at DIFC Courts. Sergejs is a registered practitioner with DIFC Courts and ADGM Courts.



**Dimitriy Mednikov**  
Associate  
dimitriy.mednikov@galadarilaw.com

Dimitriy is an Associate at the Dispute Resolution department of Galadari's Dubai office. Dimitriy's practice focuses on complex commercial arbitration, particularly in the IT, engineering and construction, and M&A sectors, under various institutional rules (ICC, LCIA, SCC, HKIAC, and DIAC). Dimitriy has substantial experience in advising and acting for high-net-worth individuals in cross-border disputes and criminal proceedings involving allegations of money laundering. Dimitriy is a registered practitioner with DIFC Courts and ADGM Courts.

## Editors' Preface

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Abdulla Ziad Galadari

Sergejs Dilevka

Dimitriy Mednikov

November 2023

## Table of Contents

<b>INTRODUCTORY PROVISIONS</b> .....	<b>10</b>
ARTICLE 1 International Court of Arbitration .....	10
ARTICLE 2 Definitions .....	14
ARTICLE 3 Written Notifications or Communications; Time Limits.....	15
<b>COMMENCING THE ARBITRATION</b> .....	<b>19</b>
ARTICLE 4 Request for Arbitration .....	19
ARTICLE 5 Answer to the Request; Counterclaims.....	23
ARTICLE 6 Effect of the Arbitration Agreement .....	28
<b>MULTIPLE PARTIES, MULTIPLE CONTRACTS AND CONSOLIDATION</b> .....	<b>36</b>
ARTICLE 7 Joinder of Additional Parties .....	36
ARTICLE 8 Claims Between Multiple Parties .....	40
ARTICLE 9 Multiple Contracts.....	43
ARTICLE 10 Consolidation of Arbitrations .....	43
<b>THE ARBITRAL TRIBUNAL</b> .....	<b>46</b>
ARTICLE 11 General Provisions .....	46
ARTICLE 13 Appointment and Confirmation of the Arbitrators .....	60
ARTICLE 14 Challenge of Arbitrators .....	66
ARTICLE 15 Replacement of Arbitrators.....	69
<b>THE ARBITRAL PROCEEDINGS</b> .....	<b>76</b>
ARTICLE 16 Transmission of the File to the Arbitral Tribunal.....	76
ARTICLE 17 Party Representation .....	77
ARTICLE 18 Place of the Arbitration .....	80
ARTICLE 19 Rules Governing the Proceedings .....	83
ARTICLE 20 Language of the Arbitration .....	84
ARTICLE 21 Applicable Rules of Law.....	85
ARTICLE 22 Conduct of the Arbitration .....	89
ARTICLE 23 Terms of Reference .....	95
ARTICLE 24 Case Management Conference and Procedural Timetable.....	100
ARTICLE 25 Establishing the Facts of the Case .....	104
ARTICLE 26 Hearings .....	110

ARTICLE 27 Closing of the Proceedings and Date for Submission of Draft Awards.....	115
ARTICLE 28 Conservatory and Interim Measures.....	116
ARTICLE 29 Emergency Arbitrator.....	118
ARTICLE 30 Expedited Procedure.....	125
<b>AWARDS .....</b>	<b>129</b>
ARTICLE 31 Time Limit for the Final Award.....	129
ARTICLE 32 Making of the Award.....	131
ARTICLE 33 Award by Consent .....	134
ARTICLE 34 Scrutiny of the Award by the Court.....	135
ARTICLE 35 Notification, Deposit and Enforceability of the Award .....	136
ARTICLE 36 Correction and Interpretation of the Award; Additional Award; Remission of Awards .....	141
<b>COSTS .....</b>	<b>147</b>
ARTICLE 38 Decision as to the Costs of the Arbitration .....	154
<b>MISCELLANEOUS.....</b>	<b>162</b>
ARTICLE 40 Waiver .....	164
ARTICLE 42 General Rule.....	166
ARTICLE 43 Governing Law and Settlement of Disputes.....	167
<b>APPENDIX I — STATUTES OF THE INTERNATIONAL COURT OF ARBITRATION .....</b>	<b>169</b>
ARTICLE 1 Function .....	169
ARTICLE 2 Composition of the Court.....	172
ARTICLE 3 Appointment.....	173
ARTICLE 4 Committees.....	180
ARTICLE 5 Special Committees.....	182
ARTICLE 6 Single-member Committees .....	185
ARTICLE 8 Confidentiality.....	188
ARTICLE 9 Modification of the Rules of Arbitration .....	190
ARTICLE 10 .....	191
<b>APPENDIX II — INTERNAL RULES OF THE INTERNATIONAL COURT OF ARBITRATION.....</b>	<b>193</b>
ARTICLE 1 Confidential Character of the Work of the International Court of Arbitration .....	193
ARTICLE 2 Participation of Members of the International Court of Arbitration in ICC Arbitration .....	201



ARTICLE 3 Relations Between the Members of the Court and the ICC National Committees and Groups.....	206
ARTICLE 4 Constitution, Quorum and Decision-Making.....	209
ARTICLE 5 Communication of Reasons of Decisions .....	218
ARTICLE 6 Court Secretariat .....	221
ARTICLE 7 Scrutiny of Arbitral Awards .....	224
<b>APPENDIX III — ARBITRATION COSTS AND FEES .....</b>	<b>226</b>
ARTICLE 1 Advance on Costs .....	226
ARTICLE 2 Costs and Fees.....	239
ARTICLE 3 Scales of Administrative Expenses and Arbitrator’s.....	254
<b>APPENDIX IV — CASE MANAGEMENT TECHNIQUES .....</b>	<b>258</b>
<b>APPENDIX V — EMERGENCY ARBITRATOR RULES. ....</b>	<b>261</b>
ARTICLE 1 Application for Emergency Measures .....	261
ARTICLE 2 Appointment of the Emergency Arbitrator;.....	267
ARTICLE 3 Challenge of an Emergency Arbitrator.....	271
ARTICLE 4 Place of the Emergency Arbitrator Proceedings .....	273
ARTICLE 5 Proceedings.....	275
ARTICLE 6 Order .....	277
ARTICLE 7 Costs of the Emergency Arbitrator Proceedings .....	284
ARTICLE 8 General Rule.....	288
<b>APPENDIX VI — EXPEDITED PROCEDURE RULES .....</b>	<b>292</b>
ARTICLE 1 Application of the Expedited Procedure Rules.....	292
ARTICLE 2 Constitution of the Arbitral Tribunal .....	296
ARTICLE 3 Proceedings.....	298
ARTICLE 4 Award .....	304
ARTICLE 5 General Rule.....	306

**RULES OF ARBITRATION OF THE INTERNATIONAL CHAMBER OF COMMERCE 2021<sup>1</sup>**

**INTRODUCTORY PROVISIONS**

**ARTICLE 1 International Court of Arbitration**

- 1 The International Court of Arbitration (the “Court”) of the International Chamber of Commerce (“ICC”) is the independent arbitration body of ICC. The statutes of the Court are set forth in Appendix I.**

Article 1(1) of the ICC Arbitration Rules 2021 establishes the foundational context and authority of the International Court of Arbitration (the “Court”) within the framework of the International Chamber of Commerce (“ICC”). This provision outlines the role, autonomy, and source of the Court’s regulatory framework. Let us break down the key points of Article 1(1):

1. **Role of the Court and ICC:** The provision establishes the Court as an “independent arbitration body” operating under the umbrella of the ICC. This means that the Court functions separately from the ICC’s other activities and is solely dedicated to overseeing arbitration proceedings.
2. **Autonomy of the Court:** By stating that the Court is independent, the provision highlights the autonomy of the Court from other entities within the ICC. This is crucial to ensuring the impartiality and credibility of the arbitration process, as it underscores the Court’s ability to make decisions free from any external influence.
3. **Statutes of the Court:** The rules governing the functioning of the Court are found in Appendix I of the ICC Arbitration Rules 2021. This implies that the specific procedures, organosational structure, and other operational aspects of the Court are elaborated in this separate appendix. These statutes provide a detailed framework for how the Court operates, ensuring transparency, consistency, and predictability in arbitration proceedings.
4. **Reference to Appendix I:** The reference to “Appendix I” underscores the fact that the detailed procedures and rules governing the Court’s operations are set out in a separate document. This is a common practice in legal drafting, where foundational principles are outlined in the main text, and more specific details are provided in accompanying appendices or annexes.

In summary, Article 1(1) of the ICC Arbitration Rules 2021 serves as a preamble that establishes the Court’s independence, its relationship with the ICC, and the fact that the detailed rules for the Court’s operations are provided in Appendix I. This article is fundamental in setting the tone for the entire set of arbitration rules, emphasising the Court’s authority and impartiality in overseeing international arbitration proceedings.

---

<sup>1</sup> Source: <https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/rules-procedure/2021-arbitration-rules>.

- 2 The Court does not itself resolve disputes. It administers the resolution of disputes by arbitral tribunals, in accordance with the Rules of Arbitration of ICC (the “Rules”). The Court is the only body authorized to administer arbitrations under the Rules, including the scrutiny and approval of awards rendered in accordance with the Rules. It draws up its own internal rules, which are set forth in Appendix II (the “Internal Rules”).**

Article 1(2) of the ICC Arbitration Rules 2021 further elaborates on the role and functions of the International Court of Arbitration (the “Court”) within the context of the International Chamber of Commerce (“ICC”) arbitration framework. This provision clarifies how the Court operates and interacts with arbitral tribunals, as well as its authority over the arbitration process. Here is a breakdown of the key points of Article 1(2):

1. **Nature of Court’s Role:** The article begins by stating that the Court does not directly resolve disputes itself. Instead, it administers the process of resolving disputes through arbitral tribunals. This highlights the Court’s intermediary role in managing arbitration proceedings, as opposed to being a decision-making body. This distinction underscores the Court’s function in facilitating a fair and efficient arbitration process rather than rendering judgments.
2. **Administration of Arbitral Tribunals:** The Court administers the resolution of disputes by arbitral tribunals in accordance with the “Rules of Arbitration of ICC”, commonly referred to as the ICC Arbitration Rules. This emphasises that the Court’s actions and decisions are guided by these rules, which serve as the procedural framework for conducting arbitration proceedings under the ICC’s jurisdiction.
3. **Exclusive Authority to Administer:** The article states that the Court is the sole body authorised to administer arbitrations under the ICC Arbitration Rules. This means that the Court has the exclusive authority to manage and oversee arbitration proceedings conducted in accordance with these rules. This authority extends to various aspects of the arbitration process, including the scrutiny and approval of awards rendered by arbitral tribunals.
4. **Scrutiny and Approval of Awards:** The provision underscores that the Court has the responsibility to scrutinise and approve awards that are rendered in accordance with the ICC Arbitration Rules. This step ensures that the awards are consistent with the procedural and substantive standards set out in the rules before they are finalised and made binding on the parties.
5. **Internal Rules of the Court:** The Court has the authority to establish its own internal rules, which are referred to as the “Internal Rules”. These rules govern the internal operations and procedures of the Court. The Internal Rules are provided in Appendix II, indicating that they are detailed regulations complementing the broader principles set out in the main body of the ICC Arbitration Rules.

In summary, Article 1(2) of the ICC Arbitration Rules 2021 elucidates the Court’s role as an administrative body that oversees arbitration proceedings, its exclusive authority to manage arbitrations under the ICC Arbitration Rules, and its responsibility to scrutinise and approve awards. It also highlights the Court’s capacity to establish its own internal rules to guide its internal operations. This article is crucial in outlining the scope and authority of the Court within the ICC arbitration framework.

**3 The President of the Court (the “President”) shall have the power to take urgent decisions on behalf of the Court, provided that any such decision is reported to the Court at one of its next sessions. At the President’s request, in the President’s absence or otherwise where the President is unable to act, one of the Vice-Presidents shall have the same power.**

Article 1(3) of the ICC Arbitration Rules 2021 outlines the powers and responsibilities of the President of the International Court of Arbitration (the “Court”) in making urgent decisions on behalf of the Court. This provision addresses the mechanism for handling time-sensitive matters and designates the Vice-Presidents’ authority in case the President is unavailable. Here is a breakdown of the key points of Article 1(3):

1. **Role of the President of the Court:** The article establishes the President of the Court (referred to as the “President”) as having the authority to make urgent decisions on behalf of the Court. These decisions are likely related to matters that require immediate attention and cannot wait until the next session of the Court. This recognises the President’s role as a key decision-maker and leader in managing the Court’s affairs.
2. **Reporting of Decisions:** While the President has the power to make urgent decisions, the provision requires that any decision taken by the President must be reported to the Court at one of its upcoming sessions. This reporting mechanism ensures transparency and accountability, as the broader Court body is informed of the President’s decisions and can review them during their sessions.
3. **Vice-Presidents’ Authority:** In cases where the President is absent or unable to act, the article grants one of the Vice-Presidents the same power to make urgent decisions on behalf of the Court. This recognises the need for continuity in decision-making even in the absence of the President.

In essence, Article 1(3) acknowledges the importance of timely decision-making in arbitration proceedings and the management of the Court’s affairs. It empowers the President to make urgent decisions while upholding the principle of accountability through subsequent reporting to the Court. Additionally, the provision ensures that the Vice-Presidents can step in when the President is unavailable, maintaining a functional decision-making process even in the President’s absence. This article contributes to the effective functioning of the ICC arbitration system by allowing for swift action in critical situations.

**4 As provided for in the Internal Rules, the Court may delegate to one or more committees composed of its members the power to take certain decisions, provided that any such decision is reported to the Court at one of its next sessions.**

Article 1(4) of the ICC Arbitration Rules 2021 introduces the concept of delegation of decision-making authority within the framework of the International Court of Arbitration (the “Court”). This provision allows the Court to delegate specific decision-making powers to committees composed of its members, subject to certain conditions. Here is a breakdown of the key points of Article 1(4):

1. **Delegation of Decision-Making Authority:** The article establishes that the Court has the authority to delegate certain decision-making powers to one or more committees

consisting of its members. This implies that the Court can entrust certain tasks and decisions to specialised committees, allowing for more focused and efficient management of specific matters.

2. **Subject to Internal Rules:** The delegation of decision-making powers is subject to the provisions outlined in the Internal Rules of the Court. This means that the procedures and criteria for such delegation would be defined within the Court’s own internal regulations, which are detailed in Appendix II of the ICC Arbitration Rules.
3. **Reporting Requirement:** Similar to the theme in previous provisions, Article 1(4) emphasises that any decision made by a committee to which authority is delegated must be reported to the Court at one of its subsequent sessions. This reporting mechanism ensures transparency and accountability, as decisions made by committees are brought back to the full Court for review and oversight.

In summary, Article 1(4) of the ICC Arbitration Rules 2021 addresses the concept of delegation of decision-making powers within the Court. It allows the Court to delegate specific powers to committees composed of its members, provided that these committees operate within the framework set by the Internal Rules. The reporting requirement ensures that the full Court remains informed of the decisions made by these committees, maintaining transparency and accountability in the decision-making process. This provision enables the Court to effectively manage its workload and specialised matters through delegation while upholding the principles of the ICC arbitration system.

## **5 The Court is assisted in its work by the Secretariat of the Court (the “Secretariat”) under the direction of its Secretary General (the “Secretary General”).**

Article 1(5) of the ICC Arbitration Rules 2021 introduces the concept of the Secretariat of the Court and the role of the Secretary General in assisting the International Court of Arbitration (the “Court”) in its operations and functions. This provision outlines the organisational structure responsible for supporting the Court’s work. Here is an analysis of the key points of Article 1(5):

1. **Assistance from the Secretariat:** The article establishes that the Court is assisted in its work by an entity referred to as the “Secretariat of the Court”. The Secretariat serves as the administrative arm of the Court, responsible for carrying out various administrative and logistical tasks related to the administration of arbitration proceedings.
2. **Direction of the Secretary General:** The Secretariat operates under the direction of the Secretary General of the Court. The Secretary General plays a pivotal role in overseeing and managing the Secretariat’s activities. The Secretary General is likely a senior administrative figure who coordinates the Court’s administrative functions and ensures smooth operations.

In essence, Article 1(5) of the ICC Arbitration Rules 2021 acknowledges the essential role of administrative support in the arbitration process. The Secretariat, under the guidance of the Secretary General, assists the Court in managing the practical aspects of arbitration proceedings. This division of responsibilities ensures that the Court can focus on its core function of overseeing and administering arbitrations, while the Secretariat handles the administrative and logistical aspects that are integral to the process.

## ARTICLE 2 Definitions

### In the Rules:

- (i) **“arbitral tribunal” includes one or more arbitrators;**
- (ii) **“claimant” includes one or more claimants, “respondent” includes one or more respondents, and “additional party” includes one or more additional parties;**
- (iii) **“party” or “parties” include claimants, respondents or additional parties;**
- (iv) **“claim” or “claims” include any claim by any party against any other party;**
- (v) **“award” includes, inter alia, an interim, partial, final, or additional award.**

Article 2 of the ICC Arbitration Rules 2021 provides definitions and explanations for various terms used within the rules. This helps to ensure clarity and uniform interpretation throughout the arbitration process. The definitions provided in this article play a crucial role in facilitating the understanding of key concepts within the ICC arbitration framework. Here is an analysis of the key points of Article 2:

1. **Inclusion of Terminology Definitions:** Article 2 clarifies the meanings of specific terms commonly used in arbitration proceedings under the ICC rules. By providing these definitions, the rules avoid potential ambiguity or misunderstanding that could arise due to different interpretations of the terms.
2. **“Arbitral Tribunal”:** This definition clarifies that the term “arbitral tribunal” encompasses not only a single arbitrator but also a panel of arbitrators. This recognises that arbitration proceedings can be conducted by a sole arbitrator or multiple arbitrators working together as a tribunal.
3. **“Claimant”, “Respondent”, and “Additional Party”:** These definitions explain that terms like “claimant”, “respondent”, and “additional party” are inclusive and can refer to one or more individuals or entities. This acknowledges the possibility of multiple parties being involved on either side of a dispute.
4. **“Party” or “Parties”:** The definitions for “party” or “parties” extend to include not only claimants and respondents but also additional parties. This comprehensive definition ensures that all participants in the arbitration process are covered under the term “party” or “parties”.
5. **“Claim” or “Claims”:** This definition expands the concept of “claim” or “claims” to encompass any claim brought by any party against any other party. This inclusive definition reflects the variety of claims that may arise in an arbitration proceeding.
6. **“Award”:** The definition of “award” is broad and includes various types of awards, such as interim, partial, final, or additional awards. This recognises the different stages and forms that awards can take during the arbitration process.

In summary, Article 2 of the ICC Arbitration Rules 2021 serves the purpose of clarifying and standardising the interpretation of essential terms used throughout the rules. By providing comprehensive definitions for terms like “arbitral tribunal”, “claimant”, “respondent”, “party”, “claim”, and “award”, the rules ensure that all participants have a clear understanding of the terminology used in arbitration proceedings. This clarity contributes to the effectiveness, transparency, and fairness of the arbitration process under the ICC framework.

### ARTICLE 3 Written Notifications or Communications; Time Limits

- 1 Save as otherwise provided in Articles 4(4)(b) and 5(3), all pleadings and other written communications submitted by any party, as well as all documents annexed thereto, shall be sent to each party, each arbitrator, and the Secretariat. Any notification or communication from the arbitral tribunal to the parties shall also be sent in copy to the Secretariat.**

Article 3(1) of the ICC Arbitration Rules 2021 outlines the requirements and procedures for communication in the arbitration process. This provision sets forth the rules regarding the submission and distribution of various documents, pleadings, and communications among the parties involved and the arbitral tribunal. Here is an analysis of the key points of Article 3(1):

- 1. General Communication Framework:** The provision establishes a general framework for communication within the arbitration process. It specifies that all written communications, including pleadings and any accompanying documents, must be sent to three categories of recipients: each party involved in the dispute, each arbitrator on the tribunal, and the Secretariat of the Court.
- 2. Inclusion of Documents Annexed:** The provision clarifies that documents annexed to any written communication, such as evidence or exhibits, are also subject to the same distribution requirement. This ensures that all relevant information is shared among the involved parties and the tribunal members.
- 3. Transmission to Arbitral Tribunal:** In addition to the parties and the Secretariat, the provision emphasises that all written communications from the arbitral tribunal to the parties must also be sent to the Secretariat. This step helps maintain a record of the communication and ensures that the Court is aware of the interactions between the tribunal and the parties.
- 4. Exceptions Noted:** The provision highlights that there are exceptions provided in Articles 4(4)(b) and 5(3). While the context of these exceptions is not explicitly stated in this provision, it suggests that in certain situations, different communication protocols may apply as defined in those specific articles.

In essence, Article 3(1) establishes a structured and transparent communication process within ICC arbitration proceedings. It ensures that relevant documents and communications are shared among parties, arbitrators, and the Secretariat, maintaining transparency and consistency. Additionally, the requirement to share tribunal communications with the Secretariat contributes to the oversight and coordination of the arbitration process by the Court. This provision helps to foster a fair, organised, and efficient arbitration process by mandating clear communication channels among the key stakeholders.

- 2 All notifications or communications from the Secretariat and the arbitral tribunal shall be made to the last address of the party or its representative for whom the same are intended, as notified either by the party in question or by any other party. Such notification or communication may be made by delivery against receipt, registered post, courier, email, or any other means of telecommunication that provides a record of the sending thereof.**

Article 3(2) of the ICC Arbitration Rules 2021 details the requirements and methods for making notifications and communications between the Secretariat of the International Court of Arbitration and the arbitral tribunal, and the parties involved in arbitration proceedings. This provision outlines the various means by which such notifications and communications can be sent and emphasises the importance of maintaining accurate contact information. Here is an analysis of the key points of Article 3(2):

1. **Recipient of Notifications:** The provision specifies that notifications or communications from the Secretariat and the arbitral tribunal should be directed to the intended recipient, which is typically the party involved in the arbitration or its representative. This ensures that important information is conveyed to the relevant individuals.
2. **Use of Last Address:** The notifications or communications should be sent to the “last address” of the party or its representative. This refers to the most recent contact details provided by the party or its representative. Keeping this information up to date is vital to ensure that important communications reach the intended recipient in a timely manner.
3. **Updating of Contact Information:** The provision emphasises that the last address can be notified by the party itself or by any other party. This recognises the need for parties to inform each other and the arbitral tribunal about any changes in contact information, ensuring accurate and efficient communication.
4. **Methods of Notification:** The provision outlines the permissible methods of notification or communication, which include delivery against receipt, registered post, courier, email, or any other means of telecommunication that provides a record of sending. These methods aim to provide a reliable means of tracking and confirming the delivery of notifications.

In essence, Article 3(2) sets forth guidelines for effective communication between the Secretariat, the arbitral tribunal, and the parties in ICC arbitration proceedings. It underscores the importance of accurate contact information and establishes a range of acceptable methods for sending notifications. By providing multiple options for communication, including modern methods like email and telecommunication, the provision acknowledges the technological advancements that can facilitate efficient communication while maintaining a record of correspondence. This article contributes to the transparency and efficacy of the arbitration process by ensuring that parties are informed and involved throughout the proceedings.



**3 A notification or communication shall be deemed to have been made on the day it was received by the party itself or by its representative, or would have been received if made in accordance with Article 3(2).**

Article 3(3) of the ICC Arbitration Rules 2021 addresses the concept of when a notification or communication is considered to have been effectively made in the context of arbitration proceedings. This provision establishes the criteria for determining the timing of notifications or communications. Here is an analysis of the key points of Article 3(3):

1. **Effective Date of Communication:** The provision states that a notification or communication is deemed to have been made on a particular day. This day is determined by either the actual receipt of the communication by the party itself or its representative or by the date the communication would have been received if it had been made in accordance with the methods specified in Article 3(2).
2. **Actual Receipt:** The provision acknowledges that the notification or communication is considered made on the day it is actually received by the party or its representative. This is the case when the communication reaches the intended recipient and is within their knowledge.
3. **Deemed Receipt:** The provision introduces the concept of “deemed receipt”. This means that if the notification or communication is made using the methods specified in Article 3(2), the communication is considered received on the day it would have been received under those methods. This is important for cases where the communication method leaves a verifiable record of sending, even if the actual receipt is not immediate.

In essence, Article 3(3) establishes a framework for determining when a notification or communication is officially made in ICC arbitration proceedings. It provides clarity by outlining two scenarios: actual receipt and deemed receipt. Actual receipt occurs when the party or its representative physically receives the communication. Deemed receipt applies when notifications are made in accordance with Article 3(2), and the communication is considered received on the day it would have been received through those specified methods. This article contributes to the procedural fairness and predictability of the arbitration process by setting clear guidelines for the timing of communications.

**4 Periods of time specified in or fixed under the Rules shall start to run on the day following the date a notification or communication is deemed to have been made in accordance with Article 3(3). When the day next following such date is an official holiday, or a non-business day in the country where the notification or communication is deemed to have been made, the period of time shall commence on the first following business day. Official holidays and non-business days are included in the calculation of the period of time. If the last day of the relevant period of time granted is an official holiday or a nonbusiness day in the country where the notification or communication is deemed to have been made, the period of time shall expire at the end of the first following business day.**

Article 3(4) of the ICC Arbitration Rules 2021 addresses the computation of time periods within the context of the arbitration process. This provision outlines how time periods specified in or determined by the rules are calculated, taking into account both official holidays and non-business days in the relevant country. Here is an analysis of the key points of Article 3(4):

1. **Starting Point of Time Periods:** The provision states that any specified time periods mentioned in the ICC Arbitration Rules begin on the day following the date when a notification or communication is deemed to have been made, as determined in accordance with Article 3(3). This provides a clear starting point for counting the time periods.
2. **Accounting for Official Holidays and Non-Business Days:** The provision recognises the impact of official holidays and non-business days in the country where the communication is deemed to have been made. If the day following the communication's deemed date is an official holiday or a non-business day in that country, the time period's commencement is deferred to the first following business day.
3. **Inclusion of Official Holidays and Non-Business Days:** Official holidays and non-business days are counted when calculating the relevant time periods. This includes both the beginning and end of the period. If the last day of the time period falls on an official holiday or non-business day, the period is extended to expire at the end of the first following business day.

In essence, Article 3(4) ensures that the calculation of time periods in the ICC arbitration process is fair and practical. By accounting for official holidays and non-business days, it takes into consideration potential disruptions that might affect the ability to meet deadlines. This provision helps prevent potential pitfalls related to timing issues and contributes to the efficiency and fairness of the arbitration proceedings.

## COMMENCING THE ARBITRATION

## ARTICLE 4 Request for Arbitration

- 1 A party wishing to have recourse to arbitration under the Rules shall submit its Request for Arbitration (the “Request”) to the Secretariat at any of the offices specified in the Internal Rules. The Secretariat shall notify the claimant and respondent of the receipt of the Request and the date of such receipt.**

Article 4(1) of the ICC Arbitration Rules 2021 outlines the process that a party must follow when initiating arbitration proceedings under the rules. This provision specifies the steps a party needs to take to formally commence the arbitration process, including the submission of the “Request for Arbitration” and the subsequent notification process by the Secretariat. Here is an analysis of the key points of Article 4(1):

1. **Initiating Arbitration:** The provision sets out that if a party wishes to initiate arbitration under the ICC Arbitration Rules, it must submit a formal document called the “Request for Arbitration” (referred to as the “Request”). This request signals the official start of the arbitration process and outlines the nature of the dispute, the parties involved, and the desired relief sought.
2. **Submission to the Secretariat:** The Request must be submitted to the Secretariat of the Court. The Secretariat is the administrative arm of the Court responsible for managing the procedural aspects of arbitration proceedings. The provision specifies that the Request can be submitted to any of the offices specified in the Internal Rules.
3. **Notification of Receipt:** Once the Secretariat receives the Request, it is required to promptly notify both the claimant (the party initiating the arbitration) and the respondent (the opposing party) about the receipt of the Request and the date on which it was received. This notification serves as an acknowledgment of the commencement of the arbitration proceedings and helps to maintain transparency and communication between the parties and the Secretariat.

In summary, Article 4(1) establishes the process for initiating arbitration under the ICC Arbitration Rules. It requires the party wishing to initiate arbitration to submit a formal Request for Arbitration to the Secretariat. Upon receipt of the Request, the Secretariat is obligated to notify both the claimant and the respondent of the initiation of proceedings. This article sets the stage for a clear and structured beginning of arbitration proceedings, ensuring that all parties are informed and that the process is initiated in accordance with the ICC’s established procedures.

- 2 The date on which the Request is received by the Secretariat shall, for all purposes, be deemed to be the date of the commencement of the arbitration.**

Article 4(2) of the ICC Arbitration Rules 2021 defines the date on which the arbitration proceedings officially commence in the context of the ICC arbitration process. This provision specifies that the date of receipt of the “Request for Arbitration” by the Secretariat is considered the formal start date of the arbitration for all legal and procedural purposes. Here is an analysis of the key points of Article 4(2):

1. **Defining Commencement of Arbitration:** The provision unequivocally states that the date on which the “Request for Arbitration” is received by the Secretariat is considered the official start date of the arbitration process. This date serves as a reference point for various purposes throughout the arbitration proceedings.
2. **Legal and Procedural Significance:** The provision’s use of the phrase “for all purposes” underscores the importance of this commencement date in shaping the timeline and various aspects of the arbitration process. This date is crucial for determining deadlines, calculating timeframes, and establishing jurisdiction for the arbitral tribunal.

In essence, Article 4(2) establishes a clear and unambiguous rule for determining the commencement date of arbitration proceedings under the ICC Arbitration Rules. By stipulating that the date of receipt of the Request by the Secretariat is the official start date, the provision provides a definitive point of reference for parties, arbitrators, and the Secretariat to follow throughout the course of the arbitration. This clarity helps to ensure consistency and predictability in the procedural timeline of the arbitration process.

**3 The Request shall contain the following information:**

- a) **the name in full, description, address and other contact details of each of the parties;**
- b) **the name in full, address and other contact details of any person(s) representing the claimant in the arbitration;**
- c) **a description of the nature and circumstances of the dispute giving rise to the claims and of the basis upon which the claims are made;**
- d) **a statement of the relief sought, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims;**
- e) **any relevant agreements and, in particular, the arbitration agreement(s);**
- f) **where claims are made under more than one arbitration agreement, an indication of the arbitration agreement under which each claim is made;**
- g) **all relevant particulars and any observations or proposals concerning the number of arbitrators and their choice in accordance with the provisions of Articles 12 and 13, and any nomination of an arbitrator required thereby; and**
- h) **all relevant particulars and any observations or proposals as to the place of the arbitration, the applicable rules of law and the language of the arbitration.**

**The claimant may submit such other documents or information with the Request as it considers appropriate or as may contribute to the efficient resolution of the dispute.**

Article 4(3) of the ICC Arbitration Rules 2021 outlines the required contents of the “Request for Arbitration”, which is the formal document submitted by the claimant to initiate arbitration proceedings under the ICC rules. This provision provides detailed information about the necessary elements that must be included in the Request. Here is an analysis of the key points of Article 4(3):

1. **Required Contents of the Request:** The provision specifies a comprehensive list of information that must be included in the Request for Arbitration. This information is essential for initiating the arbitration process and ensuring that all parties and the arbitral tribunal have a clear understanding of the nature of the dispute and the claims being made.
2. **Information About the Parties:** The Request must contain the full name, description, address, and contact details of each of the parties involved in the dispute. This ensures accurate identification and communication between the parties.
3. **Representation Details:** The names, addresses, and contact details of any individuals representing the claimant in the arbitration must also be provided. This allows for clear communication channels between the representatives and the other parties.
4. **Description of Dispute:** The Request should include a detailed description of the nature and circumstances of the dispute that has led to the claims being made. This information sets the context for the claims being asserted.
5. **Statement of Relief Sought:** The Request must outline the relief sought, including specified amounts for quantified claims and estimates for other claims. This provides a clear indication of the relief being requested by the claimant.
6. **Arbitration Agreements and Claims:** Any relevant agreements, especially the arbitration agreement(s), should be included in the Request. If there are multiple arbitration agreements involved, the Request should indicate which agreement corresponds to each claim.
7. **Arbitrator Selection and Other Details:** The Request should provide relevant information and observations concerning the number of arbitrators, their selection (as per Articles 12 and 13), and any required nominations. It should also cover details about the place of arbitration, applicable rules of law, and the language of the arbitration.
8. **Additional Documents and Information:** The provision allows the claimant to submit additional documents or information that it considers appropriate or that could contribute to the efficient resolution of the dispute. This flexibility allows the claimant to provide context and supporting materials as needed.

In summary, Article 4(3) of the ICC Arbitration Rules 2021 establishes the comprehensive list of information and documents that must be included in the Request for Arbitration. This provision ensures that the initiation of arbitration proceedings is supported by detailed and necessary information, setting the groundwork for a well-informed and structured arbitration process.

#### **4 Together with the Request, the claimant shall:**

- a) **make payment of the filing fee required by Appendix III (“Arbitration Costs and Fees”) in force on the date the Request is submitted; and**
- b) **submit a sufficient number of copies of the Request for each other party, each arbitrator and the Secretariat where the claimant requests transmission of the Request by**

**delivery against receipt, registered post or courier. In the event that the claimant fails to comply with either of these requirements, the Secretariat may fix a time limit within which the claimant must comply, failing which the file shall be closed without prejudice to the claimant’s right to submit the same claims at a later date in another Request.**

Article 4(4) of the ICC Arbitration Rules 2021 outlines the additional requirements and steps that the claimant must fulfil when submitting the “Request for Arbitration”. This provision emphasises the importance of proper documentation, payment of fees, and timely compliance with the requirements. Here is an analysis of the key points of Article 4(4):

1. **Filing Fee Payment:** The provision stipulates that, in addition to submitting the Request for Arbitration, the claimant must make payment of the filing fee as required by the “Arbitration Costs and Fees” schedule provided in Appendix III of the ICC Arbitration Rules. The filing fee is paid at the time of submitting the Request and helps cover administrative costs related to the initiation of the arbitration process.
2. **Submission of Copies of the Request:** The claimant is required to submit a sufficient number of copies of the Request for each of the other parties, each arbitrator, and the Secretariat. The number of copies should account for each recipient who will need access to the Request.
3. **Methods of Submission:** The claimant is given the option to choose the method of transmission of the Request copies. It can request that the copies be sent via delivery against receipt, registered post, or courier. This provides flexibility while ensuring that the recipients receive the necessary documentation.
4. **Consequences of Non-Compliance:** If the claimant fails to fulfil either of the two requirements (filing fee payment or submission of copies), the Secretariat has the authority to address the issue. The Secretariat can establish a time limit within which the claimant must comply with the requirements. If the claimant does not meet the established deadline, the file will be closed. However, this closure does not preclude the claimant from later submitting the same claims through another Request for Arbitration.

In essence, Article 4(4) of the ICC Arbitration Rules 2021 sets forth the practical requirements that accompany the submission of the Request for Arbitration. It ensures that the claimant provides the necessary documentation, payment, and copies to initiate the arbitration process effectively. The provision also reflects the ICC’s approach of allowing for corrective measures by fixing a time limit for compliance before resorting to closing the file, thereby maintaining a balance between enforcing requirements and preserving the claimant’s right to seek arbitration at a later date.

**5 The Secretariat shall transmit a copy of the Request and the documents annexed thereto to the respondent for its Answer to the Request once the Secretariat has sufficient copies of the Request and the required filing fee.**

Article 4(5) of the ICC Arbitration Rules 2021 outlines the process by which the Secretariat of the International Court of Arbitration manages the transmission of the “Request for Arbitration” and its associated documents to the respondent. This provision establishes the conditions under which the respondent is provided with a copy of the claimant’s Request and the related materials. Here is an analysis of the key points of Article 4(5):

1. **Transmittal to Respondent:** The provision states that the Secretariat of the Court is responsible for transmitting a copy of the claimant’s Request for Arbitration, along with any annexed documents, to the respondent. This transmission is a crucial step in initiating the respondent’s involvement in the arbitration process.
2. **Conditions for Transmittal:** The transmission of the Request and documents to the respondent is contingent upon two factors: the Secretariat having sufficient copies of the Request and the required filing fee being paid by the claimant. These conditions ensure that the transmission process is executed correctly and that the respondent receives all relevant information.

In essence, Article 4(5) of the ICC Arbitration Rules 2021 establishes a procedural step in the initiation of arbitration proceedings. It ensures that the respondent is provided with a copy of the claimant’s Request for Arbitration, allowing the respondent to prepare and submit an answer to the claims raised by the claimant. The provision also underscores the importance of fulfilling administrative requirements (sufficient copies and filing fee payment) to enable the proper transmission of documents. This contributes to the orderly and transparent functioning of the arbitration process by facilitating communication between the parties from the outset.

#### **ARTICLE 5 Answer to the Request; Counterclaims**

- 1 **Within 30 days from receipt of the Request from the Secretariat, the respondent shall submit an Answer (the “Answer”) which shall contain the following information:**
  - a) **its name in full, description, address and other contact details;**
  - b) **the name in full, address and other contact details of any person(s) representing the respondent in the arbitration;**
  - c) **its comments as to the nature and circumstances of the dispute giving rise to the claims and the basis upon which the claims are made;**
  - d) **its response to the relief sought;**
  - e) **any observations or proposals concerning the number of arbitrators and their choice in light of the claimant’s proposals and in accordance with the provisions of Articles 12 and 13, and any nomination of an arbitrator required thereby; and**
  - f) **any observations or proposals as to the place of the arbitration, the applicable rules of law and the language of the arbitration.**

**The respondent may submit such other documents or information with the Answer as it considers appropriate or as may contribute to the efficient resolution of the dispute.**

Article 5(1) of the ICC Arbitration Rules 2021 outlines the requirements and details for the submission of the “Answer” by the respondent in response to the “Request for Arbitration” made by the claimant. This provision defines the necessary contents of the Answer and the timeline within which it must be submitted. Here is an analysis of the key points of Article 5(1):

1. **Timeline for Submission:** The provision specifies that the respondent must submit the Answer within 30 days from the receipt of the Request from the Secretariat. This time frame ensures that the respondent has a reasonable period to prepare and provide a response.
2. **Required Contents of the Answer:** The Answer must include a range of information to provide a comprehensive response to the claimant's Request for Arbitration. This information includes the respondent's name, description, address, and contact details, as well as the name, address, and contact details of any representatives involved in the arbitration.
3. **Comments on Dispute and Claims:** The respondent is required to provide comments on the nature and circumstances of the dispute that led to the claims and the basis upon which those claims are being made. This allows the respondent to clarify its position on the issues raised by the claimant.
4. **Response to Relief Sought:** The Answer should also include the respondent's response to the relief sought by the claimant. This provides insight into how the respondent views the requested relief and whether it agrees or disagrees with the claims.
5. **Arbitrator Selection and Other Details:** Similar to the claimant's obligations, the respondent is expected to provide observations or proposals regarding the number of arbitrators, their selection process, and any required nominations. The respondent's input helps shape the composition of the arbitral tribunal.
6. **Choice of Arbitration Details:** The respondent should also express any observations or proposals about the place of the arbitration, applicable rules of law, and the language of the arbitration. These details contribute to setting the parameters for the arbitration proceedings.
7. **Submission of Additional Documents:** The provision allows the respondent to submit additional documents or information it considers relevant to the Answer. This flexibility supports the respondent's ability to provide context and supporting materials.

In summary, Article 5(1) of the ICC Arbitration Rules 2021 establishes the requirements for the respondent's Answer to the claimant's Request for Arbitration. It ensures that the respondent's response is well-informed and comprehensive, covering a range of aspects related to the dispute. The provision also emphasises the importance of submitting the Answer within the specified timeline to maintain the efficiency and effectiveness of the arbitration process.

**2 The Secretariat may grant the respondent an extension of the time for submitting the Answer, provided the application for such an extension contains the respondent's observations or proposals concerning the number of arbitrators and their choice and, where required by Articles 12 and 13, the nomination of an arbitrator. If the respondent fails to do so, the Court shall proceed in accordance with the Rules.**

Article 5(2) of the ICC Arbitration Rules 2021 addresses the potential extension of the deadline for the respondent to submit the "Answer" in response to the claimant's "Request for Arbitration". This provision outlines the circumstances under which the Secretariat can grant an extension and the



actions the respondent must take in order to request such an extension. Here is an analysis of the key points of Article 5(2):

1. **Extension of Time for Submitting the Answer:** The provision grants the Secretariat the authority to extend the time period for the respondent to submit the Answer. This extension is discretionary and allows for flexibility in cases where the respondent requires more time to prepare a comprehensive response.
2. **Conditions for Extension Application:** The respondent seeking an extension must submit an application that includes its observations or proposals concerning the number of arbitrators and their selection. If required by Articles 12 and 13 (related to arbitrator appointment), the respondent must also provide the nomination of an arbitrator.
3. **Consequences of Failure to Provide Observations:** If the respondent fails to include the necessary observations or proposals about the number of arbitrators and their choice, or if required, the nomination of an arbitrator, in their extension application, the Court (the International Court of Arbitration) will proceed in accordance with the Rules. This suggests that the Court will not automatically grant an extension if the required information is not provided.

In essence, Article 5(2) of the ICC Arbitration Rules 2021 establishes the conditions under which the Secretariat can grant an extension for the respondent to submit the Answer. The respondent must provide specific information related to arbitrator selection and nomination as part of their extension application. This provision encourages the respondent to actively engage in the arbitration process and ensures that the necessary details for the formation of the arbitral tribunal are provided in a timely manner. It also emphasises the importance of complying with the requirements to receive an extension, reflecting the ICC's commitment to maintaining a fair and efficient arbitration process.

**3 The Answer shall be submitted in a sufficient number of copies for each other party, each arbitrator and the Secretariat where the respondent requests transmission thereof by delivery against receipt, registered post or courier.**

Article 5(3) of the ICC Arbitration Rules 2021 outlines the requirements for submitting the “Answer” by the respondent in response to the “Request for Arbitration” made by the claimant. This provision specifies the number of copies of the Answer that must be provided and the available transmission methods. Here is an analysis of the key points of Article 5(3):

1. **Number of Copies Required:** The provision states that the respondent must submit a sufficient number of copies of the Answer. These copies are intended for each of the other parties involved in the arbitration, each arbitrator on the tribunal, and the Secretariat of the International Court of Arbitration.
2. **Transmittal Options:** The respondent has the option to choose how the copies of the Answer are transmitted to the recipients. The provision specifies that the respondent can request the transmission of the copies by using methods such as delivery against receipt, registered post, or courier.

In essence, Article 5(3) of the ICC Arbitration Rules 2021 sets forth practical requirements for the submission of the respondent's Answer in the arbitration proceedings. It ensures that the necessary

parties and stakeholders have access to the respondent's response. By requiring a sufficient number of copies and offering multiple transmission methods, this provision aims to facilitate efficient communication and document sharing among the parties and the Secretariat. This contributes to the transparency and proper functioning of the arbitration process by ensuring that all relevant participants are informed and engaged.

**4 The Secretariat shall communicate the Answer and the documents annexed thereto to all other parties.**

Article 5(4) of the ICC Arbitration Rules 2021 outlines the responsibility of the Secretariat of the International Court of Arbitration in relation to communicating the respondent's "Answer" and any associated annexed documents to the other parties involved in the arbitration proceedings. Here is an analysis of the key points of Article 5(4):

Communication of the Answer: The provision states that the Secretariat has the duty to communicate the respondent's Answer to all other parties involved in the arbitration. This communication ensures that the claimant, any additional parties, and the arbitral tribunal are aware of the respondent's response and its contents.

In essence, Article 5(4) of the ICC Arbitration Rules 2021 highlights the administrative role of the Secretariat in ensuring proper communication within the arbitration proceedings. By transmitting the respondent's Answer and any annexed documents to all relevant parties, the Secretariat helps maintain transparency, access to information, and effective communication among the parties involved. This contributes to the fairness and efficiency of the arbitration process by ensuring that all participants are well-informed about the developments in the case.

**5 Any counterclaims made by the respondent shall be submitted with the Answer and shall provide:**

- a) a description of the nature and circumstances of the dispute giving rise to the counterclaims and of the basis upon which the counterclaims are made;
- b) a statement of the relief sought together with the amounts of any quantified counterclaims and, to the extent possible, an estimate of the monetary value of any other counterclaims;
- c) any relevant agreements and, in particular, the arbitration agreement(s); and
- d) where counterclaims are made under more than one arbitration agreement, an indication of the arbitration agreement under which each counterclaim is made.

**The respondent may submit such other documents or information with the counterclaims as it considers appropriate or as may contribute to the efficient resolution of the dispute.**

Article 5(5) of the ICC Arbitration Rules 2021 addresses the submission of counterclaims by the respondent in response to the claimant's "Request for Arbitration". This provision outlines the

requirements and details that must be included in any counterclaims made by the respondent. Here is an analysis of the key points of Article 5(5):

1. **Submission of Counterclaims:** The provision states that if the respondent wishes to make counterclaims against the claimant, these counterclaims must be submitted along with the Answer. Counterclaims are claims made by the respondent against the claimant within the same arbitration proceedings.
2. **Required Contents of Counterclaims:** The counterclaims must contain certain information to ensure clarity and comprehensive presentation:
  - a. **Description of Dispute:** The counterclaims must include a description of the nature and circumstances of the dispute that has led to the counterclaims, along with the basis upon which these counterclaims are being made.
  - b. **Statement of Relief Sought:** The counterclaims must outline the relief sought, including specified amounts for quantified counterclaims and estimates for other counterclaims.
  - c. **Relevant Agreements:** Any relevant agreements, particularly the arbitration agreement(s) under which the counterclaims are being made, should be included.
  - d. **Multiple Arbitration Agreements:** If the counterclaims are made under more than one arbitration agreement, the respondent should indicate which arbitration agreement corresponds to each counterclaim.
3. **Submission of Additional Documents:** Similar to the requirements for the Request and Answer, the provision allows the respondent to submit additional documents or information it considers relevant to the counterclaims. This provides flexibility for the respondent to present their case effectively.

In summary, Article 5(5) of the ICC Arbitration Rules 2021 establishes the framework for submitting counterclaims in response to the claimant's Request for Arbitration. It ensures that counterclaims are presented in a clear and comprehensive manner, with specific details about the nature of the dispute, the relief sought, and the relevant agreements. The provision's flexibility in allowing additional documents or information supports the respondent's ability to effectively address the claims raised by the claimant. This contributes to a comprehensive and fair arbitration process that allows both parties to present their arguments and counterarguments within a single set of proceedings.

**6 The claimant shall submit a reply to any counterclaim within 30 days from receipt of the counterclaims communicated by the Secretariat. Prior to the transmission of the file to the arbitral tribunal, the Secretariat may grant the claimant an extension of time for submitting the reply.**

Article 5(6) of the ICC Arbitration Rules 2021 outlines the procedural requirements for the claimant's response to any counterclaims made by the respondent in the arbitration proceedings. This provision establishes the timeline and conditions under which the claimant must submit its reply to counterclaims. Here is an analysis of the key points of Article 5(6):

1. Claimant's Reply to Counterclaim: The provision specifies that if the respondent has submitted counterclaims along with its Answer, the claimant is required to submit a reply to those counterclaims.
2. Timeline for Submission: The claimant must submit its reply to any counterclaim within 30 days from the receipt of the counterclaims that have been communicated to the claimant by the Secretariat. This timeline ensures that the claimant has a reasonable period to prepare and provide a response.
3. Extension of Time: The Secretariat has the discretion to grant an extension of time to the claimant for submitting the reply to counterclaims. This extension can be granted before the file is transmitted to the arbitral tribunal. The provision does not specify the criteria for granting such an extension, but it allows the Secretariat to exercise judgment based on the circumstances.

In essence, Article 5(6) of the ICC Arbitration Rules 2021 sets forth the requirements for the claimant's response to any counterclaims made by the respondent. The provision ensures that both parties have the opportunity to present their arguments and counterarguments within a structured and fair timeline. The flexibility for the Secretariat to grant an extension recognises that there may be legitimate reasons for the claimant to request additional time for preparation, while also aiming to maintain the efficiency of the arbitration process. This provision contributes to the orderly progression of the arbitration proceedings by ensuring that all parties have the opportunity to present their positions thoroughly and effectively.

## ARTICLE 6 Effect of the Arbitration Agreement

- 1 Where the parties have agreed to submit to arbitration under the Rules, they shall be deemed to have submitted ipso facto to the Rules in effect on the date of commencement of the arbitration, unless they have agreed to submit to the Rules in effect on the date of their arbitration agreement.**

Article 6(1) of the ICC Arbitration Rules 2021 addresses the application of the ICC Rules to arbitration proceedings when the parties have agreed to submit their disputes to arbitration under these rules. This provision clarifies which version of the ICC Rules will apply, depending on the parties' agreement. Here is an analysis of the key points of Article 6(1):

1. Applicability of the ICC Rules: The provision establishes that when parties have agreed to submit their dispute to arbitration under the ICC Rules, they are deemed to have automatically accepted the application of these Rules. This means that the procedural framework and guidelines provided by the ICC Rules will govern the arbitration proceedings.
2. Default Rule for the Effective Date: The default rule is that the ICC Rules in effect on the date of the commencement of the arbitration will apply. In other words, if the parties have not explicitly chosen a specific version of the Rules in their arbitration agreement, the version that is currently in effect when the arbitration begins will automatically apply.

3. **Exception for Agreement on Specific Version:** The provision introduces an exception. If the parties have explicitly agreed in their arbitration agreement to submit to the ICC Rules in effect on the date of their arbitration agreement, then this agreement takes precedence over the default rule. In such cases, the version of the Rules that was in force when the parties initially agreed to arbitration will govern the proceedings.

In essence, Article 6(1) of the ICC Arbitration Rules 2021 addresses the mechanism for determining which version of the ICC Rules will apply to the arbitration proceedings. It acknowledges that parties may either implicitly accept the version in effect at the start of arbitration or expressly choose a specific version by reference to the date of their arbitration agreement. This provision ensures clarity and predictability in terms of the procedural framework that will govern the arbitration process, while respecting the parties' autonomy in choosing the applicable rules.

## **2 By agreeing to arbitration under the Rules, the parties have accepted that the arbitration shall be administered by the Court.**

Article 6(2) of the ICC Arbitration Rules 2021 addresses a fundamental aspect of the arbitration process: the administrative role of the International Court of Arbitration (the "Court") in cases where the parties have agreed to arbitration under the ICC Rules. Here is an analysis of the key points of Article 6(2):

1. **Acceptance of Court Administration:** The provision states that by agreeing to arbitration under the ICC Rules, the parties have implicitly accepted that the administration of the arbitration will be conducted by the Court. This means that the Court, as the administrative body of the ICC, will play a crucial role in overseeing various aspects of the arbitration process, including the appointment of arbitrators, handling procedural matters, and ensuring compliance with the ICC Rules.
2. **Importance of Court Administration:** The Court's administration of the arbitration adds an extra layer of professionalism and expertise to the proceedings. The Court's involvement helps ensure that the arbitration process follows established procedural guidelines, that arbitrator appointments are made in accordance with the ICC Rules, and that the arbitration progresses efficiently.
3. **Parties' Commitment to ICC Rules:** By accepting the Court's administration, the parties also acknowledge their commitment to following the ICC Rules throughout the arbitration process. This includes adhering to the Rules' provisions regarding procedures, timelines, and other aspects that contribute to a fair and effective arbitration.

In summary, Article 6(2) of the ICC Arbitration Rules 2021 emphasises the parties' acceptance of the role of the International Court of Arbitration in administering arbitrations under the ICC Rules. This provision underscores the significance of the Court's involvement in maintaining the integrity and effectiveness of the arbitration process, as well as the parties' commitment to adhering to the ICC Rules throughout the proceedings.

## **3 If any party against which a claim has been made does not submit an Answer, or if any party raises one or more pleas concerning the existence, validity or scope of the arbitration**

**agreement or concerning whether all of the claims made in the arbitration may be determined together in a single arbitration, the arbitration shall proceed and any question of jurisdiction or of whether the claims may be determined together in that arbitration shall be decided directly by the arbitral tribunal, unless the Secretary General refers the matter to the Court for its decision pursuant to Article 6(4).**

Article 6(3) of the ICC Arbitration Rules 2021 addresses the procedural steps that follow if a party against whom a claim has been made does not submit an “Answer”, or if any party raises certain objections related to the arbitration agreement’s existence, validity, scope, or the consolidation of claims. This provision outlines how the arbitration process will proceed in such situations. Here is an analysis of the key points of Article 6(3):

1. **Failure to Submit an Answer:** If a party that is the subject of a claim fails to submit an Answer within the specified time frame, the arbitration will still proceed. The lack of an Answer does not halt the arbitration process.
2. **Objections Concerning Arbitration Agreement or Claims Consolidation:** If a party raises objections related to the existence, validity, or scope of the arbitration agreement, or questions whether all of the claims made in the arbitration should be determined together in a single arbitration, the arbitration will still move forward.
3. **Arbitral Tribunal’s Role:** The provision establishes that in cases where objections are raised, the arbitral tribunal (the appointed panel of arbitrators) will have the authority to decide on questions of jurisdiction and whether the claims may be determined together in the ongoing arbitration. The tribunal will make these decisions unless the Secretary General (of the ICC) refers the matter to the Court for its decision (as outlined in Article 6(4)).

In essence, Article 6(3) of the ICC Arbitration Rules 2021 addresses the continuation of the arbitration process when certain circumstances arise, such as a party not submitting an Answer or when objections are raised. It ensures that the arbitration moves forward despite such challenges, with the arbitral tribunal having the initial authority to decide on jurisdictional issues and claims consolidation. The provision also allows for the possibility of the Court’s involvement in such decisions if the Secretary General deems it appropriate. This approach maintains the momentum of the arbitration process while ensuring that questions of jurisdiction and claims consolidation are addressed within the framework of the arbitration itself.

**4 In all cases referred to the Court under Article 6(3), the Court shall decide whether and to what extent the arbitration shall proceed. The arbitration shall proceed if and to the extent that the Court is prima facie satisfied that an arbitration agreement under the Rules may exist. In particular:**

- (i) **where there are more than two parties to the arbitration, the arbitration shall proceed between those of the parties, including any additional parties joined pursuant to Article 7(1), with respect to which the Court is prima facie satisfied that an arbitration agreement under the Rules that binds them all may exist; and**
- (ii) **where claims pursuant to Article 9 are made under more than one arbitration agreement, the arbitration shall proceed as to those claims with respect to which the**

**Court is prima facie satisfied (a) that the arbitration agreements under which those claims are made may be compatible, and (b) that all parties to the arbitration may have agreed that those claims can be determined together in a single arbitration.**

**The Court’s decision pursuant to Article 6(4) is without prejudice to the admissibility or merits of any party’s plea or pleas.**

Article 6(4) of the ICC Arbitration Rules 2021 outlines the procedure and criteria for the International Court of Arbitration’s (the “Court”) decision when matters have been referred to it under Article 6(3). Article 6(3) addresses situations where a party does not submit an “Answer” or raises certain objections regarding the arbitration agreement or claims consolidation. Article 6(4) expands on how the Court will make determinations in these cases. Here is an analysis of the key points of Article 6(4):

1. **Court’s Decision:** Article 6(4) clarifies that when matters are referred to the Court under Article 6(3), the Court has the authority to decide whether and to what extent the arbitration should proceed. The Court plays a critical role in assessing the viability of the arbitration based on the circumstances presented.
2. **Prima Facie Satisfaction of Arbitration Agreement:** The Court’s decision is guided by the concept of being “prima facie satisfied” that an arbitration agreement under the ICC Rules may exist. This means that the Court will assess whether there is a preliminary and apparent basis to believe that an enforceable arbitration agreement may be present between the parties involved.
3. **Criteria for Proceeding:** The criteria for the arbitration to proceed in different scenarios are outlined:
  - a. **Multiple Parties:** If there are more than two parties in the arbitration, the arbitration will proceed between those parties for which the Court is prima facie satisfied that a binding arbitration agreement under the Rules might exist.
  - b. **Multiple Claims Under Different Agreements:** If claims are made under multiple arbitration agreements, the arbitration will proceed for those claims for which the Court is satisfied (a) that the arbitration agreements are compatible, and (b) that the parties have agreed to determine those claims together in a single arbitration.
4. **Without Prejudice to Pleas:** The provision emphasises that the Court’s decision under Article 6(4) does not affect the admissibility or merits of any party’s objections or pleas. This means that the Court’s decision only addresses the procedural aspect of the arbitration’s continuation and does not prejudge the substantive arguments raised by the parties.

In summary, Article 6(4) of the ICC Arbitration Rules 2021 outlines the Court’s role in making decisions when matters are referred to it under Article 6(3). It provides a framework for the Court to determine whether the arbitration should proceed based on the satisfaction of certain criteria, while also ensuring that the substantive objections raised by the parties are not prejudiced by the Court’s decision. This provision contributes to the effective and orderly administration of the arbitration process by allowing the Court to address procedural issues that may arise during the proceedings.

**5 In all matters decided by the Court under Article 6(4), any decision as to the jurisdiction of the arbitral tribunal, except as to parties or claims with respect to which the Court decides that the arbitration cannot proceed, shall then be taken by the arbitral tribunal itself.**

Article 6(5) of the ICC Arbitration Rules 2021 addresses the allocation of authority between the International Court of Arbitration (the “Court”) and the arbitral tribunal in cases where the Court has made decisions under Article 6(4). This provision outlines the division of responsibilities between the Court and the tribunal regarding jurisdictional matters in the context of the arbitration proceedings. Here is an analysis of the key points of Article 6(5):

1. **Court’s Initial Decision on Jurisdiction:** Article 6(4) grants the Court the authority to decide whether and to what extent the arbitration shall proceed in certain situations, including scenarios involving questions of jurisdiction or claims consolidation. The Court’s decision is made based on being prima facie satisfied with the existence of an arbitration agreement or compatibility of claims under different agreements.
2. **Subsequent Tribunal Decision on Jurisdiction:** Article 6(5) outlines the subsequent allocation of jurisdictional decision-making. Specifically, it states that any decision as to the jurisdiction of the arbitral tribunal (the panel of arbitrators appointed to hear the case) will be taken by the tribunal itself, except for parties or claims with respect to which the Court has decided that the arbitration cannot proceed.
3. **Scope of Tribunal’s Jurisdictional Authority:** The provision implies that once the Court has made its determinations under Article 6(4) and the arbitration proceeds, the arbitral tribunal will have the authority to decide on jurisdictional matters concerning the remaining parties or claims. This reflects the principle of tribunal autonomy and the role of the tribunal in deciding matters that fall within its jurisdiction under the arbitration agreement and the applicable rules.

In essence, Article 6(5) of the ICC Arbitration Rules 2021 establishes the framework for the division of authority between the Court and the arbitral tribunal in relation to jurisdictional matters. While the Court initially decides whether and to what extent the arbitration shall proceed, jurisdictional decisions as to parties or claims not affected by the Court’s decision will subsequently fall under the purview of the arbitral tribunal. This division of roles ensures a clear and balanced allocation of decision-making authority in the arbitration process, enhancing both the efficiency and effectiveness of the proceedings.

**6 Where the parties are notified of the Court’s decision pursuant to Article 6(4) that the arbitration cannot proceed in respect of some or all of them, any party retains the right to ask any court having jurisdiction whether or not, and in respect of which of them, there is a binding arbitration agreement.**

Article 6(6) of the ICC Arbitration Rules 2021 addresses the recourse available to parties when the International Court of Arbitration (the “Court”) makes a decision pursuant to Article 6(4) that the arbitration cannot proceed in respect of some or all of the parties. This provision outlines the party’s right to seek judicial intervention to determine the existence of a binding arbitration agreement. Here is an analysis of the key points of Article 6(6):



1. **Court's Decision on Arbitration Proceeding:** Article 6(4) grants the Court the authority to decide whether and to what extent the arbitration shall proceed. This includes situations where the Court determines that the arbitration cannot proceed in respect of certain parties or claims.
2. **Party's Right to Judicial Intervention:** If the Court's decision communicated under Article 6(4) concludes that the arbitration cannot proceed with respect to some or all of the parties, this provision clarifies that any party affected by the decision has the right to seek a determination from a court with jurisdiction. The court in question would be a competent judicial authority.
3. **Judicial Review of Arbitration Agreement Existence:** The provision allows a party to approach a court to seek a determination regarding the existence of a binding arbitration agreement. This means that if a party disagrees with the Court's decision and believes that an arbitration agreement does exist, they can have a court determine whether such an agreement is indeed in place.
4. **Scope of Judicial Determination:** The right to seek judicial intervention applies specifically to whether there is a binding arbitration agreement and, if so, the parties for whom the arbitration agreement is binding.

In essence, Article 6(6) of the ICC Arbitration Rules 2021 safeguards the parties' right to seek judicial review when the Court decides that the arbitration cannot proceed with respect to certain parties or claims. This provision provides a mechanism for parties to independently challenge the Court's decision by seeking a court determination on the existence of a binding arbitration agreement. It underscores the importance of parties having a fair opportunity to address questions about the enforceability of an arbitration agreement through the judicial process, ensuring that their rights are protected even when faced with the Court's decision on the arbitration's scope.

**7 Where the Court has decided pursuant to Article 6(4) that the arbitration cannot proceed in respect of any of the claims, such decision shall not prevent a party from reintroducing the same claim at a later date in other proceedings.**

Article 6(7) of the ICC Arbitration Rules 2021 addresses the consequences when the International Court of Arbitration (the "Court") has made a decision pursuant to Article 6(4) that the arbitration cannot proceed with respect to any of the claims. This provision outlines the impact of such a decision on the ability of a party to reintroduce the same claim in separate proceedings at a later date. Here is an analysis of the key points of Article 6(7):

1. **Court's Decision and Reintroduction of Claims:** Article 6(4) deals with the Court's decision-making authority when determining whether and to what extent the arbitration shall proceed. Article 6(7) specifically addresses the scenario where the Court decides, under Article 6(4), that the arbitration cannot proceed with respect to any of the claims presented.
2. **Reintroduction of Claims in Other Proceedings:** The provision clarifies that if the Court's decision results in the arbitration not proceeding with respect to any of the claims, this decision will not prevent a party from bringing the same claim again at a later date in

other proceedings. In essence, the party retains the right to pursue the same claim in a different forum or context.

3. **Limitation on the Effect of the Court's Decision:** The key implication of this provision is that the Court's decision, when it leads to the arbitration not proceeding with certain claims, does not operate as a bar to those claims being pursued again in other forms of dispute resolution, such as litigation or another arbitration. The decision does not have a *res judicata* effect that would prevent the claim from being reintroduced.

In summary, Article 6(7) of the ICC Arbitration Rules 2021 ensures that when the Court's decision pursuant to Article 6(4) leads to the non-proceeding of claims in the arbitration, the affected party still has the freedom to reintroduce the same claims in separate proceedings at a later date. This provision respects a party's right to seek recourse in different forums and to retain the option of pursuing their claims through alternative dispute resolution mechanisms if the arbitration process does not proceed as anticipated.

## **8 If any of the parties refuses or fails to take part in the arbitration or any stage thereof, the arbitration shall proceed notwithstanding such refusal or failure.**

Article 6(8) of the ICC Arbitration Rules 2021 addresses the situation where one or more parties to the arbitration refuse or fail to participate in the arbitration process or any stage thereof. This provision outlines the consequences of such refusal or failure and the approach that will be taken to ensure the arbitration's progression. Here is an analysis of the key points of Article 6(8):

1. **Non-Participation of Parties:** The provision covers instances where a party, despite being a participant in the arbitration, either refuses or fails to take part in the arbitration process. This could involve actions like not submitting pleadings, not attending hearings, or not cooperating in the proceedings.
2. **Continuation of Arbitration:** Regardless of the refusal or failure of a party to participate, Article 6(8) states that the arbitration will proceed. In other words, the non-participation of a party will not halt the arbitration process or prevent it from moving forward.
3. **Ensuring Fair and Efficient Proceedings:** The provision aims to ensure that the arbitration process continues to move forward, even in the absence of participation from one or more parties. This approach is designed to avoid delays and to ensure that disputes are resolved in a fair and timely manner.
4. **Consequences of Non-Participation:** While the arbitration will continue, the provision does not specify the specific consequences or impacts that the non-participation of a party may have on the proceedings. The rules do not detail whether the arbitrators can make decisions without the participation of the absent party, or whether their absence might influence the outcome.

In summary, Article 6(8) of the ICC Arbitration Rules 2021 emphasises that the arbitration process will proceed even if one or more parties refuse or fail to participate. This provision underscores the importance of maintaining the progress of the arbitration and ensuring its effectiveness, regardless of the participation status of individual parties. However, the details of how the absence of a party might

impact the arbitration proceedings are not explicitly outlined in this provision and would likely be addressed through other provisions of the Rules and the discretion of the arbitral tribunal.

- 9 Unless otherwise agreed, the arbitral tribunal shall not cease to have jurisdiction by reason of any allegation that the contract is non-existent or null and void, provided that the arbitral tribunal upholds the validity of the arbitration agreement. The arbitral tribunal shall continue to have jurisdiction to determine the parties' respective rights and to decide their claims and pleas even though the contract itself may be non-existent or null and void.**

Article 6(9) of the ICC Arbitration Rules 2021 addresses the jurisdiction of the arbitral tribunal in cases where a party alleges that the underlying contract is non-existent or null and void. This provision outlines the scope of the tribunal's jurisdiction and decision-making authority in such situations. Here is an analysis of the key points of Article 6(9):

1. **Preservation of Jurisdiction:** Article 6(9) establishes that, unless otherwise agreed by the parties, the arbitral tribunal does not lose its jurisdiction to hear and decide a case solely due to an allegation by one party that the underlying contract is non-existent or null and void.
2. **Arbitration Agreement's Validity:** The provision stipulates that the tribunal's jurisdiction is maintained as long as the arbitration agreement itself is deemed valid by the tribunal. In other words, if the tribunal determines that the arbitration agreement is valid, it retains authority to proceed with the arbitration process, even if the underlying contract is alleged to be non-existent or null and void.
3. **Scope of Jurisdiction:** The arbitral tribunal's jurisdiction, as outlined in Article 6(9), encompasses more than just the existence or validity of the underlying contract. The tribunal's authority extends to determining the parties' respective rights, deciding on their claims, and addressing their pleas, even if the contract is deemed non-existent or null and void.
4. **Principle of Separability:** This provision aligns with the principle of separability, which recognises that an arbitration agreement is considered distinct from the underlying contract. Even if the main contract is challenged or invalidated, the arbitration agreement can remain valid and enforceable, allowing the tribunal to proceed with the arbitration.

In summary, Article 6(9) of the ICC Arbitration Rules 2021 emphasises that the arbitral tribunal's jurisdiction is maintained when allegations arise that the underlying contract is non-existent or null and void. As long as the arbitration agreement itself is upheld as valid, the tribunal retains the authority to address the parties' claims and pleas, even if the contract at the centre of the dispute is found to lack validity. This provision reflects the principle of separability and aims to ensure that disputes can be resolved through arbitration even when the underlying contract is being challenged.

**MULTIPLE PARTIES, MULTIPLE CONTRACTS AND CONSOLIDATION**

**ARTICLE 7 Joinder of Additional Parties**

- 1 A party wishing to join an additional party to the arbitration shall submit its request for arbitration against the additional party (the “Request for Joinder”) to the Secretariat. The date on which the Request for Joinder is received by the Secretariat shall, for all purposes, be deemed to be the date of the commencement of arbitration against the additional party. Any such joinder shall be subject to the provisions of Articles 6(3)–6(7) and 9. Unless all parties, including the additional party, otherwise agree, or as provided for in Article 7(5), no additional party may be joined after the confirmation or appointment of any arbitrator. The Secretariat may fix a time limit for the submission of a Request for Joinder.**

Article 7(1) of the ICC Arbitration Rules 2021 addresses the process and requirements for joining an additional party to an ongoing arbitration. This provision outlines the steps to be taken and the conditions that apply when a party wishes to bring in a new party to the arbitration proceedings. Here is an analysis of the key points of Article 7(1):

1. **Request for Joinder:** If a party intends to include an additional party in the arbitration proceedings, it must submit a formal request known as a “Request for Joinder” to the Secretariat of the International Court of Arbitration. This request initiates the process of bringing the additional party into the arbitration.
2. **Commencement Date:** The date on which the Secretariat receives the Request for Joinder is considered the official commencement date of the arbitration against the newly joined additional party. This date is significant for establishing timelines, procedural milestones, and the overall progress of the arbitration with the newly joined party.
3. **Subject to Specific Provisions:** The joinder of an additional party is subject to the provisions of Articles 6(3) to 6(7) and Article 9 of the ICC Arbitration Rules. These provisions address various aspects, including situations where a party refuses or fails to participate, jurisdictional matters, and claims consolidation.
4. **Timing of Joinder:** Article 7(1) stipulates that, unless agreed upon by all parties, including the additional party, or as allowed by Article 7(5), no additional party may be joined after an arbitrator has been confirmed or appointed in the arbitration. This restriction helps ensure the efficiency and stability of the arbitration process by avoiding disruptions that could arise from late-stage additions of new parties.
5. **Time Limit:** The Secretariat has the authority to set a time limit within which the party wishing to join an additional party must submit the Request for Joinder. This time limit ensures that the joinder process proceeds in a timely manner and is not unduly delayed.

In summary, Article 7(1) of the ICC Arbitration Rules 2021 outlines the procedure for joining an additional party to an ongoing arbitration. This provision ensures that the process is initiated with a formal request to the Secretariat, clarifies the date of commencement of the proceedings against the additional party, and establishes conditions for the joinder process, including compliance with specific provisions of the ICC Arbitration Rules. The provision also emphasises the importance of considering the timing of joinder to avoid disruption to the arbitration process once arbitrators have been appointed.

**2 The Request for Joinder shall contain the following information:**

- a) **the case reference of the existing arbitration;**
- b) **the name in full, description, address and other contact details of each of the parties, including the additional party; and**
- c) **the information specified in Article 4(3), subparagraphs c), d), e) and f).**

**The party filing the Request for Joinder may submit therewith such other documents or information as it considers appropriate or as may contribute to the efficient resolution of the dispute.**

Article 7(2) of the ICC Arbitration Rules 2021 outlines the required contents of a “Request for Joinder” when a party seeks to join an additional party to an ongoing arbitration. This provision sets out the necessary information that must be included in the request and highlights the flexibility to include additional documents or information that would aid in the efficient resolution of the dispute. Here is an analysis of the key points of Article 7(2):

1. **Contents of the Request for Joinder:** The provision specifies that a Request for Joinder must contain the following information:
2. **Case Reference:** The case reference of the existing arbitration, allowing for proper identification and linkage to the ongoing proceedings.
3. **Parties’ Information:** Complete details, including name, description, address, and contact information, for all parties involved in the arbitration, including the additional party being sought to be joined.
4. **Information from Article 4(3):** The Request for Joinder must also include the information specified in Article 4(3), which relates to the details of the dispute, the relief sought, the applicable agreements, and the particulars about the arbitration procedure.
5. **Additional Documents or Information:** The party submitting the Request for Joinder has the option to include other documents or information they deem relevant or necessary for facilitating the efficient resolution of the dispute. This provision recognises the need for flexibility in the submission of additional materials that could contribute to the understanding and progression of the arbitration proceedings.

In summary, Article 7(2) of the ICC Arbitration Rules 2021 outlines the required contents of a Request for Joinder when a party intends to bring an additional party into an ongoing arbitration. This provision ensures that the request provides the necessary information to identify and connect the new party to the existing proceedings, while also encouraging the inclusion of other pertinent documents or information that could enhance the arbitration process’s efficiency and effectiveness.

**3 The provisions of Articles 4(4) and 4(5) shall apply, mutatis mutandis, to the Request for Joinder.**

Article 7(3) of the ICC Arbitration Rules 2021 establishes a connection between the process of joining an additional party to an ongoing arbitration (as outlined in Article 7) and the provisions related to the initial Request for Arbitration (as outlined in Articles 4(4) and 4(5)). The phrase “mutatis mutandis” refers to the principle of making necessary adjustments or modifications to apply certain provisions in a different context. Here is an analysis of the key points of Article 7(3):

1. Incorporation of Article 4(4): Article 4(4) of the ICC Arbitration Rules 2021 deals with the requirement for a claimant to make payment of the filing fee along with the initial Request for Arbitration. Article 7(3) states that the provisions of Article 4(4) shall apply to the Request for Joinder, with necessary adjustments.
2. Incorporation of Article 4(5): Article 4(5) of the ICC Arbitration Rules 2021 pertains to the submission of sufficient copies of the Request for Arbitration to other parties, arbitrators, and the Secretariat. Article 7(3) establishes that the provisions of Article 4(5) shall also apply to the Request for Joinder, with necessary adjustments.
3. “Mutatis Mutandis” Principle: The phrase “mutatis mutandis” indicates that the mentioned provisions from Article 4 will be applied to the Request for Joinder, but with the necessary adjustments or modifications to suit the context of joining an additional party to the arbitration rather than initiating the arbitration itself.

In summary, Article 7(3) of the ICC Arbitration Rules 2021 ensures consistency and uniformity in the procedural requirements by incorporating provisions from Article 4 (specifically, Article 4(4) and Article 4(5)) into the process of filing a Request for Joinder. The use of “mutatis mutandis” acknowledges that while the provisions themselves are relevant, certain adjustments or modifications may be necessary to adapt them to the context of joining an additional party to an ongoing arbitration.

**4 The additional party shall submit an Answer in accordance, mutatis mutandis, with the provisions of Articles 5(1)–5(4). The additional party may make claims against any other party in accordance with the provisions of Article 8.**

Article 7(4) of the ICC Arbitration Rules 2021 pertains to the procedural steps that the additional party must follow after being joined to an ongoing arbitration. This provision references other articles in the rules to establish the requirements for the additional party’s participation and claims. Here is an analysis of the key points of Article 7(4):

1. Answer by Additional Party: According to Article 7(4), the additional party that has been joined to the arbitration proceedings must submit an Answer. This Answer should follow the provisions outlined in Articles 5(1) to 5(4) of the ICC Arbitration Rules 2021.
2. Incorporation of Articles 5(1)–5(4): The phrase “mutatis mutandis” is used, indicating that the provisions of Articles 5(1) to 5(4) should be applied to the additional party’s Answer, with necessary adjustments made to accommodate the specific situation of the additional party joining the proceedings.

3. Claims by Additional Party: Article 7(4) also highlights that the additional party has the right to make claims against any other party involved in the arbitration. This is in line with the principle that all parties in the arbitration, including the newly joined party, have the right to present their claims and defences.
4. Reference to Article 8: The provision references Article 8, which pertains to counterclaims, claims for multiple relief, and joinder of additional claims. This suggests that the additional party is entitled to bring its claims against other parties in accordance with the procedures specified in Article 8.

In summary, Article 7(4) of the ICC Arbitration Rules 2021 outlines the steps that the additional party should take after being joined to an ongoing arbitration. The provision emphasises that the additional party is subject to similar procedural requirements for submitting an Answer as outlined in Articles 5(1) to 5(4), and it also affirms the additional party's right to make claims against other parties in accordance with the principles outlined in Article 8. This provision ensures that the joined party is treated fairly and consistently within the arbitration process.

- 5 **Any Request for Joinder made after the confirmation or appointment of any arbitrator shall be decided by the arbitral tribunal once constituted and shall be subject to the additional party accepting the constitution of the arbitral tribunal and agreeing to the Terms of Reference, where applicable. In deciding on such a Request for Joinder, the arbitral tribunal shall take into account all relevant circumstances, which may include whether the arbitral tribunal has prima facie jurisdiction over the additional party, the timing of the Request for Joinder, possible conflicts of interests and the impact of the joinder on the arbitral procedure. Any decision to join an additional party is without prejudice to the arbitral tribunal's decision as to its jurisdiction with respect to that party.**

Article 7(5) of the ICC Arbitration Rules 2021 addresses the process and considerations surrounding requests for joinder of an additional party that are made after the confirmation or appointment of any arbitrator. This provision outlines the factors to be taken into account when deciding on such a request and emphasises the role of the arbitral tribunal in evaluating and deciding on the joinder. Here is an analysis of the key points of Article 7(5):

1. Timing and Arbitral Tribunal's Role: Article 7(5) applies specifically to situations where a request for joinder of an additional party is made after an arbitrator has been confirmed or appointed. In such cases, the provision grants the authority to decide on the request to the arbitral tribunal itself once it has been constituted.
2. Additional Party's Acceptance: The joinder of an additional party, after the confirmation or appointment of an arbitrator, is subject to certain conditions. The additional party must accept the constitution of the arbitral tribunal and agree to the Terms of Reference, if applicable, as part of the joinder process.
3. Factors to Consider: The arbitral tribunal, in deciding whether to allow the request for joinder, is instructed to take into account several relevant circumstances. These circumstances include:
  - a. Whether the arbitral tribunal has prima facie jurisdiction over the additional party.

- b. The timing of the request for joinder, including whether it would disrupt the arbitration process.
  - c. Possible conflicts of interest that might arise due to the additional party's involvement.
  - d. The potential impact of the joinder on the overall arbitral procedure.
4. **No Prejudice to Jurisdiction Decision:** The provision specifies that any decision to join an additional party is separate from the arbitral tribunal's decision on its jurisdiction with respect to that party. This means that allowing the joinder does not prejudge or determine the arbitral tribunal's ultimate jurisdiction over the additional party.

In summary, Article 7(5) of the ICC Arbitration Rules 2021 establishes a framework for handling requests to join an additional party to ongoing arbitration proceedings after the confirmation or appointment of an arbitrator. The provision grants the arbitral tribunal the authority to decide on the joinder, subject to the additional party's acceptance of certain conditions. The tribunal's decision is guided by considerations such as jurisdiction, timing, conflicts of interest, and the impact on the arbitration process. The provision emphasises that the decision to join an additional party does not affect the arbitral tribunal's separate determination of its jurisdiction over that party.

#### ARTICLE 8 Claims Between Multiple Parties

- 1 In an arbitration with multiple parties, claims may be made by any party against any other party, subject to the provisions of Articles 6(3)–6(7) and 9 and provided that no new claims may be made after the Terms of Reference are signed or approved by the Court without the authorization of the arbitral tribunal pursuant to Article 23(4).**

Article 8(1) of the ICC Arbitration Rules 2021 addresses the issue of making claims in an arbitration involving multiple parties. It outlines the general principles under which claims can be made between different parties in such a scenario and sets limitations on when new claims can be introduced into the proceedings. Here is an analysis of the key points of Article 8(1):

1. **Scope of Claims:** The provision establishes that, in an arbitration involving multiple parties, any party has the right to make claims against any other party. This means that each party is entitled to bring forward claims against any other party involved in the arbitration, subject to certain conditions and limitations.
2. **Subject to Specific Provisions:** Article 8(1) specifies that the right to make claims is subject to the provisions of Articles 6(3) to 6(7) and Article 9 of the ICC Arbitration Rules. These provisions deal with matters such as the arbitration's jurisdiction, joinder of parties, and the scope of claims. This indicates that while parties have the general right to make claims, they must adhere to the procedural requirements and limitations outlined in these relevant articles.
3. **Limitation on New Claims:** The provision includes an important limitation on introducing new claims into the proceedings. It states that new claims cannot be made after the Terms of Reference are signed or approved by the Court, unless the arbitral tribunal grants authorisation in accordance with Article 23(4) of the ICC Arbitration Rules. The Terms of



Reference essentially outline the scope and framework of the arbitration proceedings. This limitation serves to ensure the efficiency and fairness of the arbitration process by preventing the introduction of new claims late in the proceedings without proper authorisation.

In summary, Article 8(1) of the ICC Arbitration Rules 2021 establishes the principle that parties in an arbitration with multiple parties have the right to make claims against one another. However, this right is subject to the procedural requirements and limitations specified in other relevant articles. Additionally, the provision places a restriction on introducing new claims after the signing or approval of the Terms of Reference, unless authorised by the arbitral tribunal in accordance with Article 23(4). This provision aims to balance the parties' right to bring claims with the need for a structured and efficient arbitration process.

**2 Any party making a claim pursuant to Article 8(1) shall provide the information specified in Article 4(3), subparagraphs c), d), e) and f).**

Article 8(2) of the ICC Arbitration Rules 2021 elaborates on the requirements for parties making claims under the provisions of Article 8(1), which relates to claims in arbitrations with multiple parties. This provision specifies the information that must be provided when a party submits a claim against another party. Here is an analysis of the key points of Article 8(2):

1. **Applicability of Article 8(1):** Article 8(2) refers back to Article 8(1), indicating that its requirements apply to parties making claims under the principles outlined in Article 8(1). Therefore, parties seeking to assert claims against other parties within a multiple-party arbitration must adhere to the guidelines set forth in Article 8(1).
2. **Information from Article 4(3):** Article 8(2) states that any party making a claim under Article 8(1) must provide specific information as outlined in Article 4(3), subparagraphs c), d), e), and f) of the ICC Arbitration Rules 2021. This means that the claimant party must include details about the nature and circumstances of the dispute giving rise to the claim, the relief sought, any relevant agreements, and particulars about the applicable rules of law, the place of arbitration, and the language of the arbitration.

In summary, Article 8(2) of the ICC Arbitration Rules 2021 reinforces the requirements for parties making claims within the context of arbitrations involving multiple parties. It highlights that the information specified in Article 4(3), subparagraphs c), d), e), and f) must be provided when asserting a claim against another party. This ensures that the necessary details are submitted to facilitate a clear understanding of the dispute and the claim being made, in line with the procedural standards outlined in the rules.

**3 Before the Secretariat transmits the file to the arbitral tribunal in accordance with Article 16, the following provisions shall apply, mutatis mutandis, to any claim made: Article 4(4) subparagraph b); Article 4(5); Article 5(1) except for subparagraphs a), b), e) and f); Article**

**5(2); Article 5(3) and Article 5(4). Thereafter, the arbitral tribunal shall determine the procedure for making a claim.**

Article 8(3) of the ICC Arbitration Rules 2021 outlines the procedural requirements for handling claims made within the context of arbitrations involving multiple parties. It specifies which provisions from other articles are applicable to these claims before the Secretariat transmits the file to the arbitral tribunal. It also indicates that the arbitral tribunal will subsequently determine the procedure for making claims. Here is an analysis of the key points of Article 8(3):

1. Application of Specific Provisions: Article 8(3) establishes that specific provisions from other articles will be applied to any claims made within the arbitration process involving multiple parties, but with necessary adjustments (*mutatis mutandis*). These provisions are:
  - a. Article 4(4), subparagraph b: This provision relates to the submission of a sufficient number of copies of the claim to various parties and entities involved in the arbitration.
  - b. Article 4(5): This provision pertains to the Secretariat communicating the claim and related documents to all other parties.
  - c. Article 5(1), except for subparagraphs a), b), e), and f): This provision outlines the requirements for submitting an Answer to the claim.
  - d. Article 5(2): This provision addresses the possibility of the Secretariat granting an extension of time for submitting an Answer to the claim.
  - e. Article 5(3): This provision defines the manner in which notifications or communications are made to parties.
  - f. Article 5(4): This provision relates to the Secretariat's communication of the Answer and annexed documents to all other parties.
2. Determination of Procedure by Arbitral Tribunal: After the Secretariat transmits the file to the arbitral tribunal in accordance with Article 16 of the ICC Arbitration Rules, Article 8(3) indicates that the arbitral tribunal will have the authority to determine the procedure for making a claim. This recognises the tribunal's role in shaping the specific process for dealing with claims, which might vary depending on the particular circumstances of the case.

In summary, Article 8(3) of the ICC Arbitration Rules 2021 establishes a transitional framework for handling claims in arbitrations with multiple parties. It applies specific provisions from other articles to these claims before the file is transmitted to the arbitral tribunal. Once the tribunal takes over the case, it has the discretion to determine the procedural aspects of handling claims, ensuring flexibility and tailored approaches to address the complexity of arbitrations involving multiple parties.

## **ARTICLE 9 Multiple Contracts**

**Subject to the provisions of Articles 6(3)–6(7) and 23(4), claims arising out of or in connection with more than one contract may be made in a single arbitration, irrespective of whether such claims are made under one or more than one arbitration agreement under the Rules.**

Article 9 of the ICC Arbitration Rules 2021 addresses the issue of making claims arising from or related to multiple contracts within a single arbitration. It emphasises that such claims can be consolidated and heard together in a single arbitration proceeding, regardless of whether the claims arise under one or multiple arbitration agreements. Here is an analysis of the key points of Article 9:

1. **Scope of Claims:** Article 9 focuses on situations where claims arise out of or are connected with more than one contract. This can happen when parties are involved in a series of related transactions or agreements, and disputes arise that have common elements.
2. **Consolidation of Claims:** The provision establishes that claims arising from multiple contracts can be brought together and consolidated in a single arbitration proceeding. This consolidation allows for the efficient resolution of related disputes in one cohesive process.
3. **Application of Article 6(3)–6(7) and 23(4):** Article 9 is subject to the provisions outlined in Articles 6(3) to 6(7) and Article 23(4) of the ICC Arbitration Rules. These provisions deal with matters related to the jurisdiction of the arbitral tribunal, joining additional parties, and the authorisation for new claims after the Terms of Reference are signed. This means that while claims from multiple contracts can be consolidated, they must still adhere to the procedural limitations and requirements set forth in these articles.
4. **Flexibility of Arbitration Agreements:** The provision highlights that claims arising from multiple contracts can be brought under a single arbitration agreement or under multiple arbitration agreements. This acknowledges the diverse nature of business transactions and agreements that parties might enter into, allowing them the flexibility to consolidate disputes regardless of the structure of the arbitration agreements.

In summary, Article 9 of the ICC Arbitration Rules 2021 addresses the ability to consolidate claims arising from or related to multiple contracts in a single arbitration. This provision offers parties the convenience of resolving interconnected disputes in a unified process, while still ensuring that the arbitration process adheres to the procedural requirements outlined in other relevant articles of the rules. It reflects the ICC's commitment to providing an adaptable and efficient framework for resolving complex disputes involving multiple contracts.

## **ARTICLE 10 Consolidation of Arbitrations**

**The Court may, at the request of a party, consolidate two or more arbitrations pending under the Rules into a single arbitration, where:**

- a) **the parties have agreed to consolidation; or**
- b) **all of the claims in the arbitrations are made under the same arbitration agreement or agreements; or**

- c) **the claims in the arbitrations are not made under the same arbitration agreement or agreements, but the arbitrations are between the same parties, the disputes in the arbitrations arise in connection with the same legal relationship, and the Court finds the arbitration agreements to be compatible.**

**In deciding whether to consolidate, the Court may take into account any circumstances it considers to be relevant, including whether one or more arbitrators have been confirmed or appointed in more than one of the arbitrations and, if so, whether the same or different persons have been confirmed or appointed.**

**When arbitrations are consolidated, they shall be consolidated into the arbitration that commenced first, unless otherwise agreed by all parties.**

Article 10 of the ICC Arbitration Rules 2021 addresses the consolidation of multiple arbitrations into a single arbitration. This provision outlines the circumstances under which arbitrations can be consolidated, the factors the Court considers when deciding on consolidation, and the procedure for consolidation. Here is an analysis of the key points of Article 10:

1. **Consolidation at the Request of a Party:** Article 10 grants the authority to consolidate multiple arbitrations to the Court of the International Court of Arbitration (the “Court”). This consolidation can occur at the request of a party involved in one of the arbitrations.
2. **Grounds for Consolidation:** The provision sets out three conditions under which consolidation can be ordered by the Court:
  - a. **Agreement of the Parties:** The parties involved in the arbitrations have agreed to consolidation.
  - b. **Same Arbitration Agreement or Agreements:** All claims in the arbitrations are made under the same arbitration agreement(s).
  - c. **Common Parties and Legal Relationship:** While the claims in the arbitrations might not arise under the same arbitration agreement(s), the arbitrations involve the same parties, the disputes relate to the same legal relationship, and the Court deems the arbitration agreements to be compatible.
3. **Considerations for Consolidation:** When deciding whether to consolidate arbitrations, the Court has the discretion to consider various circumstances it deems relevant. This includes factors such as whether one or more arbitrators have been confirmed or appointed in more than one of the arbitrations, and whether the same or different individuals have been confirmed or appointed.
4. **Order of Consolidation:** When arbitrations are consolidated, they are merged into the arbitration that commenced first, unless all parties involved agree otherwise.

In summary, Article 10 of the ICC Arbitration Rules 2021 outlines the framework for the consolidation of multiple arbitrations into a single arbitration. The Court holds the authority to order consolidation based on parties’ agreement, common arbitration agreements, or related legal relationships. The provision reflects the ICC’s approach to efficiently managing multiple arbitrations and ensuring that related disputes are resolved cohesively when appropriate. The Court’s discretion in considering

various factors contributes to a flexible and adaptable approach to consolidation, promoting an effective and streamlined arbitration process.

## THE ARBITRAL TRIBUNAL

## ARTICLE 11 General Provisions

**1 Every arbitrator must be and remain impartial and independent of the parties involved in the arbitration.**

Article 11(1) of the ICC Arbitration Rules 2021 emphasises a fundamental principle of arbitration: the requirement for arbitrators to be impartial and independent in their role. This provision underscores the importance of maintaining a fair and unbiased approach throughout the arbitration process. Here is an analysis of the key points of Article 11(1):

1. **Impartiality and Independence:** The provision begins by stating that every arbitrator must be impartial and independent. This means that arbitrators should not favour any party involved in the arbitration and must approach the case without any preconceived biases or influences.
2. **Core Principle:** Impartiality and independence are fundamental principles in arbitration and are crucial to ensure a fair and just resolution of disputes. Arbitrators must be seen as unbiased third parties who make decisions based solely on the evidence and arguments presented, rather than being influenced by external factors or personal relationships.
3. **Fairness and Trust:** The requirement for arbitrators to be impartial and independent contributes to building trust in the arbitration process. Parties have confidence in the proceedings when they believe that the arbitrators are neutral and free from any potential conflicts of interest.
4. **Ongoing Obligation:** The use of the phrase “must be and remain” highlights that impartiality and independence are not only expected at the outset but must be upheld throughout the entire arbitration process. If circumstances arise that could compromise an arbitrator’s impartiality or independence, it is their responsibility to address those concerns.

In summary, Article 11(1) of the ICC Arbitration Rules 2021 enforces the crucial principle that arbitrators must be impartial and independent throughout the arbitration proceedings. This principle underpins the integrity of the arbitration process, maintains parties’ trust, and ensures that arbitration decisions are made solely on the basis of the merits of the case presented.

**2 Before appointment or confirmation, a prospective arbitrator shall sign a statement of acceptance, availability, impartiality and independence. The prospective arbitrator shall disclose in writing to the Secretariat any facts or circumstances which might be of such a nature as to call into question the arbitrator’s independence in the eyes of the parties, as well as any circumstances that could give rise to reasonable doubts as to the arbitrator’s impartiality. The Secretariat shall provide such information to the parties in writing and fix a time limit for any comments from them.**

Article 11(2) of the ICC Arbitration Rules 2021 outlines the requirements for prospective arbitrators before their appointment or confirmation, emphasising the importance of their impartiality and

independence. This provision focuses on the obligations of prospective arbitrators to sign a statement of acceptance, availability, impartiality, and independence, and to disclose any circumstances that could affect their impartiality or independence. The Secretariat plays a role in facilitating this process by sharing relevant information with the parties. Here is an analysis of the key points of Article 11(2):

1. **Statement of Acceptance, Availability, Impartiality, and Independence:** Before their appointment or confirmation, prospective arbitrators are required to sign a statement that acknowledges their acceptance of the role, confirms their availability to serve, and affirms their commitment to impartiality and independence. This is a standard procedure to ensure that arbitrators are willing and able to fulfil their duties with integrity.
2. **Duty to Disclose:** The provision establishes a duty for prospective arbitrators to disclose any facts or circumstances that could raise doubts about their independence or impartiality. This disclosure requirement is crucial to maintaining transparency and allowing the parties to assess whether any potential conflicts of interest or biases could affect the arbitration process.
3. **Secretariat's Role:** The prospective arbitrator's written disclosures are submitted to the Secretariat. The Secretariat is responsible for reviewing the disclosures and determining whether any of the disclosed facts or circumstances could affect the prospective arbitrator's impartiality or independence. The Secretariat shares this information with the parties, ensuring transparency in the appointment process.
4. **Parties' Opportunity to Comment:** Upon receiving the Secretariat's communication regarding the prospective arbitrator's disclosures, the parties have an opportunity to provide comments or raise concerns about the disclosed information. The Secretariat sets a time limit for the parties to provide their feedback.

In summary, Article 11(2) of the ICC Arbitration Rules 2021 highlights the careful and rigorous process of appointing or confirming arbitrators with a focus on their impartiality and independence. It underscores the significance of full disclosure by prospective arbitrators and the role of the Secretariat in facilitating the exchange of information between the parties and the prospective arbitrator. This process contributes to maintaining the integrity of the arbitration proceedings and promoting trust in the arbitrators' decision-making.

**3 An arbitrator shall immediately disclose in writing to the Secretariat and to the parties any facts or circumstances of a similar nature to those referred to in Article 11(2) concerning the arbitrator's impartiality or independence which may arise during the arbitration.**

Article 11(3) of the ICC Arbitration Rules 2021 emphasises the ongoing duty of arbitrators to promptly disclose any new facts or circumstances that could affect their impartiality or independence. This provision underscores the importance of maintaining the highest standards of integrity and transparency throughout the arbitration process. Here is an analysis of the key points of Article 11(3):

1. **Ongoing Duty of Disclosure:** The provision highlights that the duty to disclose facts or circumstances that could impact an arbitrator's impartiality or independence is not limited to the pre-appointment phase. It continues throughout the entire arbitration process. This ongoing obligation ensures that any developments that could potentially compromise an arbitrator's neutrality are promptly brought to light.

2. **Written Disclosure:** The requirement for immediate written disclosure underscores the seriousness of the obligation. Written disclosure provides a clear record of the matter in question and serves as a transparent communication channel between the arbitrator, the Secretariat, and the parties.
3. **To the Secretariat and Parties:** The arbitrator must disclose the new facts or circumstances both to the Secretariat and to the parties involved in the arbitration. This ensures that all relevant parties are informed and that there is no lack of transparency in the process.
4. **Similar Nature to Article 11(2):** The provision specifies that the disclosed facts or circumstances should be of a similar nature to those referred to in Article 11(2). This refers to situations that could reasonably lead to doubts about the arbitrator's impartiality or independence. This alignment ensures consistency in the disclosure requirements.

In summary, Article 11(3) of the ICC Arbitration Rules 2021 underscores the ongoing duty of arbitrators to promptly and transparently disclose any new facts or circumstances that could raise concerns about their impartiality or independence. This provision contributes to maintaining the integrity of the arbitration process, ensuring that all parties have confidence in the fairness of the proceedings and the arbitrators' decisions.

#### **4 The decisions of the Court as to the appointment, confirmation, challenge or replacement of an arbitrator shall be final.**

Article 11(4) of the ICC Arbitration Rules 2021 pertains to the finality of decisions made by the Court in relation to the appointment, confirmation, challenge, or replacement of an arbitrator. This provision emphasises the authority and conclusive nature of the Court's decisions in these matters. Here is an analysis of the key points of Article 11(4):

1. **Court's Decision Finality:** The provision explicitly states that the decisions made by the Court regarding the appointment, confirmation, challenge, or replacement of an arbitrator are final. This means that once the Court has made a decision on any of these matters, it cannot be appealed or further contested.
2. **Preserving the Process's Integrity:** The finality of the Court's decisions contributes to the integrity and efficiency of the arbitration process. Parties involved in arbitration rely on these decisions to ensure the proper functioning of the tribunal and the fairness of the proceedings.
3. **Respect for the Court's Role:** The finality of the Court's decisions underscores the respect for the Court's authority and expertise in managing the arbitration process. This is in line with the Court's role as an impartial and independent body responsible for overseeing the arbitration and ensuring its effectiveness.
4. **Minimising Disruptions:** By establishing the Court's decisions as final, the provision helps minimise disruptions to the arbitration proceedings. It prevents unnecessary delays that could arise from appeals or challenges to the Court's decisions on arbitrators.

In summary, Article 11(4) of the ICC Arbitration Rules 2021 emphasises that the decisions of the Court regarding the appointment, confirmation, challenge, or replacement of an arbitrator are final and



cannot be appealed. This provision contributes to the smooth functioning of the arbitration process, upholding the Court’s authority and maintaining the fairness and integrity of the proceedings.

**5 By accepting to serve, arbitrators undertake to carry out their responsibilities in accordance with the Rules.**

Article 11(5) of the ICC Arbitration Rules 2021 underscores the commitment that arbitrators make when accepting their role within the arbitration process. This provision emphasises the expectation that arbitrators will fulfil their responsibilities in alignment with the established Rules of the arbitration. Here is an analysis of the key points of Article 11(5):

1. **Acceptance and Responsibility:** The provision highlights that when arbitrators accept their appointment, they are committing to perform their duties in accordance with the ICC Arbitration Rules. This signifies the importance of upholding the integrity and standards set by the Rules throughout the arbitration process.
2. **Guiding the Arbitrators’ Conduct:** The phrase “undertake to carry out their responsibilities” emphasises that arbitrators have a set of responsibilities and obligations that they are expected to fulfil diligently. This includes conducting the arbitration impartially, abiding by the Rules, and ensuring the integrity of the proceedings.
3. **Adherence to the Rules:** Arbitrators play a critical role in ensuring that the arbitration process is fair, efficient, and in compliance with the established procedures. This provision reinforces the arbitrators’ commitment to adhering to the specific guidelines and principles outlined in the ICC Arbitration Rules.
4. **Maintaining Confidence in Arbitration:** The provision contributes to maintaining parties’ confidence in the arbitration process. When arbitrators commit to abiding by the Rules, it reinforces the perception of fairness and transparency, reassuring parties that the arbitration is being conducted in a consistent and impartial manner.

In summary, Article 11(5) of the ICC Arbitration Rules 2021 emphasises that arbitrators accept their roles with the understanding that they will carry out their responsibilities in accordance with the Rules. This provision reinforces the importance of arbitrators’ commitment to maintaining the standards and principles of the arbitration process, contributing to a fair and credible resolution of disputes.

**6 Insofar as the parties have not provided otherwise, the arbitral tribunal shall be constituted in accordance with the provisions of Articles 12 and 13.**

Article 11(6) of the ICC Arbitration Rules 2021 addresses the constitution of the arbitral tribunal, specifying that the tribunal’s composition should follow the procedures outlined in Articles 12 and 13 of the same Rules. This provision clarifies the default method for forming the arbitral tribunal when the parties have not stipulated an alternative arrangement. Here is an analysis of the key points of Article 11(6):

1. **Reference to Articles 12 and 13:** The provision directs attention to Articles 12 and 13 of the ICC Arbitration Rules 2021, which deal with the constitution of the arbitral tribunal.

These articles outline the process of selecting arbitrators, the number of arbitrators, and related matters.

2. **Default Procedure:** Article 11(6) functions as a default rule, indicating that if the parties have not specified any alternative provisions regarding the composition of the arbitral tribunal, then the procedures set out in Articles 12 and 13 will apply automatically.
3. **Flexibility for Parties:** The use of the phrase “Insofar as the parties have not provided otherwise” acknowledges that parties have the flexibility to deviate from the default procedure by agreement. Parties are free to include specific clauses in their arbitration agreement that outline their preferred method for constituting the arbitral tribunal.
4. **Ensuring Consistency:** This provision contributes to consistency and predictability within the ICC arbitration process. By referring to Articles 12 and 13, it establishes a standard framework for the formation of the tribunal unless parties have negotiated an alternative arrangement.

In summary, Article 11(6) of the ICC Arbitration Rules 2021 clarifies that, unless the parties have specified an alternative approach, the composition of the arbitral tribunal should adhere to the procedures outlined in Articles 12 and 13 of the same Rules. This provision aims to provide a default framework for constituting the tribunal while allowing parties the option to customise the process through their arbitration agreement.

**7 In order to assist prospective arbitrators and arbitrators in complying with their duties under Articles 11(2) and 11(3), each party must promptly inform the Secretariat, the arbitral tribunal and the other parties, of the existence and identity of any non-party which has entered into an arrangement for the funding of claims or defences and under which it has an economic interest in the outcome of the arbitration.**

Article 11(7) of the ICC Arbitration Rules 2021 addresses the duty of parties to provide information about third-party funding arrangements to assist prospective arbitrators and arbitrators in maintaining their independence and impartiality. This provision reflects the growing recognition of the influence of third-party funding on arbitration proceedings. Here is an analysis of the key points of Article 11(7):

1. **Third-Party Funding Disclosure:** The provision mandates that each party promptly discloses the existence and identity of any non-party that has entered into an arrangement to fund claims or defences. This requirement applies to funding arrangements where the non-party has an economic interest in the outcome of the arbitration. The intent is to ensure transparency regarding financial relationships that could potentially affect the proceedings.
2. **Maintaining Independence and Impartiality:** This requirement aims to prevent any potential conflicts of interest that may arise due to third-party funding. By disclosing funding arrangements, the prospective arbitrators and arbitrators can assess whether there are any factors that might influence their impartiality or independence.
3. **Communication Channels:** The provision stipulates that the disclosure must be made to multiple parties involved in the arbitration process, including the Secretariat, the arbitral tribunal, and other parties. This ensures that all relevant parties are informed about the

funding arrangements and can take them into account when assessing potential conflicts or biases.

4. **Supporting Transparency:** The requirement for disclosure aligns with the broader trend toward transparency and ethical conduct in arbitration proceedings. It allows all parties to be aware of potential financial interests that could impact the arbitration's outcome and provides a basis for addressing any related concerns.
5. **Facilitating Compliance with Duties:** Article 11(7) serves as a practical tool to help arbitrators and prospective arbitrators comply with their obligations under Articles 11(2) and 11(3). By being informed of funding arrangements, arbitrators can better assess whether such arrangements might affect their ability to maintain impartiality and independence.

In summary, Article 11(7) of the ICC Arbitration Rules 2021 emphasises the need for parties to promptly disclose third-party funding arrangements that could impact the arbitration process. This requirement aims to enhance transparency, support arbitrators' compliance with their duties, and prevent conflicts of interest related to funding relationships.

## ARTICLE 12 Constitution of the Arbitral Tribunal

### Number of Arbitrators

#### 1 The disputes shall be decided by a sole arbitrator or by three arbitrators.

Article 12(1) of the ICC Arbitration Rules 2021 outlines the options for the number of arbitrators who will decide the disputes in an arbitration case. The provision allows for two choices: a sole arbitrator or a panel of three arbitrators. Here is an analysis of the key points of Article 12(1):

1. **Arbitrator Composition Options:** The provision sets forth the fundamental decision on the number of arbitrators who will form the arbitral tribunal. Parties have the flexibility to choose either a sole arbitrator, who would make decisions individually, or a three-member panel of arbitrators, who would collectively decide the dispute.
2. **Flexibility for Parties:** The ability to choose the number of arbitrators offers parties the opportunity to tailor the arbitration process to the complexity and specifics of their dispute. Simple cases may be efficiently resolved by a single arbitrator, while more complex cases might benefit from the perspectives of a three-member tribunal.
3. **Efficiency vs. Expertise:** Opting for a sole arbitrator can potentially streamline the proceedings and decision-making process, leading to faster resolution. On the other hand, a three-member panel may provide a broader range of expertise and perspectives, particularly in intricate cases that require in-depth understanding of different legal or technical aspects.
4. **Cost Considerations:** The choice between a sole arbitrator and a panel of three arbitrators can also impact the cost of arbitration. Generally, a sole arbitrator may be less expensive to appoint and manage, while a panel of three arbitrators involves additional fees and expenses.

5. **Party Autonomy:** The provision underscores the principle of party autonomy in arbitration. Parties have the autonomy to decide the number of arbitrators based on their preferences, the nature of the dispute, and their strategic considerations.
6. **Balancing Efficiency and Fairness:** This provision highlights the balance that needs to be struck between efficient dispute resolution and ensuring a fair and thorough consideration of complex issues. The choice of arbitrator composition should align with parties' objectives for the arbitration.

In summary, Article 12(1) of the ICC Arbitration Rules 2021 provides parties with the choice of having either a sole arbitrator or a panel of three arbitrators to decide their disputes. This choice offers flexibility, allowing parties to align the composition of the arbitral tribunal with the unique characteristics of their case and their desired balance between efficiency and expertise.

**2 Where the parties have not agreed upon the number of arbitrators, the Court shall appoint a sole arbitrator, save where it appears to the Court that the dispute is such as to warrant the appointment of three arbitrators. In such case, the claimant shall nominate an arbitrator within 15 days from receipt of the notification of the decision of the Court, and the respondent shall nominate an arbitrator within 15 days from receipt of the notification of the nomination made by the claimant. If a party fails to nominate an arbitrator, the appointment shall be made by the Court.**

Article 12(2) of the ICC Arbitration Rules 2021 addresses the procedure for determining the number of arbitrators when the parties have not agreed upon it. The article outlines the circumstances under which a sole arbitrator or a panel of three arbitrators will be appointed, and it specifies the process for the appointment of arbitrators in each scenario. Here is an analysis of the key points of Article 12(2):

1. **Default Appointment of a Sole Arbitrator:** When the parties have not agreed upon the number of arbitrators, the default approach is for the Court to appoint a sole arbitrator. This simplifies the process and can potentially lead to quicker resolution.
2. **Exception for Complex Disputes:** However, the provision introduces an exception. If the Court determines that the nature of the dispute requires more comprehensive consideration or expertise, it may decide to appoint a panel of three arbitrators instead.
3. **Nomination Process for Panel of Three Arbitrators:** In cases where a panel of three arbitrators is appointed, the claimant and respondent each have the opportunity to nominate an arbitrator within 15 days of being notified of the Court's decision. This ensures that both parties have a say in the composition of the arbitral tribunal.
4. **Failure to Nominate:** If a party fails to nominate an arbitrator within the specified timeframe, the Court will step in and make the appointment on behalf of the non-nominating party. This prevents a situation where the process is delayed due to non-cooperation.
5. **Balancing Party Autonomy and Efficiency:** The provision respects party autonomy by allowing parties to influence the composition of the arbitral tribunal through the nomination process. At the same time, it ensures efficiency by providing a mechanism for the Court to step in if parties do not nominate arbitrators promptly.

6. Consideration of Case Complexity: The distinction between appointing a sole arbitrator or a panel of three arbitrators based on the complexity of the case reflects the intention to tailor the tribunal's composition to the specific needs of the dispute.

In summary, Article 12(2) of the ICC Arbitration Rules 2021 provides a mechanism for determining the number of arbitrators when the parties have not agreed upon it. It establishes the default appointment of a sole arbitrator, with an exception for cases that warrant a panel of three arbitrators. The provision also outlines a clear process for nominating arbitrators in both scenarios, while ensuring efficiency and maintaining a balance between party autonomy and case complexity.

### Sole Arbitrator

- 3 Where the parties have agreed that the dispute shall be resolved by a sole arbitrator, they may, by agreement, nominate the sole arbitrator for confirmation. If the parties fail to nominate a sole arbitrator within 30 days from the date when the claimant's Request for Arbitration has been received by the other party or parties, or within such additional time as may be allowed by the Secretariat, the sole arbitrator shall be appointed by the Court.**

Article 12(3) of the ICC Arbitration Rules 2021 deals with the process of appointing a sole arbitrator in cases where the parties have agreed to resolve their dispute through arbitration with a single arbitrator. The provision outlines the procedure for confirming the nominated arbitrator and the steps to be taken if the parties fail to nominate an arbitrator within the specified timeframe. Here is an analysis of the key points of Article 12(3):

1. Nominating the Sole Arbitrator: When parties have agreed to resolve their dispute through a sole arbitrator, they have the option to nominate the sole arbitrator themselves, subject to confirmation. This allows parties to have a direct role in selecting the arbitrator who will decide the case.
2. Confirmation Process: Parties may agree to nominate the sole arbitrator for confirmation. This means that while the parties nominate the arbitrator, the ICC Court will confirm the appointment to ensure compliance with the ICC Arbitration Rules and ethical standards.
3. Default Appointment by the Court: If the parties fail to nominate a sole arbitrator within 30 days from the date the claimant's Request for Arbitration has been received by the other party or parties, or within a further period allowed by the Secretariat, the ICC Court will step in and appoint the sole arbitrator. This ensures that the arbitration process can move forward even if the parties do not cooperate in nominating an arbitrator.
4. Balancing Timeliness and Party Autonomy: The provision strikes a balance between the need for timely appointment of the sole arbitrator and the parties' autonomy to nominate an arbitrator. The specified time limit encourages parties to act promptly in selecting an arbitrator.
5. Efficiency and Dispute Resolution: The provision emphasises the importance of efficient dispute resolution by setting clear time limits for the nomination process. This is particularly significant in maintaining the timeline of arbitration proceedings.

6. **Role of the Secretariat:** The provision allows the Secretariat to grant additional time for the parties to nominate a sole arbitrator if deemed necessary. This is a practical mechanism to accommodate reasonable delays that might occur due to unforeseen circumstances.

In summary, Article 12(3) of the ICC Arbitration Rules 2021 outlines the process for appointing a sole arbitrator when parties have agreed to resolve their dispute through arbitration. It provides parties with the option to nominate the arbitrator subject to confirmation and sets a time limit for the nomination process. If parties fail to nominate within the specified timeframe, the ICC Court will appoint the sole arbitrator, ensuring the arbitration process moves forward efficiently.

### Three Arbitrators

- 4 Where the parties have agreed that the dispute shall be resolved by three arbitrators, each party shall nominate in the Request and the Answer, respectively, one arbitrator for confirmation. If a party fails to nominate an arbitrator, the appointment shall be made by the Court.**

Article 12(4) of the ICC Arbitration Rules 2021 addresses the process of appointing three arbitrators in cases where the parties have agreed that their dispute will be resolved by a panel of arbitrators. The article outlines the procedure for nominating arbitrators by each party and the steps to be taken if a party fails to nominate an arbitrator. Here is an analysis of the key points of Article 12(4):

1. **Nominating the Arbitrators:** When parties agree to resolve their dispute with a panel of three arbitrators, each party is required to nominate one arbitrator for confirmation. This means that each party has the opportunity to select an arbitrator who will be part of the arbitral tribunal.
2. **Dual Nominations:** Both the claimant and the respondent have the responsibility to nominate an arbitrator. The claimant nominates an arbitrator in the Request for Arbitration, and the respondent nominates an arbitrator in the Answer to the Request. This dual nomination process ensures that each party's perspective is represented in the composition of the tribunal.
3. **Confirmation by the Court:** The nominated arbitrators are subject to confirmation by the ICC Court. This confirmation process is designed to ensure that the nominated arbitrators meet the criteria set forth in the ICC Arbitration Rules and uphold ethical standards.
4. **Default Appointment by the Court:** If a party fails to nominate an arbitrator within the specified timeframe, the ICC Court will step in and make the appointment on behalf of the non-nominating party. This provision prevents delays in the arbitration process due to non-cooperation.
5. **Balancing Party Autonomy and Efficiency:** Similar to other provisions in the ICC Arbitration Rules, Article 12(4) aims to strike a balance between party autonomy and the efficient progression of the arbitration process. Parties have the freedom to nominate arbitrators, but the process is structured to ensure timely appointments.

6. Promoting Fairness and Diversity: The requirement for dual nominations encourages a diverse composition of the arbitral tribunal, where each party can contribute to the selection of arbitrators. This can enhance the fairness and credibility of the arbitration process.

In summary, Article 12(4) of the ICC Arbitration Rules 2021 establishes the process for appointing three arbitrators when parties have agreed on a panel for resolving their dispute. It mandates that each party nominates an arbitrator, subject to confirmation by the ICC Court. The provision ensures that the arbitration process remains efficient while promoting a fair and balanced composition of the arbitral tribunal.

- 5 **Where the dispute is to be referred to three arbitrators, the third arbitrator, who will act as president of the arbitral tribunal, shall be appointed by the Court, unless the parties have agreed upon another procedure for such appointment, in which case the nomination will be subject to confirmation pursuant to Article 13. Should such procedure not result in a nomination within 30 days from the confirmation or appointment of the co-arbitrators or any other time limit agreed by the parties or fixed by the Court, the third arbitrator shall be appointed by the Court.**

Article 12(5) of the ICC Arbitration Rules 2021 addresses the appointment of the third arbitrator, who will also serve as the president of the arbitral tribunal, in cases where the dispute is referred to a panel of three arbitrators. The article outlines the process for appointing this third arbitrator and underscores the role of the ICC Court in the appointment procedure. Here is an analysis of the key points of Article 12(5):

1. Appointment of the Third Arbitrator and Tribunal President: In cases where the parties have agreed to a three-arbitrator tribunal, the third arbitrator is appointed to serve as the president of the arbitral tribunal. The president often plays a crucial role in managing the proceedings and ensuring the efficiency of the arbitration.
2. Role of the Court: The article highlights the central role of the ICC Court in the appointment process of the third arbitrator, emphasising the Court's authority to ensure the appointment is made in accordance with the ICC Arbitration Rules and ethical considerations.
3. Alternative Procedures: Parties have the flexibility to agree upon an alternative procedure for appointing the third arbitrator-president. This can be a negotiated procedure that suits the specific circumstances of the arbitration and the preferences of the parties.
4. Confirmation of Appointment: If the parties agree upon an alternative procedure for appointing the third arbitrator-president, the nominated arbitrator's appointment is subject to confirmation pursuant to Article 13. This confirmation mechanism ensures that the nominated arbitrator meets the criteria set out in the ICC Arbitration Rules.
5. Timeliness of Appointment: The article emphasises the importance of timeliness in the appointment process. If the alternative procedure for appointment does not result in a nomination within 30 days from the confirmation or appointment of the co-arbitrators, or within any other agreed or Court-fixed time limit, the ICC Court will step in to make the appointment.

6. Efficiency and Progression: This provision aligns with the overall theme of the ICC Arbitration Rules, focusing on the efficient and timely progression of the arbitration process. The requirement for timely appointment of the third arbitrator-president ensures that the proceedings move forward without unnecessary delays.

In summary, Article 12(5) of the ICC Arbitration Rules 2021 outlines the procedure for appointing the third arbitrator, who will serve as the president of the arbitral tribunal, in cases where the dispute is referred to a three-arbitrator panel. It highlights the role of the ICC Court in ensuring the proper appointment, provides flexibility for alternative procedures if agreed upon, and emphasises the importance of timeliness in the appointment process to maintain the efficiency of the arbitration proceedings.

**6 Where there are multiple claimants or multiple respondents, and where the dispute is to be referred to three arbitrators, the multiple claimants, jointly, and the multiple respondents, jointly, shall nominate an arbitrator for confirmation pursuant to Article 13.**

Article 12(6) of the ICC Arbitration Rules 2021 addresses the scenario where there are multiple claimants or multiple respondents in a dispute that is referred to a three-arbitrator panel. The article outlines the process by which these multiple parties jointly nominate an arbitrator for confirmation, highlighting the collaborative nature of the nomination in such cases. Here is an analysis of the key points of Article 12(6):

1. Multilateral Nominations: In cases where there are multiple claimants or multiple respondents involved in the dispute, and the arbitration is to be resolved by a three-arbitrator panel, this provision requires the groups of multiple claimants and multiple respondents to collaborate in nominating an arbitrator.
2. Joint Nomination: Multiple claimants, jointly, and multiple respondents, jointly, are responsible for nominating a single arbitrator for confirmation. This joint nomination process ensures that each group of parties is involved in selecting an arbitrator who will contribute to the arbitral tribunal.
3. Confirmation by the ICC Court: Similar to the nomination process outlined in Article 12(4) for individual parties, the nominated arbitrator is subject to confirmation by the ICC Court. The Court's confirmation process ensures that the nominated arbitrator meets the necessary qualifications and ethical standards.
4. Balancing Party Autonomy and Efficiency: The provision strikes a balance between allowing the parties to have a say in the composition of the arbitral tribunal and maintaining the efficiency of the arbitration process. Joint nominations help streamline the appointment process for multiple parties.
5. Promoting Collaboration: Article 12(6) encourages cooperation among the parties within each group (claimants or respondents) to jointly select an arbitrator. This collaboration can facilitate smoother proceedings and help manage the arbitration process effectively.
6. Ensuring Representation: The requirement for joint nominations ensures that the interests of all multiple claimants or respondents are considered in selecting an arbitrator. This can lead to a balanced and diverse composition of the arbitral tribunal.



In summary, Article 12(6) of the ICC Arbitration Rules 2021 outlines the process by which multiple claimants, jointly, and multiple respondents, jointly, nominate an arbitrator for confirmation when the arbitration involves a three-arbitrator panel. The provision emphasises collaboration among these groups of parties while maintaining the Court's role in confirming the nominated arbitrator. This approach aims to combine party involvement with procedural efficiency in the appointment process.

**7 Where an additional party has been joined (Article 7(1)), and where the dispute is to be referred to three arbitrators, the additional party may, jointly with the claimant(s) or with the respondent(s), nominate an arbitrator for confirmation pursuant to Article 13 and subject to Article 7(5).**

Article 12(7) of the ICC Arbitration Rules 2021 addresses the situation where an additional party has been joined to the arbitration under Article 7(1), and the dispute is to be resolved by a three-arbitrator panel. The article outlines the process by which the additional party, together with either the claimant(s) or the respondent(s), nominates an arbitrator for confirmation by the ICC Court, subject to the conditions specified in Article 7(5). Here is an analysis of the key points of Article 12(7):

1. **Inclusion of Additional Party:** This provision takes into account scenarios where an additional party is joined to the arbitration following the provisions of Article 7(1). It allows the additional party to participate in the nomination process for an arbitrator when the arbitration is to be decided by a three-arbitrator panel.
2. **Collaborative Nomination:** Article 12(7) permits the additional party to nominate an arbitrator in collaboration with either the claimant(s) or the respondent(s) already involved in the arbitration. This approach fosters cooperation among the parties and ensures that the interests of the newly joined party are represented in the selection of an arbitrator.
3. **Confirmation by ICC Court:** The nominated arbitrator, whether jointly nominated by the additional party and the claimant(s) or the respondent(s), is subject to confirmation by the ICC Court in accordance with Article 13. This confirmation process ensures that the nominated arbitrator meets the necessary qualifications and ethical standards.
4. **Relation to Article 7(5):** The joint nomination by the additional party and the claimant(s) or the respondent(s) is subject to the conditions set out in Article 7(5). Article 7(5) specifies that any Request for Joinder made after the confirmation or appointment of any arbitrator shall be decided by the arbitral tribunal once constituted and is subject to the additional party accepting the constitution of the tribunal and agreeing to the Terms of Reference, where applicable.
5. **Balancing Party Autonomy and Efficiency:** This provision strikes a balance between allowing the additional party to participate in the nomination process and ensuring the efficiency of the arbitration proceedings. The collaboration in selecting an arbitrator streamlines the appointment process.
6. **Representation of Interests:** The involvement of the additional party in the nomination process helps ensure that their interests are adequately represented in the composition of the arbitral tribunal.

In summary, Article 12(7) of the ICC Arbitration Rules 2021 outlines the procedure for joint nominations of an arbitrator by an additional party, together with either the claimant(s) or the respondent(s), in cases where the dispute is to be resolved by a three-arbitrator panel. The provision promotes collaboration and representation of interests while maintaining the Court's role in confirming the nominated arbitrator. It works in conjunction with the conditions specified in Article 7(5) regarding the joinder of additional parties after the appointment or confirmation of arbitrators.

**8 In the absence of a joint nomination pursuant to Articles 12(6) or 12(7) and where all parties are unable to agree to a method for the constitution of the arbitral tribunal, the Court may appoint each member of the arbitral tribunal and shall designate one of them to act as president. In such cases, the Court shall be at liberty to choose any person it regards as suitable to act as arbitrator, applying Article 13 when it considers this appropriate.**

Article 12(8) of the ICC Arbitration Rules 2021 addresses the scenario where parties fail to make a joint nomination pursuant to Articles 12(6) or 12(7) and are unable to agree on a method for constituting the arbitral tribunal. The article outlines the process by which the ICC Court intervenes to appoint each member of the arbitral tribunal and designates one of them as the president. Here is an analysis of the key points of Article 12(8):

1. **Default Procedure for Tribunal Constitution:** Article 12(8) sets forth a default procedure for constituting the arbitral tribunal when parties are unable to reach a joint nomination as specified in Articles 12(6) and 12(7), or when they cannot agree on an alternative method for tribunal appointment.
2. **Court's Role in Appointment:** In this scenario, the ICC Court assumes a proactive role by appointing each member of the arbitral tribunal. This ensures that the tribunal's composition is determined, even in cases of disagreement or inability to nominate arbitrators.
3. **Designation of President:** Alongside appointing the individual arbitrators, the Court designates one of them to serve as the president of the arbitral tribunal. The president plays a leadership role in the proceedings and may have certain additional responsibilities.
4. **Flexibility in Arbitrator Selection:** The ICC Court has the discretion to choose suitable arbitrators to serve on the tribunal. This discretion allows the Court to consider factors such as expertise, impartiality, and the specific nature of the dispute when making appointments.
5. **Application of Article 13:** The article references Article 13, which pertains to the confirmation of arbitrators. This implies that the Court will follow the confirmation process outlined in Article 13 when appointing arbitrators under Article 12(8), further ensuring the arbitrators' qualifications and independence.
6. **Maintaining Tribunal Neutrality:** By involving the ICC Court in appointing arbitrators, Article 12(8) aims to maintain the neutrality and impartiality of the arbitral tribunal, especially when parties are unable to agree on arbitrator appointments themselves.
7. **Ensuring Arbitral Process:** This provision helps ensure that the arbitration process moves forward even when parties are unable to come to an agreement on the composition of

the tribunal. It prevents potential delays that could arise from prolonged negotiations over arbitrator selection.

In summary, Article 12(8) of the ICC Arbitration Rules 2021 outlines the process for the ICC Court’s intervention in appointing arbitrators and designating a president when parties are unable to reach joint nominations or agree on a method for constituting the arbitral tribunal. This provision maintains the integrity of the arbitration process by ensuring that a qualified and impartial tribunal is in place, even in situations of disagreement among the parties.

**9 Notwithstanding any agreement by the parties on the method of constitution of the arbitral tribunal, in exceptional circumstances the Court may appoint each member of the arbitral tribunal to avoid a significant risk of unequal treatment and unfairness that may affect the validity of the award.**

Article 12(9) of the ICC Arbitration Rules 2021 addresses a unique scenario where the ICC Court has the authority to intervene and appoint each member of the arbitral tribunal, irrespective of any prior agreement by the parties on the method of tribunal constitution. This provision is intended to address exceptional circumstances where there is a significant risk of unequal treatment and unfairness that could potentially impact the validity of the award. Here is an analysis of the key points of Article 12(9):

1. **Exceptional Circumstances:** This provision is invoked when there are exceptional circumstances that create a notable risk of unequal treatment and unfairness in the arbitration proceedings. Such circumstances could undermine the overall integrity of the process.
2. **Override of Party Agreement:** Even if the parties had previously agreed on a method for the constitution of the arbitral tribunal, Article 12(9) empowers the ICC Court to supersede this agreement and appoint each member of the arbitral tribunal. This underscores the importance of maintaining fairness and impartiality in the proceedings.
3. **Significant Risk of Unequal Treatment and Unfairness:** The decision to intervene under Article 12(9) is based on the presence of a “significant risk” that unequal treatment and unfairness could affect the validity of the eventual award. This risk must be substantial enough to warrant the Court’s intervention.
4. **Preserving Validity of Award:** The primary goal of this provision is to ensure the validity of the award that will be issued at the end of the arbitration. By addressing concerns related to unequal treatment and unfairness, the provision aims to prevent potential challenges to the award’s validity on these grounds.
5. **Maintaining Arbitration’s Integrity:** The provision underscores the ICC’s commitment to maintaining the integrity and credibility of the arbitration process. It allows the Court to step in when circumstances threaten to compromise the principles of fairness and equal treatment.
6. **Discretion of the ICC Court:** The decision to invoke Article 12(9) rests with the ICC Court. The Court will assess whether the exceptional circumstances warrant its intervention to appoint the tribunal members.

7. **Balancing Fairness and Party Autonomy:** While party autonomy in selecting arbitrators is generally upheld, Article 12(9) reflects the principle that fairness and equal treatment must take precedence, especially when there is a genuine risk of injustice.

In summary, Article 12(9) of the ICC Arbitration Rules 2021 empowers the ICC Court to appoint each member of the arbitral tribunal in exceptional circumstances where there is a significant risk of unequal treatment and unfairness that could impact the validity of the award. This provision reinforces the importance of maintaining a fair and impartial arbitration process, even if it requires overriding prior agreements on tribunal constitution.

## **ARTICLE 13 Appointment and Confirmation of the Arbitrators**

- 1 In confirming or appointing arbitrators, the Court shall consider the prospective arbitrator’s nationality, residence and other relationships with the countries of which the parties or the other arbitrators are nationals and the prospective arbitrator’s availability and ability to conduct the arbitration in accordance with the Rules. The same shall apply where the Secretary General confirms arbitrators pursuant to Article 13(2).**

Article 13(1) of the ICC Arbitration Rules 2021 outlines the criteria and considerations that the ICC Court should take into account when confirming or appointing arbitrators for an arbitration. This provision emphasises the importance of ensuring the independence, impartiality, and competence of arbitrators in order to maintain the integrity and fairness of the arbitration process. Here is an analysis of the key points of Article 13(1):

1. **Nationality, Residence, and Relationships:** The ICC Court is tasked with considering the prospective arbitrator’s nationality, residence, and any other relationships they may have with the countries of which the parties or other arbitrators are nationals. This consideration aims to prevent potential conflicts of interest or bias that could arise due to such affiliations.
2. **Independence and Impartiality:** One of the fundamental principles of arbitration is the independence and impartiality of arbitrators. Article 13(1) underscores the need for arbitrators to be free from any external influences or biases that could impact their decision-making. By considering their nationality, residence, and relationships, the Court aims to ensure that arbitrators are capable of making unbiased decisions.
3. **Ability to Conduct Arbitration in Accordance with Rules:** Another critical consideration is the prospective arbitrator’s ability to conduct the arbitration in accordance with the ICC Arbitration Rules. This involves understanding and adhering to the procedural and substantive requirements of the Rules to ensure a fair and efficient arbitration process.
4. **Availability:** Arbitration proceedings can be time-intensive, and it is essential that arbitrators are available to dedicate the necessary time and effort to the case. The Court takes into account the prospective arbitrator’s availability to ensure that the proceedings move forward smoothly and without unnecessary delays.

5. **Competence:** The Court also assesses the prospective arbitrator’s competence in the relevant field of law or industry. This ensures that arbitrators possess the necessary expertise to understand and rule on complex issues that may arise during the arbitration.
6. **Balancing Factors:** Article 13(1) reflects the need to balance various factors, such as the arbitrator’s nationality, potential relationships, and competence. The Court’s decision is aimed at selecting arbitrators who can contribute to a fair and just resolution of the dispute.
7. **Secretary General’s Role:** The same criteria and considerations apply when the Secretary General confirms arbitrators pursuant to Article 13(2). This reaffirms the consistency in the selection process, whether the appointment is made by the Court or the Secretary General.

In summary, Article 13(1) of the ICC Arbitration Rules 2021 emphasises the criteria that the ICC Court should take into account when confirming or appointing arbitrators. By considering factors such as nationality, residence, relationships, availability, ability to adhere to the Rules, and competence, the Court aims to ensure the independence, impartiality, and competence of the arbitrators, thereby safeguarding the integrity of the arbitration process.

**2 The Secretary General may confirm as coarbitrators, sole arbitrators and presidents of arbitral tribunals persons nominated by the parties or pursuant to their particular agreements, provided that the statement they have submitted contains no qualification regarding impartiality or independence or that a qualified statement regarding impartiality or independence has not given rise to objections. Such confirmation shall be reported to the Court at one of its next sessions. If the Secretary General considers that a co-arbitrator, sole arbitrator or president of an arbitral tribunal should not be confirmed, the matter shall be submitted to the Court.**

Article 13(2) of the ICC Arbitration Rules 2021 outlines the role of the Secretary General in confirming arbitrators who have been nominated by the parties or pursuant to their specific agreements. This provision sets out a procedure for confirming arbitrators while ensuring their impartiality and independence. Let us delve into the key points of Article 13(2):

1. **Confirmation of Nominated Arbitrators:** The Secretary General has the authority to confirm individuals nominated by the parties as co-arbitrators, sole arbitrators, or presidents of arbitral tribunals. This recognises the parties’ autonomy in selecting arbitrators while maintaining a mechanism to ensure the arbitrators’ qualifications.
2. **Qualification Statements:** Prospective arbitrators nominated by the parties are required to submit a statement of acceptance, availability, impartiality, and independence, as per Article 11(2) of the ICC Arbitration Rules. This is an essential step to ensure that arbitrators are impartial and independent in their decision-making process.
3. **Lack of Qualification Statements:** The confirmation by the Secretary General is contingent upon the submitted statement containing no qualification regarding impartiality or independence. This means that the prospective arbitrator should not make any statements that cast doubt on their impartiality or independence. If a statement with a

qualification is submitted, and there are no objections raised, it may also lead to confirmation.

4. Reporting to the Court: The confirmation of nominated arbitrators by the Secretary General is reported to the ICC Court during one of its next sessions. This reporting mechanism adds transparency to the confirmation process and allows for the Court's oversight.
5. Objections and Non-Confirmation: If the Secretary General determines that a nominated arbitrator should not be confirmed due to concerns about impartiality or independence, the matter is escalated to the ICC Court. This ensures an additional layer of scrutiny over the confirmation process to uphold the integrity of the arbitration.

Article 13(2) strikes a balance between recognising the parties' choice of arbitrators and safeguarding the impartiality and independence of the arbitral tribunal. It empowers the Secretary General to confirm nominated arbitrators, subject to the absence of qualification statements or objections. This process helps maintain the high standards of professionalism and fairness in the selection of arbitrators, ultimately contributing to the credibility of the arbitration process.

**3 Where the Court is to appoint an arbitrator, it shall make the appointment upon proposal of an ICC National Committee or Group that it considers to be appropriate. If the Court does not accept the proposal made, or if the National Committee or Group fails to make the proposal requested within the time limit fixed by the Court, the Court may repeat its request, request a proposal from another National Committee or Group that it considers to be appropriate, or appoint directly any person whom it regards as suitable.**

Article 13(3) of the ICC Arbitration Rules 2021 outlines the procedure for the appointment of arbitrators by the ICC Court when it is responsible for making the appointment. This provision emphasises the involvement of ICC National Committees or Groups in proposing suitable arbitrators. Here are the key aspects of Article 13(3):

1. Appointment by the Court: In situations where the ICC Court is tasked with appointing an arbitrator, Article 13(3) provides guidance on the process to be followed for the selection.
2. Involvement of ICC National Committees or Groups: The Court is required to appoint an arbitrator upon a proposal made by an ICC National Committee or Group. These committees and groups are regional or national entities affiliated with the ICC that facilitate arbitration-related activities.
3. Proposal Consideration: The Court evaluates the proposal made by the ICC National Committee or Group and determines whether it is suitable. The proposed arbitrator's qualifications, impartiality, and independence are factors that are likely taken into account.
4. Options for the Court: If the Court does not accept the proposed arbitrator or if the ICC National Committee or Group fails to provide a proposal within the specified time frame, the Court has several options:

- a. Requesting another proposal from the same or a different ICC National Committee or Group that it deems suitable.
  - b. Appointing an arbitrator directly from a list of suitable individuals.
  - c. Repeating its request to the same or a different ICC National Committee or Group.
5. Court's Discretion: The provision grants the ICC Court the discretion to decide on the appropriate course of action if the initial proposal is not accepted or if a proposal is not received within the prescribed time frame.

Article 13(3) emphasises the collaborative role of ICC National Committees or Groups in proposing arbitrators for appointment by the Court. This collaborative approach enhances the quality and credibility of arbitrator appointments while maintaining the Court's authority to ensure the selection of impartial and qualified arbitrators. The provision also demonstrates the flexibility of the ICC Arbitration Rules to adapt to varying circumstances and to achieve the overarching goal of a fair and efficient arbitration process.

**4 The Court may also appoint directly to act as arbitrator any person whom it regards as suitable where:**

- a) **one or more of the parties is a state or may be considered to be a state entity;**
- b) **the Court considers that it would be appropriate to appoint an arbitrator from a country or territory where there is no National Committee or Group; or**
- c) **the President certifies to the Court that circumstances exist which, in the President's opinion, make a direct appointment necessary and appropriate.**

Article 13(4) of the ICC Arbitration Rules 2021 outlines the circumstances under which the ICC Court has the authority to directly appoint an arbitrator. This provision aims to ensure that qualified and impartial arbitrators are appointed in cases involving certain parties or where specific considerations apply. Here is an analysis of Article 13(4):

1. Direct Appointment by the Court: Under Article 13(4), the ICC Court is granted the authority to appoint an arbitrator directly, bypassing the usual proposal process through ICC National Committees or Groups. This provision is invoked in specific situations where the Court deems it necessary and appropriate.
2. Three Situations for Direct Appointment:
  - a. State or State Entity: If one or more parties involved in the arbitration is a state or could be considered a state entity, the Court has the discretion to make a direct appointment. States often have unique legal statuses and may require specific considerations when selecting arbitrators.
  - b. Absence of National Committee or Group: In cases where there is no ICC National Committee or Group in a particular country or territory, the Court can directly

appoint an arbitrator. This ensures that parties from regions without a local committee or group can still have access to qualified arbitrators.

- c. Certification by the President: The provision allows the Court’s President to certify that circumstances exist which, in their opinion, necessitate a direct appointment. This certification provides an additional mechanism for ensuring fair and appropriate arbitrator appointments.
3. Flexibility and Adaptability: Article 13(4) demonstrates the flexibility of the ICC Arbitration Rules to accommodate unique situations and parties with specific characteristics. This flexibility ensures that the arbitration process remains effective and impartial regardless of the parties involved or the geographical context.
4. Preservation of Impartiality: The provision aims to ensure the impartiality and independence of appointed arbitrators, even in cases involving states or entities with potential interests. By allowing the Court to directly appoint arbitrators, it can select individuals who are qualified and unbiased, contributing to the fairness of the arbitration process.

Overall, Article 13(4) of the ICC Arbitration Rules 2021 reflects the ICC’s commitment to maintaining a high standard of arbitrator appointments in cases involving states, regions without National Committees or Groups, or situations that warrant special attention. It underscores the ICC’s dedication to upholding the integrity and fairness of the arbitration process.

**5 Where the Court is to appoint the sole arbitrator or the president of the arbitral tribunal, such sole arbitrator or president of the arbitral tribunal shall be of a nationality other than those of the parties. However, in suitable circumstances and provided that none of the parties objects within the time limit fixed by the Secretariat, the sole arbitrator or the president of the arbitral tribunal may be chosen from a country of which any of the parties is a national.**

Article 13(5) of the ICC Arbitration Rules 2021 addresses the nationality of the sole arbitrator or the president of the arbitral tribunal appointed by the ICC Court. The provision aims to ensure impartiality and prevent potential conflicts of interest related to the nationality of arbitrators. Here is an analysis of Article 13(5):

1. Nationality Considerations: The provision emphasises that the sole arbitrator or the president of the arbitral tribunal appointed by the Court should have a nationality other than those of the parties involved in the arbitration. This requirement helps minimise potential bias and ensures that arbitrators approach the case impartially.
2. Exceptional Circumstances: While the general rule is that the appointed arbitrator’s nationality should be different from the parties, Article 13(5) recognises that there may be exceptional circumstances where the arbitrator’s nationality aligns with that of one of the parties. In such cases, the provision allows flexibility for the sole arbitrator or the president of the tribunal to be chosen from the country of one of the parties, under certain conditions.
3. Party Objection: To address any concerns about potential bias or conflicts of interest, the provision allows for party objections. If any party objects to the appointment based on



the arbitrator's nationality within the time limit specified by the Secretariat, then the arbitrator from the country of one of the parties would not be appointed.

4. **Balancing Impartiality and Practicality:** Article 13(5) strikes a balance between ensuring the impartiality of arbitrators and recognising practical considerations. While it is generally preferred to have arbitrators from neutral countries, there might be circumstances where a candidate from a party's country could bring relevant expertise or understanding to the case.
5. **Decision by Secretariat:** The provision stipulates that the time limit for objections to the arbitrator's nationality will be fixed by the Secretariat. This allows the Secretariat to establish a reasonable and fair timeframe for parties to raise objections.

In summary, Article 13(5) of the ICC Arbitration Rules 2021 reflects the ICC's commitment to impartiality and fairness in the arbitration process. It outlines guidelines for the appointment of arbitrators, particularly focusing on their nationality in relation to the parties involved, while also allowing for exceptions under suitable circumstances and with party consent. This provision seeks to ensure that arbitrators approach cases without any perceived bias and that parties have confidence in the arbitration process.

**6 Whenever the arbitration agreement upon which the arbitration is based arises from a treaty, and unless the parties agree otherwise, no arbitrator shall have the same nationality of any party to the arbitration.**

Article 13(6) of the ICC Arbitration Rules 2021 addresses the nationality of arbitrators in cases where the arbitration agreement is based on a treaty. The provision aims to uphold impartiality and prevent any potential conflicts of interest that may arise due to arbitrators having the same nationality as the parties involved. Here is an analysis of Article 13(6):

1. **Treaty-Based Arbitration Agreements:** The provision applies specifically to cases where the arbitration agreement is based on a treaty. This could include investment treaties, bilateral agreements, or multilateral agreements between states. Such treaties often contain arbitration clauses that allow parties to resort to arbitration to settle disputes.
2. **Imposing a Requirement:** Article 13(6) imposes a requirement that no arbitrator in a treaty-based arbitration shall have the same nationality as any party to the arbitration. This is intended to prevent any perception of bias or potential influence that might arise if an arbitrator shares a nationality with one of the parties.
3. **Promoting Impartiality:** By mandating arbitrators to have different nationalities from the parties, the provision promotes the impartiality and independence of the arbitral tribunal. It helps prevent situations where arbitrators could be influenced by their own nationality or affiliations.
4. **Exception Through Agreement:** The provision allows parties to agree otherwise if they wish to waive the requirement that arbitrators cannot have the same nationality as the parties. This flexibility recognises that there might be circumstances where parties are comfortable with an arbitrator of the same nationality, perhaps due to expertise or other relevant factors.

5. Preventing Conflicts of Interest: Article 13(6) aligns with the broader goal of maintaining the integrity of international arbitration. Conflicts of interest can arise if arbitrators are closely associated with the parties' national interests, potentially undermining the credibility of the arbitration process.
6. Enhancing Public Confidence: By establishing clear rules regarding the nationality of arbitrators in treaty-based arbitrations, the provision enhances public confidence in international arbitration. It ensures that arbitration outcomes are perceived as fair and unbiased by parties, stakeholders, and the general public.

In summary, Article 13(6) of the ICC Arbitration Rules 2021 plays a vital role in safeguarding the integrity and credibility of arbitration proceedings arising from treaty-based agreements. By prohibiting arbitrators from sharing the nationality of any party unless agreed otherwise, this provision upholds the principles of impartiality, fairness, and independence in the arbitration process.

#### ARTICLE 14 Challenge of Arbitrators

- 1 A challenge of an arbitrator, whether for an alleged lack of impartiality or independence, or otherwise, shall be made by the submission to the Secretariat of a written statement specifying the facts and circumstances on which the challenge is based.**

Article 14(1) of the ICC Arbitration Rules 2021 outlines the procedure for challenging an arbitrator in the context of an arbitration proceeding. The provision is designed to ensure a fair and transparent process for addressing concerns related to an arbitrator's impartiality, independence, or other grounds. Here is an analysis of Article 14(1):

1. Challenging an Arbitrator: The central purpose of Article 14(1) is to establish a formal process for parties to challenge an arbitrator. This challenge can be based on various grounds, including alleged lack of impartiality, lack of independence, or other concerns that could potentially affect the arbitrator's ability to render a fair and unbiased decision.
2. Written Statement Requirement: The provision requires that a challenge of an arbitrator must be made through the submission of a written statement to the Secretariat. This ensures that challenges are properly documented and that the Secretariat has a clear understanding of the grounds on which the challenge is being made.
3. Specificity of Facts and Circumstances: The written statement submitted to the Secretariat must specify the facts and circumstances on which the challenge is based. This requirement emphasises the need for parties to provide clear and concrete reasons for the challenge, rather than general or speculative claims. Providing specific details helps ensure a well-founded challenge.
4. Ensuring Transparency: Requiring a written statement with specific facts and circumstances promotes transparency in the challenge process. It prevents arbitrary or baseless challenges and helps the Secretariat, the arbitral tribunal, and the parties understand the nature and substance of the challenge.
5. Fair and Efficient Challenge Process: The provision contributes to the overall fairness and efficiency of the arbitration process by establishing a structured mechanism for

addressing challenges. This helps prevent undue delays or disruptions caused by unfounded challenges or challenges lacking substance.

6. **Preservation of Arbitrator Independence and Impartiality:** Article 14(1) supports the broader principle of maintaining arbitrator independence and impartiality, which are essential for the credibility of the arbitration process. A clear and transparent challenge process ensures that parties have a means to address any concerns they may have about an arbitrator's qualifications or potential biases.
7. **Balancing Parties' Rights and Arbitrator's Reputation:** While parties have the right to challenge an arbitrator if they believe there is a valid reason, this provision also acknowledges the importance of protecting an arbitrator's reputation and integrity. Requiring specific facts and circumstances helps strike a balance between the parties' rights and the arbitrator's standing.

In summary, Article 14(1) of the ICC Arbitration Rules 2021 establishes a structured and transparent procedure for challenging an arbitrator. By requiring a written statement specifying the facts and circumstances underlying the challenge, the provision ensures that challenges are grounded in legitimate concerns and contributes to the overall fairness and credibility of the arbitration process.

**2 For a challenge to be admissible, it must be submitted by a party either within 30 days from receipt by that party of the notification of the appointment or confirmation of the arbitrator, or within 30 days from the date when the party making the challenge was informed of the facts and circumstances on which the challenge is based if such date is subsequent to the receipt of such notification.**

Article 14(2) of the ICC Arbitration Rules 2021 outlines the time limits within which a challenge against an arbitrator must be submitted for it to be considered admissible. This provision aims to establish a clear and reasonable timeframe for parties to raise concerns about the appointment or confirmation of an arbitrator. Here is an analysis of Article 14(2):

1. **Time Limits for Admissibility:** Article 14(2) establishes two alternative time limits for submitting a challenge against an arbitrator to be considered admissible. The challenge must be submitted within either 30 days from the receipt by the challenging party of the notification of the appointment or confirmation of the arbitrator, or within 30 days from the date when the party making the challenge was informed of the facts and circumstances forming the basis of the challenge if that date comes after the receipt of the notification.
2. **Clarity and Certainty:** By setting clear and specific time limits, Article 14(2) provides parties with certainty about the period during which they can raise challenges against arbitrators. This helps prevent challenges from being made arbitrarily or belatedly, contributing to the overall efficiency and stability of the arbitration process.
3. **Balancing the Interests:** The provision strikes a balance between the parties' right to challenge an arbitrator's appointment and the need to maintain the arbitration process's integrity and timeline. The time limits prevent undue delays caused by last-minute challenges that could disrupt the proceedings.

4. **Receipt of Notification:** The first time limit is triggered by the receipt of the notification of the arbitrator’s appointment or confirmation. This ensures that parties have a clear starting point for calculating the 30-day period.
5. **Additional Time for New Information:** The second time limit accommodates situations where the challenging party learns of facts and circumstances supporting their challenge after receiving the notification. If the new information comes to light after the receipt of the notification, the 30-day period begins from the date of learning of such information.
6. **Promotion of Efficiency:** Imposing time limits encourages parties to promptly address any concerns they may have about arbitrator appointments. This promotes efficiency by allowing the proceedings to move forward without undue interruptions or disruptions caused by belated challenges.
7. **Flexibility in Case of New Information:** The provision acknowledges that parties may become aware of relevant facts and circumstances after the initial notification. By providing an additional 30-day window, it ensures that parties have an opportunity to raise legitimate concerns even if those concerns emerge at a later stage.

In summary, Article 14(2) of the ICC Arbitration Rules 2021 establishes clear time limits for the admissibility of challenges against arbitrators. These time limits strike a balance between parties’ rights and the need for an efficient and orderly arbitration process. By requiring challenges to be raised within these specified time frames, the provision contributes to the overall fairness and effectiveness of the arbitration proceedings.

**3 The Court shall decide on the admissibility and, at the same time, if necessary, on the merits of a challenge after the Secretariat has afforded an opportunity for the arbitrator concerned, the other party or parties and any other members of the arbitral tribunal to comment in writing within a suitable period of time. Such comments shall be communicated to the parties and to the arbitrators.**

Article 14(3) of the ICC Arbitration Rules 2021 addresses the process for handling challenges to arbitrators, emphasising transparency, fairness, and due process. This provision outlines the steps the Court takes when a challenge is raised against an arbitrator, ensuring that all relevant parties have the opportunity to provide input. Here is an analysis of Article 14(3):

1. **Dual Decision:** Article 14(3) combines two key aspects of handling challenges into a single process: admissibility and merits. The Court, responsible for making these determinations, evaluates both whether the challenge is admissible and whether it has merit based on the facts and circumstances presented.
2. **Court’s Role:** The Court, which has authority over arbitrator challenges, is entrusted with making decisions related to the admissibility and merits of the challenge. This ensures that such decisions are made by a neutral and authoritative body, enhancing the credibility and integrity of the process.
3. **Opportunity for Comments:** The provision emphasises due process by requiring the Secretariat to provide all relevant parties, including the arbitrator facing the challenge,

the opposing party or parties, and other members of the arbitral tribunal, an opportunity to comment in writing on the challenge within a suitable period of time.

4. **Transparency:** By ensuring that all parties have a chance to present their perspectives, Article 14(3) promotes transparency and accountability in the challenge process. This transparency helps maintain trust in the arbitration process.
5. **Written Communication:** The requirement for written comments helps streamline the process and allows parties to present their arguments and concerns in a structured and documented manner. This helps prevent misunderstandings and ensures that all relevant information is considered.
6. **Communication to All Parties:** The provision ensures that comments provided by the parties and the arbitrators are shared with all parties involved in the arbitration. This practice promotes open communication and allows all parties to be aware of the discussions surrounding the challenge.
7. **Balanced Consideration:** Article 14(3) mandates that the comments from all relevant parties be communicated to the Court, helping the Court make a well-informed decision that takes into account multiple perspectives and arguments.
8. **Suitable Period of Time:** The provision does not specify a fixed period for providing comments, allowing flexibility to consider the circumstances of each case. This approach accommodates the need for timely decisions while also allowing parties sufficient time to prepare their responses.
9. **Fairness and Equity:** By allowing all relevant parties to express their views on the challenge, the provision ensures that the process is fair and equitable. This is crucial for upholding the principle of impartiality and independence in arbitration proceedings.

In conclusion, Article 14(3) of the ICC Arbitration Rules 2021 outlines a comprehensive and transparent process for handling challenges to arbitrators. By considering both the admissibility and merits of a challenge and providing a mechanism for all parties to comment, this provision helps maintain the integrity and fairness of the arbitration process.

## ARTICLE 15 Replacement of Arbitrators

- 1 An arbitrator shall be replaced upon death, upon acceptance by the Court of the arbitrator's resignation, upon acceptance by the Court of a challenge, or upon acceptance by the Court of a request of all the parties.**

Article 15(1) of the ICC Arbitration Rules 2021 outlines the circumstances under which an arbitrator may be replaced during the course of an arbitration. This provision ensures that the arbitration process remains fair, unbiased, and efficient by allowing for the replacement of an arbitrator in certain situations. Here is an analysis of Article 15(1):

1. **Replacement Scenarios:** The provision enumerates four situations in which an arbitrator may be replaced:

- a. Death: An arbitrator’s role is automatically terminated upon their death. This scenario necessitates a replacement to maintain a functioning arbitral tribunal.
  - b. Resignation: If an arbitrator voluntarily resigns from their position, the Court’s acceptance of their resignation will result in their replacement.
  - c. Challenge: If a challenge against an arbitrator is accepted by the Court, the arbitrator is replaced to ensure impartiality and independence.
  - d. Unanimous Request: In cases where all parties unanimously request the replacement of an arbitrator, the Court accepts their request, allowing for a new arbitrator to be appointed.
2. Court’s Role: The Court plays a crucial role in overseeing the replacement of arbitrators. It is responsible for accepting resignations, challenges, and requests for replacement. This ensures that the process is guided by an authoritative body, maintaining the integrity of the arbitration.
  3. Party Agreement: The provision recognises the parties’ ability to collectively decide to replace an arbitrator. This mechanism allows for flexibility and collaboration among the parties involved in the arbitration.
  4. Efficiency and Continuity: Replacing an arbitrator in the specified scenarios helps ensure that the arbitration process remains efficient and that proceedings continue smoothly. Prompt replacements help prevent delays and ensure that the parties’ interests are adequately represented.
  5. Impartiality and Independence: The provision aligns with the core principles of arbitration by addressing situations that could compromise the arbitrator’s impartiality and independence, such as resignation or successful challenges.
  6. Balancing Flexibility and Control: By allowing for arbitrator replacements under certain conditions, Article 15(1) maintains a balance between the flexibility needed to adapt to changing circumstances and the control necessary to safeguard the fairness and integrity of the arbitration process.
  7. Preservation of Due Process: The provision, by specifying the scenarios in which an arbitrator can be replaced, contributes to due process by ensuring that changes to the arbitral tribunal are made in a structured and controlled manner.

In summary, Article 15(1) of the ICC Arbitration Rules 2021 outlines the circumstances under which an arbitrator may be replaced. By addressing scenarios such as death, resignation, challenge acceptance, and unanimous party requests, the provision maintains the fairness and efficiency of the arbitration process while safeguarding the principles of impartiality and independence.

**2 An arbitrator shall also be replaced on the Court’s own initiative when it decides that the arbitrator is prevented de jure or de facto from fulfilling the arbitrator’s functions, or that the**

**arbitrator is not fulfilling those functions in accordance with the Rules or within the prescribed time limits.**

Article 15(2) of the ICC Arbitration Rules 2021 addresses the circumstances under which an arbitrator may be replaced by the Court's own initiative. This provision reflects the Court's role in ensuring the integrity, efficiency, and fairness of the arbitration process. Here is an analysis of Article 15(2):

1. **Court's Oversight:** The provision empowers the Court to initiate the replacement of an arbitrator. This authority demonstrates the Court's commitment to overseeing the arbitration process to ensure that it adheres to the prescribed rules, time limits, and principles of due process.
2. **Grounds for Replacement:** The Court may decide to replace an arbitrator in two main scenarios:
  - a. **Prevented from Fulfilling Functions:** If an arbitrator is prevented either legally (de jure) or practically (de facto) from fulfilling their duties, replacement is warranted. This prevents any legal or practical obstacles from compromising the functioning of the arbitral tribunal.
  - b. **Non-Compliance with Rules or Time Limits:** If an arbitrator fails to perform their functions in accordance with the ICC Arbitration Rules or within the specified time limits, the Court can replace the arbitrator to maintain the efficiency and proper progression of the arbitration.
3. **Preservation of Due Process:** The provision aims to ensure that the arbitration process is conducted in a manner that upholds due process, fairness, and the principles of impartiality and independence. The Court's ability to replace an arbitrator who is not fulfilling their functions properly contributes to the integrity of the arbitral process.
4. **Balancing Efficiency and Fairness:** Article 15(2) balances the need for an efficient arbitration process with the requirement for a fair and just outcome. The Court's power to replace arbitrators in specific circumstances helps strike this balance.
5. **Guidance for Arbitrators:** This provision also serves as guidance for arbitrators, emphasising the importance of adhering to the rules and fulfilling their responsibilities within the prescribed framework. Arbitrators are incentivised to act in accordance with their obligations to avoid being replaced due to non-compliance.
6. **Prompt Action:** By allowing the Court to take proactive measures to replace an arbitrator who is not fulfilling their role effectively, Article 15(2) helps prevent delays and disruptions in the arbitration proceedings.
7. **Court's Discretion:** The provision vests the Court with discretion in determining whether an arbitrator's replacement is necessary. This discretionary authority allows the Court to consider the unique circumstances of each case before making a decision.

In conclusion, Article 15(2) of the ICC Arbitration Rules 2021 grants the Court the authority to replace an arbitrator on its own initiative under certain circumstances. By addressing situations where an arbitrator is prevented from fulfilling their functions or fails to comply with the rules and time limits, the provision ensures the integrity, fairness, and efficiency of the arbitration process.

- 3 When, on the basis of information that has come to its attention, the Court considers applying Article 15(2), it shall decide on the matter after the arbitrator concerned, the parties and any other members of the arbitral tribunal have had an opportunity to comment in writing within a suitable period of time. Such comments shall be communicated to the parties and to the arbitrators.**

Article 15(3) of the ICC Arbitration Rules 2021 outlines the procedure that the Court follows when considering the replacement of an arbitrator under Article 15(2). This process ensures transparency, fairness, and the opportunity for all relevant parties to provide input. Let us analyse Article 15(3):

1. **Court's Decision-Making Process:** The provision establishes a structured decision-making process for the Court when considering the replacement of an arbitrator. This process ensures that the Court's decision is well-informed, based on relevant information, and takes into account the perspectives of all parties involved.
2. **Informed Decision:** The Court is required to make a decision based on information that has come to its attention. This ensures that the Court's decision is supported by facts and circumstances that warrant the potential replacement of the arbitrator under Article 15(2).
3. **Opportunity for Comments:** Before making a decision, the Court provides the arbitrator concerned, the parties, and any other members of the arbitral tribunal with the opportunity to comment in writing. This ensures that all relevant parties have a chance to express their views, present arguments, and provide any information that might be relevant to the decision.
4. **Suitable Period of Time:** The provision stipulates that a suitable period of time is provided for submitting written comments. This time frame allows parties and arbitrators to adequately prepare their responses and ensures that the process is not rushed.
5. **Transparency and Fairness:** The requirement to communicate the comments of the parties and arbitrators to each other and to the arbitral tribunal enhances transparency and fairness in the process. This allows all parties to understand the perspectives and arguments put forth by others.
6. **Balancing Efficiency and Due Process:** While the provision introduces a comment period, it also emphasises the importance of efficiency in arbitration proceedings. The structure allows for a balance between providing adequate time for comments and ensuring the arbitration progresses in a timely manner.
7. **Preservation of Due Process:** By giving all relevant parties the opportunity to provide comments, Article 15(3) upholds the principle of due process. Parties and arbitrators have a chance to voice concerns or provide information that might impact the Court's decision.
8. **Consideration of Comments:** The Court's obligation to consider the comments before making a decision reflects its commitment to taking into account the perspectives and arguments presented by the parties and arbitrators.



In conclusion, Article 15(3) of the ICC Arbitration Rules 2021 outlines a structured and transparent procedure that the Court follows when considering the replacement of an arbitrator under Article 15(2). By providing an opportunity for written comments from the arbitrator, parties, and other members of the arbitral tribunal, the provision ensures that the Court's decision is informed and considers the viewpoints of all relevant stakeholders.

**4 When an arbitrator is to be replaced, the Court has discretion to decide whether or not to follow the original nominating process. Once reconstituted, and after having invited the parties to comment, the arbitral tribunal shall determine if and to what extent prior proceedings shall be repeated before the reconstituted arbitral tribunal.**

Article 15(4) of the ICC Arbitration Rules 2021 addresses the replacement of an arbitrator and the subsequent actions that the Court and the reconstituted arbitral tribunal may take. Let us analyse the key points of this article:

1. **Discretion of the Court:** The provision grants the Court the discretion to decide whether to follow the original nominating process for the replacement of an arbitrator. This means that the Court can choose to use the same process that was used for the initial appointment of arbitrators, or it can opt for an alternative approach.
2. **Flexibility in Reconstitution:** The discretionary power given to the Court reflects the need for flexibility in the replacement process. The circumstances surrounding the replacement may vary, and the Court's discretion allows it to tailor the process to best suit the situation.
3. **Invitation for Comments:** Once the arbitral tribunal has been reconstituted, the provision requires that the tribunal invite the parties to comment on whether and to what extent prior proceedings should be repeated. This invitation ensures that parties have a say in how the arbitration should proceed following the replacement of an arbitrator.
4. **Decision by the Reconstituted Tribunal:** The responsibility for determining whether and to what extent prior proceedings should be repeated lies with the reconstituted arbitral tribunal. This empowers the tribunal to assess the situation and make informed decisions based on the comments received from the parties.
5. **Balancing Efficiency and Fairness:** The provision seeks to strike a balance between the efficiency of the arbitration process and the fairness of the proceedings. It acknowledges that, in some cases, repeating prior proceedings may be necessary to ensure fairness, while in other cases, it may be more efficient to proceed without repetition.
6. **Tailored Approach:** The provision allows the reconstituted arbitral tribunal to tailor its approach based on the circumstances of the case. This flexibility is important in ensuring that the arbitration process remains adaptable to the needs of each individual case.
7. **Preserving Due Process:** By inviting parties to comment on whether prior proceedings should be repeated, the provision safeguards due process. It ensures that parties have an opportunity to voice any concerns and contribute to the decision-making process.

In summary, Article 15(4) of the ICC Arbitration Rules 2021 grants the Court discretion in deciding whether to follow the original nominating process for replacing an arbitrator. It also outlines the role of the reconstituted arbitral tribunal in determining whether and to what extent prior proceedings should be repeated. This provision balances the need for procedural efficiency with the principles of fairness and due process in arbitration proceedings.

- 5 Subsequent to the closing of the proceedings, instead of replacing an arbitrator who has died or been removed by the Court pursuant to Articles 15(1) or 15(2), the Court may decide, when it considers it appropriate, that the remaining arbitrators shall continue the arbitration. In making such determination, the Court shall take into account the views of the remaining arbitrators and of the parties and such other matters that it considers appropriate in the circumstances.**

Article 15(5) of the ICC Arbitration Rules 2021 addresses a specific situation in which an arbitrator has died or been removed, and the Court is presented with the question of whether the remaining arbitrators should continue the arbitration. Let us analyse the key points of this article:

1. **Continuation of Arbitration:** This provision allows the Court, in certain circumstances, to decide that the remaining arbitrators should continue the arbitration even after the death or removal of one of the arbitrators. The goal is to avoid unnecessary delays and interruptions in the arbitration process.
2. **Flexible Approach:** Article 15(5) acknowledges that there may be cases where it is appropriate to continue the arbitration with the remaining arbitrators, rather than going through the process of appointing a replacement. This approach emphasises the importance of flexibility in arbitration proceedings.
3. **Court's Discretion:** The decision to allow the remaining arbitrators to continue the arbitration is left to the discretion of the Court. The Court is required to consider various factors before making such a determination.
4. **Consideration of Views:** The Court is directed to take into account the views of both the remaining arbitrators and the parties involved in the arbitration. This ensures that the decision is made with input from those directly affected by the continuation of the arbitration.
5. **Other Relevant Matters:** The Court's decision-making process is not limited solely to the views of the remaining arbitrators and the parties. The provision allows the Court to consider other matters that it deems appropriate in the circumstances. This enables the Court to take a holistic approach in its decision-making.
6. **Balancing Efficiency and Fairness:** The provision strikes a balance between procedural efficiency and the interests of justice. By allowing the continuation of the arbitration with the remaining arbitrators, the provision aims to prevent unnecessary delays while also considering the parties' rights to a fair and just process.
7. **Case-Specific Determination:** The decision under Article 15(5) is case-specific and may vary based on the unique circumstances of each case. This approach reflects the principle that arbitrations should be adaptable and tailored to the needs of the individual dispute.

In summary, Article 15(5) of the ICC Arbitration Rules 2021 provides the Court with the authority to decide whether the remaining arbitrators should continue an arbitration after the death or removal of an arbitrator. The Court's decision-making process involves considering the views of the remaining arbitrators and the parties, as well as other relevant matters. This provision promotes a flexible and balanced approach to handling unexpected situations that may arise during arbitration proceedings.

## THE ARBITRAL PROCEEDINGS

## ARTICLE 16 Transmission of the File to the Arbitral Tribunal

**The Secretariat shall transmit the file to the arbitral tribunal as soon as it has been constituted, provided the advance on costs requested by the Secretariat at this stage has been paid.**

Article 16 of the ICC Arbitration Rules 2021 addresses the process of transmitting the case file to the arbitral tribunal once it has been constituted. Let us analyse the key points of this article:

1. **Transmittal of the Case File:** This article outlines the responsibility of the Secretariat to transmit the case file to the arbitral tribunal. The case file typically includes all relevant documents, pleadings, submissions, evidence, and correspondence related to the arbitration proceedings.
2. **Timing:** The Secretariat is required to transmit the case file to the arbitral tribunal “as soon as it has been constituted”. This means that once the arbitrators have been appointed and the tribunal has been formed, the file should be promptly provided to the tribunal for their consideration.
3. **Advance on Costs:** The transmittal of the case file is contingent upon the payment of the “advance on costs” requested by the Secretariat at this stage. The advance on costs is a payment made by the parties to cover the anticipated costs of the arbitration proceedings, including the arbitrators’ fees and administrative expenses.
4. **Administrative Efficiency:** By transmitting the case file to the arbitral tribunal promptly after its constitution, the ICC Arbitration Rules aim to ensure that the arbitration process moves forward efficiently. This helps prevent unnecessary delays and ensures that the tribunal has access to all the relevant information needed to conduct the arbitration.
5. **Responsibility of the Secretariat:** The Secretariat plays a crucial role in facilitating the arbitration proceedings. Its responsibility includes organising and managing administrative aspects of the arbitration, such as communication between the parties and the arbitral tribunal, as well as transmitting the case file.
6. **Procedural Clarity:** Article 16 provides clarity on the procedural step of transmitting the case file to the arbitral tribunal. This clarity contributes to the overall transparency and fairness of the arbitration process.
7. **Interaction with Other Articles:** This article should be read in conjunction with other relevant provisions of the ICC Arbitration Rules, such as those governing the appointment and challenge of arbitrators, the submission of pleadings, and the general conduct of the arbitration.

In summary, Article 16 of the ICC Arbitration Rules 2021 outlines the process of transmitting the case file to the arbitral tribunal once it has been constituted. This process is contingent upon the payment of the advance on costs requested by the Secretariat. By ensuring the efficient transfer of the case file, this article helps maintain the smooth progress of the arbitration proceedings and facilitates the tribunal’s access to relevant information.

## ARTICLE 17 Party Representation

### 1 Each party must promptly inform the Secretariat, the arbitral tribunal and the other parties of any changes in its representation.

Article 17(1) of the ICC Arbitration Rules 2021 addresses the requirement for parties to promptly notify changes in their representation during the arbitration proceedings. Let us break down the key aspects of this article:

1. **Mandatory Notification:** This provision makes it mandatory for each party involved in the arbitration to promptly inform three entities: the Secretariat, the arbitral tribunal, and the other parties. The notification requirement is triggered by any changes in the party's representation.
2. **Scope of Representation:** "Representation" refers to the legal representatives or counsel who are authorised to act on behalf of a party in the arbitration proceedings. Any changes to legal representatives or counsel should be promptly communicated in accordance with this article.
3. **Transparency and Communication:** The rule's intention is to ensure transparency and efficient communication within the arbitration process. By promptly notifying all concerned parties and the tribunal about changes in representation, the parties and the tribunal can remain well-informed and conduct the proceedings smoothly.
4. **Maintaining Accurate Records:** Accurate records of party representation are crucial for maintaining the integrity of the arbitration proceedings. Knowing the authorised representatives helps in addressing correspondence, scheduling, and ensuring that all parties are properly notified of key developments.
5. **Efficiency and Fairness:** This requirement promotes the efficiency and fairness of the arbitration process. It ensures that all parties are aware of who is representing each side at any given point, which aids in avoiding confusion and procedural disputes.
6. **Preventing Delays:** By mandating prompt notification, this provision helps prevent unnecessary delays caused by misunderstandings or miscommunications related to party representation changes.
7. **Protecting Parties' Rights:** Parties have the right to be represented by counsel of their choosing. This article helps protect this right by ensuring that parties are fully aware of any changes in representation that may impact their interests.
8. **Interaction with Other Rules:** Article 17(1) should be read in conjunction with other relevant provisions of the ICC Arbitration Rules, as it relates to procedural matters and communication protocols within the arbitration.

In summary, Article 17(1) of the ICC Arbitration Rules 2021 requires each party to promptly notify the Secretariat, the arbitral tribunal, and the other parties of any changes in its representation. This rule enhances transparency, communication, and efficiency within the arbitration process and helps maintain accurate records of party representation throughout the proceedings.

- 2 The arbitral tribunal may, once constituted and after it has afforded an opportunity to the parties to comment in writing within a suitable period of time, take any measure necessary to avoid a conflict of interest of an arbitrator arising from a change in party representation, including the exclusion of new party representatives from participating in whole or in part in the arbitral proceedings.**

Article 17(2) of the ICC Arbitration Rules 2021 addresses the arbitral tribunal’s authority to address conflicts of interest arising from changes in party representation during the arbitration proceedings. Here is an analysis of the key points of this article:

1. **Conflict of Interest Management:** This provision empowers the arbitral tribunal to take measures to address conflicts of interest that may arise due to changes in party representation. Conflicts of interest can occur when new representatives are added who have connections to an arbitrator or a party that could potentially compromise the impartiality and independence of the proceedings.
2. **Tribunal’s Discretion:** The article provides the arbitral tribunal with discretion in determining the measures to be taken. This allows the tribunal to tailor its response to the specific circumstances of the case.
3. **Opportunity for Comment:** Before taking any measures, the arbitral tribunal must afford the parties an opportunity to comment in writing within a suitable period of time. This procedural step ensures fairness and due process, allowing parties to present their perspectives on the proposed measures.
4. **Avoiding Conflict of Interest:** The main purpose of this article is to prevent situations where a change in party representation might compromise the arbitrator’s impartiality or independence, which are fundamental principles in arbitration.
5. **Measures to be Taken:** The article specifies that the arbitral tribunal may take measures that are necessary to avoid conflicts of interest. These measures could include excluding new party representatives from participating in the arbitral proceedings, either in whole or in part.
6. **Balancing Interests:** The provision seeks to balance the interests of maintaining the integrity of the arbitration process with the parties’ rights to legal representation of their choosing.
7. **Ensuring Fairness:** By allowing the arbitral tribunal to manage conflicts of interest arising from changes in party representation, this article contributes to maintaining fairness, transparency, and the overall integrity of the arbitration process.
8. **Interaction with Other Rules:** Article 17(2) should be read in conjunction with other provisions of the ICC Arbitration Rules, as it interacts with the rules related to party representation and arbitrator challenges.

In summary, Article 17(2) of the ICC Arbitration Rules 2021 empowers the arbitral tribunal to take necessary measures to prevent conflicts of interest arising from changes in party representation. This provision ensures that the arbitration process remains impartial, independent, and fair, while allowing the tribunal to tailor its response based on the specific circumstances of the case.

**3 At any time after the commencement of the arbitration, the arbitral tribunal or the Secretariat may require proof of the authority of any party representatives.**

Article 17(3) of the ICC Arbitration Rules 2021 addresses the issue of proving the authority of party representatives involved in an arbitration. Here is an analysis of this article:

1. **Proof of Authority:** This provision grants both the arbitral tribunal and the Secretariat the authority to request proof of the authority of party representatives. The purpose is to ensure that individuals representing the parties have the legal authorisation to act on their behalf in the arbitration proceedings.
2. **Timing of Authority Check:** The article emphasises that this requirement can be triggered at any point after the commencement of the arbitration. This ensures that parties' representatives are verified for their authority to participate throughout the entire arbitration process.
3. **Arbitral Tribunal and Secretariat's Role:** The article highlights that both the arbitral tribunal and the Secretariat can initiate the requirement for proof of authority. This is significant because it enables oversight from both the tribunal, which has jurisdiction over the proceedings, and the administrative body (Secretariat) managing the administrative aspects.
4. **Ensuring Legitimate Representation:** The primary goal of this provision is to prevent unauthorised individuals from representing parties in the arbitration. This is crucial for maintaining the integrity of the proceedings and ensuring that the parties' rights and interests are properly represented.
5. **Preserving Fairness and Order:** By allowing the arbitral tribunal and Secretariat to request proof of authority, the provision contributes to maintaining fairness, order, and the proper functioning of the arbitration process.
6. **Variability in Legal Systems:** The requirement for proving the authority of party representatives can be influenced by the legal systems of different jurisdictions. Some jurisdictions might require specific formalities to establish authority.
7. **Avoiding Unauthorised Representation:** Unauthorised representation can lead to potential disputes, delays, or even invalidation of arbitration proceedings. This article aims to mitigate such risks.
8. **Interaction with National Laws:** The requirement for proof of authority may vary depending on the relevant national laws, regulations, and practices. Arbitral tribunals and the Secretariat should consider these factors when applying this provision.

In summary, Article 17(3) of the ICC Arbitration Rules 2021 empowers both the arbitral tribunal and the Secretariat to request proof of authority for party representatives involved in the arbitration. This provision serves as a safeguard against unauthorised representation and contributes to maintaining the legitimacy and fairness of the arbitration process.

## ARTICLE 18 Place of the Arbitration

### 1 The place of the arbitration shall be fixed by the Court, unless agreed upon by the parties.

Article 18(1) of the ICC Arbitration Rules 2021 addresses the determination of the place of arbitration in an ICC arbitration proceeding. Here is an analysis of this article:

1. **Determining the Place of Arbitration:** This article outlines the process for determining the physical location or venue where the arbitration proceedings will take place. The “place of arbitration” is crucial as it has implications for matters such as procedural rules, legal principles, and the convenience of the parties and arbitrators.
2. **Court’s Authority:** The article states that the Court, which is the International Court of Arbitration of the ICC, has the authority to fix the place of arbitration if the parties have not agreed on it. This allows for central control over this aspect of the arbitration process, ensuring consistency and avoiding disputes between the parties.
3. **Party Agreement:** If the parties have already agreed on the place of arbitration, then that agreement prevails. The article recognises the principle of party autonomy, which is a fundamental aspect of international arbitration. Parties are free to choose the place of arbitration based on their preferences and convenience.
4. **Balancing Party Autonomy and Efficiency:** While party autonomy is respected, there is an inherent balance in the process to ensure that the chosen place of arbitration aligns with practical considerations such as the availability of infrastructure, legal system, and convenience for all parties and arbitrators.
5. **Court’s Role in Efficiency:** The ICC Court’s involvement in determining the place of arbitration can contribute to the efficiency of the process. The Court can consider factors like accessibility, neutrality, and infrastructure when fixing the place, promoting a smooth arbitration process.
6. **Avoiding Disputes:** Having a provision that designates the Court to fix the place of arbitration when the parties have not agreed helps prevent potential disputes or delays that could arise if the parties could not agree on this matter themselves.
7. **International Dimension:** The ICC Arbitration Rules are widely used for international disputes, often involving parties from different jurisdictions. This provision ensures that the choice of the place of arbitration is made with due consideration of international factors and requirements.
8. **Practical Considerations:** The article does not provide specific criteria for the Court to consider when fixing the place of arbitration. However, the choice will likely take into account factors such as the parties’ convenience, neutrality, proximity to relevant evidence, and the location of legal representation.
9. **Enforcement and Compliance:** The place of arbitration can have implications for the enforceability of awards and compliance with local laws. The ICC Court’s determination aims to ensure that the chosen place is suitable for these purposes.



In summary, Article 18(1) of the ICC Arbitration Rules 2021 outlines the process for determining the place of arbitration. While parties are given the autonomy to agree on the place, the Court's authority to fix the place of arbitration when there is no agreement ensures a balanced approach that considers practical and legal considerations for the arbitration proceedings.

**2 The arbitral tribunal may, after consulting the parties, conduct hearings and meetings at any location it considers appropriate, unless otherwise agreed by the parties.**

Article 18(2) of the ICC Arbitration Rules 2021 addresses the conduct of hearings and meetings in an arbitration proceeding. Here is an analysis of this article:

1. **Arbitral Tribunal's Discretion:** This article gives the arbitral tribunal significant discretion regarding the conduct of hearings and meetings. The arbitral tribunal, composed of one or more arbitrators, has the authority to determine where such events will take place.
2. **Consulting the Parties:** Before making a decision on the location of hearings and meetings, the arbitral tribunal is required to consult with the parties. This provision reflects the importance of involving the parties and considering their views on matters that could impact the practical aspects of the arbitration proceedings.
3. **Flexibility and Adaptability:** The provision emphasises the flexibility and adaptability of the arbitration process. By allowing the arbitral tribunal to choose a location that it deems appropriate, the process can be tailored to the specific circumstances of the case and the needs of the parties and witnesses.
4. **Parties' Agreement:** While the arbitral tribunal has the discretion to determine the location, this authority is subject to any agreement between the parties. If the parties have already agreed on a specific location for hearings and meetings, that agreement will prevail over the arbitral tribunal's discretion.
5. **Efficiency and Cost Considerations:** The arbitral tribunal's ability to select a suitable location contributes to the efficiency and cost-effectiveness of the arbitration process. The tribunal can choose a location that minimises travel and accommodation expenses for the parties, witnesses, and arbitrators.
6. **Neutral and Convenient Locations:** The article allows the arbitral tribunal to select a location that is neutral and convenient for all parties, promoting a fair and equitable process for all stakeholders involved.
7. **International Dimension:** The flexibility granted by this article is particularly valuable in international arbitrations involving parties from different jurisdictions. The tribunal's choice of location can accommodate the geographic spread of parties and witnesses.
8. **Ensuring Fairness:** By requiring consultation with the parties, the article aims to ensure that the selected location does not unfairly disadvantage any party. This aligns with the principles of fairness and due process that underlie arbitration proceedings.

9. Customisation: The article acknowledges that each case is unique, and the arbitral tribunal's ability to determine the location of hearings and meetings acknowledges the diverse requirements of different disputes.

In summary, Article 18(2) of the ICC Arbitration Rules 2021 grants the arbitral tribunal the discretion to conduct hearings and meetings at locations it considers appropriate, after consulting the parties. This provision underscores the flexible nature of arbitration and aims to balance the tribunal's authority with the parties' involvement and interests.

### 3 The arbitral tribunal may deliberate at any location it considers appropriate.

Article 18(3) of the ICC Arbitration Rules 2021 addresses the arbitral tribunal's discretion regarding the location of its deliberations. Here is an analysis of this article:

1. Deliberative Process: This article highlights the arbitral tribunal's freedom to decide where it will conduct its deliberations. Deliberations involve the private discussions and considerations among the arbitrators to arrive at their decisions on the case.
2. Arbitrator Flexibility: The provision recognises the practicality of allowing arbitrators to choose a suitable location for deliberations. This flexibility can accommodate the arbitrators' schedules, preferences, and the practical considerations of their working environment.
3. Confidentiality: The provision aligns with the confidentiality principle that often characterises arbitration proceedings. By allowing the arbitral tribunal to deliberate at any suitable location, the confidentiality of these discussions can be better maintained.
4. Technology Utilisation: In modern arbitration practice, arbitrators may be geographically dispersed. The provision acknowledges the use of technology, such as video conferencing or secure digital communication platforms, for conducting remote deliberations.
5. Efficiency and Convenience: Deliberating at a location the arbitrators find most suitable can contribute to efficient decision-making. It allows them to focus on the matter at hand without concerns about logistical constraints.
6. Impact on Decision-Making: The provision indirectly underscores the importance of arbitrators having an appropriate environment for deliberations, which can contribute to well-reasoned and fair decisions.
7. Minimising Distractions: Arbitrators can select a location that minimises distractions, thus enhancing the quality of their deliberative process and fostering clear communication among themselves.
8. Collective Decision-Making: Deliberations often involve discussions among the arbitrators, sharing views, and reaching a consensus. Having the flexibility to deliberate in a conducive environment can facilitate effective communication and decision-making.

9. **Balancing with Hearings:** While the provision does not explicitly mention it, the choice of location for deliberations should also be considered in relation to the locations chosen for hearings and meetings, if any, to ensure consistency and practicality.
10. **Principle of Autonomy:** The article reflects the fundamental principle of party autonomy, which allows the arbitral tribunal to manage procedural matters in a manner that suits the specific characteristics of the case.

In summary, Article 18(3) of the ICC Arbitration Rules 2021 gives the arbitral tribunal the discretion to deliberate at any location it considers appropriate. This provision acknowledges the practical considerations involved in the arbitrators' decision-making process and aims to ensure efficient, confidential, and effective deliberations.

### **ARTICLE 19 Rules Governing the Proceedings**

**The proceedings before the arbitral tribunal shall be governed by the Rules and, where the Rules are silent, by any rules which the parties or, failing them, the arbitral tribunal may settle on, whether or not reference is thereby made to the rules of procedure of a national law to be applied to the arbitration.**

Article 19 of the ICC Arbitration Rules 2021 addresses the procedural framework that governs the proceedings before the arbitral tribunal. Here is an analysis of this article:

1. **Primary Governing Framework:** The article establishes the fundamental principle that the proceedings before the arbitral tribunal are primarily governed by the ICC Arbitration Rules 2021. These rules serve as the foundational framework that outlines the procedural steps, rights, and responsibilities of the parties and the tribunal throughout the arbitration process.
2. **Gap-Filling Mechanism:** Article 19 recognises that there may be situations where the ICC Arbitration Rules do not expressly address certain procedural matters. In such cases, the article provides a mechanism for filling these gaps. This can occur through the application of other rules that the parties or the arbitral tribunal may agree upon.
3. **Parties' Autonomy:** The article highlights the principle of party autonomy, which is a fundamental aspect of arbitration. It allows the parties to agree on the rules that will apply to the proceedings in addition to the ICC Arbitration Rules. This flexibility enables the parties to tailor the arbitration process to their specific needs and preferences.
4. **Arbitral Tribunal's Role:** Article 19 also acknowledges that in cases where the parties have not agreed on supplementary rules, the arbitral tribunal has the authority to determine the rules that will govern the proceedings. This discretion ensures that the tribunal can adapt the procedure to the unique circumstances of each case.
5. **Reference to National Law:** The article contemplates the possibility of referring to the rules of procedure of a national law in the absence of specific agreements between the parties or determinations by the arbitral tribunal. However, it is important to note that such reference is not automatic but rather discretionary and contingent upon the parties' intentions or the tribunal's decision.

6. **Balancing Standardisation and Flexibility:** By allowing the parties and the arbitral tribunal to agree on supplemental rules or procedures, Article 19 strikes a balance between the standardised framework provided by the ICC Arbitration Rules and the flexibility required to accommodate the specific requirements of each dispute.
7. **Consistency with International Arbitration Practice:** The provision aligns with the general practice of international arbitration, where parties often have the autonomy to agree on procedural matters. It reflects the notion that arbitration allows parties to tailor the process to their preferences, while still adhering to fundamental principles of fairness and due process.

In summary, Article 19 of the ICC Arbitration Rules 2021 establishes the primary role of the ICC Arbitration Rules in governing the proceedings before the arbitral tribunal. It also recognises the autonomy of the parties and the tribunal to agree on additional rules or procedures in cases where the ICC Rules are silent on specific matters. This article embodies the flexibility and adaptability that are inherent to arbitration, while also ensuring that essential procedural safeguards are maintained throughout the process.

#### **ARTICLE 20 Language of the Arbitration**

**In the absence of an agreement by the parties, the arbitral tribunal shall determine the language or languages of the arbitration, due regard being given to all relevant circumstances, including the language of the contract.**

Article 20 of the ICC Arbitration Rules 2021 addresses the important matter of determining the language or languages to be used in the arbitration proceedings. Here is an analysis of this article:

1. **Language Determination:** The article outlines the procedure for determining the language or languages that will be used in the arbitration proceedings. The language of the arbitration is a significant aspect, as it affects communication between the parties, arbitrators, and other participants.
2. **Party Agreement:** The article starts by stating that the determination of the language(s) of the arbitration is based on the absence of an agreement by the parties on this matter. This implies that parties have the opportunity to agree on the language(s) upfront in their arbitration agreement or through subsequent agreement.
3. **Arbitral Tribunal's Role:** In the absence of a specific agreement by the parties, the responsibility of determining the language(s) of the arbitration falls upon the arbitral tribunal. This demonstrates the tribunal's authority to make decisions on procedural matters, ensuring that the arbitration process moves forward even in the absence of party agreement.
4. **Relevance of Circumstances:** The arbitral tribunal's determination of the language(s) must take into account "all relevant circumstances". This language recognises that the choice of language should consider factors beyond the preferences of the parties, such as the location of the parties, the location of relevant evidence, and the language of the contract itself.

5. **Importance of Contract Language:** The article specifically emphasises that due regard should be given to the language of the contract. This underscores the principle that the language used in the contract reflects the parties' intention and understanding. Therefore, using the contract language in the arbitration process helps maintain consistency and clarity.
6. **Communication and Efficiency:** The choice of language(s) has implications for communication among the parties and arbitrators, as well as the efficiency of the arbitration process. Ensuring that participants can fully understand and communicate in the chosen language(s) is crucial for a fair and effective process.
7. **Balance of Interests:** Article 20 seeks to strike a balance between the parties' interests and the practical requirements of conducting a successful arbitration. By giving due regard to all relevant circumstances, including the contract language, the article aims to ensure that language choice aligns with the needs of the parties and the arbitration process.
8. **Common Practice in Arbitration:** The article reflects a common practice in international arbitration, where language choice is carefully considered to facilitate effective communication and ensure fairness. It acknowledges the diverse nature of international commercial contracts and the need to accommodate parties from different linguistic backgrounds.

In summary, Article 20 of the ICC Arbitration Rules 2021 establishes the procedure for determining the language or languages of the arbitration proceedings in the absence of an agreement by the parties. The article highlights the arbitral tribunal's authority to make this determination, guided by all relevant circumstances and particularly by the language of the contract. This approach seeks to balance the parties' interests, effective communication, and the practical efficiency of the arbitration process.

## ARTICLE 21 Applicable Rules of Law

- 1 The parties shall be free to agree upon the rules of law to be applied by the arbitral tribunal to the merits of the dispute. In the absence of any such agreement, the arbitral tribunal shall apply the rules of law which it determines to be appropriate.**

Article 21(1) of the ICC Arbitration Rules 2021 addresses the important issue of the applicable rules of law in the arbitration proceedings. Here is an analysis of this article:

1. **Party Autonomy:** The article starts by emphasising the principle of party autonomy. It affirms that the parties have the freedom to agree upon the rules of law that will govern the merits of their dispute. This reflects the widely recognised concept in international arbitration that parties should have the freedom to shape the procedural and substantive aspects of their arbitration.
2. **Choice of Law:** The parties' ability to choose the rules of law allows them to opt for a legal framework with which they are familiar, that aligns with their contract, or that suits their commercial expectations. This choice provides parties with a degree of control over the substantive legal principles that will be applied to resolve their dispute.

3. **Default Rule:** If the parties have not expressly agreed upon the applicable rules of law, the article sets out the default rule: the arbitral tribunal shall apply the rules of law it determines to be appropriate. This reflects a common approach in international arbitration where the tribunal, in the absence of party agreement, has the authority to select the legal principles that will guide its decision-making.
4. **Tribunal Discretion:** By granting the arbitral tribunal the discretion to determine the appropriate rules of law, the article recognises the tribunal's role as an independent decision-maker. This discretion enables the tribunal to select the most suitable legal principles for the case at hand, considering the factual and legal complexities involved.
5. **Balancing Interests:** The article strikes a balance between party autonomy and tribunal discretion. While parties have the right to choose their governing law, the absence of a choice empowers the tribunal to make a decision in the interest of fairness and justice.
6. **Expertise and Neutrality:** The arbitral tribunal's determination of the appropriate rules of law may be influenced by factors such as the parties' legal backgrounds, the subject matter of the dispute, and international legal principles. This approach ensures that the tribunal brings its expertise and neutrality to bear in selecting the applicable law.
7. **Transparency and Predictability:** While the article grants discretion to the arbitral tribunal, the tribunal is still expected to provide reasoned and well-justified decisions regarding the choice of law. This enhances transparency and predictability for the parties and helps ensure that parties can understand the legal basis for the tribunal's decisions.
8. **Legal Pluralism:** The flexibility in selecting the appropriate rules of law allows international arbitration to accommodate legal pluralism, wherein arbitrators can choose from various legal sources to craft a decision that aligns with international trade practices and commercial norms.

In summary, Article 21(1) of the ICC Arbitration Rules 2021 emphasises party autonomy in choosing the rules of law that will apply to the merits of the dispute. It provides a default rule that empowers the arbitral tribunal to determine the appropriate rules of law if the parties have not agreed upon them. This approach maintains a balance between party autonomy and tribunal discretion, ensuring that the arbitration process is fair, transparent, and adapted to the specific circumstances of each case.

## **2 The arbitral tribunal shall take account of the provisions of the contract, if any, between the parties and of any relevant trade usages.**

Article 21(2) of the ICC Arbitration Rules 2021 outlines additional factors that the arbitral tribunal must consider when determining the applicable rules of law in an arbitration. Here is an analysis of this article:

1. **Contractual Provisions:** This provision underscores the importance of the parties' contract in shaping the applicable rules of law. The arbitral tribunal is required to take into account the provisions of the contract that may specify the governing law for the dispute. This reflects the principle that parties' intentions, as manifested in their contract, should guide the resolution of their disputes.

2. **Flexibility and Context:** By considering the contract’s provisions, the arbitral tribunal can contextualise the dispute within the contractual framework. This approach enhances the tribunal’s understanding of the parties’ intentions, expectations, and agreements, allowing it to apply the most relevant legal principles to the case.
3. **Relevance of Trade Usages:** The article also directs the arbitral tribunal to consider any relevant trade usages. Trade usages are customary practices or standards within a particular industry or trade that may have contractual significance. By acknowledging the relevance of trade usages, the article reflects the practical realities of international commerce and the need to apply rules that align with industry norms.
4. **Uniformity and Consistency:** Considering the contract and relevant trade usages helps promote uniformity and consistency in international arbitration outcomes. It ensures that decisions are grounded in both the parties’ agreement and established practices within their industry.
5. **Parties’ Expectations:** The article recognises that parties enter into contracts with specific legal expectations and that these expectations may influence their choice of law. By taking into account the contract and trade usages, the arbitral tribunal aims to respect and give effect to those expectations.
6. **Avoiding Conflicts:** Considering the contract and trade usages also helps avoid conflicts or inconsistencies between the chosen rules of law and the parties’ actual contractual arrangements or industry practices.
7. **Comprehensive Decision-Making:** The requirement to consider the contract and trade usages reflects the holistic nature of international arbitration decisions. The tribunal is expected to consider not only the legal principles but also the specific context and intentions of the parties.
8. **Balancing Factors:** Article 21(2) helps arbitrators strike a balance between the rules of law that the tribunal determines to be appropriate (as per Article 21(1)) and the specific contractual and industry-related elements that could influence the outcome.

In summary, Article 21(2) of the ICC Arbitration Rules 2021 enhances the tribunal’s decision-making process by directing it to consider the provisions of the parties’ contract and any relevant trade usages when determining the applicable rules of law. This provision ensures that arbitration decisions are grounded in both the parties’ agreements and the practical realities of their industry, fostering fairness, clarity, and consistency in the arbitral process.

### **3 The arbitral tribunal shall assume the powers of an amiable compositeur or decide ex aequo et bono only if the parties have agreed to give it such powers.**

Article 21(3) of the ICC Arbitration Rules 2021 addresses the authority of the arbitral tribunal to act as an amiable compositeur or decide ex aequo et bono. Here is an analysis of this article:

1. **Amiable Compositeur and Ex Aequo et Bono:** These are alternative dispute resolution principles that allow the arbitral tribunal to resolve a dispute based on general considerations of fairness and equity rather than strict application of legal rules. “Amiable

compositeur” refers to the arbitrator acting as a “friendly mediator” and deciding based on principles of equity, while “ex aequo et bono” refers to deciding based on what is just and fair without strictly applying existing legal rules.

2. **Consensual Nature:** The key principle emphasised in Article 21(3) is the consensual nature of adopting these alternative decision-making approaches. The arbitral tribunal is only authorised to assume the powers of an amiable compositeur or decide ex aequo et bono if the parties have explicitly agreed to grant it such powers.
3. **Respecting Party Autonomy:** The ICC Arbitration Rules respect the parties’ autonomy to choose the governing law and the method by which their dispute will be resolved. Article 21(3) underscores that the tribunal should not apply amiable compositeur or ex aequo et bono principles unless the parties have specifically chosen this approach.
4. **Balancing Legal Principles and Equity:** While arbitration often emphasises applying the parties’ chosen rules of law, there are cases where parties might desire a more flexible approach that considers equitable considerations. Article 21(3) ensures that such an approach is only taken when the parties have consciously decided to depart from strict legal rules.
5. **Limits to the Tribunal’s Authority:** By requiring parties’ agreement for amiable compositeur or ex aequo et bono decisions, Article 21(3) safeguards against arbitrators unilaterally imposing their own notions of fairness, thereby preserving the integrity of the arbitral process.
6. **Clarity in Decision-Making:** The provision promotes clarity and certainty in the arbitral process. Parties are aware upfront whether their arbitration will be decided based on legal principles or broader notions of fairness, ensuring that they have predictability and confidence in the proceedings.
7. **Encouraging Party Participation:** By requiring parties’ consent, Article 21(3) encourages active participation in shaping the decision-making framework of the arbitration. This fosters cooperation and transparency throughout the process.
8. **Customisation of Dispute Resolution:** The article highlights the flexibility of arbitration and the ability of parties to customise their dispute resolution process based on their specific preferences and needs.

In summary, Article 21(3) of the ICC Arbitration Rules 2021 emphasises that the arbitral tribunal can adopt the roles of an amiable compositeur or decide ex aequo et bono only if the parties have agreed to give it such authority. This provision reflects the parties’ autonomy to shape the arbitral process according to their preferences and promotes clarity, fairness, and predictability in arbitration proceedings.



## ARTICLE 22 Conduct of the Arbitration

- 1 The arbitral tribunal and the parties shall make every effort to conduct the arbitration in an expeditious and cost-effective manner, having regard to the complexity and value of the dispute.**

Article 22(1) of the ICC Arbitration Rules 2021 addresses the principles of efficiency and cost-effectiveness in conducting arbitration proceedings. Here is an analysis of this article:

- 1. Efficiency and Cost-Effectiveness:** This provision underscores the importance of conducting the arbitration process in a manner that is both efficient and cost-effective. It acknowledges that arbitration is intended to provide a timely and streamlined resolution to disputes.
- 2. Arbitral Tribunal and Parties:** Article 22(1) places the responsibility on both the arbitral tribunal and the parties to collectively work towards achieving efficiency and cost-effectiveness in the arbitration proceedings.
- 3. Collaborative Approach:** The use of the term “every effort” implies a collaborative and cooperative approach between the arbitral tribunal and the parties. This indicates that all stakeholders involved are expected to contribute to the goal of ensuring an expeditious and cost-effective process.
- 4. Balancing Complexity and Value:** The provision acknowledges that different disputes may vary in terms of complexity and value. Therefore, the efforts to ensure efficiency and cost-effectiveness should be adapted to the specific characteristics of each case.
- 5. Tailored Approach:** The reference to “having regard to the complexity and value of the dispute” highlights the need for a balanced and proportionate approach. It suggests that while the goal is efficiency, it should not compromise the thorough consideration of complex issues.
- 6. Avoiding Delays:** One of the key objectives of this provision is to prevent unnecessary delays in the arbitration process. Delays can lead to increased costs and hinder the parties’ ability to obtain a timely resolution.
- 7. Resource Allocation:** The provision encourages prudent allocation of resources, including time and financial resources. This can involve focusing on essential issues and avoiding unnecessary procedural steps that could lead to delays.
- 8. Minimising Costs:** By emphasising cost-effectiveness, the article aims to control the overall costs of the arbitration. Parties are encouraged to avoid unnecessary legal actions or motions that could escalate expenses.
- 9. Party Participation:** Parties are expected to actively contribute to the efficient and cost-effective conduct of the proceedings. This might involve timely submission of documents, adherence to procedural deadlines, and cooperation in scheduling hearings.
- 10. Preserving Due Process:** While efficiency is important, the article does not suggest sacrificing due process or the parties’ right to present their case adequately. Instead, it

encourages the use of tools and strategies that expedite proceedings without compromising fairness.

11. Adaptive Approach: The provision recognises that the approach to achieving efficiency and cost-effectiveness may vary depending on the circumstances of each case. It allows for flexibility in tailoring the process to suit the particular needs of the dispute.

In summary, Article 22(1) of the ICC Arbitration Rules 2021 emphasises the shared responsibility of the arbitral tribunal and the parties to conduct arbitration proceedings in a manner that is efficient and cost-effective. While seeking to expedite the process, this article also takes into consideration the complexity and value of the dispute, ensuring a balanced and proportionate approach to achieving resolution.

**2 In order to ensure effective case management, after consulting the parties, the arbitral tribunal shall adopt such procedural measures as it considers appropriate, provided that they are not contrary to any agreement of the parties. Such measures may include one or more of the case management techniques described in Appendix IV.**

Article 22(2) of the ICC Arbitration Rules 2021 focuses on effective case management in arbitration proceedings. This provision empowers the arbitral tribunal to adopt procedural measures to ensure the efficient and well-organised conduct of the arbitration. Here is an analysis of this article:

1. Effective Case Management: The primary objective of Article 22(2) is to emphasise the importance of effective case management throughout the arbitration process. This involves managing the proceedings in a way that promotes efficiency, fairness, and the timely resolution of the dispute.
2. Tribunal's Authority: The article grants the arbitral tribunal significant authority to adopt procedural measures. This authority is subject to consultation with the parties and is designed to facilitate the smooth progression of the arbitration.
3. Flexibility: The provision acknowledges that different cases may require different approaches to case management. The arbitral tribunal is given flexibility to tailor procedural measures to suit the unique characteristics and needs of each dispute.
4. Parties' Consultation: The article highlights the importance of consulting the parties before adopting procedural measures. This consultative approach promotes transparency and allows the parties to provide input on the proposed measures.
5. Compliance with Agreements: Procedural measures adopted by the arbitral tribunal must not be contrary to any agreements made by the parties. This underscores the principle of party autonomy and respect for the terms of the parties' arbitration agreement.
6. Appendix IV: The article makes specific reference to "Appendix IV", which contains a list of case management techniques. These techniques are designed to streamline the proceedings and may include tools such as early determination of issues, document production, and expert reports.

7. **Balancing Efficiency and Fairness:** The adoption of case management measures aims to strike a balance between achieving efficiency and ensuring the parties' right to a fair and reasonable opportunity to present their case.
8. **Expertise of the Tribunal:** The arbitral tribunal's discretion in adopting procedural measures acknowledges its expertise in managing the arbitration process. This expertise helps in identifying measures that are best suited to the specific case.
9. **Timely Resolution:** Effective case management supports the goal of timely resolution. By proactively addressing potential delays and inefficiencies, the arbitral tribunal contributes to expediting the arbitration process.
10. **Improved Communication:** Consultation with the parties regarding procedural measures fosters communication and collaboration between the tribunal and the parties. This communication helps in identifying potential issues early and addressing them promptly.
11. **Responsive Approach:** The article underscores the dynamic and responsive nature of case management. The arbitral tribunal may adjust procedural measures as the case progresses, ensuring that the proceedings remain efficient and effective.

In summary, Article 22(2) of the ICC Arbitration Rules 2021 empowers the arbitral tribunal to adopt procedural measures for effective case management. These measures are aimed at promoting efficiency, fairness, and timely resolution, while taking into account the parties' agreements and the specific characteristics of the dispute. The provision reinforces the arbitral tribunal's role in shaping the arbitration process to achieve these objectives.

**3 Upon the request of any party, the arbitral tribunal may make orders concerning the confidentiality of the arbitration proceedings or of any other matters in connection with the arbitration and may take measures for protecting trade secrets and confidential information.**

Article 22(3) of the ICC Arbitration Rules 2021 addresses the issue of confidentiality in arbitration proceedings. This provision recognises the importance of protecting sensitive information and trade secrets while providing the arbitral tribunal with the authority to issue orders and take measures to ensure confidentiality. Here is an analysis of this article:

1. **Confidentiality:** The article underscores the significance of maintaining confidentiality in arbitration proceedings. Confidentiality is essential to encourage parties to participate in arbitration without fear that sensitive information will be publicly disclosed.
2. **Party Request:** The provision allows any party to request the arbitral tribunal to make orders regarding the confidentiality of the arbitration proceedings or any other matters related to the arbitration. This empowers parties to proactively seek protection for confidential information.
3. **Tribunal's Discretion:** The arbitral tribunal is granted discretion to decide whether to issue orders or take measures to protect confidentiality. This discretion allows the tribunal to consider the specific circumstances of the case, including the nature of the information and the potential impact of disclosure.

4. **Scope of Orders:** The orders made by the arbitral tribunal can cover various aspects of the arbitration proceedings, including the confidentiality of documents, hearings, submissions, and the final award. This ensures a comprehensive approach to maintaining confidentiality.
5. **Protection of Trade Secrets:** The provision acknowledges the importance of protecting trade secrets and confidential information. This is particularly relevant in commercial disputes where proprietary information may be at stake.
6. **Balancing Interests:** While confidentiality is important, the arbitral tribunal must also balance it against the parties' right to a fair and transparent process. This means that confidentiality orders should not unduly restrict the presentation of evidence or the ability to challenge claims.
7. **Ensuring Neutrality:** The provision reinforces the arbitral tribunal's neutral role in overseeing the proceedings. The tribunal's authority to issue confidentiality orders ensures that sensitive information remains protected regardless of the parties' interests.
8. **Party Autonomy:** The article respects party autonomy by allowing a party to request confidentiality measures. This allows parties to have a say in the protection of their sensitive information.
9. **Flexibility:** The provision is flexible, allowing the arbitral tribunal to tailor its orders to the specific circumstances of the case. This flexibility ensures that confidentiality measures are proportionate to the potential harm caused by disclosure.
10. **Transparency:** While the proceedings are confidential, the parties involved should be aware of the measures being taken to protect confidentiality. This transparency helps maintain trust in the arbitration process.
11. **Arbitral Tribunal's Expertise:** The article recognises the expertise of the arbitral tribunal in managing the arbitration proceedings, including matters of confidentiality. The tribunal's familiarity with the case allows it to make informed decisions on confidentiality orders.

In summary, Article 22(3) of the ICC Arbitration Rules 2021 addresses the issue of confidentiality in arbitration proceedings. It allows parties to request confidentiality orders and empowers the arbitral tribunal to take measures to protect trade secrets, sensitive information, and maintain the confidentiality of the proceedings. This provision reflects the delicate balance between confidentiality and transparency in arbitration.

**4 In all cases, the arbitral tribunal shall act fairly and impartially and ensure that each party has a reasonable opportunity to present its case.**

Article 22(4) of the ICC Arbitration Rules 2021 emphasises the principles of fairness, impartiality, and the equal treatment of the parties in the conduct of arbitration proceedings. This provision underscores the arbitral tribunal's responsibility to ensure that each party has a meaningful and equitable opportunity to present its case. Here is an analysis of this article:

1. **Principle of Fairness:** The article establishes the fundamental principle of fairness in arbitration proceedings. This principle is essential to maintain the integrity of the arbitration process and uphold the parties' confidence in the outcome.
2. **Impartiality of the Arbitral Tribunal:** The provision underscores the duty of the arbitral tribunal to act impartially, free from bias or favouritism towards any party. This ensures that the tribunal's decisions are not influenced by extraneous factors that could compromise the fairness of the proceedings.
3. **Equal Opportunity:** The article highlights the importance of affording each party an equal and reasonable opportunity to present its case. This includes the right to be heard, to present evidence, and to respond to arguments and evidence presented by the opposing party.
4. **Protection of Due Process:** By requiring the arbitral tribunal to provide a reasonable opportunity to both parties, the provision safeguards the due process rights of the parties. It prevents one party from being unfairly disadvantaged in the arbitration proceedings.
5. **Balanced Proceedings:** The article aims to ensure that the proceedings are conducted in a balanced manner, where both parties are treated equitably and have the chance to make their arguments and substantiate their claims.
6. **Preservation of Neutrality:** The provision reinforces the arbitral tribunal's role as an impartial and neutral decision-maker. This is crucial to maintain the integrity and legitimacy of the arbitration process.
7. **Quality of Decisions:** Fairness and equal opportunity contribute to well-reasoned and well-founded decisions by the arbitral tribunal. A thorough consideration of each party's arguments enhances the overall quality of the final award.
8. **Avoiding Procedural Injustice:** By ensuring that each party is given adequate time and opportunities to present its case, the provision mitigates the risk of procedural injustice that may arise if one party's rights are curtailed.
9. **Party Autonomy:** While the article mandates that the arbitral tribunal must ensure fairness and equal opportunity, it does not dictate the specific procedures to be followed. This respects the principle of party autonomy, allowing the parties and the tribunal to determine the best means of presenting their cases.
10. **Compliance with Ethical Standards:** The article aligns with ethical standards for arbitrators, which require them to conduct proceedings fairly and impartially, irrespective of the parties involved.

In summary, Article 22(4) of the ICC Arbitration Rules 2021 underscores the principles of fairness, impartiality, and equal opportunity in arbitration proceedings. The provision reinforces the arbitral tribunal's duty to ensure that each party has a reasonable opportunity to present its case and that the proceedings are conducted with the utmost fairness and integrity.

## 5 The parties undertake to comply with any order made by the arbitral tribunal.

Article 22(5) of the ICC Arbitration Rules 2021 emphasises the parties' obligation to comply with orders issued by the arbitral tribunal during the course of the arbitration proceedings. Here is an analysis of this article:

1. **Enforcement of Tribunal's Authority:** This article highlights the authority of the arbitral tribunal to issue orders and directions to guide the arbitration proceedings. It emphasises that parties are legally bound to respect and adhere to these orders.
2. **Efficiency and Orderliness:** By requiring parties to comply with the tribunal's orders, the provision promotes the orderly and efficient conduct of arbitration proceedings. This ensures that the arbitration process runs smoothly and according to the established procedures.
3. **Fostering a Respectful Environment:** The article fosters an environment of mutual respect between the parties and the tribunal. Parties are expected to honour the tribunal's decisions and directions, even if they disagree with them, to maintain the integrity of the process.
4. **Preserving Procedural Fairness:** Compliance with tribunal orders helps maintain the fairness of the proceedings by ensuring that all parties adhere to the established procedural rules and deadlines. This prevents one party from gaining an unfair advantage due to non-compliance.
5. **Enhancing Arbitral Tribunal's Role:** The provision reinforces the tribunal's role as a decision-maker and ensures that its directions are followed by the parties. This is essential for the effective functioning of the arbitration process.
6. **Avoiding Contemptuous Behaviour:** By committing parties to comply with tribunal orders, the article discourages contemptuous behaviour or deliberate non-compliance, which could disrupt the proceedings and undermine the tribunal's authority.
7. **Preserving Integrity of the Award:** Ensuring that parties adhere to orders issued by the tribunal helps maintain the integrity of the final award. If parties fail to comply with procedural directives, the validity of the award could be called into question.
8. **Maintaining Confidence in Arbitration:** Upholding the parties' commitment to comply with tribunal orders contributes to the credibility and reputation of the arbitration process. This encourages parties to participate fully and adhere to the decisions of the tribunal.
9. **Binding Nature of Arbitration:** The article reaffirms that arbitration is a legally binding process, and the decisions of the tribunal are to be respected and followed by the parties.
10. **Enforcement Mechanism:** In case of non-compliance, the tribunal may take appropriate measures to address the situation, which may include warnings, sanctions, or other appropriate remedies.

In conclusion, Article 22(5) of the ICC Arbitration Rules 2021 underscores the importance of parties' compliance with orders issued by the arbitral tribunal. By adhering to these orders, parties contribute

to the smooth and orderly progression of the arbitration proceedings and help maintain the integrity of the process.

#### ARTICLE 23 Terms of Reference

- 1 As soon as it has received the file from the Secretariat, the arbitral tribunal shall draw up, on the basis of documents or in the presence of the parties and in the light of their most recent submissions, a document defining its Terms of Reference. This document shall include the following particulars:**
- a) the names in full, description, address and other contact details of each of the parties and of any person(s) representing a party in the arbitration;**
  - b) the addresses to which notifications and communications arising in the course of the arbitration may be made;**
  - c) a summary of the parties' respective claims and of the relief sought by each party, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims;**
  - d) unless the arbitral tribunal considers it inappropriate, a list of issues to be determined;**
  - e) the names in full, address and other contact details of each of the arbitrators;**
  - f) the place of the arbitration; and**
  - g) particulars of the applicable procedural rules and, if such is the case, reference to the power conferred upon the arbitral tribunal to act as amiable compositeur or to decide ex aequo et bono.**

Article 23(1) of the ICC Arbitration Rules 2021 outlines the requirements and contents of the Terms of Reference, a document that the arbitral tribunal is required to draw up as soon as it receives the case file from the Secretariat. Here is an analysis of this article:

1. **Purpose of the Terms of Reference:** The Terms of Reference serve as a foundational document that defines the scope and framework of the arbitration proceedings. It ensures that all parties and arbitrators are on the same page regarding the key aspects of the case.
2. **Parties and Representatives:** The article mandates that the Terms of Reference include the full names, descriptions, addresses, and contact details of each party and their representatives. This information is crucial for communication and correspondence throughout the arbitration.
3. **Communication Addresses:** The inclusion of addresses for communication ensures that parties and arbitrators know where to send notifications, submissions, and other important communications related to the arbitration.

4. **Summary of Claims and Relief:** The Terms of Reference should contain a concise summary of the claims brought by each party and the specific relief sought. This helps clarify the main issues in dispute and guides the proceedings.
5. **Quantified Claims and Monetary Value:** Parties are required to provide quantified claims, and if possible, an estimated monetary value for other claims. This information aids the tribunal in understanding the magnitude of the dispute.
6. **List of Issues:** Unless the tribunal finds it inappropriate, a list of issues to be determined in the arbitration is included. This list outlines the key points of contention and helps focus the proceedings.
7. **Arbitrators' Details:** The names, addresses, and contact details of each arbitrator are included, ensuring transparency and proper identification of the individuals involved in the arbitration.
8. **Place of Arbitration:** The place where the arbitration proceedings will be conducted is specified. This can influence procedural matters, including the applicable laws and venue for hearings.
9. **Applicable Procedural Rules:** The Terms of Reference should outline the procedural rules that govern the arbitration, including any rules regarding the tribunal's authority to decide *ex aequo et bono* or act as *amiable compositeur*.
10. **Clarity and Efficiency:** By requiring specific details in the Terms of Reference, this article aims to enhance clarity and efficiency in the arbitration process. This ensures that all parties are well-informed about the procedural framework and can prepare accordingly.
11. **Initial Document for the Tribunal:** The Terms of Reference becomes an initial document for the tribunal's reference and guides its decision-making throughout the proceedings.
12. **Preserving Consistency:** The document also helps prevent misunderstandings or disputes about the fundamental aspects of the arbitration, promoting consistency in the proceedings.
13. **Collaborative Process:** The process of creating the Terms of Reference may involve collaboration between the tribunal and the parties, allowing for input from all sides to ensure accuracy and fairness.

In conclusion, Article 23(1) of the ICC Arbitration Rules 2021 outlines the necessary contents of the Terms of Reference, an important document that sets the foundation for the arbitration proceedings. It aims to ensure transparency, clarity, and effective communication between the parties and the tribunal while providing a roadmap for the resolution of the dispute.

**2 The Terms of Reference shall be signed by the parties and the arbitral tribunal. Within 30 days from the date on which the file has been transmitted to it, the arbitral tribunal shall transmit to the Court the Terms of Reference signed by it and by the parties. The Court may extend this**



**time limit pursuant to a reasoned request from the arbitral tribunal or on its own initiative if it decides it is necessary to do so.**

Article 23(2) of the ICC Arbitration Rules 2021 outlines the procedures regarding the signing and transmission of the Terms of Reference in an arbitration case. Here is an analysis of this article:

1. **Significance of the Terms of Reference:** The Terms of Reference serve as a foundational document for the arbitration proceedings, outlining essential details such as the scope of the dispute, the parties' claims, and the procedural framework.
2. **Signature Requirement:** According to this article, the Terms of Reference must be signed by both the parties involved in the arbitration and the members of the arbitral tribunal. This requirement ensures that all parties and arbitrators agree on the content and scope of the arbitration process.
3. **Timeline for Transmission:** Within 30 days from the date the arbitral tribunal receives the case file from the Secretariat, the signed Terms of Reference are to be transmitted to the ICC Court. This ensures a timely and efficient progression of the arbitration proceedings.
4. **Role of the ICC Court:** The ICC Court has a supervisory role over the arbitration process, and the transmission of the signed Terms of Reference allows the Court to review and confirm that the key aspects of the arbitration are properly documented and agreed upon.
5. **Time Limit Extension:** The Court has the authority to extend the 30-day time limit for transmitting the signed Terms of Reference. Such an extension can be granted based on a reasoned request from the arbitral tribunal or even on the Court's own initiative, should it determine that an extension is necessary.
6. **Flexibility:** Granting the Court the authority to extend the time limit acknowledges that unexpected circumstances or complexities may arise during the early stages of arbitration, allowing for flexibility in the process.
7. **Efficiency and Procedural Management:** By requiring the timely transmission of the signed Terms of Reference, the article promotes procedural efficiency and facilitates proper case management.
8. **Formalisation of the Proceedings:** The signed Terms of Reference mark a formal step in the arbitration process, providing a documented basis for the proceedings and ensuring that all parties are on the same page.
9. **Transparency and Clarity:** The requirement for signatures from both the parties and the tribunal underscores transparency and accountability in the arbitration process, minimising the potential for later disputes regarding the agreed-upon terms.

In conclusion, Article 23(2) of the ICC Arbitration Rules 2021 establishes procedures for the signing and transmission of the Terms of Reference. This article promotes transparency, efficiency, and proper case management in arbitration proceedings while allowing for necessary extensions under appropriate circumstances.

- 3 If any of the parties refuses to take part in the drawing up of the Terms of Reference or to sign the same, they shall be submitted to the Court for approval. When the Terms of Reference have been signed in accordance with Article 23(2) or approved by the Court, the arbitration shall proceed.**

Article 23(3) of the ICC Arbitration Rules 2021 addresses situations where a party refuses to participate in the drawing up of the Terms of Reference or declines to sign the Terms of Reference. Here is an analysis of this article:

1. **Participation in the Drawing Up of Terms of Reference:** The Terms of Reference outline essential details about the arbitration, and they are drawn up through a collaborative process involving the parties and the arbitral tribunal. This collaborative approach ensures that all parties have a say in the scope and procedural framework of the arbitration.
2. **Refusal to Participate or Sign:** If one of the parties refuses to participate in the process of drawing up the Terms of Reference or declines to sign the document, it can potentially delay the progress of the arbitration and hinder the establishment of a clear and agreed-upon procedural framework.
3. **Submission to the Court for Approval:** In cases where a party refuses to participate or sign, Article 23(3) stipulates that the unsigned Terms of Reference shall be submitted to the ICC Court for approval. The Court's involvement in approving the Terms of Reference ensures that the arbitration process is not stalled due to a party's refusal to cooperate.
4. **Preservation of Arbitration Proceeding:** The ultimate goal is to ensure that the arbitration process proceeds despite any obstacles, such as a party's refusal to cooperate. By allowing the Court to approve the Terms of Reference, the article prevents a single party's refusal from derailing the entire arbitration proceeding.
5. **Ensuring Fairness and Efficiency:** The involvement of the Court in approving the Terms of Reference in cases of refusal safeguards the fairness and efficiency of the arbitration process. It prevents any party from using the refusal tactic to manipulate the arbitration timeline or the procedural framework.
6. **Balancing Parties' Rights:** While the article ensures that arbitration proceeds, it also respects parties' rights by allowing the Court to assess the Terms of Reference's content for fairness and consistency with established practices.
7. **Certainty and Clarity:** Once the Terms of Reference are signed in accordance with Article 23(2) or approved by the Court under Article 23(3), the arbitration process can proceed with a clear and agreed-upon understanding of the scope and procedural aspects of the dispute resolution.

In summary, Article 23(3) of the ICC Arbitration Rules 2021 serves to address situations where a party refuses to participate in the drawing up of the Terms of Reference or sign them. By allowing the unsigned Terms of Reference to be submitted to the Court for approval, the article ensures that the arbitration process can move forward, safeguarding fairness and efficiency while respecting the rights of all parties involved.

- 4 After the Terms of Reference have been signed or approved by the Court, no party shall make new claims which fall outside the limits of the Terms of Reference unless it has been authorized to do so by the arbitral tribunal, which shall consider the nature of such new claims, the stage of the arbitration and other relevant circumstances.**

Article 23(4) of the ICC Arbitration Rules 2021 addresses the scope of claims that parties can make once the Terms of Reference have been signed or approved by the Court. Here is an analysis of this article:

Scope Limitation: Article 23(4) establishes a limitation on the scope of claims that parties can introduce after the Terms of Reference have been signed or approved by the Court. It seeks to maintain the efficiency and integrity of the arbitration process by ensuring that the parties' claims are consistent with the agreed-upon terms of reference.

1. **New Claims Authorisation:** The article acknowledges that there might be circumstances where a party wishes to bring new claims that were not included in the original Terms of Reference. To do so, the party must seek authorisation from the arbitral tribunal. This requirement is in place to prevent parties from introducing new claims that might significantly alter the course of the arbitration without proper consideration.
2. **Arbitral Tribunal's Discretion:** The arbitral tribunal is granted discretion to determine whether to allow new claims that fall outside the original Terms of Reference. The tribunal is expected to take into account various factors, including the nature of the new claims, the current stage of the arbitration, and any other relevant circumstances.
3. **Ensuring Fairness:** Allowing the arbitral tribunal to assess new claims ensures that all parties are treated fairly and that the arbitration process remains balanced. It prevents one party from unfairly gaining an advantage by introducing unexpected claims that the other parties may not have had an opportunity to prepare for.
4. **Balancing Efficiency and Flexibility:** While the article sets a limitation on new claims, it also recognises that unforeseen circumstances may arise that warrant introducing new claims. By granting the arbitral tribunal the authority to evaluate such requests, the article strikes a balance between maintaining the efficiency of the proceedings and allowing for necessary flexibility.
5. **Preservation of Consistency:** The requirement of obtaining the tribunal's authorisation for new claims post-Terms of Reference ensures consistency in the case's development and helps prevent surprises that could undermine the fairness of the arbitration process.
6. **Encouraging Advance Planning:** Parties are encouraged to thoroughly consider their claims and defences before the Terms of Reference are signed or approved. This promotes advanced planning, disclosure of relevant information, and a more efficient arbitration process.

In summary, Article 23(4) of the ICC Arbitration Rules 2021 aims to maintain the consistency and fairness of the arbitration process by placing limitations on new claims introduced after the signing or approval of the Terms of Reference. By requiring parties to seek the arbitral tribunal's authorisation for such claims and considering various factors, the article balances the need for flexibility with the goal of an efficient and equitable arbitration proceeding.

## ARTICLE 24 Case Management Conference and Procedural Timetable

### 1 When drawing up the Terms of Reference or as soon as possible thereafter, the arbitral tribunal shall hold a case management conference to consult the parties on procedural measures that may be adopted pursuant to Article 22(2).

Article 24(1) of the ICC Arbitration Rules 2021 focuses on a crucial procedural step in arbitration – the case management conference. Here is an analysis of this article:

1. **Procedural Consultation:** The article emphasises the importance of procedural efficiency and effective case management in the arbitration process. It requires that the arbitral tribunal, when drafting the Terms of Reference or shortly thereafter, convene a case management conference. The purpose of this conference is to consult with the parties about the potential procedural measures that may be adopted in accordance with Article 22(2) of the Rules.
2. **Early Engagement:** By mandating a case management conference at an early stage, the article encourages active engagement between the arbitral tribunal and the parties. This engagement allows for the identification of procedural issues, the exploration of potential case management techniques, and the establishment of a framework for the arbitration proceedings.
3. **Tailoring the Procedure:** The case management conference provides an opportunity for the arbitral tribunal and the parties to tailor the arbitration procedure to the specific needs and complexities of the case. It allows for the consideration of various case management techniques, as outlined in Appendix IV of the Rules, that could enhance the efficiency and effectiveness of the proceedings.
4. **Parties' Participation:** The article recognises the parties' role in the arbitration process. Holding the case management conference ensures that the parties have a say in shaping the procedural framework of the arbitration. This contributes to transparency, fairness, and the parties' confidence in the arbitration process.
5. **Procedural Flexibility:** The article aligns with the flexible nature of arbitration by not prescribing a specific time for the case management conference but rather indicating that it should be held when drawing up the Terms of Reference or promptly thereafter. This recognises that the timing of the conference may vary depending on the circumstances of each case.
6. **Enhanced Efficiency:** By discussing procedural measures and case management techniques early on, the case management conference contributes to the efficient progression of the arbitration. It helps prevent delays, minimises unnecessary disputes, and streamlines the process.
7. **Customisation and Adaptability:** The article reflects the principle of adaptability in arbitration proceedings. The consultation during the case management conference allows the arbitral tribunal and the parties to customise the procedure to suit the specific characteristics of the dispute, ensuring that it is well-suited to the parties' needs.

8. **Clarity and Transparency:** Holding a case management conference ensures that all parties are on the same page regarding the procedural steps to be taken. It promotes clarity and transparency, reducing the potential for misunderstandings or disputes down the line.

In summary, Article 24(1) of the ICC Arbitration Rules 2021 underlines the significance of effective case management in arbitration proceedings. By requiring a case management conference, the article encourages early consultation between the arbitral tribunal and the parties to discuss and agree upon procedural measures that will govern the arbitration process, thereby contributing to a fair, efficient, and tailored dispute resolution process.

**2 During such conference, or as soon as possible thereafter, the arbitral tribunal shall establish the procedural timetable that it intends to follow for the efficient conduct of the arbitration. The procedural timetable and any modifications thereto shall be communicated to the Court and the parties.**

Article 24(2) of the ICC Arbitration Rules 2021 addresses the establishment of a procedural timetable during or shortly after the case management conference. Let us analyse this article:

1. **Procedural Efficiency:** The article emphasises the importance of procedural efficiency and planning in arbitration proceedings. It requires the arbitral tribunal to establish a procedural timetable during the case management conference or shortly thereafter. This timetable serves as a roadmap for the arbitration process, setting out key deadlines and milestones.
2. **Timely Planning:** By requiring the establishment of the procedural timetable during or immediately after the case management conference, the article ensures that the parties, the arbitral tribunal, and the Court are on the same page from the outset of the arbitration. This timely planning helps prevent delays and uncertainties.
3. **Clear Communication:** The article underscores the importance of clear communication between the arbitral tribunal, the Court, and the parties. The established procedural timetable and any subsequent modifications are to be communicated to all relevant stakeholders. This communication contributes to transparency and avoids misunderstandings.
4. **Balancing Flexibility and Structure:** While the article mandates the establishment of a procedural timetable, it also provides some flexibility. The arbitral tribunal is given discretion to determine the timetable that it intends to follow. This recognises that each arbitration may have unique characteristics and requirements.
5. **Efficient Progression:** A well-structured procedural timetable helps ensure the efficient progression of the arbitration. It outlines the deadlines for various stages of the process, such as the submission of pleadings, the exchange of evidence, and the final hearing. This facilitates smooth proceedings and reduces the risk of unnecessary delays.
6. **Adaptation and Modification:** The article acknowledges that the procedural timetable may need to be modified as the arbitration unfolds. It allows for modifications to be made, provided that they are communicated to the Court and the parties. This flexibility accommodates unforeseen circumstances or changes in the complexity of the case.

7. **Balancing Speed and Fairness:** While efficiency is important, the article also acknowledges the need to conduct the arbitration fairly. The procedural timetable should strike a balance between ensuring a timely resolution and providing the parties with sufficient time to present their cases adequately.
8. **Court's Oversight:** By requiring the communication of the procedural timetable to the Court, the article enables the Court to have insight into the progress of the arbitration and to address any concerns that may arise. This oversight contributes to the overall integrity of the arbitration process.

In summary, Article 24(2) of the ICC Arbitration Rules 2021 underscores the significance of planning and efficiency in arbitration proceedings. It mandates the establishment of a procedural timetable during or shortly after the case management conference, allowing for well-structured and transparent proceedings. The article strikes a balance between flexibility and structure, accommodating modifications as necessary, and ensuring that the arbitration progresses efficiently while respecting the parties' rights to present their cases effectively.

**3 To ensure continued effective case management, the arbitral tribunal, after consulting the parties by means of a further case management conference or otherwise, may adopt further procedural measures or modify the procedural timetable.**

Article 24(3) of the ICC Arbitration Rules 2021 addresses the ongoing case management role of the arbitral tribunal and its authority to make adjustments to the arbitration proceedings. Let us analyse this article:

1. **Continuous Case Management:** The article emphasises the importance of continuous and effective case management throughout the arbitration process. It acknowledges that the arbitral tribunal's role extends beyond the initial establishment of the procedural timetable.
2. **Adaptation to Changing Circumstances:** Arbitrations can be influenced by various factors such as new evidence, legal developments, and unforeseen events. Article 24(3) recognises that the arbitral tribunal must have the flexibility to adapt the procedural measures and timetable in response to changing circumstances.
3. **Consultation with Parties:** The article highlights the importance of consulting the parties before adopting further procedural measures or making modifications. This consultation can be done through a subsequent case management conference or through other means of communication. It ensures that the parties' input is considered before any changes are made.
4. **Effective Dispute Resolution:** By allowing the arbitral tribunal to adopt further procedural measures or modify the procedural timetable, the article contributes to effective and efficient dispute resolution. The tribunal can address issues as they arise, ensuring that the arbitration remains on track and that the parties are provided with a fair and timely process.
5. **Balancing Flexibility and Fairness:** While the article grants the arbitral tribunal authority to make adjustments, it also underscores the importance of maintaining fairness in the

proceedings. The tribunal must strike a balance between adapting the process and ensuring that both parties have an equal opportunity to present their cases.

6. **Transparency and Communication:** The article promotes transparency and open communication between the arbitral tribunal and the parties. The tribunal's decision to adopt further procedural measures or modify the timetable is expected to be based on the input and agreement of the parties whenever possible.
7. **Efficiency and Timeliness:** The ability to make adjustments to the procedural measures and timetable helps maintain the overall efficiency and timeliness of the arbitration. Delays caused by unexpected developments can be minimised, contributing to the goal of resolving the dispute promptly.
8. **Consideration of Complexity:** The article recognises that the complexity and nature of the dispute may necessitate adjustments to the procedural approach. Different cases may require different levels of oversight and involvement by the arbitral tribunal.

In summary, Article 24(3) of the ICC Arbitration Rules 2021 underscores the importance of ongoing case management in arbitration proceedings. It grants the arbitral tribunal the authority to adopt further procedural measures or modify the procedural timetable to respond to changing circumstances, ensuring effective and fair dispute resolution. The article's emphasis on consultation with the parties and maintaining transparency contributes to a process that is both efficient and equitable.

**4 Case management conferences may be conducted through a meeting in person, by video conference, telephone or similar means of communication. In the absence of an agreement of the parties, the arbitral tribunal shall determine the means by which the conference will be conducted. The arbitral tribunal may request the parties to submit case management proposals in advance of a case management conference and may request the attendance at any case management conference of the parties in person or through an internal representative.**

Article 24(4) of the ICC Arbitration Rules 2021 focuses on the conduct of case management conferences and provides guidance on various aspects related to their organisation and execution. Here is an analysis of this article:

1. **Flexibility in Communication Methods:** The article recognises the diverse range of communication methods available for case management conferences. These methods include in-person meetings, video conferences, telephone calls, or other similar means of communication. This flexibility allows the arbitral tribunal and parties to choose the most suitable mode of interaction based on practical considerations and the specific circumstances of the case.
2. **Party Agreement and Tribunal Authority:** The article clarifies that the means by which a case management conference is conducted can be determined through an agreement among the parties. However, if the parties do not reach an agreement, the arbitral tribunal has the authority to decide on the method of communication to be used during the conference.

3. **Preparation and Proposals:** The article permits the arbitral tribunal to request the parties to submit case management proposals before a scheduled conference. This advance submission of proposals can help streamline the conference and focus discussions on relevant topics. It encourages parties to be proactive in identifying issues and proposing procedural measures.
4. **Attendance at Conferences:** The article allows the arbitral tribunal to request the attendance of parties at case management conferences, either in person or through a representative. This provision ensures that key stakeholders are present to contribute to the discussions and decisions made during the conference.
5. **Efficiency and Coordination:** By providing guidelines for the conduct of case management conferences, the article aims to enhance the efficiency and coordination of the arbitration process. It facilitates discussions on procedural matters, adjustments to the timetable, and other case-specific considerations that contribute to the smooth progress of the proceedings.
6. **Adapting to Technological Advances:** The recognition of various communication methods reflects the growing role of technology in modern arbitration proceedings. Parties and tribunals can leverage digital tools to conduct conferences effectively, especially when geographic distances are a factor.
7. **Balancing Flexibility and Fairness:** While the article promotes flexibility in determining the means of communication, it also ensures that the process remains fair and transparent. The arbitral tribunal's authority to make decisions in the absence of party agreement prevents any undue advantage or bias.
8. **Practicality and Cost-Efficiency:** The ability to conduct case management conferences through different communication methods aligns with the practical and cost-effective management of the arbitration process. Parties can participate without incurring extensive travel costs, and conferences can be organised more swiftly.

In summary, Article 24(4) of the ICC Arbitration Rules 2021 addresses the conduct of case management conferences by providing options for communication methods and clarifying the authority of the arbitral tribunal in determining these methods. The article promotes flexibility, efficiency, and coordination in arbitration proceedings while ensuring fairness and transparency. It reflects the modernisation of arbitration practices to incorporate technological advancements in communication.

## **ARTICLE 25 Establishing the Facts of the Case**

### **1 The arbitral tribunal shall proceed within as short a time as possible to establish the facts of the case by all appropriate means.**

Article 25(1) of the ICC Arbitration Rules 2021 emphasises the arbitral tribunal's responsibility to promptly and effectively establish the facts of the case through appropriate means. Here is an analysis of this article:

1. **Efficiency and Timeliness:** The primary focus of Article 25(1) is to underscore the importance of expeditiously establishing the facts of the case. Arbitration proceedings are



often chosen for their speed and efficiency compared to traditional litigation, and this article reinforces that expectation by encouraging the arbitral tribunal to act swiftly.

2. **Factual Inquiry:** The article highlights the central role of the arbitral tribunal in uncovering and understanding the facts relevant to the dispute. This process involves gathering evidence, considering arguments, and evaluating testimony to reach an informed decision.
3. **Comprehensive Approach:** The wording “all appropriate means” emphasises the arbitral tribunal’s flexibility in choosing from a variety of methods to ascertain facts. This could include documentary evidence, witness statements, expert opinions, site visits, and any other relevant sources.
4. **Impartiality and Independence:** The article implies that the arbitral tribunal should conduct its fact-finding process impartially and independently, ensuring that all parties have an equal opportunity to present their case and provide evidence.
5. **Balancing Speed and Thoroughness:** While the article emphasises the need for prompt fact-finding, it does not compromise the requirement for a thorough and well-reasoned assessment of the evidence. The arbitral tribunal must strike a balance between efficiency and ensuring a fair, comprehensive examination of the facts.
6. **Ensuring Equitable Proceedings:** By swiftly establishing the facts, the article contributes to the fairness and effectiveness of the arbitration process. It helps avoid undue delays that can result from prolonged fact-finding processes.
7. **Determination of Merits:** Establishing the facts is crucial for the arbitral tribunal’s determination of the merits of the case. A well-founded factual basis is essential for rendering an informed and reasoned award.
8. **Prevention of Procedural Delays:** Article 25(1) indirectly contributes to preventing procedural delays that can result from lengthy and drawn-out fact-finding processes. This aligns with the general principle of efficiency underlying arbitration.
9. **Adherence to Best Practices:** The article aligns with best practices and international standards for arbitration, which emphasise efficient case management and a just resolution of disputes.

In summary, Article 25(1) of the ICC Arbitration Rules 2021 underscores the arbitral tribunal’s obligation to promptly and effectively establish the facts of the case using appropriate means. This requirement ensures an efficient, balanced, and equitable arbitration process while upholding the fundamental principles of fairness, impartiality, and thoroughness in reaching a decision.

**2 The arbitral tribunal may decide to hear witnesses, experts appointed by the parties or any other person, in the presence of the parties, or in their absence provided they have been duly summoned.**

Article 25(2) of the ICC Arbitration Rules 2021 grants the arbitral tribunal the authority to determine whether to hear witnesses, experts, or any other individuals as part of the arbitration proceedings. Here is an analysis of this article:

1. **Witnesses and Experts:** The article highlights the arbitral tribunal’s discretion to receive testimony from witnesses and experts. Witnesses can provide first-hand accounts of events or circumstances, while experts can offer specialised insights relevant to the case.
2. **Party-Appointed Experts:** The article explicitly mentions “experts appointed by the parties”, indicating that parties can bring in their own experts to present their perspective on technical, scientific, or specialised matters.
3. **Flexibility in Hearing:** The arbitral tribunal is given the flexibility to determine whether to hold hearings for witnesses, experts, or other individuals. This decision may be influenced by the complexity of the case, the nature of the evidence, and the parties’ preferences.
4. **Presence of Parties:** The article specifies that witnesses, experts, or other individuals may be heard “in the presence of the parties”. This suggests that parties have the opportunity to attend and observe the proceedings where witnesses or experts provide their testimony.
5. **Presence of Parties’ Absence:** The article also acknowledges that witnesses or experts may be heard in the parties’ absence, provided they have been duly summoned. This recognises that there might be situations where a party is unable to attend the proceedings but has been properly notified.
6. **Fairness and Transparency:** By allowing witnesses, experts, and other individuals to provide testimony, the article contributes to the transparency and fairness of the arbitration process. It ensures that parties have the opportunity to present their case and challenge evidence.
7. **Consideration of Practicalities:** The article recognises that parties may not always be able to attend hearings due to logistical or other reasons. Allowing hearings in the absence of parties, as long as they have been properly summoned, accommodates such situations.
8. **Arbitral Tribunal’s Discretion:** The article underscores the arbitral tribunal’s role as the decision-maker in determining the necessity and relevance of hearing witnesses, experts, or other individuals. This discretion allows the tribunal to tailor the proceedings to the specific needs of the case.
9. **Procedural Fairness:** By granting the arbitral tribunal the authority to hear witnesses and experts, the article aligns with the broader principle of procedural fairness in arbitration. It ensures that each party has an opportunity to present its case and address the evidence presented.

In summary, Article 25(2) of the ICC Arbitration Rules 2021 provides the arbitral tribunal with the authority to decide whether to hear witnesses, experts, or other individuals as part of the arbitration

proceedings. This flexibility enhances the transparency, fairness, and effectiveness of the arbitration process by allowing relevant evidence to be presented and considered, whether in the presence of the parties or in their absence.

**3 The arbitral tribunal, after consulting the parties, may appoint one or more experts, define their terms of reference and receive their reports. At the request of a party, the parties shall be given the opportunity to question at a hearing any such expert.**

Article 25(3) of the ICC Arbitration Rules 2021 empowers the arbitral tribunal to appoint one or more experts, specify their terms of reference, receive their reports, and allow parties to question these experts at a hearing. Here is an analysis of this article:

1. **Appointment of Experts:** The article confers authority upon the arbitral tribunal to appoint experts when it deems their specialised knowledge necessary to assist in resolving the dispute. These experts may be appointed after consulting the parties, ensuring transparency and fairness.
2. **Expert's Role:** The appointed expert(s) contribute their professional expertise to the tribunal's understanding of complex technical, scientific, financial, or other specialised matters relevant to the case.
3. **Terms of Reference:** The arbitral tribunal defines the terms of reference for the appointed expert(s), outlining the scope and objectives of their engagement. This ensures that the expert's role is clearly defined and aligns with the arbitration's objectives.
4. **Expert Reports:** The article empowers the tribunal to receive reports from the appointed expert(s). These reports provide the tribunal and the parties with insights into technical or specialised issues, aiding the tribunal in making informed decisions.
5. **Consultation with Parties:** The arbitral tribunal is required to consult the parties before appointing experts, reflecting the principle of procedural fairness. This consultation ensures that parties have an opportunity to express their views and raise any concerns.
6. **Questioning the Expert:** The article grants a right to parties to question the appointed expert(s) at a hearing upon their request. This allows parties to challenge the expert's opinions, methodology, or conclusions, contributing to a thorough examination of the evidence.
7. **Hearing Opportunity:** The provision for questioning the expert at a hearing emphasises the importance of an open and transparent arbitration process. It allows parties to directly engage with the expert's findings and assessments.
8. **Party's Perspective:** Allowing parties to question experts promotes their ability to advocate for their positions and contest evidence presented by opposing parties. This enhances the overall fairness of the arbitration proceedings.
9. **Balanced Expertise:** The article ensures that the tribunal's decisions are well-informed and based on a balanced assessment of evidence, including input from appointed experts.

10. **Efficient Resolution:** The involvement of experts can contribute to the efficient resolution of complex disputes by providing the tribunal with specialised insights, reducing the need for the tribunal to develop its own expertise.
11. **Party Autonomy:** While the tribunal has the authority to appoint experts, the article also respects party autonomy by allowing them to request the questioning of experts. This balance ensures that the arbitration process respects the parties' rights and interests.

In summary, Article 25(3) of the ICC Arbitration Rules 2021 underscores the arbitral tribunal's authority to appoint experts, receive their reports, and allow parties to question experts at hearings. This provision enhances the arbitration process's accuracy, fairness, and efficiency by leveraging specialised expertise and ensuring robust scrutiny of evidence.

**4 At any time during the proceedings, the arbitral tribunal may summon any party to provide additional evidence.**

Article 25(4) of the ICC Arbitration Rules 2021 empowers the arbitral tribunal to summon any party to provide additional evidence at any point during the proceedings. Here is an analysis of this article:

1. **Broad Authority:** This provision grants the arbitral tribunal the authority to request parties to present additional evidence beyond what has already been submitted. This reflects the tribunal's proactive role in ensuring that all relevant evidence is considered for a fair and informed decision.
2. **Continuing Fact-Finding:** The article acknowledges that the need for evidence might arise at different stages of the proceedings. This flexibility enables the tribunal to gather information that might be newly discovered or necessary to clarify emerging issues.
3. **Balancing Power:** Granting the tribunal the power to summon additional evidence ensures a balanced allocation of power between the tribunal and the parties. It prevents any one party from having undue control over the presentation of evidence.
4. **Ensuring Completeness:** The provision contributes to a comprehensive fact-finding process. The tribunal can summon evidence that it believes is essential to fully understand the case and make a well-informed decision.
5. **Flexibility in Timing:** The article's phrasing, "at any time during the proceedings", underscores the tribunal's ability to exercise this power as circumstances require. This reflects the dynamic nature of arbitration, where new information may arise unexpectedly.
6. **Discretionary Authority:** While the tribunal has the power to summon additional evidence, it retains the discretion to determine when and what evidence to summon. This discretion prevents abuse of the process while allowing the tribunal to exercise its fact-finding role effectively.
7. **Party Engagement:** The provision encourages active party engagement throughout the arbitration process. Parties may need to respond to a summons for additional evidence, ensuring their involvement in the presentation of evidence remains ongoing.

8. **Fairness and Due Process:** The article reinforces the principle of due process by allowing parties to provide evidence and be heard in response to the tribunal’s summons. This ensures that the arbitration process remains fair and transparent.
9. **Evidentiary Development:** The ability to summon evidence helps ensure that the tribunal has a complete understanding of the case, promoting well-informed decision-making and reducing the risk of errors due to incomplete evidence.
10. **Efficient Fact-Finding:** This provision contributes to an efficient fact-finding process. If the tribunal requires further evidence, it can directly request the necessary information, preventing unnecessary delays that might result from formal requests between parties.
11. **Dynamic Case Management:** Article 25(4) reflects the arbitration’s dynamic and adaptive nature. The tribunal can actively manage the proceedings, adjusting its evidentiary requirements as the case develops.

In summary, Article 25(4) of the ICC Arbitration Rules 2021 empowers the arbitral tribunal to summon any party to provide additional evidence as needed throughout the proceedings. This provision enhances the fact-finding process, ensures a balanced allocation of power, and contributes to a fair and informed arbitration process.

## **5 The arbitral tribunal may decide the case solely on the documents submitted by the parties unless any of the parties requests a hearing.**

Article 25(4) of the ICC Arbitration Rules 2021 provides the arbitral tribunal with the authority to decide the case solely based on the documents submitted by the parties, unless any of the parties explicitly requests a hearing. Here is an analysis of this article:

1. **Document-Based Decision:** The article recognises that arbitral tribunals have the discretion to render decisions solely based on the written submissions and evidence presented by the parties. This approach is often referred to as a “documents-only” procedure.
2. **Efficiency and Cost-Effectiveness:** Allowing decisions based on written documents can promote efficiency and reduce costs, as it avoids the need for a formal hearing. This is particularly beneficial for straightforward cases where parties prefer a swift resolution.
3. **Flexibility:** The provision recognises the flexibility of arbitration proceedings. Parties have the option to determine the level of formality they desire, depending on the complexity of the case and their preference for hearings.
4. **Party Autonomy:** The article respects party autonomy by providing the option for a hearing if requested. This reflects the parties’ right to present their case orally and be heard before the tribunal makes its decision.
5. **Balancing Interests:** The article strikes a balance between expediency and due process. It allows parties to waive a hearing if they believe that the documentary evidence is sufficient to present their case adequately.

6. **Consideration of Hearings:** The provision acknowledges that oral hearings can provide an opportunity for parties to further elaborate on their arguments, respond to questions from the tribunal, and address any concerns.
7. **Preservation of Rights:** By allowing a party to request a hearing, the provision ensures that parties have the opportunity to fully present their case, cross-examine witnesses, and engage in direct interaction with the tribunal.
8. **Transparency:** The article promotes transparency in the decision-making process. Parties are aware that a decision may be rendered solely based on the submitted documents unless they specifically request a hearing.
9. **Adaptive Approach:** The provision reflects modern arbitration practices, where arbitral tribunals tailor their procedures to suit the specific needs and preferences of the parties.
10. **Balanced Approach:** Article 25(4) strikes a balance between providing the flexibility for document-based decisions and respecting parties' right to request hearings. This balance ensures that arbitration remains a dynamic and adaptable dispute resolution mechanism.

In summary, Article 25(4) of the ICC Arbitration Rules 2021 allows the arbitral tribunal to decide the case solely on the basis of the documents submitted by the parties, unless any party explicitly requests a hearing. This provision reflects the flexibility of arbitration proceedings and provides parties with options to tailor the procedure to their preferences and the nature of the case.

## ARTICLE 26 Hearings

- 1 A hearing shall be held if any of the parties so requests or, failing such a request, if the arbitral tribunal on its own motion decides to hear the parties. When a hearing is to be held, the arbitral tribunal, giving reasonable notice, shall summon the parties to appear before it on the day and at the place fixed by it. The arbitral tribunal may decide, after consulting the parties, and on the basis of the relevant facts and circumstances of the case, that any hearing will be conducted by physical attendance or remotely by videoconference, telephone or other appropriate means of communication.**

Article 26(1) of the ICC Arbitration Rules 2021 addresses the conduct of hearings in arbitration proceedings. Here is an analysis of this article:

1. **Mandatory and Optional Hearings:** The article distinguishes between two scenarios: a) a hearing shall be held if any party requests it, and b) the arbitral tribunal may decide to hold a hearing on its own initiative. This recognises the importance of hearings as a means of presenting arguments and evidence and leaves room for flexibility when determining whether a hearing is necessary.
2. **Party Autonomy:** The provision respects party autonomy by allowing a party to request a hearing. This ensures that parties have the opportunity to present their case orally before the arbitral tribunal.
3. **Tribunal's Discretion:** The article vests the arbitral tribunal with discretion to decide whether to hold a hearing even in the absence of a party's request. This recognises the

tribunal's authority to manage the proceedings effectively and make informed decisions about the need for a hearing.

4. **Notice and Summons:** The article highlights the importance of reasonable notice and formal summons for hearings. This ensures that parties are adequately informed and can prepare for the hearing, preserving due process.
5. **Format of Hearings:** The provision acknowledges the evolving nature of technology and communication methods. The arbitral tribunal is empowered to decide whether a hearing will be conducted in person or remotely using videoconferencing, telephone, or other appropriate means. This reflects the practical consideration of convenience, cost-effectiveness, and accessibility.
6. **Efficiency and Flexibility:** The article demonstrates the ICC's commitment to efficient case management by allowing the arbitral tribunal to tailor the format of hearings based on the specific circumstances of the case. This flexibility contributes to effective dispute resolution.
7. **Consultation with Parties:** The provision emphasises the importance of consulting the parties when determining the format of hearings. This ensures that the parties are involved in decisions that impact the conduct of the proceedings.
8. **Balance of Interests:** Article 26(1) strikes a balance between the parties' right to present their case in person and the practical considerations of conducting proceedings efficiently, particularly in complex or cross-border cases.
9. **Modern Approach:** The article acknowledges the use of modern technology for remote hearings, reflecting the changing landscape of dispute resolution and the need for adaptability.
10. **Preservation of Due Process:** The provision ensures that parties are given the opportunity to present their arguments and evidence in a manner that preserves due process and fairness.

In summary, Article 26(1) of the ICC Arbitration Rules 2021 addresses the conduct of hearings in arbitration proceedings. It recognises the right of parties to request a hearing and grants the arbitral tribunal the discretion to decide whether to hold a hearing on its own initiative. The provision also acknowledges the flexibility to hold hearings in various formats, including remote proceedings, based on the specific circumstances of the case. This approach balances party rights, due process, efficiency, and modern arbitration practices.

**2 If any of the parties, although duly summoned, fails to appear without valid excuse, the arbitral tribunal shall have the power to proceed with the hearing.**

Article 26(2) of the ICC Arbitration Rules 2021 deals with the scenario when a party fails to appear for a scheduled hearing. Here is an analysis of this article:

1. **Enforcement of Tribunal's Authority:** The provision establishes the authority of the arbitral tribunal to proceed with the hearing even if one of the parties fails to appear,

provided there is no valid excuse. This upholds the tribunal’s ability to manage proceedings efficiently and ensure that the arbitration process is not unduly delayed by the absence of a party.

2. **Due Process and Fairness:** The article implicitly assumes that parties will be duly summoned for the hearing. This underscores the importance of due process and fairness in arbitration proceedings, ensuring that parties are given proper notice and opportunity to participate.
3. **Valid Excuse:** The provision does not explicitly define what constitutes a “valid excuse” for non-appearance. The determination of valid excuses is likely to depend on the specific circumstances of each case. It could include reasons such as illness, emergency situations, technical difficulties for remote hearings, etc.
4. **Balancing Party Interests:** By allowing the arbitral tribunal to proceed with the hearing in the absence of a party, the provision takes into account the interests of the other party or parties, who may have invested time and resources in preparing for the hearing.
5. **Preservation of Arbitration’s Efficiency:** The provision contributes to maintaining the efficiency of the arbitration process by preventing unwarranted delays due to a party’s non-appearance. This is especially relevant given the emphasis on timely resolution of disputes in modern arbitration.
6. **Tribunal’s Discretion:** While the provision grants the arbitral tribunal the power to proceed, it does not obligate the tribunal to do so in all cases. The tribunal may exercise its discretion based on the specific circumstances, including the reasons provided for the non-appearance.
7. **Importance of Communication:** The article underscores the importance of effective communication between the parties and the arbitral tribunal. It assumes that parties will be informed and duly summoned for hearings, and it emphasises the need for parties to actively engage in the arbitration process.
8. **Balance between Party Rights and Process Efficiency:** Article 26(2) balances the rights of parties to participate in hearings with the need to ensure that the arbitration process remains efficient and effective. It reflects a practical approach to handling non-appearance while considering the overall goals of arbitration.

In summary, Article 26(2) of the ICC Arbitration Rules 2021 provides the arbitral tribunal with the power to proceed with a hearing even if a party fails to appear without a valid excuse. This provision aims to strike a balance between upholding due process and ensuring the efficient progression of arbitration proceedings. The provision underscores the importance of effective communication, fairness, and the tribunal’s authority in managing the arbitration process.



**3 The arbitral tribunal shall be in full charge of the hearings, at which all the parties shall be entitled to be present. Save with the approval of the arbitral tribunal and the parties, persons not involved in the proceedings shall not be admitted.**

Article 26(3) of the ICC Arbitration Rules 2021 addresses the conduct of hearings and the presence of parties and non-parties during these hearings. Here is an analysis of this article:

1. **Tribunal's Control:** This provision affirms the authority of the arbitral tribunal over the conduct of hearings. The tribunal is granted full control and responsibility for managing the proceedings during the hearing. This authority allows the tribunal to ensure that the proceedings are orderly, focused, and adhere to the arbitration rules.
2. **Parties' Right to Attend:** The article guarantees that all parties to the arbitration are entitled to be present at the hearings. This upholds the principles of due process, transparency, and fairness, as parties have the right to observe and participate in the presentation of evidence and arguments.
3. **Exclusion of Uninvolved Persons:** The provision limits attendance to individuals who are directly involved in the proceedings, such as the parties, their representatives, witnesses, experts, and tribunal members. This restriction ensures the confidentiality and integrity of the arbitration process by preventing unauthorised individuals from accessing sensitive information or influencing the proceedings.
4. **Approval for Non-Parties:** If a party wishes to have a person not involved in the proceedings attend the hearing, approval from both the arbitral tribunal and the parties is required. This requirement safeguards against the potential for undue influence or interference by third parties who are not directly participating in the arbitration.
5. **Balancing Confidentiality and Transparency:** The provision strikes a balance between the need for transparency and the protection of sensitive information. By allowing the tribunal and parties to approve the presence of non-parties, the provision ensures that confidential information remains confidential while maintaining a level of transparency that enhances the legitimacy of the process.
6. **Flexibility in Exceptional Cases:** The article acknowledges the possibility that there may be exceptional circumstances where allowing non-parties to attend could be beneficial. Such exceptions would require the agreement of the tribunal and all parties, demonstrating a flexible approach that considers the unique circumstances of each case.
7. **Preservation of Tribunal's Autonomy:** The provision reinforces the independence and autonomy of the arbitral tribunal by granting it the authority to decide who may be present during hearings. This aligns with the general principle that arbitrators have significant discretion to manage the arbitration process.
8. **Adherence to Principles of Natural Justice:** By guaranteeing the presence of parties at the hearings and limiting the attendance of non-parties, the article adheres to the principles of natural justice, ensuring that parties have the opportunity to present their case and respond to arguments made.

In conclusion, Article 26(3) of the ICC Arbitration Rules 2021 underscores the authority of the arbitral tribunal over hearing proceedings, grants parties the right to be present, and sets guidelines for the

attendance of non-parties. It maintains a balance between transparency, confidentiality, and due process while recognising the tribunal's autonomy to manage the arbitration process effectively.

**4 The parties may appear in person or through duly authorised representatives. In addition, they may be assisted by advisers.**

Article 26(4) of the ICC Arbitration Rules 2021 addresses the participation of parties and their representatives in arbitration hearings. Here is an analysis of this article:

1. **Modes of Representation:** The article recognises the flexibility of representation in arbitration proceedings. Parties have the option to appear in person or be represented by duly authorised representatives. This flexibility is essential as it accommodates parties who may prefer to attend the hearing themselves or delegate the task to representatives.
2. **Duly Authorised Representatives:** The provision emphasises the importance of authorisation for representatives. Parties must ensure that their chosen representatives are officially authorised to act on their behalf. This requirement ensures that the representatives have the necessary authority to make decisions, present arguments, and engage in negotiations during the arbitration.
3. **Advisers:** The article acknowledges that parties may be assisted by advisers. These advisers are individuals who provide legal, technical, or other specialised expertise to parties during the proceedings. While advisers do not have the same authority as authorised representatives, their input can contribute to the parties' understanding and presentation of their case.
4. **Enhanced Presentation of Case:** By allowing parties to be represented by authorised representatives and assisted by advisers, the article facilitates the presentation of a comprehensive and well-prepared case. Authorised representatives are legally empowered to advocate on behalf of the parties, and advisers can contribute their expertise to strengthen the parties' arguments.
5. **Professionalism and Expertise:** The provision recognises that parties may require professional legal or technical assistance in presenting their case effectively. This aligns with the principles of fairness and equality, ensuring that parties can compete on an equal footing regardless of their level of expertise.
6. **Balanced Participation:** The article strikes a balance between party autonomy and the need for representation. While parties are free to appear in person if they choose, the option to be represented by authorised representatives or assisted by advisers provides them with more comprehensive and specialised support.
7. **Effective Advocacy:** Authorised representatives play a critical role in articulating the parties' arguments, cross-examining witnesses, and presenting evidence. This enhances the efficiency and effectiveness of the arbitration process by ensuring that proceedings are conducted professionally and according to legal norms.
8. **Disclosure of Representation:** The requirement for authorised representatives to be duly authorised and advisers to be identified ensures transparency in the proceedings.

Allowing parties to be represented by authorised individuals prevents unauthorised third-party interference and helps maintain the integrity of the arbitration process.

In summary, Article 26(4) of the ICC Arbitration Rules 2021 acknowledges the various modes of representation available to parties in arbitration hearings. It ensures parties' flexibility in choosing representation while upholding the principles of professionalism, fairness, and transparency in the arbitration process.

#### **ARTICLE 27 Closing of the Proceedings and Date for Submission of Draft Awards**

**As soon as possible after the last hearing concerning matters to be decided in an award or the filing of the last authorized submissions concerning such matters, whichever is later, the arbitral tribunal shall:**

- a) declare the proceedings closed with respect to the matters to be decided in the award; and**
- b) inform the Secretariat and the parties of the date by which it expects to submit its draft award to the Court for approval pursuant to Article 34.**

**After the proceedings are closed, no further submission or argument may be made, or evidence produced, with respect to the matters to be decided in the award, unless requested or authorized by the arbitral tribunal.**

Article 27 of the ICC Arbitration Rules 2021 addresses the procedural steps that occur after the last hearing or the submission of the final authorised submissions and before the submission of the final award. Here is an analysis of this article:

1. **Proceedings Closure:** Article 27 emphasises the importance of finalising the proceedings once all relevant hearings and authorised submissions have been completed. This step signifies the conclusion of the evidentiary phase and signals that no further evidence, submissions, or arguments may be introduced, except under specific circumstances authorised by the arbitral tribunal.
2. **Procedural Efficiency:** The provision is aligned with the overarching goal of procedural efficiency in arbitration. By setting a clear point of closure for submissions and evidence, it ensures that parties and the arbitral tribunal focus on the merits of the case and move toward the preparation of the final award.
3. **Draft Award Submission:** The article outlines a two-fold obligation for the arbitral tribunal after the proceedings are closed. First, it requires the arbitral tribunal to declare the proceedings closed in relation to the matters that will be addressed in the final award. Second, it mandates the arbitral tribunal to inform the Secretariat and the parties of the anticipated date by which the draft award will be submitted to the Court for approval under Article 34.
4. **Court Approval:** Article 27 reflects the structure of the ICC arbitration process, where the final award is subject to Court approval. The draft award is submitted to the Court for

review, and this ensures that the award aligns with the principles and standards upheld by the ICC.

5. **Restricted Further Submissions:** The provision limits further submissions, arguments, or evidence after proceedings are closed. This limitation maintains the finality and integrity of the arbitration process. However, the arbitral tribunal retains the authority to request or authorise additional submissions or evidence if deemed necessary.
6. **Predictability and Clarity:** Article 27 adds predictability and clarity to the proceedings by defining a clear point at which parties should expect to submit their final authorised submissions and the tribunal should anticipate delivering its draft award. This contributes to better planning and timely completion of the arbitration process.
7. **Fairness and Due Process:** The provision ensures fairness and due process by allowing parties to fully participate in the proceedings until the proceedings are formally closed. Once the proceedings are closed, parties can anticipate the timeline for the issuance of the draft award and the subsequent steps in the arbitration process.

In summary, Article 27 of the ICC Arbitration Rules 2021 establishes a significant juncture in the arbitration process by defining the closure of proceedings after the last hearing or authorised submissions. It outlines the obligations of the arbitral tribunal and parties at this stage and contributes to the overall efficiency, transparency, and fairness of the arbitration proceedings.

## ARTICLE 28 Conservatory and Interim Measures

- 1 Unless the parties have otherwise agreed, as soon as the file has been transmitted to it, the arbitral tribunal may, at the request of a party, order any interim or conservatory measure it deems appropriate. The arbitral tribunal may make the granting of any such measure subject to appropriate security being furnished by the requesting party. Any such measure shall take the form of an order, giving reasons, or of an award, as the arbitral tribunal considers appropriate.**

Article 28(1) of the ICC Arbitration Rules 2021 addresses the authority of the arbitral tribunal to order interim or conservatory measures during the course of the arbitration proceedings. Here is an analysis of this article:

1. **Interim and Conservatory Measures:** This article underscores the arbitral tribunal's power to order interim or conservatory measures upon the request of a party. Interim measures are temporary actions intended to preserve the status quo or prevent harm pending the final award, while conservatory measures are intended to safeguard specific assets or rights during the arbitration process.
2. **Party Request:** The arbitral tribunal's ability to order interim or conservatory measures is contingent upon a request from a party. This ensures that the arbitral tribunal's intervention is guided by the parties' specific needs and concerns rather than being initiated solely by the tribunal.
3. **No Party Agreement Required:** The article highlights that the arbitral tribunal's authority to order interim or conservatory measures is not contingent upon the parties' prior

agreement. This can be particularly significant in cases where parties have not addressed this issue in their arbitration agreement but find the need for such measures during the proceedings.

4. **Tribunal's Discretion:** The arbitral tribunal has discretion in determining whether to grant interim or conservatory measures and the nature of such measures. This discretion allows the tribunal to tailor its decisions to the specific circumstances of the case.
5. **Security Requirement:** The article grants the arbitral tribunal the authority to require the requesting party to furnish appropriate security as a condition for granting the requested measures. This serves to balance the interests of both parties and ensures that the measures are not frivolously sought.
6. **Form of Measures:** The article provides flexibility in the form that the interim or conservatory measures may take. Such measures can be issued in the form of an order or an award, as deemed appropriate by the arbitral tribunal. This flexibility accommodates different types of measures and their intended outcomes.
7. **Reasoning Requirement:** Regardless of the form chosen, the article mandates that the arbitral tribunal's decision to grant interim or conservatory measures must be accompanied by reasons. This ensures transparency and allows the parties to understand the basis on which the measures were granted.
8. **Procedural Efficiency:** By allowing the arbitral tribunal to order interim or conservatory measures, this article facilitates the efficient resolution of disputes, particularly in cases where immediate actions are required to prevent irreparable harm or maintain the status quo.

In summary, Article 28(1) of the ICC Arbitration Rules 2021 grants the arbitral tribunal the authority to order interim or conservatory measures upon the request of a party. This provision promotes the flexibility, efficiency, and fairness of the arbitration process by allowing the tribunal to address urgent issues and take appropriate actions to safeguard the parties' interests.

- 2 Before the file is transmitted to the arbitral tribunal, and in appropriate circumstances even thereafter, the parties may apply to any competent judicial authority for interim or conservatory measures. The application of a party to a judicial authority for such measures or for the implementation of any such measures ordered by an arbitral tribunal shall not be deemed to be an infringement or a waiver of the arbitration agreement and shall not affect the relevant powers reserved to the arbitral tribunal. Any such application and any measures taken by the judicial authority must be notified without delay to the Secretariat. The Secretariat shall inform the arbitral tribunal thereof.**

Article 28(2) of the ICC Arbitration Rules 2021 deals with the interaction between the arbitral tribunal and competent judicial authorities regarding interim or conservatory measures. Let us analyse this article:

1. **Judicial Authority for Interim Measures:** This article acknowledges that, before the file is transmitted to the arbitral tribunal and under appropriate circumstances even thereafter, parties have the option to seek interim or conservatory measures from competent judicial

authorities. This recognises that parties may have urgent concerns that require immediate court intervention.

2. **No Infringement of Arbitration Agreement:** The article emphasises that applying to a judicial authority for interim or conservatory measures or seeking enforcement of such measures ordered by the arbitral tribunal does not constitute an infringement or waiver of the parties' arbitration agreement. This is significant because parties often resort to courts to safeguard their interests without forfeiting their right to pursue arbitration.
3. **Preservation of Arbitral Tribunal's Powers:** This article clarifies that parties' applications to judicial authorities and any measures taken by the authorities will not undermine or erode the powers of the arbitral tribunal. The tribunal retains its authority to address the case and make decisions, as it deems appropriate.
4. **Notice and Reporting:** The article requires that any application to a judicial authority for interim or conservatory measures and any measures taken by such authority must be promptly notified to the Secretariat. The Secretariat, in turn, informs the arbitral tribunal of these developments. This communication ensures that the arbitral tribunal is kept informed of relevant actions taken by the parties in external forums.
5. **Balancing Party Interests:** This provision strikes a balance between the parties' right to seek court intervention to protect their interests and the principle of respecting the autonomy of the arbitration process. It enables parties to take urgent measures while maintaining the authority of the arbitral tribunal.
6. **Coordination and Communication:** By requiring notification to the Secretariat and subsequent communication to the arbitral tribunal, this article encourages coordination and cooperation between the judicial authorities and the arbitral tribunal, ensuring that both bodies are aware of each other's actions.
7. **Flexibility and Adaptability:** The provision acknowledges the dynamic nature of arbitration proceedings and the need for flexibility in addressing urgent matters. It reflects an awareness that circumstances can change, even after the commencement of arbitration.

In summary, Article 28(2) of the ICC Arbitration Rules 2021 provides a framework for parties to seek interim or conservatory measures from judicial authorities while safeguarding the integrity and authority of the arbitral tribunal. It recognises the practical need for immediate action to protect parties' interests without undermining the arbitration process.

#### **ARTICLE 29 Emergency Arbitrator**

- 1 **A party that needs urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal ("Emergency Measures") may make an application for such measures pursuant to the Emergency Arbitrator Rules in Appendix V. Any such application shall be accepted only if it is received by the Secretariat prior to the transmission of the file to**

**the arbitral tribunal pursuant to Article 16 and irrespective of whether the party making the application has already submitted its Request for Arbitration.**

Article 29(1) of the ICC Arbitration Rules 2021 addresses the provision for parties to seek urgent interim or conservatory measures through an Emergency Arbitrator process. Let us analyse this article:

1. **Urgent Interim or Conservatory Measures:** This provision recognises that certain situations may require immediate intervention before the constitution of the arbitral tribunal. It allows parties to apply for “Emergency Measures” to address urgent issues that cannot wait until the full arbitral tribunal is constituted.
2. **Emergency Arbitrator Rules:** The article refers to the “Emergency Arbitrator Rules” in Appendix V, which provide specific procedures for parties to seek and obtain urgent interim measures from an Emergency Arbitrator. These rules outline the process, timeline, and requirements for seeking such measures.
3. **Timing of Application:** To be eligible for the Emergency Arbitrator process, the application for Emergency Measures must be submitted before the transmission of the case file to the arbitral tribunal pursuant to Article 16. This ensures that the application is made at a stage where urgent action is needed but before the arbitration proceedings have fully commenced.
4. **Independence and Neutrality:** The Emergency Arbitrator process aims to ensure impartiality and neutrality in addressing the urgent issues. The Emergency Arbitrator is expected to decide on the application based on the information provided by the parties and the evidence available, within a short timeframe.
5. **Early Remedies:** This provision offers parties a mechanism to seek remedies quickly in urgent situations, even before the full arbitral tribunal is constituted. It prevents any undue delay in addressing time-sensitive matters.
6. **Applicability of Request for Arbitration:** The article specifies that the application for Emergency Measures can be made irrespective of whether the party has already submitted its Request for Arbitration. This emphasises that the Emergency Arbitrator process is separate from the general arbitration proceedings.
7. **Balance of Interests:** By allowing parties to seek urgent relief through the Emergency Arbitrator process, this provision balances the need for quick action with the principle of providing parties with an opportunity to present their case.
8. **Efficient and Effective Resolution:** This article underscores the ICC’s commitment to providing parties with a swift and efficient means of addressing urgent matters, recognising that certain situations require immediate attention.

In summary, Article 29(1) of the ICC Arbitration Rules 2021 establishes the framework for parties to seek urgent interim or conservatory measures through the Emergency Arbitrator process. It allows parties to address critical matters that cannot wait for the constitution of the full arbitral tribunal, ensuring that the arbitration process remains adaptable to urgent circumstances.

**2 The emergency arbitrator’s decision shall take the form of an order. The parties undertake to comply with any order made by the emergency arbitrator.**

Article 29(2) of the ICC Arbitration Rules 2021 addresses the nature and effect of the decisions made by the Emergency Arbitrator. Let us analyse this article:

1. **Form of Decision:** According to this provision, the decision of the Emergency Arbitrator shall take the form of an “order”. Unlike a full award, which is typically issued by the arbitral tribunal at the conclusion of the arbitration proceedings, the decision of the Emergency Arbitrator is presented as an order, reflecting its interim and expedited nature.
2. **Urgent Measures:** The order issued by the Emergency Arbitrator is a response to the parties’ urgent request for interim or conservatory measures. It provides an immediate remedy to address pressing issues before the full arbitral tribunal is constituted.
3. **Binding Nature:** The article emphasises that the parties have a duty to comply with any order issued by the Emergency Arbitrator. This underscores the enforceability of the Emergency Arbitrator’s decisions and the parties’ commitment to respecting the authority of the process.
4. **Interim Relief:** The Emergency Arbitrator’s order is designed to provide temporary relief until the full arbitral tribunal can be constituted and the matter can be fully examined. It is aimed at preserving the status quo or preventing imminent harm until a more comprehensive resolution can be achieved through the main arbitration proceedings.
5. **Efficiency and Flexibility:** By allowing the Emergency Arbitrator’s decision to take the form of an order, the ICC Arbitration Rules acknowledge the need for swift, efficient, and flexible resolution of urgent matters.
6. **Compliance:** The provision reflects the parties’ obligation to adhere to the orders issued by the Emergency Arbitrator. This ensures that the relief granted by the Emergency Arbitrator is effectively enforced and that the parties abide by the decisions made.

In summary, Article 29(2) of the ICC Arbitration Rules 2021 establishes that the decision of the Emergency Arbitrator will be in the form of an order. This order holds the same binding force as any other arbitration decision and is expected to be complied with by the parties. This provision reinforces the significance of the Emergency Arbitrator’s role in providing rapid and effective relief in cases requiring urgent measures.

**3 The emergency arbitrator’s order shall not bind the arbitral tribunal with respect to any question, issue or dispute determined in the order. The arbitral tribunal may modify, terminate or annul the order or any modification thereto made by the emergency arbitrator.**

Article 29(3) of the ICC Arbitration Rules 2021 addresses the relationship between the decisions of the Emergency Arbitrator and the subsequent proceedings before the arbitral tribunal. Let us analyse this article:

1. **Non-Binding Nature:** This provision clarifies that the emergency arbitrator’s order is not binding on the arbitral tribunal in relation to any question, issue, or dispute that was



determined in the order. While the Emergency Arbitrator’s order is effective and enforceable as an interim measure, it does not create a precedent or establish a binding legal determination for the main arbitration proceedings.

2. **Arbitral Tribunal’s Discretion:** The article empowers the arbitral tribunal to modify, terminate, or annul the emergency arbitrator’s order or any modifications made by the emergency arbitrator. This reflects the tribunal’s authority to reconsider the order in light of more extensive proceedings, additional evidence, and the full context of the case.
3. **Continuation of Main Proceedings:** The provision recognises that the emergency arbitrator’s proceedings are distinct from the main arbitration proceedings. The order issued by the emergency arbitrator is designed to address immediate and urgent matters, while the arbitral tribunal’s role is to comprehensively consider the merits of the dispute.
4. **Flexibility and Finality:** This article reflects the flexibility and adaptability of the arbitration process. It acknowledges that the emergency arbitrator’s order, though effective for its intended purpose, is subject to review and potential modification by the arbitral tribunal. This approach allows for a balance between swift interim relief and the comprehensive examination of the case by the full tribunal.
5. **Preservation of Tribunal’s Role:** By affirming that the arbitral tribunal has the authority to modify or annul the emergency arbitrator’s order, this provision ensures that the tribunal retains its role as the ultimate decision-maker in the arbitration process.

In summary, Article 29(3) of the ICC Arbitration Rules 2021 establishes that the emergency arbitrator’s order does not bind the arbitral tribunal regarding the same issues. It further empowers the arbitral tribunal to modify, terminate, or annul the emergency arbitrator’s order or any modifications made. This article strikes a balance between providing expedited relief through the emergency arbitrator process and preserving the arbitral tribunal’s role in the overall arbitration proceedings.

#### **4 The arbitral tribunal shall decide upon any party’s requests or claims related to the emergency arbitrator proceedings, including the reallocation of the costs of such proceedings and any claims arising out of or in connection with the compliance or noncompliance with the order.**

Article 29(4) of the ICC Arbitration Rules 2021 addresses the authority of the arbitral tribunal in relation to requests or claims arising from the emergency arbitrator proceedings. Let us analyse this article:

1. **Scope of Authority:** This provision outlines the jurisdiction of the arbitral tribunal to address various matters related to the emergency arbitrator proceedings. It empowers the tribunal to make decisions on requests or claims that arise as a consequence of the emergency arbitrator’s order or the compliance or noncompliance with that order.
2. **Reallocation of Costs:** The article specifically mentions the arbitral tribunal’s authority to decide on the reallocation of the costs of the emergency arbitrator proceedings. This indicates that the tribunal can determine which party should bear the costs associated with the emergency arbitrator’s involvement. This decision is likely based on the particular circumstances of the case and the conduct of the parties.

3. **Compliance and Noncompliance:** The provision grants the arbitral tribunal the authority to handle claims arising from compliance or noncompliance with the order issued by the emergency arbitrator. This means that if a party seeks relief or claims damages due to another party's actions or omissions concerning the implementation of the emergency arbitrator's order, the arbitral tribunal can address those claims.
4. **Consistency and Integration:** Article 29(4) reflects the overall integration of the emergency arbitrator proceedings into the broader arbitration process. It ensures that the main arbitral tribunal is equipped to manage issues that arise as a result of the emergency arbitrator's actions, thereby promoting consistency and a unified approach in the arbitration proceedings.
5. **Efficiency and Flexibility:** By entrusting the arbitral tribunal with authority over the costs and related claims, this provision streamlines the process and avoids unnecessary duplication of proceedings. It also underscores the arbitration process's flexibility to address matters that arise as the case unfolds.

In summary, Article 29(4) of the ICC Arbitration Rules 2021 grants the arbitral tribunal authority to decide on requests or claims arising from the emergency arbitrator proceedings. This includes matters such as the reallocation of costs and any claims arising out of compliance or noncompliance with the emergency arbitrator's order. The article reinforces the tribunal's role as the final decision-maker and ensures that the emergency arbitrator process remains integrated into the broader arbitration proceedings.

**5 Articles 29(1)–29(4) and the Emergency Arbitrator Rules set forth in Appendix V (collectively the “Emergency Arbitrator Provisions”) shall apply only to parties that are either signatories of the arbitration agreement under the Rules that is relied upon for the application or successors to such signatories.**

Article 29(5) of the ICC Arbitration Rules 2021 establishes the scope and applicability of the Emergency Arbitrator Provisions, which include Articles 29(1) through 29(4) and the rules set forth in Appendix V. Let us analyse this article:

1. **Limited Applicability:** This provision restricts the application of the Emergency Arbitrator Provisions to a specific category of parties. It specifies that these provisions are only applicable to parties who meet certain criteria: they must be either signatories of the arbitration agreement under the ICC Rules that is being relied upon for the application, or they must be successors to such signatories.
2. **Purpose and Intent:** By defining the scope of parties to whom the Emergency Arbitrator Provisions apply, this article aims to ensure that only those parties directly connected to the arbitration agreement in question are eligible to seek relief through the emergency arbitrator mechanism. This approach aims to prevent abuse of the mechanism by parties who are not directly party to the agreement in question.
3. **Protection of Signatories:** The provision highlights the principle that the emergency arbitrator mechanism is primarily intended to provide relief to the parties who are directly bound by the arbitration agreement. This helps maintain the integrity of the arbitration

process and ensures that parties with a direct contractual relationship are the beneficiaries of this mechanism.

4. **Successors to Signatories:** In addition to original signatories, the provision extends the applicability of the Emergency Arbitrator Provisions to successors of the original signatories. This recognises situations where contractual relationships may have evolved due to corporate restructurings, assignments, or other legal changes.
5. **Preventing Third-Party Applications:** By limiting the scope to original signatories and their successors, the provision helps prevent third parties who are not parties to the arbitration agreement from invoking the emergency arbitrator mechanism. This protects the parties' autonomy and choice in arbitration proceedings.
6. **Clarity and Predictability:** Article 29(5) brings clarity and predictability to the application of the Emergency Arbitrator Provisions, ensuring that the mechanism is available only to those parties for whom it was designed. This avoids potential disputes over the eligibility of parties to access this emergency relief.

In summary, Article 29(5) of the ICC Arbitration Rules 2021 specifies that the Emergency Arbitrator Provisions, which encompass Articles 29(1) through 29(4) and the rules in Appendix V, apply exclusively to parties that are either signatories of the arbitration agreement under the ICC Rules being relied upon for the application or successors to such signatories. This limitation serves to protect the integrity of the emergency arbitrator mechanism and ensures its appropriate and targeted use.

## 6 The Emergency Arbitrator Provisions shall not apply if:

- a) **the arbitration agreement under the Rules was concluded before 1 January 2012;**
- b) **the parties have agreed to opt out of the Emergency Arbitrator Provisions; or**
- c) **the arbitration agreement upon which the application is based arises from a treaty.**

Article 29(6) of the ICC Arbitration Rules 2021 outlines the circumstances under which the Emergency Arbitrator Provisions, which include Articles 29(1) through 29(4) and the rules in Appendix V, do not apply. Let us analyse this article:

1. **Exclusion of Certain Arbitration Agreements:** This provision specifies that the Emergency Arbitrator Provisions do not apply if the arbitration agreement under the ICC Rules was concluded before 1 January 2012. In other words, if the arbitration agreement predates this date, the parties cannot avail themselves of the emergency arbitrator mechanism.
2. **Opting Out:** Parties have the option to agree to opt out of the Emergency Arbitrator Provisions. If the parties explicitly agree to opt out, then these provisions will not apply to their arbitration proceedings. This recognises the principle of party autonomy in arbitration, allowing parties to choose the rules and mechanisms that suit their preferences.
3. **Exclusion for Treaty-Based Arbitrations:** The provision states that the Emergency Arbitrator Provisions also do not apply if the arbitration agreement upon which the

application is based arises from a treaty. This means that for disputes arising from treaty obligations, the emergency arbitrator mechanism is not available under the ICC Rules.

4. **Objective and Rationale:** Article 29(6) is designed to provide clarity on the instances in which the parties cannot resort to the emergency arbitrator mechanism. It ensures that the use of this mechanism is consistent with the intentions of the parties, the nature of the dispute, and the type of arbitration agreement.
5. **Respect for Treaty-Based Arbitrations:** The exclusion of treaty-based arbitration agreements from the Emergency Arbitrator Provisions acknowledges the distinct legal context and obligations that arise from treaties. Such disputes may involve considerations beyond the scope of emergency arbitrator proceedings.
6. **Balancing Party Autonomy:** The provision strikes a balance between allowing parties to access the emergency arbitrator mechanism while respecting their autonomy and choices. It also recognises that the application of this mechanism may not be appropriate or feasible in all types of arbitration agreements or disputes.

In summary, Article 29(6) of the ICC Arbitration Rules 2021 specifies the situations in which the Emergency Arbitrator Provisions do not apply. These include scenarios where the arbitration agreement predates 1 January 2012, where the parties have opted out, or where the arbitration agreement is based on a treaty. This article ensures that the use of the emergency arbitrator mechanism aligns with the parties' intentions, the nature of the dispute, and the type of arbitration agreement in place.

**7 The Emergency Arbitrator Provisions are not intended to prevent any party from seeking urgent interim or conservatory measures from a competent judicial authority at any time prior to making an application for such measures, and in appropriate circumstances even thereafter, pursuant to the Rules. Any application for such measures from a competent judicial authority shall not be deemed to be an infringement or a waiver of the arbitration agreement. Any such application and any measures taken by the judicial authority must be notified without delay to the Secretariat.**

Article 29(7) of the ICC Arbitration Rules 2021 elaborates on the relationship between the Emergency Arbitrator Provisions and the right of parties to seek urgent interim or conservatory measures from a judicial authority. Let us analyse this article:

1. **Non-Preclusion of Judicial Authority:** This provision clarifies that the Emergency Arbitrator Provisions are not intended to prevent parties from seeking urgent interim or conservatory measures from a competent judicial authority. In other words, parties can still approach a court for such measures, even before or after making an application for such measures through the Emergency Arbitrator Provisions.
2. **Flexibility in Timing:** The article recognises that parties may need to seek urgent measures from a judicial authority before or after initiating the arbitration proceedings under the ICC Rules. This acknowledges that parties may need immediate relief to protect their interests, and they should have the option to seek such relief from the appropriate judicial forum.

3. **Infringement or Waiver:** Importantly, the article stipulates that seeking urgent measures from a judicial authority does not constitute an infringement of or waiver of the arbitration agreement. This means that the parties can still pursue arbitration proceedings even if they have already sought interim measures from a court. This principle preserves the parties' rights under both the arbitration agreement and the legal system.
4. **Notification and Coordination:** The article requires that any application for urgent measures made to a judicial authority, as well as any measures taken by the judicial authority, must be promptly notified to the ICC Secretariat. This notification ensures transparency and coordination between the court proceedings and the ongoing arbitration proceedings.
5. **Objective and Rationale:** Article 29(7) seeks to strike a balance between the use of emergency arbitrator proceedings and the parties' right to approach a court for urgent measures. It acknowledges that parties may need immediate relief from a judicial authority before the emergency arbitrator mechanism can be activated.
6. **Coordination and Efficiency:** By requiring notification to the Secretariat, the article aims to ensure that there is coordination between the different legal proceedings, allowing the ICC and the arbitral tribunal to stay informed and manage the proceedings effectively.

In summary, Article 29(7) of the ICC Arbitration Rules 2021 clarifies that the Emergency Arbitrator Provisions do not prevent parties from seeking urgent interim or conservatory measures from a judicial authority. Parties have the flexibility to pursue such measures before or after initiating emergency arbitrator proceedings, without infringing upon their arbitration agreement. The article emphasises the importance of notification and coordination to ensure the efficient management of both court and arbitration proceedings.

### ARTICLE 30 Expedited Procedure

- 1 By agreeing to arbitration under the Rules, the parties agree that this Article 30 and the Expedited Procedure Rules set forth in Appendix VI (collectively the "Expedited Procedure Provisions") shall take precedence over any contrary terms of the arbitration agreement.**

Article 30(1) of the ICC Arbitration Rules 2021 introduces the concept of the Expedited Procedure Provisions, which are outlined in Appendix VI, and clarifies their application in relation to the arbitration agreement. Let us break down this provision:

1. **Precedence of Expedited Procedure Provisions:** This article establishes that by agreeing to arbitration under the ICC Rules, parties also agree that Article 30 and the Expedited Procedure Rules in Appendix VI (referred to as the Expedited Procedure Provisions) take precedence over any contrary terms in their arbitration agreement.
2. **Context of Expedited Procedure:** The Expedited Procedure Provisions are designed to provide a streamlined and efficient process for resolving disputes, particularly where the value of the dispute is relatively low or where parties desire a faster resolution. These

provisions facilitate a more expedited arbitration process compared to the standard procedures under the ICC Rules.

3. **Binding Nature:** By agreeing to the precedence of the Expedited Procedure Provisions, parties commit to following the specific procedures outlined in Appendix VI if the conditions for the expedited procedure are met. These procedures may include shorter timeframes for submitting evidence, exchanging written submissions, and rendering an award.
4. **Flexibility and Autonomy:** Despite the precedence of the Expedited Procedure Provisions, parties still retain some autonomy. They have the flexibility to opt out of the expedited procedure if they wish to follow the standard procedures of the ICC Rules. This opt-out is often exercised when parties believe that their dispute requires more comprehensive proceedings.
5. **Balancing Efficiency and Procedural Fairness:** The Expedited Procedure Provisions aim to strike a balance between achieving an efficient and swift resolution and ensuring that parties have an opportunity to present their case adequately. While the procedure is expedited, parties' due process rights are maintained.
6. **Efficiency and Timeliness:** The provision reflects the ICC's commitment to providing parties with an efficient and cost-effective method of dispute resolution, particularly for cases that do not require the same level of procedural complexity as larger and more intricate disputes.

In summary, Article 30(1) of the ICC Arbitration Rules 2021 establishes the precedence of the Expedited Procedure Provisions over any conflicting terms in the arbitration agreement. It underscores parties' agreement to prioritise an expedited and efficient process when the Expedited Procedure Rules are applicable, while still offering parties the flexibility to opt out and choose the standard procedures if they prefer. This provision reflects the ICC's dedication to offering a range of procedural options that cater to the diverse needs of parties involved in arbitration proceedings.

## **2 The Expedited Procedure Rules set forth in Appendix VI shall apply if:**

- a) **the amount in dispute does not exceed the limit set out in Article 1(2) of Appendix VI at the time of the communication referred to in Article 1(3) of that Appendix; or**
- b) **the parties so agree.**

Article 30(2) of the ICC Arbitration Rules 2021 outlines the conditions under which the Expedited Procedure Rules, as detailed in Appendix VI, will be applicable. Let us delve into the analysis of this provision:

1. **Thresholds for Application:** The provision specifies two scenarios under which the Expedited Procedure Rules will apply:
  - a) **Amount in Dispute:** If the monetary value of the dispute does not exceed the threshold specified in Article 1(2) of Appendix VI at the time of the communication referred to in Article 1(3) of the same appendix.

3. b) Agreement of the Parties: If the parties expressly agree to apply the Expedited Procedure Rules, regardless of the monetary value of the dispute.
4. Monetary Limit: The monetary limit referred to in point (a) reflects the ICC's intention to provide an expedited procedure for relatively smaller disputes. This limit may change over time as indicated by the reference to Article 1(2) of Appendix VI.
5. Flexibility in Application: This provision recognises that parties may choose to opt into the expedited procedure even if the dispute exceeds the monetary threshold. This could be driven by various factors, such as a desire for a faster resolution or the simplicity of the case.
6. Consent-Based Approach: The provision emphasises the principle of party autonomy by allowing the Expedited Procedure Rules to apply when parties explicitly agree. This ensures that parties have control over the procedure to be followed, whether expedited or standard.
7. Balancing Speed and Substantive Rights: The Expedited Procedure Rules aim to expedite proceedings while maintaining a fair process for parties to present their case. This provision underscores the importance of parties' consent in determining the applicable procedure and reflects the ICC's commitment to procedural flexibility.
8. Ensuring Efficiency: The provision aligns with the broader objective of providing efficient and cost-effective dispute resolution options for parties involved in arbitration. By setting conditions for the application of expedited procedures, the ICC seeks to strike a balance between efficiency and preserving parties' ability to present their case fully.

In summary, Article 30(2) of the ICC Arbitration Rules 2021 outlines the scenarios under which the Expedited Procedure Rules, detailed in Appendix VI, will apply. It specifies a monetary threshold and the possibility of parties' agreement as triggers for the application of expedited procedures. This approach demonstrates the ICC's responsiveness to the diverse needs of parties while promoting both efficiency and procedural fairness in arbitration proceedings.

### **3 The Expedited Procedure Provisions shall not apply if:**

- a) **the arbitration agreement under the Rules was concluded before the date on which the Expedited Procedure Provisions came into force;**
- b) **the parties have agreed to opt out of the Expedited Procedure Provisions; or**
- c) **the Court, upon the request of a party before the constitution of the arbitral tribunal or on its own motion, determines that it is inappropriate in the circumstances to apply the Expedited Procedure Provisions.**

Article 30(3) of the ICC Arbitration Rules 2021 sets out the circumstances under which the Expedited Procedure Provisions, detailed in Appendix VI, will not apply. Let us analyse this provision:

1. Retroactive Application: Point (a) states that the Expedited Procedure Provisions will not apply if the arbitration agreement was concluded before the date on which these

provisions came into force. This prevents the application of expedited procedures to disputes where the parties did not have the opportunity to consider or agree upon such procedures when entering into the arbitration agreement.

2. **Opt-Out Option:** Point (b) recognises parties’ autonomy by allowing them to opt out of the Expedited Procedure Provisions. This ensures that parties who prefer the standard procedure or have specific reasons for avoiding the expedited process can make that choice.
3. **Court’s Discretion:** Point (c) introduces a mechanism for the Court to exercise discretion in cases where the application of expedited procedures might be deemed inappropriate. This provision allows the Court, at the request of a party or on its own initiative before the arbitral tribunal is constituted, to determine whether the circumstances warrant the exclusion of the Expedited Procedure Provisions. This is intended to ensure that expedited procedures are not applied when they are not suitable for the specific case at hand.
4. **Balancing Speed and Fairness:** By setting these exceptions, the provision ensures that the Expedited Procedure Provisions are not imposed in situations where they might compromise fairness or the parties’ rights. It reflects the ICC’s commitment to upholding a balance between expediting proceedings and maintaining a just and equitable arbitration process.
5. **Flexibility and Protection:** This provision’s multi-faceted approach takes into account the diverse needs of parties and the potential complexities of arbitration cases. It provides options for parties to tailor their proceedings while offering a mechanism for the Court to step in when necessary.
6. **Responsive to Change:** The provision recognises that arbitration agreements may have been concluded before the Expedited Procedure Provisions were introduced. This reflects the ICC’s understanding that arbitration rules evolve over time, and parties should not be bound by rules that were not in existence when they agreed to arbitrate.

In summary, Article 30(3) of the ICC Arbitration Rules 2021 outlines the situations in which the Expedited Procedure Provisions, set out in Appendix VI, will not apply. It considers the timing of the arbitration agreement, parties’ agreement to opt out, and the Court’s discretion to assess appropriateness. This nuanced approach underscores the ICC’s commitment to flexibility, fairness, and efficiency in arbitration proceedings.



## AWARDS

## ARTICLE 31 Time Limit for the Final Award

- 1 The time limit within which the arbitral tribunal must render its final award is six months. Such time limit shall start to run from the date of the last signature by the arbitral tribunal or by the parties of the Terms of Reference or, in the case of application of Article 23(3), the date of the notification to the arbitral tribunal by the Secretariat of the approval of the Terms of Reference by the Court. The Court may fix a different time limit based upon the procedural timetable established pursuant to Article 24(2).**

Article 31(1) of the ICC Arbitration Rules 2021 outlines the time limit within which the arbitral tribunal must render its final award. Let us analyse this provision:

- 1. Six-Month Time Limit:** The provision establishes a default time limit of six months within which the arbitral tribunal must render its final award. This time limit is intended to promote the efficient resolution of disputes and ensure that arbitration proceedings do not unnecessarily extend over long periods.
- 2. Commencement of Time Limit:** The time limit begins to run from a specific triggering event. It starts from the date of the last signature by the arbitral tribunal or by the parties of the Terms of Reference. In cases where Article 23(3) is applicable (approval of the Terms of Reference by the Court), the time limit begins from the date of the notification to the arbitral tribunal by the Secretariat about the Court's approval.
- 3. Adaptability:** The provision acknowledges that there might be scenarios where the default six-month time limit is not appropriate due to the complexity of the case or other specific circumstances. It allows for flexibility by granting the Court the authority to fix a different time limit based on the procedural timetable established under Article 24(2).
- 4. Balancing Efficiency and Thoroughness:** By setting a specific time limit for rendering the final award, the provision underscores the ICC's emphasis on ensuring that arbitration proceedings are conducted efficiently. However, it also recognises the importance of a thorough and fair deliberation process by allowing the Court to extend or modify the time limit based on the procedural needs of the case.
- 5. Accountability and Predictability:** The provision contributes to transparency and predictability in arbitration proceedings by establishing a clear time frame for the rendering of the final award. This helps parties, arbitrators, and other stakeholders manage their expectations regarding the duration of the arbitration process.
- 6. Incentive for Timely Completion:** By imposing a time limit on the rendering of the final award, the provision encourages parties, arbitrators, and the tribunal to work diligently to ensure that the proceedings progress efficiently. This ultimately benefits parties by providing them with a final resolution in a reasonable time frame.

In summary, Article 31(1) of the ICC Arbitration Rules 2021 establishes a six-month time limit for the arbitral tribunal to render its final award. It provides clarity, adaptability, and predictability while encouraging efficiency and ensuring fairness in the arbitration process. The provision strikes a balance between expeditious resolution and thorough consideration of the issues at hand.

**2 The Court may extend the time limit pursuant to a reasoned request from the arbitral tribunal or on its own initiative if it decides it is necessary to do so.**

Article 31(2) of the ICC Arbitration Rules 2021 addresses the authority of the Court to extend the time limit for rendering the final award. Let us analyse this provision:

1. **Court’s Discretion:** The provision grants the ICC Court the discretion to extend the time limit for rendering the final award. This discretion reflects the Court’s role in overseeing the arbitration process and ensuring that it is conducted fairly and effectively.
2. **Reasoned Request:** The Court’s authority to extend the time limit is triggered by a “reasoned request” from the arbitral tribunal. This implies that the tribunal must provide a well-founded explanation for why an extension is necessary. This requirement promotes transparency and accountability, ensuring that requests for extensions are supported by valid reasons.
3. **Initiative by the Court:** The provision also allows the Court to extend the time limit on its own initiative. This indicates that the Court is proactive in managing the arbitration process and may intervene if it determines that an extension is necessary for the proper conduct of the proceedings.
4. **Necessity Standard:** The Court’s decision to grant an extension is based on whether it deems the extension “necessary”. This standard reflects the Court’s responsibility to balance the need for efficient proceedings with the need for fairness and thorough consideration of the case. The Court’s determination of necessity contributes to maintaining the integrity of the arbitration process.
5. **Flexibility:** By giving the Court the authority to extend the time limit, the provision acknowledges that unforeseen circumstances or complexities in the case may arise that require additional time for the tribunal to render a fair and considered award. This flexibility recognises that not all cases can fit within a rigid time frame.
6. **Protection of Due Process:** Granting the Court the power to extend the time limit safeguards the due process rights of the parties. It ensures that the parties have an opportunity to present their cases fully and that the arbitral tribunal has sufficient time to consider the evidence and arguments before issuing the final award.
7. **Balancing Efficiency and Quality:** The provision illustrates the ICC’s commitment to striking a balance between achieving efficiency in arbitration proceedings and upholding the quality of the arbitral process. It reflects the understanding that while time limits are important for timely resolution, they should not compromise the fairness and thoroughness of the proceedings.

In summary, Article 31(2) of the ICC Arbitration Rules 2021 grants the ICC Court the authority to extend the time limit for rendering the final award. This provision ensures that extensions are granted based on reasoned requests or the Court’s own determination of necessity. It reflects the Court’s role in overseeing the arbitration process and maintaining a balance between efficiency and due process.

## ARTICLE 32 Making of the Award

- 1 When the arbitral tribunal is composed of more than one arbitrator, an award is made by a majority decision. If there is no majority, the award shall be made by the president of the arbitral tribunal alone.**

Article 32(1) of the ICC Arbitration Rules 2021 addresses the process of making awards when the arbitral tribunal is composed of multiple arbitrators. Let us analyse this provision:

- 1. Majority Decision:** The provision establishes the default rule that an award made by a multi-member arbitral tribunal is decided by a majority decision. This means that if the tribunal consists of three arbitrators, for instance, at least two of them must agree on the content of the award.
- 2. Ensuring Consensus:** The majority requirement aims to ensure that the award reflects the consensus among the tribunal members. This is in line with the principle of deliberation and collaborative decision-making, which is common in arbitration to achieve balanced and well-considered outcomes.
- 3. Efficient Decision-Making:** By requiring a majority decision, the provision promotes efficient decision-making within the tribunal. It prevents situations where a single arbitrator could potentially delay the process or influence the outcome disproportionately.
- 4. No Majority Situation:** In cases where there is no majority among the arbitrators, the provision outlines a clear solution. The award shall be made by the president of the arbitral tribunal alone. This approach prevents deadlocks and ensures that the proceedings can move forward to a conclusion, even if a consensus cannot be reached.
- 5. Role of the President:** In the absence of a majority, the president's role becomes crucial. The provision designates the president to make the final decision, reflecting the leadership role often assigned to the president of the tribunal.
- 6. Preservation of Neutrality:** The provision does not specify that the president's decision must align with their own individual views. It can be inferred that the president, when making the award alone, should consider the discussions and arguments presented during deliberations to reach a balanced decision.
- 7. Balancing Efficiency and Fairness:** Article 32(1) strikes a balance between efficiency and fairness. It allows the majority to prevail, avoiding delays, while also providing a mechanism for a single decision-maker when consensus cannot be reached.
- 8. Transparent Process:** The provision's clarity and straightforwardness contribute to transparency in the arbitration process. Parties can anticipate how awards will be decided in various scenarios involving multi-member tribunals.

In summary, Article 32(1) of the ICC Arbitration Rules 2021 establishes the principle that awards by multi-member arbitral tribunals are made by a majority decision. It ensures efficient decision-making while also providing a solution for situations where no majority can be reached by allowing the president to make the award alone.

## 2 The award shall state the reasons upon which it is based.

Article 32(2) of the ICC Arbitration Rules 2021 addresses a fundamental requirement for arbitration awards – the obligation to provide reasons for the award. Let us analyse this provision:

1. **Reasoned Awards:** The provision mandates that the award must include the reasons upon which it is based. This requirement ensures transparency and accountability in the arbitral process, as parties and other stakeholders can understand the rationale behind the decision.
2. **Transparency:** Requiring reasons in the award contributes to the transparency of the arbitration proceedings. Parties are entitled to know why a certain outcome was reached and how the arbitrators evaluated the evidence, arguments, and legal principles.
3. **Legal Scrutiny:** Reasoned awards facilitate judicial review of arbitration awards in countries where such review is permitted by law. Clear and well-explained reasons provide a basis for assessing the arbitrators' decision-making process.
4. **Facilitating Enforcement:** In international arbitration, where awards are often recognised and enforced in different jurisdictions, reasoned awards are more likely to be accepted by courts as valid and enforceable.
5. **Arbitrator Accountability:** Requiring reasons enhances the accountability of arbitrators for their decisions. This can discourage arbitrary or unsupported awards, as arbitrators are aware that their decisions will be subject to scrutiny.
6. **Educational Value:** Reasoned awards also have educational value for practitioners, scholars, and students of arbitration. They provide insights into how tribunals analyse complex legal and factual issues.
7. **Quality of Decision-Making:** The necessity to provide reasons encourages arbitrators to engage in thorough and thoughtful deliberations, resulting in more well-founded and carefully considered awards.
8. **Communication to Parties:** A reasoned award helps parties to better understand the tribunal's decision, even if their arguments were not entirely successful. It fosters confidence in the process and demonstrates respect for the parties' right to a fair hearing.
9. **Balancing Efficiency and Explanations:** While the requirement for reasoned awards adds depth to the decision, it is essential to strike a balance to avoid excessively lengthy or overly detailed explanations that could hinder efficiency.

In summary, Article 32(2) of the ICC Arbitration Rules 2021 emphasises the importance of providing reasons in arbitration awards. This requirement enhances transparency, facilitates enforcement, supports legal review, and ensures accountability in the arbitration process.

**3 The award shall be deemed to be made at the place of the arbitration and on the date stated therein.**

Article 32(3) of the ICC Arbitration Rules 2021 establishes two key elements regarding the timing and location of the arbitration award. Let us analyse this provision:

1. **Timing of the Award:** The provision specifies that the award is deemed to be made on the date stated within the award itself. This means that the actual date of the award is the one provided within the award document, which may or may not coincide with the date when the tribunal's deliberations concluded.
2. **Place of the Arbitration:** The provision stipulates that the award is deemed to be made at the place of the arbitration. The "place of the arbitration" refers to the geographical location designated as the official seat or legal venue of the arbitration proceedings. It is worth noting that the choice of the place of arbitration can have implications for the applicable law, the legal framework governing the arbitration, and the enforcement of the award.
3. **Certainty and Legal Effect:** By determining a specific date and place for the award, this provision enhances the certainty and legal effect of the award. Parties, courts, and other relevant stakeholders can easily identify the temporal and geographic context of the award.
4. **Enforcement and Recognition:** The determination of the place of the arbitration is particularly relevant for the enforcement and recognition of the award. Enforcing courts may consider the place of arbitration when assessing whether they have jurisdiction to enforce the award and when evaluating whether the award is subject to certain procedural or substantive legal requirements.
5. **Clarity in Jurisdiction:** The specification of the place of the arbitration clarifies the jurisdiction under which the award is made. It avoids potential confusion about which legal framework governs the award's validity and enforceability.
6. **Choice of Law Implications:** While the provision does not explicitly address the choice of law applicable to the award, the place of arbitration may have implications for determining the procedural law that applies to the arbitration and the substantive law governing the dispute.

In summary, Article 32(3) of the ICC Arbitration Rules 2021 addresses the timing and location of the arbitration award. It ensures clarity regarding the date and place of the award's issuance, which has implications for enforcement, recognition, and the legal framework governing the arbitration.

## ARTICLE 33 Award by Consent

**If the parties reach a settlement after the file has been transmitted to the arbitral tribunal in accordance with Article 16, the settlement shall be recorded in the form of an award made by consent of the parties, if so requested by the parties and if the arbitral tribunal agrees to do so.**

1. Article 33 of the ICC Arbitration Rules 2021 pertains to the scenario where the parties to an arbitration reach a settlement after the arbitration proceedings have commenced. Let us break down the key aspects of this article:
2. **Settlement Reached After File Transmission:** The article is triggered when the parties reach a settlement after the case file has been transmitted to the arbitral tribunal, which signifies that the arbitration proceedings are already in progress.
3. **Recording Settlement in the Form of an Award:** If the parties agree and wish to have their settlement recorded as an official decision, they can request the arbitral tribunal to issue an award reflecting the terms of their settlement. This award is often referred to as an “award by consent” or “consent award”.
4. **Voluntary Nature:** The decision to request an award by consent is voluntary and depends on the parties’ mutual agreement and the arbitral tribunal’s consent. The arbitral tribunal has the discretion to decide whether or not to grant the parties’ request for an award by consent.
5. **Binding Effect:** If the arbitral tribunal agrees to issue an award by consent, it becomes a binding and enforceable document. The terms of the settlement, as recorded in the award, carry the same legal weight as any other arbitration award.
6. **Benefits of Consent Award:** A consent award provides legal certainty to the parties regarding the terms of their settlement. It also serves as a mechanism for parties to formalise their resolution of the dispute and avoid potential future disagreements over the interpretation or enforcement of the settlement terms.
7. **Efficiency and Finality:** The option of obtaining a consent award promotes efficiency in the resolution process by allowing the parties to conclude the dispute without the need for further proceedings. It also contributes to the finality of the arbitration process, as parties are less likely to challenge an award they themselves have consented to.
8. **Preserving Confidentiality:** Parties often prefer consent awards as they can help preserve the confidentiality of the settlement agreement since the terms are incorporated into a private arbitration award rather than a public court judgment.

In summary, Article 33 of the ICC Arbitration Rules 2021 allows parties to request the arbitral tribunal to issue an award by consent if they reach a settlement after the commencement of arbitration proceedings. This provision promotes the efficient and conclusive resolution of disputes through formalising settlements in the form of arbitration awards while allowing the parties to retain confidentiality and control over the process.

## ARTICLE 34 Scrutiny of the Award by the Court

**Before signing any award, the arbitral tribunal shall submit it in draft form to the Court. The Court may lay down modifications as to the form of the award and, without affecting the arbitral tribunal's liberty of decision, may also draw its attention to points of substance. No award shall be rendered by the arbitral tribunal until it has been approved by the Court as to its form.**

Article 34 of the ICC Arbitration Rules 2021 deals with the finalisation and approval of arbitral awards by the arbitral tribunal and the role of the ICC Court in this process. Here is a breakdown of the key points of this article:

1. **Draft Award Submission to the Court:** Before an arbitral tribunal signs the final award, it is required to submit the draft award to the ICC Court for review. This step ensures that the award complies with the procedural and formal requirements set out in the ICC Arbitration Rules.
2. **Court's Review of Form and Substance:** The Court's review of the draft award focuses on two main aspects: form and substance. In terms of form, the Court may suggest modifications to ensure that the award adheres to proper formatting, language, and other procedural elements. This helps maintain consistency and professionalism in the awards issued under ICC arbitration.
3. **Preservation of Arbitral Tribunal's Decision-Making Autonomy:** The Court's role in reviewing the draft award does not encroach on the arbitral tribunal's autonomy to decide the substantive matters of the dispute. The Court's intervention is primarily related to matters of procedural compliance and formal correctness rather than the underlying merits of the award.
4. **Pointing Out Points of Substance:** While the Court's main focus is on form, it also has the authority to bring to the arbitral tribunal's attention any points of substance. This means that the Court can alert the arbitral tribunal to any potential issues or inconsistencies it identifies in the award.
5. **Approval of Form by the Court:** No award can be rendered by the arbitral tribunal until it has been approved by the Court as to its form. This approval ensures that the award is properly structured and complies with the requirements of the ICC Arbitration Rules.
6. **Balancing Formality and Efficiency:** Article 34 strikes a balance between maintaining the formalities and quality of ICC awards while still respecting the efficiency of the arbitration process. By involving the Court in the review of awards, parties can have confidence that the awards issued are consistent with ICC standards.
7. **Final Step Before Issuing the Award:** After the Court approves the form of the award, the arbitral tribunal can proceed to sign and issue the final award. This step marks the culmination of the arbitration process, as it brings closure to the dispute and provides the parties with a legally binding decision.

In summary, Article 34 of the ICC Arbitration Rules 2021 emphasises the importance of submitting draft awards to the ICC Court for review and approval as to their form. This helps ensure that the awards meet the procedural and formal requirements while safeguarding the arbitral tribunal's decision-making autonomy regarding substantive matters.

## ARTICLE 35 Notification, Deposit and Enforceability of the Award

- 1 Once an award has been made, the Secretariat shall notify to the parties the text signed by the arbitral tribunal, provided always that the costs of the arbitration have been fully paid to ICC by the parties or by one of them.**

Article 35(1) of the ICC Arbitration Rules 2021 outlines the procedure for notifying the parties of the final award once it has been made by the arbitral tribunal. Here is a breakdown of its key points:

1. **Notification of the Award:** According to Article 35(1), after an arbitral tribunal has issued an award, the Secretariat of the ICC shall notify the parties of the text of the award that has been signed by the arbitral tribunal. This notification serves to officially communicate the outcome of the arbitration to the parties.
2. **Requirement of Full Payment:** However, there is a condition attached to this notification. The award will be officially notified to the parties only if the costs of the arbitration have been fully paid to the ICC. The payment of arbitration costs is a crucial aspect of ensuring the efficiency and integrity of the arbitration process.
3. **Importance of Full Payment:** The requirement for full payment of arbitration costs before the award is officially notified helps ensure that the parties fulfil their financial obligations to the ICC. This requirement encourages parties to honour their financial responsibilities in a timely manner, contributing to the smooth administration of the arbitration proceedings.
4. **Parties' Responsibilities:** Parties engaged in ICC arbitration are responsible for paying the arbitration costs, which cover various aspects of the arbitration process, such as administrative fees, arbitrator fees, and other expenses related to the conduct of the proceedings.
5. **Ensuring Timely Notification:** By linking the notification of the award to the full payment of arbitration costs, Article 35(1) aims to ensure that the notification is only sent when the parties have met their financial commitments to the ICC. This approach helps maintain the integrity of the arbitration process and encourages parties to promptly fulfil their financial obligations.

In summary, Article 35(1) of the ICC Arbitration Rules 2021 outlines the procedure for notifying parties of the final award. The notification is contingent upon the full payment of arbitration costs, underscoring the importance of financial responsibility in the arbitration process and contributing to the effective administration of ICC arbitration cases.

- 2 Additional copies certified true by the Secretary General shall be made available on request and at any time to the parties, but to no one else.**

Article 35(2) of the ICC Arbitration Rules 2021 addresses the availability of additional copies of the final award after it has been made and officially notified to the parties. Here is an analysis of its key points:



1. **Additional Certified Copies:** According to Article 35(2), parties involved in the arbitration process have the right to request additional copies of the final award. These copies are certified as true by the Secretary General of the ICC. This certification adds an official seal of authenticity to the copies, indicating that they accurately reflect the content of the original award.
2. **Access Limited to Parties:** The provision specifies that additional certified copies of the award are made available only to the parties involved in the arbitration. This limitation is in line with the principle of confidentiality that typically surrounds arbitration proceedings. It ensures that sensitive information and details contained in the award are shared only with those directly involved in the case.
3. **Maintaining Confidentiality:** The restriction on providing additional certified copies to anyone other than the parties is essential to maintaining the confidentiality of the arbitration process. It prevents unauthorised access to the award's contents and preserves the privacy of the parties' dispute resolution efforts.
4. **Preservation of Authenticity:** The certification by the Secretary General further enhances the credibility and authenticity of the copies. It signifies that the copies are true and accurate representations of the original award, reducing the risk of unauthorised alterations or tampering.
5. **Accessibility to Parties:** By providing a mechanism for parties to request additional certified copies of the award "at any time", Article 35(2) ensures that parties have ongoing access to the official documentation of the outcome of the arbitration process. This accessibility is important for record-keeping, compliance, and potential enforcement of the award.

In summary, Article 35(2) of the ICC Arbitration Rules 2021 addresses the availability of additional certified copies of the final award to the parties involved in the arbitration. This provision ensures that parties have ongoing access to authentic and official documentation of the award while maintaining confidentiality and safeguarding the integrity of the arbitration process.

### **3 By virtue of the notification made in accordance with Article 35(1), the parties waive any other form of notification or deposit on the part of the arbitral tribunal.**

Article 35(3) of the ICC Arbitration Rules 2021 addresses the implications of the official notification made to the parties regarding the final award. Here is an analysis of its key points:

1. **Waiver of Other Notifications:** This provision states that upon receiving the official notification of the final award, as required by Article 35(1), the parties implicitly waive any other form of notification or deposit that might be expected from the arbitral tribunal. In other words, the official notification serves as the official communication of the award to the parties, and they do not need any further forms of notification or deposit from the arbitral tribunal.
2. **Efficiency and Finality:** By waiving the need for additional notifications or deposits, this provision enhances the efficiency and finality of the arbitration process. Once the official notification of the award has been provided to the parties in accordance with Article

35(1), they are considered to be adequately informed about the outcome of the arbitration.

3. **Legal Certainty:** The provision contributes to legal certainty by ensuring that parties have a clear and consistent understanding of the process and the point at which they are deemed to have received the award. This helps to avoid confusion or potential disputes regarding the validity of notifications or the timing of awards.
4. **Avoiding Duplication:** The waiver of additional forms of notification or deposit prevents redundancy in communication efforts. It eliminates the need for the arbitral tribunal to redundantly provide the same information through multiple channels, streamlining the communication process.
5. **Protecting Parties' Rights:** It is important to note that while the provision states that parties waive any other form of notification or deposit, it does not undermine parties' rights or their access to the award. It simply ensures that parties acknowledge the official notification as the valid and authoritative means of communication from the arbitral tribunal.

In summary, Article 35(3) of the ICC Arbitration Rules 2021 clarifies that upon receiving the official notification of the final award as required by Article 35(1), parties waive any other forms of notification or deposit from the arbitral tribunal. This provision promotes efficiency, legal certainty, and the finality of the arbitration process, while also safeguarding parties' rights and access to the award.

#### **4 An original of each award made in accordance with the Rules shall be deposited with the Secretariat.**

Article 35(4) of the ICC Arbitration Rules 2021 pertains to the deposit of original awards with the Secretariat and underscores the formal and organisational aspects of the arbitration process. Here is an analysis of its key points:

1. **Archiving Original Awards:** This provision requires that an original copy of each award, which has been rendered in accordance with the ICC Arbitration Rules, must be deposited with the Secretariat. The "original copy" here refers to a physical or electronic version of the award that bears the original signatures of the arbitral tribunal members.
2. **Formal Recordkeeping:** The requirement to deposit original awards contributes to the formal recordkeeping of the arbitration proceedings. Having original copies of awards stored with the Secretariat ensures a reliable repository for official records related to the arbitration process. This can be important for purposes of verification, reference, and enforcement of awards.
3. **Documentation of Outcomes:** The original award copies deposited with the Secretariat serve as official documentation of the outcomes of the arbitration cases. This documentation can be useful for parties involved in the arbitration, as well as for any future reference that might be needed.
4. **Transparency and Accessibility:** Depositing original awards with the Secretariat enhances transparency in the arbitration process. It ensures that parties have access to

authenticated copies of the awards they have received. It also maintains the integrity of the awards by having them stored in a centralised and secure manner.

5. **Enforcement and Recognition:** In case the award needs to be enforced or recognised in a different jurisdiction, having an original copy deposited with the Secretariat can provide a credible source of the award's authenticity. This can be crucial when presenting the award to courts or authorities for enforcement purposes.
6. **Conformity with International Standards:** The deposit of original awards aligns with international arbitration standards and practices, where maintaining an official record of awards is considered a best practice for ensuring transparency and accountability in the arbitration process.

In summary, Article 35(4) of the ICC Arbitration Rules 2021 requires that an original copy of each award made in accordance with the Rules is to be deposited with the Secretariat. This practice promotes transparency, formal recordkeeping, and accessibility to awards, while also facilitating enforcement and recognition efforts when necessary.

## **5 The arbitral tribunal and the Secretariat shall assist the parties in complying with whatever further formalities may be necessary.**

Article 35(5) of the ICC Arbitration Rules 2021 emphasises the collaborative role of the arbitral tribunal and the Secretariat in assisting the parties with complying with any additional formalities that may be required after the award has been rendered. Here is an analysis of its key points:

1. **Continued Assistance:** This provision underscores the ongoing involvement of the arbitral tribunal and the Secretariat even after the award has been made. Their role extends beyond rendering the award to ensuring that the parties are able to fulfil any additional formalities that might be necessary.
2. **Post-Award Formalities:** After an award has been made, there could be various post-award formalities that the parties need to complete. These could include matters related to enforcement, execution, recognition in different jurisdictions, or other procedural requirements.
3. **Cooperation and Collaboration:** The language of the provision ("shall assist") indicates a proactive approach on the part of both the arbitral tribunal and the Secretariat to cooperate and collaborate with the parties. This reflects the principle of ensuring a smooth and effective arbitration process.
4. **Guidance and Support:** The arbitral tribunal and the Secretariat are expected to guide the parties through any further steps they need to take to meet the necessary formalities. This could involve providing information, clarifications, or advice on the procedures involved.
5. **Efficiency and Effectiveness:** By providing assistance, the aim is to enhance the efficiency and effectiveness of the post-award process. This aligns with the broader goal of ensuring that arbitration proceedings are conducted smoothly and that parties are supported throughout the entire process.

6. Customisation: The provision's language ("whatever further formalities may be necessary") allows flexibility for the specific requirements that might arise in different cases. This acknowledges that the formalities could vary depending on the nature of the dispute and the applicable laws.
7. Overall Arbitration Experience: This provision contributes to the overall positive experience of the arbitration process for the parties. It reinforces the idea that the arbitral tribunal and the Secretariat are available to offer guidance and assistance beyond the issuance of the award.

In summary, Article 35(5) of the ICC Arbitration Rules 2021 highlights the commitment of the arbitral tribunal and the Secretariat to assist the parties with any additional formalities that may be necessary after the award has been rendered. This collaborative approach aims to ensure that parties are well-supported in completing any post-award procedures efficiently and effectively.

**6 Every award shall be binding on the parties. By submitting the dispute to arbitration under the Rules, the parties undertake to carry out any award without delay and shall be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made.**

Article 35(6) of the ICC Arbitration Rules 2021 establishes the binding nature of arbitration awards rendered under the Rules and outlines the legal consequences for the parties involved. Here is an analysis of its key points:

1. Binding Nature of Awards: This provision affirms that every award rendered under the ICC Arbitration Rules is legally binding on the parties. It emphasises the finality and authority of the award, indicating that the decision reached by the arbitral tribunal must be respected and adhered to by the parties.
2. Undertaking to Comply: By participating in the arbitration process under the ICC Rules, the parties explicitly undertake to carry out the award promptly. This means that they commit to fulfilling the obligations, directions, and remedies set out in the award without undue delay.
3. Waiver of Recourse: The provision establishes that by agreeing to arbitration under the ICC Rules and participating in the process, the parties waive their right to any form of recourse insofar as this waiver can validly be made. This waiver essentially restricts the parties' ability to challenge the award through other means such as litigation or alternative dispute resolution mechanisms.
4. Preservation of Legal Rights: While the provision limits the parties' recourse to challenge the award, it does not necessarily prevent them from seeking recourse in cases where the challenge is allowed under applicable law or international conventions. The scope of the waiver is limited to what can be validly waived.
5. Finality and Certainty: The provision contributes to the overall goal of arbitration, which is to provide parties with a faster and more efficient alternative to litigation. It promotes finality and certainty by encouraging parties to accept and implement the award without undue delay.

6. **Enforcement Mechanism:** The provision underscores the enforceability of arbitration awards under the ICC Rules. Courts in various jurisdictions generally uphold the binding nature of awards issued in accordance with recognised arbitration rules and conventions.
7. **Incentive for Cooperation:** By committing to abide by the award, parties contribute to the cooperative spirit of arbitration. They signal their willingness to respect the arbitration process, the decision of the arbitral tribunal, and the principle of finality.

In summary, Article 35(6) of the ICC Arbitration Rules 2021 establishes the binding nature of awards rendered under the Rules and emphasises the parties' commitment to promptly carry out the award's provisions. The provision also addresses the waiver of certain forms of recourse, contributing to the overall efficacy and finality of the arbitration process.

### **ARTICLE 36 Correction and Interpretation of the Award; Additional Award; Remission of Awards**

- 1 On its own initiative, the arbitral tribunal may correct a clerical, computational or typographical error, or any errors of similar nature contained in an award, provided such correction is submitted for approval to the Court within 30 days from notification of the award by the Secretariat pursuant to Article 35(1).**

Article 36(1) of the ICC Arbitration Rules 2021 outlines the procedure for the correction of certain types of errors that may occur in an arbitral award. Here is an analysis of this provision:

1. **Scope of Correction:** This article grants the arbitral tribunal the authority to correct specific types of errors in an award. The errors that can be corrected include clerical, computational, typographical, or other errors of a similar nature. These errors are generally minor and do not involve substantive changes to the content or the essence of the award.
2. **Initiative for Correction:** The provision allows the arbitral tribunal to initiate the correction process on its own accord. This means that if the arbitral tribunal identifies such errors, it has the responsibility to correct them in order to ensure the accuracy and clarity of the award.
3. **Submission to the Court:** While the arbitral tribunal can make the corrections, the corrected version of the award must be submitted to the International Court of Arbitration of the ICC for approval. This submission needs to occur within 30 days from the notification of the award by the Secretariat, which is in accordance with Article 35(1) of the Rules.
4. **Approval of Corrections:** The role of the Court is to review and approve the corrections made by the arbitral tribunal. This ensures that the corrections do not alter the substance or essence of the award and only address minor errors. The Court's approval adds a layer of oversight to maintain the integrity of the arbitration process.
5. **Limited Timeframe:** The provision establishes a strict timeframe of 30 days for the arbitral tribunal to correct the errors and submit the corrected award to the Court. This ensures that the correction process is efficient and does not unduly delay the finality of the award.

6. **Preservation of Award's Integrity:** The provision's focus on clerical, computational, typographical, or similar errors reflects the intention to preserve the accuracy and authenticity of the award while minimising the need for parties to seek clarification or corrections through other means.
7. **Efficiency and Finality:** By allowing the arbitral tribunal to correct minor errors and involving the Court to approve the corrections, the provision contributes to the efficiency and finality of the arbitration process. Parties can have confidence that even minor errors will be promptly addressed.

In summary, Article 36(1) of the ICC Arbitration Rules 2021 provides a mechanism for the correction of specific types of errors in an arbitral award. This provision allows the arbitral tribunal to initiate corrections, subject to approval by the Court, within a limited timeframe after the award has been notified to the parties. The provision ensures the accuracy of awards while maintaining the efficiency and finality of the arbitration process.

**2 Any application of a party for the correction of an error of the kind referred to in Article 36(1), or for the interpretation of an award, must be made to the Secretariat within 30 days from receipt of the award by such party.**

Article 36(2) of the ICC Arbitration Rules 2021 addresses the procedure and timeframe for parties to request the correction of errors or seek interpretation of an arbitral award. Here is an analysis of this provision:

1. **Types of Applications:** This provision outlines two types of applications that a party can make: correction of errors and interpretation of an award. These applications concern matters related to the content, accuracy, or understanding of the award.
2. **Correction of Errors:** Parties can apply for the correction of errors of the same nature as mentioned in Article 36(1). These errors typically involve clerical, computational, typographical, or similar minor errors that do not impact the substantive content of the award.
3. **Interpretation of Award:** In addition to seeking corrections, parties can also apply for the interpretation of an award. This implies that a party may have concerns about the meaning, intention, or scope of certain provisions in the award.
4. **Timeframe for Application:** The provision establishes a strict timeframe within which a party must submit its application to the Secretariat. This timeframe is 30 days from the receipt of the award by the party making the application. This ensures that parties act promptly if they believe there are errors to be corrected or aspects of the award to be clarified.
5. **Role of the Secretariat:** The Secretariat serves as the administrative arm of the ICC arbitration process. It is the designated recipient of the applications for correction or interpretation of awards as specified in this provision.

6. **Efficient Resolution:** The provision's 30-day timeframe encourages parties to address any concerns or uncertainties about the award promptly. This contributes to the efficient resolution of any issues related to the award's content or interpretation.
7. **Finality of Awards:** The provision's requirement for timely applications aligns with the overall goal of maintaining the finality of arbitral awards. By setting a specific timeframe for parties to seek corrections or interpretation, the provision seeks to avoid unnecessary delays in the process.
8. **Parties' Rights:** The provision ensures that parties have the opportunity to seek corrections or clarifications when necessary. This reflects the principle of due process and the parties' right to understand the reasoning and content of the award.

In summary, Article 36(2) of the ICC Arbitration Rules 2021 establishes a timeframe and procedure for parties to apply for the correction of errors or the interpretation of an arbitral award. This provision ensures that parties can promptly address concerns about the award's accuracy or meaning, contributing to the efficiency and finality of the arbitration process.

**3 Any application of a party for an additional award as to claims made in the arbitral proceedings which the arbitral tribunal has omitted to decide must be made to the Secretariat within 30 days from receipt of the award by such party.**

Article 36(3) of the ICC Arbitration Rules 2021 outlines the procedure and timeframe for parties to apply for an additional award on claims that were omitted from the initial arbitral award. Here is an analysis of this provision:

1. **Additional Award for Omitted Claims:** This provision deals with situations where the arbitral tribunal has not addressed or decided certain claims that were raised by the parties during the arbitration proceedings. It allows parties to seek an additional award specifically for these omitted claims.
2. **Timeframe for Application:** Similar to Article 36(2), this provision establishes a strict timeframe within which a party must submit its application to the Secretariat. The timeframe is 30 days from the receipt of the initial award by the party making the application.
3. **Prompt Resolution:** The provision's timeframe encourages parties to promptly seek redress for claims that were inadvertently omitted from the initial award. This helps in addressing potential gaps in the resolution of disputes and contributes to a timely resolution of the parties' concerns.
4. **Role of the Secretariat:** As in Article 36(2), the Secretariat is designated as the administrative entity to receive applications for additional awards related to omitted claims.
5. **Finality of Awards:** By setting a specific timeframe for parties to apply for an additional award, this provision aligns with the overall goal of maintaining the finality of arbitral awards. It ensures that parties promptly address the issue of omitted claims rather than letting it linger.

6. **Preservation of Rights:** The provision acknowledges the parties' right to seek a complete resolution of their disputes. If certain claims were inadvertently omitted in the initial award, this provision ensures parties have a mechanism to seek a proper determination on those claims.
7. **Efficient and Comprehensive Resolution:** The provision contributes to an efficient and comprehensive resolution of disputes by providing parties with a means to address any gaps or omissions in the award, thereby minimising the need for subsequent proceedings.
8. **Balancing Interests:** The provision strikes a balance between the finality of the initial award and the parties' right to address omitted claims. It does so by requiring timely action while also recognising that parties may have valid reasons to request an additional award.

In summary, Article 36(3) of the ICC Arbitration Rules 2021 establishes a timeframe and procedure for parties to apply for an additional award on claims omitted from the initial arbitral award. The provision ensures that parties can promptly seek resolution for omitted claims while maintaining the overall efficiency and finality of the arbitration process.

- 4 After transmission of an application pursuant to Articles 36(2) or 36(3) to the arbitral tribunal, the latter shall grant the other party or parties a short time limit, normally not exceeding 30 days, from receipt of the application by that party or parties, to submit any comments thereon. The arbitral tribunal shall submit its decision on the application in draft form to the Court not later than 30 days from expiry of the time limit for the receipt of any comments from the other party or parties or within such other period as the Court may decide. A decision to correct or to interpret the award shall take the form of an addendum and shall constitute part of the award. A decision to grant the application under paragraph 3 shall take the form of an additional award. The provisions of Articles 32, 34 and 35 shall apply mutatis mutandis.**

Article 36(4) of the ICC Arbitration Rules 2021 outlines the process for handling applications related to the correction, interpretation, or additional award on claims omitted from the initial arbitral award. Here is an analysis of this provision:

1. **Application Process:** This provision focuses on the procedural steps following the submission of applications pursuant to Article 36(2) or 36(3) for correction, interpretation, or additional awards.
2. **Comments from Other Parties:** After the application is transmitted to the arbitral tribunal, the tribunal is required to provide the other party or parties a reasonable period (usually not exceeding 30 days) to submit their comments on the application. This ensures that all parties have an opportunity to provide input before a decision is reached.
3. **Timely Decision:** The arbitral tribunal is required to draft and submit its decision on the application to the Court within 30 days from the expiration of the time limit for receiving comments from the other parties. This timeframe contributes to a prompt resolution of the application, aligning with the goal of maintaining an efficient arbitration process.
4. **Form of Decisions:** Depending on the nature of the application, the provision specifies the form that the arbitral tribunal's decision should take. A decision to correct or interpret the



award is referred to as an “addendum” and is considered part of the award. A decision to grant an application under paragraph 3 (related to omitted claims) is referred to as an “additional award”.

5. **Application of Other Provisions:** To ensure consistency and procedural fairness, the provision states that certain provisions, namely Articles 32, 34, and 35, apply “mutatis mutandis” to these decisions. This means that while these provisions are not directly applicable, their underlying principles or procedures are adapted as necessary to suit the context of these decisions.
6. **Streamlined Process:** The provision establishes a clear process for handling applications for corrections, interpretations, or additional awards, which streamlines the resolution of these matters and provides a structured framework for the arbitral tribunal to follow.
7. **Balancing Party Interests:** The provision acknowledges the importance of allowing parties to provide their comments and ensures that their views are considered before a decision is finalised. This approach seeks to balance the interests of all parties involved.
8. **Efficiency and Fairness:** By setting specific time limits and procedural steps, this provision enhances the efficiency and fairness of the application process. It ensures that parties have the opportunity to address potential issues with the award promptly and that decisions are made in a transparent and well-structured manner.

In summary, Article 36(4) of the ICC Arbitration Rules 2021 outlines the procedural steps for handling applications related to corrections, interpretations, or additional awards. The provision emphasises timely decisions, procedural fairness, and the application of relevant principles from other articles, all of which contribute to an effective and well-regulated arbitration process.

**5 Where a court remits an award to the arbitral tribunal, the provisions of Articles 32, 34, 35 and this Article 36 shall apply mutatis mutandis to any addendum or award made pursuant to the terms of such remission. The Court may take any steps as may be necessary to enable the arbitral tribunal to comply with the terms of such remission and may fix an advance to cover any additional fees and expenses of the arbitral tribunal and any additional ICC administrative expenses.**

Article 36(5) of the ICC Arbitration Rules 2021 addresses the scenario where a court remits an arbitral award to the arbitral tribunal for further consideration. Here is an analysis of this provision:

1. **Court Remission:** This provision comes into play when a court decides to remit an award back to the arbitral tribunal for reconsideration. This could occur if the court identifies issues or errors in the award that warrant further examination or clarification by the arbitral tribunal.
2. **Application of Certain Articles:** Article 36(5) specifies that certain articles from the ICC Arbitration Rules apply “mutatis mutandis” to the situation where an award is remitted. These articles include Articles 32, 34, and 35, along with the present Article 36. “Mutatis mutandis” means that certain adjustments or modifications are made to these articles to suit the context of the remission process.

3. **Addendum or Award:** In cases of remission, the arbitral tribunal may be required to issue an “addendum” or a new “award” that addresses the issues identified by the court. An addendum would be an extension or modification of the original award to provide further clarification or rectification, while a new award could be made to replace the original award entirely.
4. **Court’s Role:** The provision acknowledges that the court that remitted the award may play a role in the process. The court can take steps to facilitate compliance with the remission’s terms, and it has the authority to fix an advance to cover any additional fees and expenses of the arbitral tribunal and any related ICC administrative expenses.
5. **Coordination and Support:** Article 36(5) ensures coordination between the court and the arbitral tribunal during the remission process. It provides a framework for addressing the procedural and financial aspects of reconsidering the award.
6. **Flexibility:** The provision recognises that the remission process may require flexibility in terms of procedure and cost. By allowing for the court to fix an advance to cover additional expenses, it ensures that practical considerations are addressed.
7. **Efficient Remission Process:** By incorporating procedural elements from other relevant articles and establishing the role of the court in facilitating the remission process, this provision contributes to an efficient and organised process for addressing issues identified by the court.

In summary, Article 36(5) of the ICC Arbitration Rules 2021 addresses the process that follows when an award is remitted by a court to the arbitral tribunal for further consideration. The provision ensures the application of relevant articles, clarifies the role of the court, and establishes a framework for addressing procedural and financial aspects related to the remission process.

## COSTS

### ARTICLE 37 Advance to Cover the Costs of the Arbitration

- 1 After receipt of the Request, the Secretary General may request the claimant to pay a provisional advance in an amount intended to cover the costs of the arbitration**
- a) until the Terms of Reference have been drawn up; or**
  - b) when the Expedited Procedure Provisions apply, until the case management conference.**

**Any provisional advance paid will be considered as a partial payment by the claimant of any advance on costs fixed by the Court pursuant to this Article 37.**

Article 37(1) of the ICC Arbitration Rules 2021 addresses the topic of requesting a provisional advance from the claimant to cover the costs of the arbitration. Here is an analysis of this provision:

1. **Provisional Advance Request:** This provision grants the Secretary General the authority to request the claimant to pay a provisional advance to cover the costs of the arbitration. This request occurs after the receipt of the Request for Arbitration, which initiates the arbitration process.
2. **Purpose of Provisional Advance:** The provisional advance is intended to secure funds that will cover the initial costs of the arbitration until certain milestones are reached in the proceedings. These milestones are defined in the provision as either the drawing up of the Terms of Reference (a) or the case management conference (b) when the Expedited Procedure Provisions apply.
3. **Cost Coverage:** The provisional advance is aimed at ensuring that the administrative and other initial costs of the arbitration are adequately covered during the early stages of the proceedings. This allows the arbitration process to proceed smoothly without delays due to lack of funds.
4. **Terms of Reference or Expedited Procedure:** The provisional advance is applicable in two specific scenarios: (a) until the Terms of Reference are drawn up or (b) when the Expedited Procedure Provisions are in effect, until the case management conference is conducted.
5. **Partial Payment of Advance on Costs:** The provision clarifies that any provisional advance paid by the claimant will be considered a partial payment of the advance on costs. The advance on costs is the amount fixed by the Court to cover the expenses of the arbitration, including administrative fees, arbitrator fees, and other related costs.
6. **Financial Contribution:** Requiring a provisional advance ensures that the claimant has a financial stake in the arbitration process. It aligns with the principle that parties should contribute to the costs of the arbitration they initiate.
7. **Flexibility:** The provision acknowledges the varying timelines and procedures that may apply to different arbitration cases, depending on factors such as the complexity of the case and the application of the Expedited Procedure Provisions.

8. **Efficiency:** By requesting a provisional advance, the ICC aims to ensure that the arbitration process is not hindered by financial concerns, thereby promoting an efficient and timely resolution of disputes.

In summary, Article 37(1) of the ICC Arbitration Rules 2021 enables the Secretary General to request a provisional advance from the claimant to cover the costs of the arbitration until certain procedural milestones are reached. This provision ensures that the arbitration process can proceed smoothly and efficiently while also promoting the principle that parties should contribute to the costs of the proceedings they initiate.

- 2 As soon as practicable, the Court shall fix the advance on costs in an amount likely to cover the fees and expenses of the arbitrators, the ICC administrative expenses and any other expenses incurred by ICC related to the arbitration for the claims which have been referred to it by the parties, unless any claims are made under Article 7 or 8 in which case Article 37(4) shall apply. The advance on costs fixed by the Court pursuant to this Article 37(2) shall be payable in equal shares by the claimant and the respondent.**

Article 37(2) of the ICC Arbitration Rules 2021 pertains to the fixing of the advance on costs by the Court and the distribution of this cost between the parties. Here is an analysis of this provision:

1. **Advance on Costs Fixing:** The provision states that the Court has the responsibility to determine the advance on costs. This advance is the amount that is expected to cover various costs associated with the arbitration, including arbitrator fees, administrative expenses of the ICC, and other costs related to the arbitration process.
2. **Comprehensive Coverage:** The advance on costs is intended to cover a range of expenses that arise from the arbitration proceedings, ensuring that the arbitration process is adequately funded. This includes fees for arbitrators, administrative expenses of the ICC, and other related expenses.
3. **Scope of Claims:** The advance on costs is calculated based on the claims that have been referred to arbitration by the parties. The Court will assess the claims presented by the parties to estimate the costs associated with resolving those claims.
4. **Exceptions for Article 7 or 8 Claims:** The provision mentions that if any claims are made under Article 7 (interim or conservatory measures) or Article 8 (emergency arbitrator provisions), a different rule applies for the calculation of the advance on costs. The details of this are covered in Article 37(4).
5. **Equal Sharing:** The advance on costs fixed by the Court is to be shared equally between the claimant and the respondent. This ensures a fair distribution of the financial burden among the parties involved in the arbitration.
6. **Predictability and Transparency:** By specifying that the Court determines the advance on costs, the provision promotes predictability and transparency in the financial aspects of the arbitration process. Parties can have a clear understanding of the financial commitments required.

7. Promoting Access to Justice: The equal sharing of the advance on costs between the parties helps ensure that neither party is disproportionately burdened financially, potentially promoting greater access to arbitration for parties with varying resources.
8. Efficient Resolution: Adequate funding through the advance on costs is essential to maintain the efficiency and timeliness of the arbitration process, preventing delays due to financial concerns.

In summary, Article 37(2) of the ICC Arbitration Rules 2021 highlights the role of the Court in determining the advance on costs for the arbitration proceedings. The advance on costs is designed to cover a range of expenses related to the arbitration process, and it is divided equally between the claimant and the respondent. This provision contributes to transparency, predictability, and fairness in the financial aspects of the arbitration process.

**3 Where counterclaims are submitted by the respondent under Article 5 or otherwise, the Court may fix separate advances on costs for the claims and the counterclaims. When the Court has fixed separate advances on costs, each of the parties shall pay the advance on costs corresponding to its claims.**

Article 37(3) of the ICC Arbitration Rules 2021 addresses the situation where counterclaims are raised by the respondent in the arbitration proceedings. This provision outlines how separate advances on costs for claims and counterclaims are determined and allocated. Here is an analysis of this provision:

1. Counterclaims Consideration: The provision acknowledges that in arbitration proceedings, respondents may submit counterclaims in response to the claims presented by the claimant. Counterclaims are claims made by the respondent against the claimant within the same arbitration proceedings.
2. Separate Advances on Costs: In cases where counterclaims are submitted, the Court has the discretion to fix separate advances on costs for both the original claims and the counterclaims. This means that the Court can determine distinct amounts for the claimant's claims and the respondent's counterclaims.
3. Cost Allocation: When separate advances on costs are fixed by the Court, each party is responsible for paying the advance on costs corresponding to its own claims or counterclaims. This ensures that the financial burden associated with advancing the costs of resolving disputes is distributed fairly between the parties.
4. Equity and Fairness: Allocating separate advances on costs for claims and counterclaims aligns with principles of equity and fairness. Each party is responsible for covering the costs associated with the issues it raises in the arbitration.
5. Avoiding Cross-Subsidisation: By setting separate advances on costs, the provision prevents one party's claims or counterclaims from subsidising the costs of the other party's claims. This approach maintains the financial independence of the claims and counterclaims.

6. **Clarity and Transparency:** This provision ensures transparency and clarity in terms of cost allocation for different aspects of the arbitration process. Parties can understand the financial implications of their claims and counterclaims separately.
7. **Encouraging Counterclaims:** The availability of separate advances on costs for counterclaims encourages respondents to raise legitimate counterclaims without concern that their claims will unduly contribute to the costs of the claimant's case.
8. **Efficiency in Cost Management:** The ability to fix separate advances on costs helps in efficient cost management, enabling the parties and the Court to assess and allocate costs based on the specific claims and counterclaims presented.

In summary, Article 37(3) of the ICC Arbitration Rules 2021 provides a framework for dealing with the financial aspects of counterclaims. It allows the Court to determine separate advances on costs for claims and counterclaims, thereby ensuring fairness, transparency, and efficiency in the allocation of costs within the arbitration process.

- 4 Where claims are made under Article 7 or 8, the Court shall fix one or more advances on costs that shall be payable by the parties as decided by the Court. Where the Court has previously fixed any advance on costs pursuant to this Article 37, any such advance shall be replaced by the advance(s) fixed pursuant to this Article 37(4), and the amount of any advance previously paid by any party will be considered as a partial payment by such party of its share of the advance(s) on costs as fixed by the Court pursuant to this Article 37(4).**

Article 37(4) of the ICC Arbitration Rules 2021 deals with the determination and payment of advances on costs when claims are made under Article 7 or 8 of the Rules. These articles relate to the joinder of additional parties and the intervention of third parties in the arbitration proceedings. Let us analyse the key points of this provision:

1. **Claims Under Article 7 or 8:** Article 7 and 8 of the ICC Arbitration Rules pertain to the joinder of additional parties and the intervention of third parties, respectively. These articles allow parties to involve other entities or individuals in the arbitration proceedings.
2. **Advance on Costs Determination:** When claims are made under Article 7 or 8, the Court is responsible for determining the amount and number of advances on costs that are payable by the parties. This gives the Court the authority to assess the financial implications of including additional parties or third parties in the arbitration proceedings.
3. **Flexible Payment Allocation:** The Court has the discretion to decide how the determined advances on costs should be allocated among the parties. This flexibility enables the Court to ensure that the financial burden is distributed fairly considering the new parties involved.
4. **Replacement of Previous Advances:** If the Court had previously fixed an advance on costs pursuant to Article 37 for the original parties, this advance will be replaced by the advance(s) fixed under Article 37(4) for the new claims under Article 7 or 8. Any advance previously paid will be considered as a partial payment towards the new advance(s) on costs.

5. **Cost Allocation for New Parties:** When new parties are joined or third parties intervene in the proceedings, the costs associated with their participation need to be accounted for. Article 37(4) ensures that the costs attributed to these parties are properly managed and allocated.
6. **Financial Transparency:** This provision enhances transparency by explicitly outlining the process for handling advances on costs when new parties are added to the arbitration proceedings. It clarifies that any payments made for the original advance on costs will be accounted for and adjusted accordingly.
7. **Efficiency in Cost Management:** By allowing the Court to fix new advances on costs for parties joining under Article 7 or 8, this provision ensures that the financial aspects of the arbitration are well-regulated and take into account the involvement of additional parties.
8. **Preventing Unintended Consequences:** The provision prevents parties from being financially disadvantaged by the inclusion of new parties in the proceedings. It ensures that the financial obligations are recalibrated to accommodate the changes in the arbitration dynamics.

In summary, Article 37(4) of the ICC Arbitration Rules 2021 serves to manage the financial aspects of including additional parties or third parties in the arbitration proceedings. It empowers the Court to determine new advances on costs, allocate them appropriately, and adjust any previously paid amounts to ensure financial fairness and efficiency in the arbitration process.

**5 The amount of any advance on costs fixed by the Court pursuant to this Article 37 may be subject to readjustment at any time during the arbitration. In all cases, any party shall be free to pay any other party's share of any advance on costs should such other party fail to pay its share.**

Article 37(5) of the ICC Arbitration Rules 2021 addresses the readjustment of advances on costs during the course of arbitration proceedings. This provision provides a mechanism for addressing potential financial imbalances and ensuring that the arbitration process remains financially viable for all parties involved. Let us analyse the key points of this provision:

1. **Readjustment of Advances on Costs:** This provision allows for the possibility of readjusting the amount of the advance on costs determined by the Court under Article 37. The purpose of this provision is to account for changing circumstances, unexpected developments, or the need to recalibrate financial obligations as the arbitration progresses.
2. **Flexibility to Address Imbalances:** As arbitration proceedings unfold, the complexity, scope, and duration of the case may evolve. This can lead to unforeseen financial implications for the parties. Article 37(5) recognises this by permitting the Court to revisit and potentially adjust the amount of the advance on costs to ensure that it remains fair and reasonable.
3. **Financial Fairness:** The provision aims to maintain a level playing field among the parties with respect to their financial contributions to the arbitration process. Readjustment can

prevent situations where one party is unfairly burdened by disproportionate costs, especially if the scope of the case expands over time.

4. **Adapting to Changing Circumstances:** Arbitration proceedings are dynamic, and unexpected developments can arise. Article 37(5) allows for financial adjustments that reflect the changing circumstances of the case, helping to avoid financial obstacles that could hinder the process.
5. **Encouragement of Collaboration:** The provision indirectly encourages collaboration among parties. If one party fails to pay its share of the advance on costs, another party has the freedom to cover the unpaid portion. This cooperative approach can facilitate smoother proceedings and maintain the momentum of the arbitration.
6. **Maintaining Arbitral Process:** Financial considerations should not impede the pursuit of justice or the resolution of disputes. This provision helps maintain the arbitration process's integrity by ensuring that financial issues are addressed and resolved efficiently.
7. **Administrative Efficiency:** By providing a mechanism for potential adjustments to the advance on costs, the provision supports the administrative efficiency of the arbitration process. Parties can address financial imbalances without the need for lengthy administrative procedures.
8. **Minimising Delays:** In cases where financial matters need to be addressed promptly, the flexibility to readjust advances on costs can prevent unnecessary delays in the arbitration proceedings.

In summary, Article 37(5) of the ICC Arbitration Rules 2021 is designed to ensure financial fairness and flexibility throughout the arbitration process. By allowing the readjustment of advances on costs and permitting parties to cover unpaid shares of the advance, this provision contributes to a balanced and efficient arbitration process that adapts to changing circumstances and ensures financial equity among the parties.

- 6 When a request for an advance on costs has not been complied with, and after consultation with the arbitral tribunal, the Secretary General may direct the arbitral tribunal to suspend its work and set a time limit, which must be not less than 15 days, on the expiry of which the relevant claims shall be considered as withdrawn. Should the party in question wish to object to this measure, it must make a request within the aforementioned period for the matter to be decided by the Court. Such party shall not be prevented, on the ground of such withdrawal, from reintroducing the same claims at a later date in another proceeding.**

Article 37(6) of the ICC Arbitration Rules 2021 addresses the situation when a party fails to comply with a request for an advance on costs. This provision outlines the steps that may be taken to address non-payment and the potential consequences for the relevant claims. Let us analyse the key points of this provision:

1. **Non-Compliance with Advance on Costs Request:** When a party does not comply with a request to pay an advance on costs as determined by the Court under Article 37, the Secretary General of the ICC may intervene to address this non-compliance.



2. **Arbitral Tribunal’s Work Suspension:** In response to the non-compliance, and after consulting with the arbitral tribunal, the Secretary General has the authority to direct the arbitral tribunal to suspend its work. This is a measure intended to ensure that the arbitration process is not unduly burdened by parties who do not fulfil their financial obligations.
3. **Setting a Time Limit for Compliance:** In conjunction with suspending the arbitral tribunal’s work, the Secretary General may set a time limit, which must be at least 15 days, within which the non-compliant party is required to pay the outstanding advance on costs.
4. **Potential Withdrawal of Relevant Claims:** If the non-compliant party does not pay the required advance on costs within the specified time limit, the relevant claims brought by that party in the arbitration proceedings may be considered as withdrawn. This means that those claims will no longer be part of the ongoing arbitration process.
5. **Party’s Right to Object:** The non-compliant party has the right to object to the potential withdrawal of its claims due to non-payment. If the party wishes to object, it must make a request within the specified time limit (not less than 15 days) for the matter to be decided by the Court.
6. **Court’s Authority to Decide:** If the non-compliant party objects to the withdrawal of its claims, the Court has the authority to make a decision on whether the claims will be considered as withdrawn due to non-payment of the advance on costs.
7. **No Preclusion of Future Claims:** Importantly, the provision clarifies that the withdrawal of claims due to non-payment of advance on costs does not preclude the non-compliant party from reintroducing those same claims in a future proceeding. This ensures that a party’s right to pursue its claims is not permanently foreclosed due to financial non-compliance.
8. **Maintaining Balance and Efficiency:** The provision aims to maintain the balance between parties and the efficiency of the arbitration process. It ensures that parties fulfil their financial obligations to support the proceedings and minimises undue delays caused by non-payment.

In summary, Article 37(6) of the ICC Arbitration Rules 2021 outlines the steps that may be taken when a party fails to comply with an advance on costs request. It empowers the Secretary General to suspend the arbitral tribunal’s work and potentially withdraw claims due to non-payment, subject to the party’s right to object and the Court’s ultimate decision. This provision helps maintain financial discipline in the arbitration process and ensures that non-compliance does not unduly burden or delay proceedings.

**7 If one of the parties claims a right to a set-off with regard to any claim, such set-off shall be taken into account in determining the advance to cover the costs of the arbitration in the same way as a separate claim insofar as it may require the arbitral tribunal to consider additional matters.**

Article 37(7) of the ICC Arbitration Rules 2021 deals with situations where one of the parties claims a right to set-off in relation to any claim in the arbitration. This provision outlines how such set-off claims

should be treated when determining the advance to cover the costs of the arbitration. Let us analyse its key points:

1. **Right to Set-Off:** Set-off refers to a legal principle where a party claims the right to deduct from its obligations a sum owed to it by the opposing party. In the context of arbitration, if one party claims a right to set-off in relation to any claim, they are asserting that a certain amount they owe to the opposing party should be set off against the opposing party's claim.
2. **Accounting for Set-Off in Advance Calculation:** According to Article 37(7), if a party claims a right to set-off in the arbitration proceedings, the amount of this set-off claim should be taken into account when determining the advance required to cover the costs of the arbitration. Essentially, this means that the set-off claim is considered as if it were a separate claim for the purpose of calculating the advance.
3. **Arbitral Tribunal's Consideration:** The provision emphasises that the set-off claim may require the arbitral tribunal to consider additional matters. This recognises that addressing a set-off claim might involve additional analysis, evidence, and deliberation, which can impact the complexity of the arbitration proceedings.
4. **Balancing Financial Responsibilities:** The purpose of this provision is to ensure that the advance on costs is appropriately calculated based on the full scope of the arbitration, including any set-off claims. By accounting for set-off claims in the calculation, the parties are required to pay an advance that reflects the potential complexity of the arbitration, which may be affected by the consideration of set-off issues.
5. **Transparency and Fairness:** Including set-off claims in the calculation of the advance promotes transparency and fairness in the financial aspects of the arbitration. Parties are required to contribute an advance that corresponds to the potential complexity and scope of their claims and defences, including any set-off arguments.

In summary, Article 37(7) of the ICC Arbitration Rules 2021 ensures that if a party claims a right to set-off in relation to any claim, the set-off claim is factored into the determination of the advance to cover the costs of the arbitration. This provision aims to ensure transparency, fairness, and accuracy in calculating the financial contributions of the parties, taking into account all aspects of the arbitration, including potential set-off issues.

#### **ARTICLE 38 Decision as to the Costs of the Arbitration**

- 1 The costs of the arbitration shall include the fees and expenses of the arbitrators and the ICC administrative expenses fixed by the Court, in accordance with the scales in force at the time of the commencement of the arbitration, as well as the fees and expenses of any experts appointed by the arbitral tribunal and the reasonable legal and other costs incurred by the parties for the arbitration.**

Article 38(1) of the ICC Arbitration Rules 2021 outlines the components that constitute the "costs of the arbitration". These costs are the financial obligations that the parties involved in the arbitration proceedings are required to bear. Here is an analysis of this article:

1. **Fees and Expenses of Arbitrators:** The fees and expenses of the arbitrators are an essential part of the costs of arbitration. Arbitrators are individuals who preside over the arbitration proceedings and make decisions on the disputes presented by the parties. These arbitrators are entitled to receive compensation for their services, which includes both their fees and expenses, such as travel and accommodation costs.
2. **ICC Administrative Expenses:** The ICC administrative expenses refer to the costs associated with the administrative support provided by the International Chamber of Commerce (ICC) in conducting the arbitration. This includes the organisation, management, and coordination of the arbitration proceedings by the ICC Secretariat. The amount of these expenses is fixed by the ICC Court based on established scales.
3. **Fees and Expenses of Experts:** If the arbitral tribunal appoints experts to assist in evaluating technical, financial, or other specialised matters related to the dispute, the fees and expenses of these experts are considered part of the costs of arbitration. These experts contribute their expertise to the tribunal's decision-making process.
4. **Legal and Other Costs Incurred by the Parties:** The parties involved in the arbitration incur various legal and other costs as part of their participation in the proceedings. These costs include legal fees paid to legal counsel representing the parties, as well as expenses related to the preparation, presentation, and defence of their cases.
5. **Scale of Costs:** The article emphasises that the costs of the arbitration are determined based on the scales in force at the time of the commencement of the arbitration. This means that the applicable fee and cost structures are those that are in effect when the arbitration is initiated.
6. **Reasonable Costs:** The article highlights that the legal and other costs incurred by the parties should be "reasonable". This implies that excessive or unnecessary expenses may not be fully recoverable as part of the costs of arbitration.

In summary, Article 38(1) of the ICC Arbitration Rules 2021 provides a comprehensive overview of the elements that constitute the costs of the arbitration. These include the fees and expenses of the arbitrators, ICC administrative expenses, fees and expenses of experts appointed by the arbitral tribunal, and the reasonable legal and other costs incurred by the parties. This article ensures transparency and fairness in accounting for the financial aspects of the arbitration process.

**2 The Court may fix the fees of the arbitrators at a figure higher or lower than that which would result from the application of the relevant scale should this be deemed necessary due to the exceptional circumstances of the case.**

Article 38(2) of the ICC Arbitration Rules 2021 grants the ICC Court the authority to adjust the fees of the arbitrators, either upwards or downwards, from the standard rates defined by the relevant scale. This adjustment is based on the recognition of exceptional circumstances that may justify a departure from the standard fee structure. Here is a detailed analysis of this article:

1. **Flexibility in Fee Adjustment:** The article recognises that certain cases may involve exceptional circumstances that warrant a departure from the standard fee structure

defined by the relevant scale. This acknowledgment reflects the understanding that not all cases fit the same mold and that flexibility is required to address unique situations.

2. **ICC Court's Discretion:** The authority to adjust arbitrators' fees lies with the ICC Court, which is the administrative body overseeing the arbitration proceedings. This discretionary power is exercised by the Court based on its assessment of the exceptional circumstances presented by the case.
3. **Justification for Fee Adjustment:** The article implies that the ICC Court will only approve fee adjustments if it deems them necessary due to the exceptional circumstances of the case. These circumstances could involve factors that may impact the arbitrators' workload, complexity of the case, the time required for resolution, or other relevant considerations.
4. **Balance and Fairness:** While the article allows for fee adjustments, it also implies that the Court's decision will aim to strike a balance between the interests of the parties and the compensation deserved by the arbitrators for their work. The Court's discretion helps ensure fairness in addressing unique situations.
5. **Transparency and Accountability:** The discretion granted to the ICC Court underscores the transparency and accountability of the arbitration process. Decisions regarding fee adjustments are made within a structured and organized institutional framework, providing parties with the assurance that exceptional circumstances will be considered fairly.
6. **Case-by-Case Basis:** As exceptional circumstances can vary from case to case, the application of this provision will be specific to each arbitration. The Court's assessment will be guided by the facts and characteristics of the particular dispute.

In summary, Article 38(2) of the ICC Arbitration Rules 2021 grants the ICC Court the discretionary authority to adjust the fees of arbitrators when exceptional circumstances warrant such adjustments. This provision reflects a balanced approach to addressing unique situations and ensures that arbitrators are compensated appropriately for their services while maintaining transparency and fairness in the arbitration process.

### **3 At any time during the arbitral proceedings, the arbitral tribunal may make decisions on costs, other than those to be fixed by the Court, and order payment.**

Article 38(3) of the ICC Arbitration Rules 2021 grants the arbitral tribunal the authority to make decisions on costs throughout the arbitral proceedings. This provision empowers the tribunal to handle various aspects of costs, apart from those that are ultimately fixed by the ICC Court. Here is a comprehensive analysis of this article:

1. **Authority for Cost Decisions:** This article recognises the arbitral tribunal's authority to make determinations concerning costs during the course of the arbitral proceedings. This authority allows the tribunal to address cost-related matters efficiently without needing to wait for the conclusion of the entire arbitration process.

2. **Scope of Decisions:** The provision refers to “decisions on costs, other than those to be fixed by the Court”. This means that the arbitral tribunal can make decisions related to costs that do not fall within the Court’s purview, such as additional costs, interim costs, or specific procedural costs that arise during the proceedings.
3. **Flexibility and Procedural Efficiency:** Allowing the arbitral tribunal to make decisions on costs promotes procedural efficiency by addressing cost-related issues promptly. This can be particularly useful in ensuring that disputes over costs do not unnecessarily delay the overall arbitration process.
4. **Responsive to Changing Circumstances:** The authority to make cost decisions as the proceedings unfold enables the tribunal to respond to changing circumstances, emerging issues, or developments that may impact costs. This adaptability enhances the tribunal’s ability to manage the arbitration effectively.
5. **Fairness and Allocation of Costs:** Article 38(3) gives the tribunal the discretion to allocate costs fairly and equitably among the parties based on the specific circumstances of the case. This ensures that costs are assigned in a manner that is just and appropriate.
6. **Balancing Authority with Oversight:** While the arbitral tribunal has the authority to make decisions on certain costs, the provision emphasises that costs to be fixed by the Court are subject to its determination. This balance between tribunal authority and Court oversight ensures consistency and fairness in cost-related decisions.
7. **Streamlining Procedural Steps:** By enabling the arbitral tribunal to make cost decisions during the proceedings, parties can avoid the need for additional steps or procedures to address cost issues separately. This contributes to the overall efficiency of the arbitration process.

In summary, Article 38(3) of the ICC Arbitration Rules 2021 empowers the arbitral tribunal to make decisions on costs during the arbitral proceedings, excluding those costs that are ultimately fixed by the ICC Court. This provision enhances procedural efficiency, responsiveness, and fairness in the allocation of costs, while maintaining an appropriate balance between tribunal authority and Court oversight.

#### **4 The final award shall fix the costs of the arbitration and decide which of the parties shall bear them or in what proportion they shall be borne by the parties.**

Article 38(4) of the ICC Arbitration Rules 2021 pertains to the final award’s role in determining and allocating the costs of the arbitration. This provision plays a significant role in ensuring that the parties’ financial obligations are clearly defined and allocated in a just and equitable manner. Here is a detailed analysis of this article:

1. **Cost Allocation:** The article emphasises that the final award must address two essential aspects of costs: determining the costs of the arbitration and allocating these costs among the parties. This allocation can include specifying whether one party bears the entire cost burden or whether the costs are shared proportionally between the parties.

2. **Finality and Binding Nature:** The final award is the ultimate decision of the arbitral tribunal, and as such, its determination of costs is binding on the parties. This ensures that the parties are aware of their respective financial obligations and that the arbitration process comes to a definitive conclusion.
3. **Transparency and Clarity:** By explicitly requiring the final award to fix the costs and specify the allocation, this article promotes transparency and clarity. Parties will have a clear understanding of the financial implications of the arbitration and their responsibilities in terms of costs.
4. **Balancing Equities:** The provision allows the arbitral tribunal to balance the equities of the case when allocating costs. Factors such as the outcome of the dispute, the parties' conduct, and the nature of the claims and defences can all play a role in determining the appropriate cost allocation.
5. **Incentive for Efficiency:** The requirement for the final award to address costs also creates an incentive for parties to conduct the arbitration in a cost-effective and efficient manner. Parties may consider the potential cost implications when making strategic decisions during the proceedings.
6. **Complexity and Disproportionate Costs:** In cases where one party's conduct has significantly increased the complexity or cost of the arbitration, the arbitral tribunal can allocate a larger portion of the costs to that party. This discourages tactics that could unnecessarily prolong or complicate the proceedings.
7. **Enforcement and Implementation:** The cost allocation in the final award is legally enforceable and can be used to ensure that parties comply with their financial obligations. This is essential to prevent any disputes arising from non-payment of costs.
8. **Certainty for Parties:** The requirement for the final award to decide on cost allocation ensures that parties know their financial obligations definitively, reducing the potential for future disagreements or disputes related to costs.
9. **Preservation of Tribunal's Discretion:** While the article mandates that the final award must address costs, it does not dictate how costs should be allocated in every case. The arbitral tribunal maintains discretion to consider the unique circumstances of each case when making its cost allocation decision.

In conclusion, Article 38(4) of the ICC Arbitration Rules 2021 ensures that the final award comprehensively addresses the costs of the arbitration, including the determination and allocation of those costs. This provision promotes transparency, fairness, and efficiency in the financial aspects of the arbitration process.

**5 In making decisions as to costs, the arbitral tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner.**

Article 38(5) of the ICC Arbitration Rules 2021 outlines a key principle that the arbitral tribunal should consider when making decisions regarding costs. This provision focuses on the tribunal's discretion to

take into account various circumstances, including the efficiency and cost-effectiveness of each party's conduct throughout the arbitration. Here is a detailed analysis of this article:

1. **Discretion and Flexibility:** The provision grants the arbitral tribunal broad discretion when deciding on costs. It acknowledges that there are various factors and circumstances that may influence the determination of costs, allowing the tribunal to adapt its decision to the specific details of each case.
2. **Relevance of Conduct:** The article highlights that the arbitral tribunal can consider the conduct of each party during the arbitration process. This includes evaluating whether a party has participated in the proceedings in an expeditious and cost-effective manner.
3. **Encouraging Efficiency:** By explicitly allowing the arbitral tribunal to take into account the efficiency and cost-effectiveness of each party's conduct, this provision encourages parties to engage in a timely and economical manner throughout the arbitration process.
4. **Incentive for Cooperation:** The consideration of efficiency and cost-effectiveness may incentivise parties to cooperate, streamline their arguments, and avoid unnecessary procedural steps. This can contribute to faster and less expensive dispute resolution.
5. **Complexity and Unreasonable Tactics:** The tribunal can evaluate whether a party's actions, such as employing overly complex or dilatory tactics, have led to increased costs or delays in the arbitration. This consideration can lead to appropriate cost allocations.
6. **Balancing of Interests:** The tribunal's ability to consider the conduct of both parties when deciding on costs ensures a balanced approach. It helps prevent one party from being unfairly penalised while rewarding the party that has actively contributed to a smooth and efficient process.
7. **Transparent Decision-Making:** While the article grants the tribunal discretion, it also promotes transparency in the decision-making process. The tribunal must provide reasons for its decisions on costs, which enhances the parties' understanding of the basis for the allocation.
8. **Objective Criteria:** The consideration of efficiency and cost-effectiveness adds an objective element to the decision-making process. Parties have a measurable standard against which their conduct can be evaluated, minimising the potential for subjective interpretations.
9. **Case-Specific Analysis:** This provision emphasises that the tribunal's assessment should be based on the circumstances of each case. What may be considered cost-effective in one situation may differ in another, depending on the complexity and nature of the dispute.

In summary, Article 38(5) of the ICC Arbitration Rules 2021 reflects the tribunal's discretion to take into account relevant circumstances, including the efficiency and cost-effectiveness of each party's conduct. This provision aligns with the goal of promoting efficient and fair dispute resolution while maintaining transparency and flexibility in the decision-making process regarding costs.

- 6 In the event of the withdrawal of all claims or the termination of the arbitration before the rendering of a final award, the Court shall fix the fees and expenses of the arbitrators and the ICC administrative expenses. If the parties have not agreed upon the allocation of the costs of the arbitration or other relevant issues with respect to costs, such matters shall be decided by the arbitral tribunal. If the arbitral tribunal has not been constituted at the time of such withdrawal or termination, any party may request the Court to proceed with the constitution of the arbitral tribunal in accordance with the Rules so that the arbitral tribunal may make decisions as to costs.**

Article 38(6) of the ICC Arbitration Rules 2021 addresses the issue of costs in cases where claims are withdrawn or the arbitration is terminated before the rendering of a final award. This provision outlines the procedures and responsibilities for determining and allocating costs in such situations. Here is a detailed analysis:

1. **Withdrawal or Termination Context:** The provision specifically applies when all claims are withdrawn by the parties or when the arbitration is terminated before a final award is rendered. This could occur due to settlement, lack of jurisdiction, or other reasons, and the article aims to ensure clarity on cost allocation in such scenarios.
2. **Role of the Court:** The Court's involvement in fixing the fees and expenses of arbitrators and ICC administrative expenses is highlighted. The Court is responsible for determining these costs, which is crucial in situations where parties are not able to reach an agreement on such matters.
3. **Allocation of Costs:** If the parties have not agreed upon the allocation of the costs of the arbitration or other related cost issues, the arbitral tribunal is empowered to decide these matters. This is a practical approach to ensure that costs are appropriately allocated even in the absence of a settlement or full arbitration proceedings.
4. **Constitution of the Arbitral Tribunal:** If the arbitral tribunal has not been constituted at the time of withdrawal or termination, the article allows any party to request the Court to proceed with the constitution of the arbitral tribunal. This is essential to facilitate the resolution of cost-related issues by a duly constituted tribunal.
5. **Fair and Equitable Allocation:** The article ensures that costs are allocated in a fair and equitable manner, taking into account the circumstances of the case and the actions of the parties leading to withdrawal or termination. This approach avoids situations where one party disproportionately bears the financial burden.
6. **Preservation of Party Rights:** The provision also recognises that a party's right to request the constitution of the arbitral tribunal and make decisions as to costs is preserved even if the withdrawal or termination occurs before the tribunal is constituted.
7. **Enhancing Clarity:** By defining the roles and responsibilities of the Court, the arbitral tribunal, and the parties, this article enhances clarity and predictability regarding the handling of costs when claims are withdrawn or the arbitration is terminated.
8. **Efficiency in Cost Determination:** The article ensures that the determination of costs in cases of withdrawal or termination remains efficient and streamlined, preventing unnecessary delays and disputes over cost allocation.



In summary, Article 38(6) of the ICC Arbitration Rules 2021 addresses the treatment of costs in cases of claim withdrawal or arbitration termination. It establishes clear procedures for cost allocation by involving the Court and, if necessary, the arbitral tribunal. The provision ensures a fair and practical approach to determining costs in situations that may arise during the course of arbitration proceedings.

## MISCELLANEOUS

## ARTICLE 39 Modified Time Limits

- 1 The parties may agree to shorten the various time limits set out in the Rules. Any such agreement entered into subsequent to the constitution of an arbitral tribunal shall become effective only upon the approval of the arbitral tribunal.**

Article 39(1) of the ICC Arbitration Rules 2021 provides parties with the flexibility to agree on the shortening of the time limits established in the Rules. This provision recognises the parties' autonomy to manage the arbitration proceedings more efficiently by tailoring the procedural timetable to their specific needs. Here is an analysis of this article:

1. **Flexibility in Time Limits:** The article reflects the ICC's commitment to ensuring flexibility and party autonomy in arbitration proceedings. It acknowledges that parties may have valid reasons for expediting the proceedings and allows them to customise the procedural timeline accordingly.
2. **Scope of Agreement:** Parties have the freedom to agree to shorten the time limits prescribed in various parts of the Rules. This agreement can apply to different stages of the arbitration, including filing of submissions, appointment of arbitrators, hearings, and the rendering of awards.
3. **Timing of Agreement:** The agreement to shorten time limits can be made either at the outset of the arbitration or during its course. This reflects the practical nature of arbitration where parties may gain a better understanding of the case's complexity and requirements as the proceedings progress.
4. **Effect on Arbitral Tribunal:** When parties reach an agreement to shorten time limits after the arbitral tribunal has been constituted, the article introduces an important safeguard. The agreed-upon changes will only become effective upon the approval of the arbitral tribunal. This requirement ensures that the tribunal is involved in the decision-making process to prevent any undue impact on the fairness and due process of the proceedings.
5. **Balancing Efficiency and Fairness:** While parties are encouraged to expedite the proceedings when appropriate, the provision underscores the importance of maintaining fairness and ensuring that the agreed-upon shortened time limits do not compromise the parties' right to present their case adequately and receive a fair hearing.
6. **Protection of Party Rights:** The requirement for arbitral tribunal approval ensures that both parties have an equal opportunity to express their views on the proposed changes. This safeguards parties against any potential imbalance that could arise from unilateral decisions to expedite the process.
7. **Harmonisation with Tribunal Approval:** By making the effectiveness of the agreed-upon changes contingent on tribunal approval, the article maintains consistency with other provisions that require tribunal approval for various matters, promoting harmonious application of the Rules.

In summary, Article 39(1) of the ICC Arbitration Rules 2021 emphasises party autonomy by allowing them to agree to shorten time limits. However, this flexibility is balanced with the requirement for

arbitral tribunal approval, ensuring that any changes do not compromise the fundamental principles of fairness, due process, and equal treatment of the parties.

**2 The Court, on its own initiative, may extend any time limit which has been modified pursuant to Article 39(1) if it decides that it is necessary to do so in order that the arbitral tribunal and the Court may fulfil their responsibilities in accordance with the Rules.**

Article 39(2) of the ICC Arbitration Rules 2021 empowers the Court to extend any time limit that has been modified pursuant to Article 39(1), if deemed necessary for the proper fulfilment of the arbitral tribunal's and the Court's responsibilities under the Rules. Here is an analysis of this article:

1. **Supervisory Role of the Court:** This provision underscores the oversight role of the ICC Court over the arbitration proceedings. The Court is responsible for ensuring that the arbitration is conducted fairly, efficiently, and in compliance with the ICC Rules.
2. **Flexibility in Extension:** The Court's authority to extend time limits provides the flexibility required to adapt to unforeseen circumstances that might affect the arbitration process. This recognises that the original time limits agreed upon by the parties could need adjustment to ensure that due process is maintained.
3. **Balancing Efficiency and Fairness:** While parties have the autonomy to agree to shorten time limits under Article 39(1), the Court's authority under Article 39(2) helps balance the need for expeditious proceedings with the overarching principle of fairness. This provision ensures that an agreed-upon expedited timeline does not unduly compromise the quality and thoroughness of the arbitration process.
4. **Responsibilities of the Arbitral Tribunal and the Court:** The provision acknowledges that both the arbitral tribunal and the ICC Court have distinct responsibilities throughout the arbitration process. This includes the arbitral tribunal's duty to carefully consider the case and render an informed award and the Court's role in ensuring the proper administration of the proceedings.
5. **Unforeseen Circumstances:** The need for an extension might arise due to factors beyond the control of the parties, such as the complexity of the dispute, the availability of evidence, or the need for additional procedural steps. This provision allows the Court to intervene when such unforeseen circumstances arise.
6. **Protection of Due Process:** By allowing the Court to extend time limits when necessary, the provision safeguards the parties' right to present their case adequately and ensures that the arbitration process maintains its integrity and fairness.
7. **Harmonisation with Article 39(1):** This provision complements Article 39(1) by addressing the potential need for time limit extensions that might not be mutually agreed upon by the parties. It reinforces the Court's role as a guardian of due process and procedural fairness.

In summary, Article 39(2) of the ICC Arbitration Rules 2021 serves as a mechanism to maintain the equilibrium between efficient proceedings and ensuring parties' rights. The Court's authority to extend

time limits modified under Article 39(1) reflects its responsibility to oversee the arbitration process and protect the core principles of fairness and due process.

#### ARTICLE 40 Waiver

**A party which proceeds with the arbitration without raising its objection to a failure to comply with any provision of the Rules, or of any other rules applicable to the proceedings, any direction given by the arbitral tribunal, or any requirement under the arbitration agreement relating to the constitution of the arbitral tribunal or the conduct of the proceedings, shall be deemed to have waived its right to object.**

Article 40 of the ICC Arbitration Rules 2021 establishes the principle that if a party continues with the arbitration process without raising an objection to a failure to comply with the Rules or other relevant provisions, it will be considered to have waived its right to object. Here is an analysis of this article:

1. **Waiver of Objection:** Article 40 underscores the importance of raising objections promptly and clearly during the arbitration process. Failure to do so may result in the party waiving its right to raise those objections at a later stage. This promotes procedural efficiency and prevents parties from exploiting minor or technical infractions to delay proceedings or create uncertainty.
2. **Preservation of Due Process:** While the provision encourages parties to promptly address any perceived violations, it also maintains the underlying principle of due process. Parties are still allowed to raise objections, but they must do so in a timely manner to avoid causing unnecessary disruptions to the arbitration process.
3. **Certainty and Finality:** The provision aims to ensure a clear and certain procedural framework for the arbitration process. By setting a cut-off point for raising objections, it contributes to the finality of arbitration proceedings, preventing parties from strategically withholding objections until later stages to gain tactical advantages.
4. **Efficiency and Avoidance of Delay:** By requiring timely objections, Article 40 contributes to the efficient management of arbitration proceedings. It discourages parties from employing dilatory tactics and encourages them to address procedural issues promptly, minimising delays and potential disputes.
5. **Balancing Rights and Responsibilities:** The provision strikes a balance between a party's right to object to non-compliance with the Rules and the need to promote the efficient and orderly conduct of arbitration proceedings. It recognises that parties have a responsibility to participate actively and engage in a constructive manner.
6. **Consistency with Modern Arbitration Practices:** The principle of waiving objections due to failure to timely raise them is common in international arbitration and legal practice. It encourages transparency, communication, and collaboration among the parties and the arbitral tribunal.
7. **Legal Certainty and Predictability:** The provision contributes to legal certainty by establishing a clear consequence for a party's failure to raise objections in a timely

manner. This clarity aids in predicting the consequences of non-compliance and encourages parties to act diligently.

In summary, Article 40 of the ICC Arbitration Rules 2021 reinforces the principle of timely and proactive participation in the arbitration process. By deeming a party to have waived its right to object if it proceeds without raising timely objections, the article promotes efficiency, fairness, and predictability in international arbitration proceedings.

#### **ARTICLE 41 Limitation of Liability**

**The arbitrators, any person appointed by the arbitral tribunal, the emergency arbitrator, the Court and its members, ICC and its employees, and the ICC National Committees and Groups and their employees and representatives shall not be liable to any person for any act or omission in connection with the arbitration, except to the extent such limitation of liability is prohibited by applicable law.**

Article 41 of the ICC Arbitration Rules 2021 addresses the limitation of liability for various participants in the arbitration process. Here is an analysis of this article:

1. **Protection from Liability:** Article 41 provides protection from liability for several key participants involved in the arbitration process. This includes arbitrators, individuals appointed by the arbitral tribunal, the emergency arbitrator, members of the ICC Court, ICC employees, and representatives of ICC National Committees and Groups.
2. **Scope of Immunity:** The article establishes a general rule of non-liability for acts or omissions connected with the arbitration process. This immunity applies to a wide range of actions taken by the mentioned parties in the course of their respective roles in the arbitration proceedings.
3. **Promotion of Independence and Impartiality:** By shielding participants from potential liability, the article contributes to the independence and impartiality of arbitrators, emergency arbitrators, and the ICC Court members. It allows these individuals to make decisions without fear of personal legal consequences.
4. **Incentive for Participation:** Providing immunity from liability encourages qualified individuals to participate in the arbitration process as arbitrators or in other roles. This ensures the availability of experienced professionals who are willing to serve in these capacities.
5. **Preservation of Decision-Making Autonomy:** The limitation of liability encourages participants to make decisions in the best interests of the arbitration process and its outcomes, without undue influence from the fear of legal actions stemming from those decisions.
6. **Applicability of Applicable Law:** Article 41 acknowledges that the limitation of liability may not apply if it is prohibited by applicable law. This ensures that any legal obligations or requirements under relevant laws are not overridden by the provision.

7. **Balancing Public Interest:** While the limitation of liability promotes the efficient functioning of arbitration proceedings, it also acknowledges the importance of protecting parties' rights to seek redress in instances where applicable law allows such claims.
8. **Common Practice:** Immunity provisions, similar to Article 41, are a common feature in many international arbitration rules. They reflect the unique nature of the arbitration process, where participants must be able to exercise their functions independently and without fear of personal repercussions.

In summary, Article 41 of the ICC Arbitration Rules 2021 is designed to safeguard the impartiality and independence of key participants in the arbitration process by limiting their liability for acts or omissions related to the proceedings. This provision strikes a balance between promoting the integrity of arbitration proceedings and respecting the rights and protections granted by applicable laws.

### ARTICLE 42 General Rule

**In all matters not expressly provided for in the Rules, the Court and the arbitral tribunal shall act in the spirit of the Rules and shall make every effort to make sure that the award is enforceable at law.**

Article 42 of the ICC Arbitration Rules 2021 addresses the approach that the ICC Court and the arbitral tribunal should take when there are matters not expressly covered by the Rules. Here is an analysis of this article:

1. **Gap-Filling Provision:** Article 42 serves as a gap-filling provision, addressing situations where the Rules do not explicitly provide guidance or procedures for specific matters that may arise during the arbitration process. It acknowledges that arbitration proceedings can be complex and diverse, and not all situations can be anticipated in the Rules.
2. **Guiding Principle:** The article establishes a guiding principle for both the ICC Court and the arbitral tribunal to act in the "spirit of the Rules". This means that even when the Rules do not offer explicit guidance, the parties and the arbitration participants should draw from the overall principles and objectives of the ICC Arbitration Rules to guide their decisions.
3. **Enforceability of the Award:** The latter part of the article emphasises the importance of ensuring that the award is enforceable at law. This reinforces the practical objective of arbitration: to arrive at a final and binding decision that can be recognised and enforced in various jurisdictions. It encourages both the ICC Court and the arbitral tribunal to consider legal requirements that could impact the enforceability of the award.
4. **Flexibility and Equitability:** Article 42 reflects the flexible nature of arbitration and promotes equitable outcomes. It allows the arbitral tribunal and the ICC Court to adapt to unforeseen situations, ensuring that the proceedings remain fair and efficient.
5. **Balancing Autonomy and Consistency:** While the ICC Arbitration Rules provide a structured framework, the parties and the arbitration participants often need room for adaptation to specific case circumstances. Article 42 allows for this flexibility while maintaining consistency with the principles and spirit of the Rules.

6. **Decision-Making Approach:** This article encourages the arbitral tribunal and the ICC Court to approach matters not covered by the Rules by considering customary arbitration practices, general principles of international arbitration, and legal requirements that ensure the enforceability of the award.
7. **Ensuring Enforceability:** The clause's emphasis on making sure that the award is enforceable underscores the importance of producing well-reasoned and compliant awards that will withstand scrutiny in various jurisdictions.

In summary, Article 42 of the ICC Arbitration Rules 2021 plays a vital role in addressing gaps or situations not explicitly covered by the Rules. It guides the ICC Court and the arbitral tribunal to act in accordance with the principles and spirit of the Rules while striving to ensure that the resulting award is enforceable at law. This provision reflects the balanced approach of promoting autonomy and adaptability within the framework of established arbitration practices.

### **ARTICLE 43 Governing Law and Settlement of Disputes**

**Any claims arising out of or in connection with the administration of the arbitration proceedings by the Court under the Rules shall be governed by French law and settled by the Paris Judicial Tribunal (Tribunal Judiciaire de Paris) in France, which shall have exclusive jurisdiction.**

Article 43 of the ICC Arbitration Rules 2021 addresses the jurisdiction and governing law for claims related to the administration of the arbitration proceedings by the ICC Court. Here is an analysis of this article:

1. **Jurisdiction and Governing Law:** Article 43 establishes the jurisdiction and governing law for claims that arise out of or are connected to the administration of the arbitration proceedings by the ICC Court under the Rules. It specifies that such claims shall be governed by French law.
2. **Exclusive Jurisdiction:** The article designates the Paris Judicial Tribunal (Tribunal Judiciaire de Paris) in France as the exclusive jurisdiction for resolving these claims. This means that disputes related to the administration of ICC arbitration proceedings will be heard exclusively by the designated judicial authority in France.
3. **Scope of Application:** This provision applies to claims specifically related to the administration of the arbitration proceedings by the ICC Court under the ICC Arbitration Rules. It does not encompass disputes about the merits of the underlying dispute itself.
4. **Clear Choice of Law and Forum:** Article 43 demonstrates the ICC's intention to provide a clear choice of law and forum for resolving disputes arising from the administration of the arbitration process. This is intended to avoid potential disputes over jurisdiction and governing law that could arise in such cases.
5. **French Law and Paris Tribunal:** The choice of French law and the Paris Judicial Tribunal reflects the ICC's historical connection to France (the ICC's headquarters are in Paris) and the well-established reputation of the French legal system in international arbitration.

6. **Specialisation and Expertise:** The designation of a specific judicial authority, in this case, the Paris Judicial Tribunal, suggests that the chosen forum is equipped with the expertise and specialisation required to handle disputes related to the administration of international arbitration proceedings.
7. **Finality and Certainty:** Article 43 contributes to the finality and certainty of arbitration proceedings by providing a clear mechanism for resolving claims related to administrative aspects of the arbitration process. Parties can have confidence in a designated forum that understands the intricacies of arbitration administration.
8. **Consistency with Other Rules:** Similar provisions are often found in other institutional arbitration rules to address claims related to administrative matters. This practice contributes to maintaining a consistent and predictable framework for resolving disputes within the context of arbitration proceedings.

In summary, Article 43 of the ICC Arbitration Rules 2021 specifies the jurisdiction, governing law, and exclusive forum for resolving claims arising from the administration of the arbitration proceedings by the ICC Court. By designating the Paris Judicial Tribunal and French law, this provision enhances the predictability and efficiency of resolving disputes related to the administrative aspects of ICC arbitration proceedings.



APPENDIX I — STATUTES OF THE INTERNATIONAL COURT OF ARBITRATION

ARTICLE 1 Function

- 1 The function of the International Court of Arbitration of the International Chamber of Commerce (the “Court”) is to ensure the application of the Rules of Arbitration of ICC, and it has all the necessary powers for that purpose.**

Article 1(1) of Appendix I to the ICC Arbitration Rules 2021 outlines the fundamental role and authority of the International Court of Arbitration of the International Chamber of Commerce (ICC Court) within the context of ICC arbitration. Here is an analysis of this article:

1. **Definition of the ICC Court’s Role:** This article establishes the primary function of the ICC Court, which is to ensure the proper application of the ICC Arbitration Rules. The Court’s role is to oversee and facilitate the arbitration proceedings conducted under these rules.
2. **Broad Authority:** The article emphasises that the ICC Court possesses “all the necessary powers” to fulfil its function. This indicates that the Court is vested with significant authority and discretion to manage and supervise arbitration cases effectively.
3. **Guardian of the Rules:** The ICC Court acts as a guardian of the ICC Arbitration Rules. Its role includes ensuring that the arbitration process adheres to these rules and that the parties and the arbitral tribunal follow the procedural framework set out in the rules.
4. **Procedural Management:** The ICC Court is responsible for managing the administrative aspects of arbitration proceedings conducted under the ICC Arbitration Rules. This includes appointing arbitrators, addressing challenges to arbitrators, fixing the costs of the arbitration, and addressing requests for expedited procedures or emergency arbitrator applications.
5. **Ensuring Consistency and Fairness:** By overseeing the application of the ICC Arbitration Rules, the ICC Court helps maintain consistency and fairness in the arbitration process. This contributes to the integrity and reputation of ICC arbitration as a widely recognised and respected method of dispute resolution.
6. **Supporting Arbitral Tribunals:** While the ICC Court is responsible for ensuring the application of the rules, it works collaboratively with the arbitral tribunals. The Court’s decisions and interventions aim to facilitate the arbitration process while respecting the authority of the arbitral tribunals.
7. **Efficiency and Effectiveness:** The powers vested in the ICC Court are intended to ensure the efficient and effective conduct of arbitration proceedings under the ICC Arbitration Rules. This includes making decisions promptly and addressing issues that may arise during the course of arbitration.
8. **Impartiality and Neutrality:** The ICC Court’s role in overseeing arbitration proceedings underscores the organisation’s commitment to impartiality and neutrality. Its decisions are aimed at promoting a level playing field for all parties involved.

In summary, Article 1(1) of Appendix I to the ICC Arbitration Rules 2021 highlights the essential function of the ICC Court in overseeing and ensuring the application of the ICC Arbitration Rules. The

Court's broad authority and powers are instrumental in maintaining the integrity, efficiency, and fairness of the arbitration process conducted under the auspices of the ICC.

**2 As an autonomous body, it carries out these functions in complete independence from ICC and its organs.**

Article 1(2) of Appendix I to the ICC Arbitration Rules 2021 underscores the autonomy and independence of the International Court of Arbitration of the International Chamber of Commerce (ICC Court) in carrying out its functions within the context of ICC arbitration. Here is an analysis of this article:

1. **Autonomous Body:** This article explicitly establishes that the ICC Court operates as an "autonomous body". This means that the ICC Court has its own distinct and separate status within the ICC's organisational structure. It is not directly controlled by other ICC organs, and it functions independently in its role of overseeing arbitration proceedings.
2. **Independence:** The article emphasises that the ICC Court operates "in complete independence" from the ICC and its various organs. This underscores the separation between the ICC Court's arbitration-related functions and other activities of the ICC. The autonomy and independence of the ICC Court are crucial to ensuring the impartial and unbiased administration of arbitration cases.
3. **Avoiding Conflicts of Interest:** By operating autonomously and independently, the ICC Court aims to avoid any potential conflicts of interest that might arise from the involvement of ICC's other organs in its arbitration-related decisions. This further enhances the credibility and fairness of the arbitration process.
4. **Impartial Decision-Making:** The autonomy and independence of the ICC Court contribute to its ability to make impartial and objective decisions. The Court's primary focus is on ensuring the proper application of the ICC Arbitration Rules and overseeing arbitration proceedings in a neutral and unbiased manner.
5. **Preservation of Integrity:** The clear separation between the ICC Court and other ICC organs helps preserve the integrity of ICC arbitration. Parties can have confidence that the decisions and actions of the ICC Court are guided solely by the principles of arbitration, without any undue influence from other aspects of the ICC's operations.
6. **Global Recognition:** The autonomy and independence of the ICC Court contribute to the global recognition and acceptance of ICC arbitration as a trusted and effective method of dispute resolution. Parties from different jurisdictions can rely on the ICC Court's decisions knowing that they are made free from external pressures.
7. **Professionalism and Expertise:** The ICC Court is composed of experienced and qualified professionals in the field of arbitration. Its autonomy allows it to apply its expertise and knowledge to complex arbitration matters with the goal of achieving fair and just outcomes.

In summary, Article 1(2) of Appendix I to the ICC Arbitration Rules 2021 emphasises the autonomous and independent nature of the ICC Court in carrying out its functions related to the administration of

arbitration proceedings. This autonomy is essential to ensuring the integrity, impartiality, and effectiveness of ICC arbitration as a widely respected method of resolving international disputes.

### 3 Its members are independent from the ICC National Committees and Groups.

Article 1(3) of Appendix I to the ICC Arbitration Rules 2021 addresses the independence of the members of the International Court of Arbitration of the International Chamber of Commerce (ICC Court) from the ICC National Committees and Groups. Here is an analysis of this article:

1. **Members of the ICC Court:** The ICC Court is composed of individuals with expertise in the field of international arbitration. These members play a crucial role in overseeing and administering arbitration cases conducted under the ICC Arbitration Rules.
2. **Independence from ICC National Committees and Groups:** This article explicitly states that the members of the ICC Court are independent from the ICC National Committees and Groups. ICC National Committees and Groups are local or regional entities affiliated with the ICC that promote ICC's activities and objectives in various countries or regions.
3. **Mitigating Conflicts of Interest:** By emphasizing the independence of ICC Court members from the ICC National Committees and Groups, the article aims to prevent potential conflicts of interest that might arise from any direct affiliation or influence. This helps ensure that the ICC Court's decisions and actions are not influenced by regional or local interests that could impact the impartiality of the arbitration process.
4. **Impartiality and Objectivity:** Independence is a fundamental principle in international arbitration. It ensures that the members of the ICC Court are free to make decisions based solely on the merits of the arbitration case, without any external pressures or considerations.
5. **Global Credibility:** The independence of ICC Court members from ICC National Committees and Groups enhances the credibility and reputation of the ICC as a globally recognised and respected institution for resolving international disputes. This independence underscores the organisation's commitment to upholding the highest standards of fairness and integrity.
6. **Expertise and Integrity:** The members of the ICC Court are typically renowned experts in the field of arbitration. Their independence allows them to exercise their expertise and uphold the highest ethical standards when overseeing arbitration proceedings, contributing to the overall integrity of the process.
7. **Ensuring Fair Administration:** The article's emphasis on independence reinforces the notion that the ICC Court operates with transparency, accountability, and fairness. Parties involved in arbitration cases can trust that their disputes will be administered by a body that is free from any undue influence.

In summary, Article 1(3) of Appendix I to the ICC Arbitration Rules 2021 underscores the independence of the members of the ICC Court from the ICC National Committees and Groups. This independence is vital for maintaining the integrity and credibility of ICC arbitration, ensuring impartial and fair administration of arbitration proceedings, and fostering trust among parties and stakeholders.

## ARTICLE 2 Composition of the Court

**The Court shall consist of a President, Vice-Presidents, and members and alternate members (collectively designated as members). In its work it is assisted by its Secretariat (Secretariat of the Court).**

Article 2 of Appendix I to the ICC Arbitration Rules 2021 defines the composition of the International Court of Arbitration (ICC Court) and its organisational structure. Here is an analysis of this article:

1. **Composition of the ICC Court:** The ICC Court is composed of several key individuals who collectively ensure the proper functioning of the arbitration process under the ICC Arbitration Rules. These key individuals include:
2. **President:** The highest-ranking individual within the ICC Court. The President oversees the court's activities, presides over meetings, and plays a crucial role in maintaining the court's integrity and effectiveness.
3. **Vice-Presidents:** The Vice-Presidents assist the President in carrying out their duties and responsibilities. They may also deputise for the President when necessary.
4. **Members and Alternate Members:** These individuals form the core of the ICC Court. They contribute to decision-making, case administration, and the overall administration of arbitration cases under the ICC Arbitration Rules.
5. **Collective Designation:** The term "members" encompasses both members and alternate members, highlighting their collective role within the ICC Court.
6. **Organisational Structure:** The article introduces the concept of the ICC Court's organisational structure. This structure is designed to ensure effective leadership, decision-making, and administration of arbitration cases. The composition of the ICC Court reflects a balance of expertise and experience in the field of international arbitration.
7. **Assistance by the Secretariat:** The article also highlights the role of the Secretariat of the Court. The Secretariat serves as a supportive body that assists the ICC Court in its day-to-day functions. The Secretariat's responsibilities include case management, administrative support, and facilitating communication between the ICC Court and the parties involved in arbitration cases.
8. **Hierarchical Structure:** The article implies a hierarchical structure within the ICC Court, with the President and Vice-Presidents occupying leadership roles. This structure ensures clear lines of authority and accountability, which are essential for the effective management of the arbitration process.
9. **Expertise and Diversity:** The composition of the ICC Court aims to encompass a diverse range of legal and arbitration expertise, ensuring that the court can address various types of disputes that arise in international commercial and investment arbitration.

10. **Impartiality and Independence:** The article does not explicitly mention it, but the independence and impartiality of the ICC Court members are implied. These qualities are crucial to maintaining the integrity of the arbitration process and fostering trust among parties involved.
11. **Efficiency and Consistency:** The organised structure of the ICC Court, with its designated roles and responsibilities, contributes to the efficient administration of arbitration cases and the consistent application of the ICC Arbitration Rules.

In summary, Article 2 of Appendix I to the ICC Arbitration Rules 2021 outlines the composition and organisational structure of the ICC Court, highlighting the roles of the President, Vice-Presidents, members, and alternate members, as well as the supportive role of the Secretariat. This article ensures a clear understanding of the leadership and decision-making framework within the ICC Court, which is vital for the effective and impartial administration of international arbitration proceedings.

### ARTICLE 3 Appointment

#### **1 The President is elected by the ICC World Council upon the recommendation of the Executive Board of ICC based on the proposal of an independent selection committee which includes highly distinguished arbitration practitioners.**

Article 3(1) of Appendix I to the ICC Arbitration Rules 2021 pertains to the process of electing the President of the International Court of Arbitration (ICC Court). Here is an analysis of this article:

1. **Election of the President:** The article establishes that the President of the ICC Court is elected through a formal process. The term “President” refers to the highest-ranking individual within the ICC Court, responsible for overseeing its activities and ensuring the effective application of the ICC Arbitration Rules.
2. **Election Process:** The President is elected by the ICC World Council. The ICC World Council is a governing body of the International Chamber of Commerce (ICC) composed of representatives from various national committees and organisations affiliated with the ICC.
3. **Recommendation by Executive Board:** The election process starts with a recommendation from the Executive Board of the ICC. The Executive Board is a key decision-making body of the ICC, responsible for strategic and operational matters.
4. **Independent Selection Committee:** The article introduces an essential aspect of the election process—the involvement of an independent selection committee. This committee is composed of highly distinguished arbitration practitioners. These individuals are likely to be well-respected experts in the field of international arbitration.
5. **Role of the Independent Selection Committee:** The independent selection committee plays a significant role in the election process. It reviews potential candidates for the role of President and makes a proposal based on its evaluation of the candidates’ qualifications, experience, and expertise. This ensures that the President possesses the necessary attributes to lead the ICC Court effectively.

6. **Transparency and Objectivity:** The involvement of an independent selection committee adds an element of transparency and objectivity to the process. It reduces the potential for bias and ensures that the President is chosen based on merit and suitability for the role.
7. **Distinguished Arbitration Practitioners:** The article emphasises that the members of the independent selection committee are highly distinguished arbitration practitioners. This underscores the importance of having individuals with extensive experience in international arbitration who can assess candidates' qualifications comprehensively.
8. **Quality Leadership:** By entrusting the election process to the ICC World Council, the Executive Board, and the independent selection committee, the article aims to ensure that the President of the ICC Court is a well-qualified and respected leader who can uphold the standards of the ICC Arbitration Rules and contribute to the effectiveness of the arbitration process.

In summary, Article 3(1) of Appendix I to the ICC Arbitration Rules 2021 outlines the process of electing the President of the ICC Court. This process involves recommendations from the Executive Board, proposals from an independent selection committee of distinguished arbitration practitioners, and the final election by the ICC World Council. The article underscores the importance of transparency, objectivity, and the selection of a qualified leader to oversee the ICC Court's activities and the application of the ICC Arbitration Rules.

## **2 On the proposal of the President, the ICC World Council appoints the Vice-Presidents of the Court from among the members of the Court or otherwise. The President and the Vice-Presidents of the Court form the Bureau of the Court.**

Article 3(2) of Appendix I to the ICC Arbitration Rules 2021 addresses the appointment of Vice-Presidents of the International Court of Arbitration (ICC Court) and the establishment of the Bureau of the Court. Here is an analysis of this article:

1. **Appointment of Vice-Presidents:** The article stipulates that the President of the ICC Court has the authority to propose candidates for the position of Vice-Presidents. These Vice-Presidents are appointed by the ICC World Council. The Vice-Presidents are individuals who assist and support the President in fulfilling the responsibilities of the ICC Court.
2. **Eligibility of Candidates:** The Vice-Presidents can be selected from among the existing members of the ICC Court or from other qualified individuals. This flexibility allows for a diverse pool of candidates to be considered for the role, enhancing the expertise and leadership within the Court.
3. **Role of the Vice-Presidents:** The Vice-Presidents play a crucial role in supporting the President in managing the activities of the ICC Court. They may take on specific responsibilities or tasks as assigned by the President, contributing to the overall efficiency and effectiveness of the Court's operations.
4. **Formation of the Bureau:** The President and the Vice-Presidents collectively form the Bureau of the ICC Court. The Bureau serves as a central decision-making body within the

Court, responsible for overseeing various aspects of its functions. The Bureau plays a key role in strategic planning, decision-making, and policy formulation.

5. Collaborative Leadership: The establishment of the Bureau comprising the President and Vice-Presidents promotes a collaborative approach to leadership within the ICC Court. The collective expertise and diverse perspectives of the President and Vice-Presidents contribute to well-informed decision-making and effective management of arbitration proceedings.
6. Representation and Expertise: By including Vice-Presidents who can be selected from members of the Court or from other qualified individuals, the ICC Court ensures representation of a wide range of expertise and experience. This diverse representation enhances the Court's ability to address various arbitration matters effectively.
7. Responsiveness to Change: The flexibility to appoint Vice-Presidents from outside the existing membership of the Court allows the ICC Court to adapt to changing needs and developments in international arbitration. It ensures that the leadership remains current and aligned with evolving practices and challenges.
8. Bureau's Leadership Role: The Bureau, comprising the President and Vice-Presidents, plays a significant role in setting the direction and standards for the ICC Court's operations. Their collaborative leadership helps maintain the Court's reputation for professionalism and excellence in international arbitration.

In summary, Article 3(2) of Appendix I to the ICC Arbitration Rules 2021 outlines the process of appointing Vice-Presidents of the ICC Court and the establishment of the Bureau of the Court. This article underscores the importance of having a collaborative leadership structure that includes the President and Vice-Presidents to effectively manage the Court's functions, ensure representation, and promote responsive decision-making in the field of international arbitration.

### **3 The members of the Court are appointed by the ICC World Council on the proposal of ICC National Committees or Groups, one member for each National Committee or Group. On the proposal of the President, the World Council may appoint alternate members.**

Article 3(3) of Appendix I to the ICC Arbitration Rules 2021 deals with the appointment of members and alternate members of the International Court of Arbitration (ICC Court). Let us analyse this article:

1. Appointment Process: According to this article, members of the ICC Court are appointed by the ICC World Council. The appointments are based on proposals made by ICC National Committees or Groups. One member is appointed for each National Committee or Group. This approach ensures a global representation within the ICC Court, reflecting the international nature of arbitration cases that the Court handles.
2. Representation: By allowing each National Committee or Group to propose a member for the ICC Court, the Court achieves diversity and representation from various jurisdictions and legal systems around the world. This diversity is essential in understanding and addressing the unique aspects and cultural differences that may arise in international arbitration cases.

3. Involvement of ICC National Committees or Groups: ICC National Committees or Groups play a critical role in nominating individuals for membership in the ICC Court. These Committees or Groups are in a position to identify and propose individuals who possess the necessary expertise, experience, and reputation in the field of international arbitration.
4. Alternate Members: The article also empowers the President of the ICC Court to propose alternate members to the ICC World Council. Alternate members can step in when a member is unable to fulfil their role, ensuring continuity and representation. This provision reflects the importance of having a backup plan to ensure the smooth functioning of the Court.
5. Expertise and Experience: The appointment process outlined in this article emphasises selecting individuals with substantial expertise and experience in international arbitration. This ensures that the Court benefits from the insights and knowledge of practitioners who are well-versed in resolving complex cross-border disputes.
6. Flexibility and Adaptability: The inclusion of alternate members gives the ICC Court the flexibility to manage unexpected circumstances, such as the unavailability of a member due to conflicts or other reasons. This ensures that the Court can continue its work effectively even in such situations.
7. International Collaboration: By facilitating appointments based on proposals from ICC National Committees or Groups, the ICC Court fosters collaboration between the international legal community and the Court itself. This collaboration helps align the Court's activities with the diverse needs and perspectives of different jurisdictions.
8. Maintaining High Standards: The selection process outlined in the article contributes to maintaining the high standards of professionalism, integrity, and expertise associated with the ICC Court. It helps ensure that only qualified individuals become members or alternate members, upholding the Court's reputation in the field of international arbitration.

In conclusion, Article 3(3) of Appendix I to the ICC Arbitration Rules 2021 establishes a comprehensive process for the appointment of members and alternate members of the ICC Court. This process promotes global representation, expertise, and adaptability, ultimately enhancing the Court's ability to effectively handle international arbitration cases and maintain its reputation as a leading arbitration institution.

**4 On the proposal of the President, the ICC World Council may appoint members and alternate members in countries and territories:**

- a) where there is no National Committee or Group; or
- b) where the National Committee or Group is suspended.

Article 3(4) of Appendix I to the ICC Arbitration Rules 2021 deals with the appointment of members and alternate members of the International Court of Arbitration (ICC Court) in specific circumstances



where there is no National Committee or Group, or when a National Committee or Group is suspended. Let us analyse this article:

1. **Continuity of Representation:** This article provides a mechanism for ensuring that representation within the ICC Court is maintained even in situations where a National Committee or Group is either absent or suspended. This continuity of representation is crucial for the functioning and decision-making process of the ICC Court.
2. **Countries and Territories without Committees:** In situations where there is no ICC National Committee or Group in a particular country or territory, the ICC Court's President can propose the appointment of members and alternate members directly. This ensures that even jurisdictions without formal National Committees or Groups have the opportunity to participate in the work of the ICC Court.
3. **Suspended National Committees or Groups:** If a National Committee or Group is suspended for any reason, the ICC World Council can also appoint members and alternate members directly. This provision prevents the absence of representation due to a suspension and ensures that the Court remains operational and representative.
4. **Filling Gaps:** This article serves the purpose of filling gaps in representation and maintaining the Court's ability to function effectively. It prevents potential disruptions caused by the absence or suspension of National Committees or Groups and ensures that the Court continues to have a balanced and diverse composition.
5. **Flexibility and Adaptability:** The provision highlights the flexibility and adaptability of the ICC Court in responding to changing circumstances. It demonstrates the Court's commitment to upholding its mandate even in situations where formal structures may not be in place or where issues with National Committees or Groups arise.
6. **Avoiding Disruption:** By providing a mechanism for appointments in cases of absence or suspension of National Committees or Groups, the ICC Court ensures that its work is not disrupted. It maintains its ability to administer arbitration cases and make decisions without unnecessary delays caused by administrative or organisational issues.
7. **Ensuring Fair and Impartial Decisions:** The ability to appoint members and alternate members directly in specific situations safeguards the principle of fair and impartial decision-making within the ICC Court. It ensures that decisions are made by knowledgeable and experienced individuals, even when the usual channels of representation are temporarily unavailable.
8. **Enhancing the ICC's Reputation:** The provision underscores the ICC's commitment to maintaining its reputation as a leading international arbitration institution. By taking measures to address potential gaps in representation, the ICC demonstrates its dedication to the highest standards of arbitration practice.

In conclusion, Article 3(4) of Appendix I to the ICC Arbitration Rules 2021 reflects the ICC Court's commitment to continuity, adaptability, and fairness in the appointment of members and alternate members. It ensures that the Court remains functional and representative, even in situations where National Committees or Groups are absent or suspended, ultimately contributing to the effective administration of international arbitration cases.

- 5 The term of office of all members, including, for the purposes of this paragraph, the President and Vice-Presidents, is three years and may be renewed once. If a member is no longer in a position to exercise the member’s functions, a successor is appointed by the World Council for the remainder of the term.**

Article 3(5) of Appendix I to the ICC Arbitration Rules 2021 outlines the term of office for members of the International Court of Arbitration (ICC Court), including the President and Vice-Presidents. Let us break down this article:

1. **Term of Office:** This article establishes that the term of office for all members of the ICC Court, which includes the President and Vice-Presidents, is three years. This predefined term ensures a level of continuity within the Court while also allowing for periodic updates and changes in membership.
2. **Term Renewal:** Members are allowed to serve a second term, as indicated by the phrase “may be renewed once”. This provision acknowledges the value of experience and continuity in the work of the Court while also recognising the importance of introducing fresh perspectives over time.
3. **Rotation of Members:** The combination of a first term and the potential for renewal results in a maximum total tenure of six years for any member, reflecting a balanced approach to ensure both continuity and new contributions. This rotation of members helps prevent stagnation and ensures that the Court remains dynamic.
4. **Successor Appointment:** If a member is unable to continue serving in their role before the end of their term, the article provides for the appointment of a successor by the ICC World Council. This provision helps maintain the functioning of the ICC Court even in situations where a member’s term is cut short for reasons such as resignation, incapacity, or any other cause.
5. **Continuity and Experience:** The combination of term renewal and the provision for successor appointment strikes a balance between maintaining continuity and introducing fresh perspectives. It allows for the Court to benefit from experienced members while also facilitating the infusion of new ideas and approaches.
6. **Effective Management:** The fixed term of office ensures that the Court’s composition is periodically reviewed and refreshed, helping to prevent any undue concentration of power or influence and promoting the overall effectiveness of the Court’s decision-making processes.
7. **Accountability and Change:** The possibility of members not being able to complete their terms acknowledges the unpredictable nature of circumstances. The provision for successor appointment allows the ICC World Council to address such situations promptly and continue the work of the Court seamlessly.
8. **Impartiality and Neutrality:** The defined terms of office, renewal options, and successor appointment mechanism contribute to the impartiality and neutrality of the ICC Court. They prevent long-term accumulation of influence and help ensure that the Court remains

focused on its mandate of administering international arbitration cases fairly and independently.

In summary, Article 3(5) of Appendix I to the ICC Arbitration Rules 2021 establishes the term of office for members of the ICC Court, including the President and Vice-Presidents, and provides mechanisms for continuity, change, and succession. This balance is essential for maintaining effective decision-making, promoting fresh perspectives, and upholding the integrity of the Court's operations over time.

**6 No Court member shall serve for more than two full consecutive terms, unless the World Council decides otherwise upon the recommendation of the Executive Board further to the proposal of the President, in particular where a Court member is proposed for election as Vice-President.**

Article 3(6) of Appendix I to the ICC Arbitration Rules 2021 establishes limitations on the consecutive terms that Court members, including the President and Vice-Presidents, can serve. Let us delve into the analysis of this article:

1. **Term Limitation:** This article sets a term limit for Court members, specifying that no member shall serve for more than two full consecutive terms. This limitation ensures a healthy turnover of members, preventing the concentration of power and fostering a continuous infusion of fresh perspectives into the Court's decision-making process.
2. **Prevention of Stagnation:** By imposing a term limit, the article helps prevent stagnation and complacency within the Court. This limitation encourages the introduction of new ideas, diversity of thought, and innovative approaches to address the evolving needs and challenges in international arbitration.
3. **Promotion of Change:** The two-term limit promotes the principle of change, safeguarding against any perception of entrenched interests or long-standing dominance within the Court. This principle aligns with the broader objective of maintaining a dynamic and responsive arbitration institution.
4. **Leadership Positions:** The article acknowledges that there might be exceptions to the term limit, particularly when a Court member is proposed for election as Vice-President. This recognises the potential value of continuity and experience in leadership roles within the Court.
5. **Balance of Experience and New Input:** The exception clause allows the World Council to consider the unique circumstances of each case and evaluate whether continuity in a leadership role, such as Vice-President, might benefit the Court's functioning. This balance ensures that the Court benefits from both experienced members and those with fresh insights.
6. **Executive Board's Role:** The World Council's decision to extend a Court member's consecutive term beyond the limit rests upon the recommendation of the Executive Board. This oversight reinforces the accountability and transparency of such exceptions, making them subject to a thorough evaluation process.

7. **Avoiding Consolidation of Power:** By limiting consecutive terms, the article contributes to the avoidance of consolidation of power or undue influence within the Court. This principle helps maintain the independence and integrity of the Court's decisions.
8. **Adaptation and Evolution:** The term limit and potential exceptions reflect an understanding that the needs and priorities of the ICC Court may change over time. The article facilitates adaptation and evolution in response to changing circumstances and demands.

In summary, Article 3(6) of Appendix I to the ICC Arbitration Rules 2021 establishes a two-term limit for consecutive service by Court members while providing for exceptions in specific cases, especially when a member is proposed for election as Vice-President. This balanced approach fosters diversity, innovation, and effective leadership within the ICC Court, aligning with its mandate to administer international arbitration in a fair, independent, and adaptable manner.

#### ARTICLE 4 Committees

##### **1 Save as provided in Articles 5(1), 6 and 7 of this Appendix, the Court conducts its work in Committees of three members.**

Article 4(1) of Appendix I to the ICC Arbitration Rules 2021 outlines the structure and composition of Committees within the ICC Court. Let us analyse this provision:

1. **Committee Structure:** The article establishes the default structure for conducting the work of the ICC Court, which is organised into Committees. These Committees consist of three members each, and they play a pivotal role in the administration and management of arbitration cases.
2. **Efficiency and Decision-Making:** The composition of Committees with three members reflects the Court's aim to achieve efficiency in its proceedings and decision-making. Smaller Committees can often facilitate faster deliberations and more streamlined processes, contributing to the expeditious handling of arbitration cases.
3. **Decentralisation of Work:** By forming Committees, the Court distributes its workload among multiple groups of members. This decentralisation allows the Court to manage a higher volume of cases effectively, thereby reducing the burden on individual members and enhancing overall operational efficiency.
4. **Expertise and Diversity:** Committees' composition allows for a diverse and well-rounded perspective on various matters. Each Committee may consist of members with different backgrounds, expertise, and experiences, ensuring that a broad range of viewpoints is considered during decision-making.
5. **Applicability of Other Articles:** The article makes reference to Articles 5(1), 6, and 7 of the same Appendix. These articles likely provide exceptions or special provisions regarding the composition and functioning of Committees in specific cases, indicating that the default three-member structure might be subject to variations in certain circumstances.

6. **Balancing Workload:** Committees with three members strike a balance between having sufficient input and maintaining a manageable group size. This balance enables members to engage in detailed discussions while avoiding potential delays that could arise from larger decision-making bodies.
7. **Collaboration and Consensus:** A three-member Committee encourages collaboration and consensus-building among its members. The smaller group size can facilitate more focused discussions and the identification of common ground, leading to well-informed and coherent decisions.
8. **Flexibility:** While Article 4(1) sets the general structure of Committees, the reference to other articles indicates that the Court can tailor its approach based on the specific needs and complexities of each case. This flexibility allows the Court to adapt its procedures to diverse arbitration scenarios.

In summary, Article 4(1) of Appendix I to the ICC Arbitration Rules 2021 establishes the default structure of Committees within the ICC Court, consisting of three members each. This approach promotes efficiency, expertise, diversity, and collaboration in decision-making, while also providing the Court with the flexibility to make exceptions and adjustments when required by specific provisions in the same Appendix.

## **2 Members of the Committees consist of a president and two other members.**

Article 4(2) of Appendix I to the ICC Arbitration Rules 2021 further elaborates on the composition of Committees within the ICC Court. Let us analyse this provision:

1. **Composition:** The article specifies that Committees consist of three members, including a president and two other members. This structure outlines the hierarchy within each Committee, with the president serving as the chair and two additional members contributing to the decision-making process.
2. **Leadership Role of the President:** The provision designates the president as the leader of the Committee. As the chairperson, the president is likely responsible for organising and guiding the Committee's discussions, ensuring that the proceedings are conducted efficiently, and helping to facilitate consensus among the members.
3. **Collaborative Decision-Making:** The inclusion of two other members alongside the president promotes collaborative decision-making within the Committee. Different members bring diverse perspectives, expertise, and insights to the table, enhancing the quality and comprehensiveness of the decisions reached.
4. **Balancing Expertise:** By appointing a president and two members, the composition aims to balance leadership and participation within the Committee. The president's role in guiding discussions may complement the contributions of the other two members, ensuring a well-rounded assessment of the issues at hand.
5. **Influence on Case Management:** The president's role may extend beyond decision-making, potentially encompassing administrative and case management responsibilities.

within the Committee. This could involve coordinating meetings, setting agendas, and ensuring that the Committee adheres to established procedural rules.

6. **Efficient Deliberations:** Having a Committee composed of three members helps to facilitate efficient deliberations. Smaller group sizes can lead to focused discussions, quicker resolution of matters, and more concise communication among members.
7. **Reduction of Potential Deadlocks:** With an odd number of members (three), Committees are less likely to face deadlock situations where opinions are evenly split. The president could play a role in breaking ties, if necessary, to arrive at a decision.
8. **Flexibility in Appointments:** While the article stipulates the composition of Committees as including a president and two other members, the specific individuals appointed to these roles can vary based on their expertise, availability, and the nature of the case under consideration.
9. **Preservation of Autonomy:** Article 4(2) underscores the Court's emphasis on maintaining the autonomy of Committees by specifying their composition and leadership structure. This autonomy supports efficient case administration and decision-making.

In summary, Article 4(2) of Appendix I to the ICC Arbitration Rules 2021 outlines the composition of Committees within the ICC Court, comprising a president and two other members. This composition aims to facilitate collaborative decision-making, balance expertise, enhance case management, and ensure efficient deliberations while allowing for flexibility in the appointment of individuals to these roles.

## ARTICLE 5 Special Committees

### 1 The Court may conduct its work in Special Committees:

- a) **to decide on matters under Articles 14 and 15(2) of the Rules;**
- b) **to scrutinise draft awards in the presence of dissenting opinions;**
- c) **to scrutinise draft awards in cases where one or more of the parties is a state or may be considered to be a state entity;**
- d) **to decide on matters transferred to a Special Committee by a Committee which did not reach a decision or deemed it preferable to abstain, having made any suggestions it deemed appropriate; or**
- e) **upon request of the President.**

Article 5(1) of Appendix I to the ICC Arbitration Rules 2021 outlines the circumstances under which the ICC Court may establish Special Committees to carry out specific tasks or address certain matters. Let us analyse this provision:

1. **Special Committees:** This article empowers the ICC Court to establish Special Committees for specific purposes, reflecting the Court’s flexibility in adapting its approach to various scenarios that may arise during arbitration proceedings.
2. **Matters under Articles 14 and 15(2) of the Rules:** The Court may set up Special Committees to address matters related to Articles 14 and 15(2) of the ICC Arbitration Rules. These articles pertain to the replacement of arbitrators and the challenge of arbitrators, respectively. The establishment of Special Committees for these matters indicates the Court’s intention to ensure transparency, impartiality, and fairness in arbitrator-related decisions.
3. **Draft Awards with Dissenting Opinions:** Special Committees may be formed to scrutinise draft awards in the presence of dissenting opinions. This provision demonstrates the Court’s commitment to ensuring that awards are thoroughly examined, especially when there are differing viewpoints among Committee members or potential challenges to the final award.
4. **Cases Involving States or State Entities:** For cases involving states or entities that may be considered as such, the Court may establish Special Committees. This underscores the unique nature of disputes involving states or state entities and emphasises the need for specialised consideration in such matters.
5. **Transfer of Matters from Other Committees:** The Court can transfer matters to a Special Committee that were initially considered by another Committee but did not reach a decision or preferred to abstain. This mechanism provides a means of resolving unresolved issues by redirecting them to a Special Committee for further consideration and decision-making.
6. **President’s Request:** The President of the Court has the authority to request the establishment of a Special Committee. This provision grants the President the flexibility to address emerging issues or unique circumstances that require the attention of a dedicated Committee.
7. **Customised Approach:** The establishment of Special Committees reflects the Court’s commitment to addressing specific complexities or challenges that may arise in arbitration proceedings. This tailored approach enhances the quality, fairness, and efficiency of the arbitration process.
8. **Efficient Decision-Making:** Special Committees may facilitate focused and efficient decision-making for specific issues. This approach can help streamline the resolution of matters that require specialised expertise or consideration.
9. **Expertise and Diversity:** The composition of Special Committees can be tailored to include members with relevant expertise or diverse perspectives, ensuring that decisions are well-informed and comprehensive.

In summary, Article 5(1) of Appendix I to the ICC Arbitration Rules 2021 outlines the circumstances under which the ICC Court may establish Special Committees to address specific matters or carry out certain tasks. These Special Committees are designed to provide a customised approach to handling distinct challenges that may arise during the arbitration process, reflecting the Court’s commitment to fairness, transparency, and efficient decision-making.

## 2 Members of the Special Committee consist of a president and at least six other members.

Article 5(2) of Appendix I to the ICC Arbitration Rules 2021 pertains to the composition of Special Committees that may be established by the ICC Court. Let us analyse this provision:

1. **Composition of Special Committees:** This article specifies that a Special Committee consists of a president and at least six other members. This composition is designed to ensure that Special Committees have a sufficient number of members to effectively deliberate on the matters assigned to them.
2. **Specialised Expertise:** Requiring at least six members for a Special Committee indicates that the Court aims to assemble a diverse and knowledgeable group of individuals. This composition ensures that a range of perspectives and expertise can be brought to the decision-making process, enhancing the quality of the Committee's deliberations.
3. **Complex Matters:** The fact that Special Committees are required to have a president and a minimum of six members suggests that these Committees are established for matters that may be particularly complex or require in-depth analysis. The larger number of members allows for thorough consideration of the issues at hand.
4. **Balanced Decision-Making:** The presence of multiple members within a Special Committee promotes balanced decision-making. Different viewpoints can be taken into account, and the collective expertise of the members can contribute to well-rounded and comprehensive decisions.
5. **Efficiency and Collaboration:** Having a president and six other members ensures that the workload of the Committee can be distributed effectively. This structure facilitates efficient collaboration and discussion, leading to more streamlined and informed decision-making processes.
6. **Appropriate for Special Circumstances:** Given that Special Committees are established for specific matters or tasks that may require careful consideration, the larger composition of at least seven members ensures that the Committee has the capacity to address these matters adequately.

In summary, Article 5(2) of Appendix I to the ICC Arbitration Rules 2021 outlines the composition of Special Committees. Requiring a president and at least six other members underscores the Court's commitment to assembling a diverse, knowledgeable, and well-equipped group to address complex matters that may require specialised expertise. This composition aims to ensure thorough, balanced, and efficient decision-making within the framework of the Special Committee's responsibilities.



## ARTICLE 6 Single-member Committees

### **The Court may scrutinize draft awards under the Expedited Procedure Provisions in Single-member Committees.**

Article 6 of Appendix I to the ICC Arbitration Rules 2021 addresses the Court's authority to scrutinise draft awards under the Expedited Procedure Provisions through Single-member Committees. Let us analyse this provision:

1. **Expedited Procedure Provisions:** This article refers to the Expedited Procedure Provisions, which are laid out in Appendix VI of the ICC Arbitration Rules. These provisions are designed to streamline and expedite arbitration proceedings for cases meeting certain criteria, such as lower value disputes or where the parties have agreed to the expedited process.
2. **Scrutiny of Draft Awards:** The article states that the Court may scrutinise draft awards that are prepared under the Expedited Procedure Provisions. This suggests that the Court has a supervisory role in ensuring the correctness and compliance of draft awards issued in expedited arbitration proceedings.
3. **Single-member Committees:** The provision specifies that the Court may carry out this scrutiny through Single-member Committees. This means that for such scrutiny, the Court may appoint a single member of the Court to review the draft award. This approach aligns with the streamlined nature of expedited proceedings, as a single committee member can make decisions more swiftly than a larger committee.
4. **Efficiency and Expediency:** By allowing Single-member Committees for the scrutiny of draft awards under the Expedited Procedure Provisions, the ICC aims to maintain the efficiency and expedited nature of these proceedings. A single committee member's review can speed up the process and avoid unnecessary delays.
5. **Specialisation and Expertise:** The use of Single-member Committees for this purpose may also allow the Court to select a committee member with specific expertise or experience relevant to the case at hand. This specialisation can enhance the quality of the scrutiny process.
6. **Foster Confidence:** The involvement of the Court, even through Single-member Committees, in reviewing draft awards issued under expedited procedures can foster confidence in the process. Parties can be assured that their awards are subject to oversight and quality control.
7. **Balancing Speed and Quality:** While expedited procedures aim to resolve disputes quickly, it is important to strike a balance between speed and the quality of decisions. The involvement of the Court through Single-member Committees helps achieve this balance.

In summary, Article 6 of Appendix I to the ICC Arbitration Rules 2021 authorises the Court to scrutinise draft awards under the Expedited Procedure Provisions through Single-member Committees. This approach supports the efficiency and expediency of expedited proceedings while maintaining a level of quality assurance and oversight by the Court.

## ARTICLE 7 Plenary of the Court

### 1 The Court meets in plenary during its annual working session. It also meets in plenary whenever so convened by the President.

Article 7(1) of Appendix I to the ICC Arbitration Rules 2021 outlines the convening of plenary meetings of the Court and provides insight into its organisational functioning. Let us analyse this provision:

1. **Plenary Meetings:** The provision indicates that the Court, which is the governing body responsible for the administration of ICC arbitration proceedings, convenes plenary meetings. A plenary meeting involves the full participation of all Court members, including the President, Vice-Presidents, and other appointed members.
2. **Annual Working Session:** The provision states that the Court meets in plenary during its annual working session. This suggests that there is a specific period during the year designated for the Court's plenary meetings, where all members come together to discuss matters related to the administration of ICC arbitration cases.
3. **Convening Authority:** The President, as the head of the Court, has the authority to convene plenary meetings whenever deemed necessary. This signifies that the President has the power to call for a meeting even outside the annual working session if important matters arise that require the attention and decisions of the full Court.
4. **Decision-Making and Deliberation:** Plenary meetings allow the Court members to collectively deliberate on various issues and make decisions that affect the administration and functioning of ICC arbitration cases. These meetings ensure that important matters are discussed thoroughly and that decisions are made collectively.
5. **Coordination and Communication:** Plenary meetings offer a platform for Court members to coordinate and communicate with each other, ensuring a cohesive approach to arbitration administration. It is a forum for sharing insights, experiences, and perspectives on various aspects of ICC arbitration proceedings.
6. **Efficiency and Consistency:** The convening of plenary meetings, both during the annual working session and on the President's initiative, promotes efficiency and consistency in the decision-making process. It allows Court members to address matters promptly and align their efforts in fulfilling the Court's responsibilities.
7. **Flexibility and Adaptability:** The provision reflects the flexibility of the Court's structure. While there is a designated annual working session, the President has the authority to call for plenary meetings at any time. This adaptability ensures that the Court can respond swiftly to emerging issues.

In summary, Article 7(1) of Appendix I to the ICC Arbitration Rules 2021 outlines the convening of plenary meetings of the Court, both during its annual working session and whenever convened by the President. These meetings play a crucial role in decision-making, coordination, and communication among Court members, enhancing the effective administration of ICC arbitration proceedings.

## 2 The plenary of the Court may take any decision under Articles 4(1), 5(1) and 6 of this Appendix.

Article 7(2) of Appendix I to the ICC Arbitration Rules 2021 provides insight into the decision-making authority of the plenary of the Court in relation to certain matters. Let us analyse this provision:

1. **Decision-Making Authority:** This provision grants the plenary of the Court the authority to make decisions on specific matters outlined in Articles 4(1), 5(1), and 6 of the same Appendix. The plenary is the highest decision-making body of the Court, consisting of all members, including the President, Vice-Presidents, and other appointed members.
2. **Matters Covered:** The provision specifically mentions three articles within the same Appendix, namely Articles 4(1), 5(1), and 6. These articles pertain to the composition of Committees (both regular and special), the establishment of Special Committees for specific purposes, and the scrutiny of draft awards under the Expedited Procedure Provisions.
3. **Committee Composition:** Under Article 4(1), the plenary of the Court may decide on the formation of Committees comprising three members each, as well as the assignment of roles within these Committees. This demonstrates the plenary's authority to structure and organise its internal committees based on the requirements of the administration of arbitration cases.
4. **Special Committees:** Article 5(1) allows the plenary to establish Special Committees to address specific matters, such as matters under Articles 14 and 15(2) of the Rules, scrutiny of draft awards with dissenting opinions, cases involving state parties, matters transferred from other Committees, or upon the request of the President. The plenary's power to establish these specialised committees reflects its adaptability and responsiveness to diverse arbitration-related issues.
5. **Expedited Procedure:** Article 6 allows the plenary to scrutinise draft awards under the Expedited Procedure Provisions in Single-member Committees. This highlights the plenary's oversight role in ensuring the proper administration of cases under the expedited arbitration procedure.
6. **Consolidated Decision-Making:** By authorising the plenary to make decisions on these matters, the provision aims to consolidate decision-making at the highest level of the Court. This approach ensures consistent and coordinated decision-making across various aspects of the arbitration process.
7. **Efficiency and Expertise:** Granting the plenary the authority to make decisions in these areas enables the Court to function efficiently and leverage the collective expertise of its members. Decisions made by the plenary are likely to be well-informed, considering the diverse backgrounds and experience of the Court members.

In summary, Article 7(2) of Appendix I to the ICC Arbitration Rules 2021 empowers the plenary of the Court to make decisions on matters outlined in Articles 4(1), 5(1), and 6. This provision reinforces the role of the plenary as the principal decision-making body responsible for overseeing various aspects of the Court's functioning and the administration of ICC arbitration cases.

**3 Members of the plenary consist of the President, the Vice-Presidents and all Court members who have accepted to attend and are in attendance.**

Article 7(3) of Appendix I to the ICC Arbitration Rules 2021 outlines the composition of the plenary of the Court during its meetings. Let us analyse this provision:

1. **Membership of the Plenary:** This provision specifies the members who constitute the plenary of the Court during its meetings. The plenary is the highest decision-making body of the International Court of Arbitration (the “Court”), responsible for various administrative and procedural decisions related to ICC arbitration cases.
2. **Inclusion of President and Vice-Presidents:** The President and Vice-Presidents of the Court, who play leadership roles within the Court, are automatically members of the plenary. Their inclusion reflects their key roles in guiding the Court’s activities and decision-making processes.
3. **Inclusion of Attending Court Members:** The provision extends plenary membership to all Court members who have accepted to attend the meeting and are present. This approach ensures that the plenary includes the active participation of the Court’s members, who are experts in international arbitration and contribute to the Court’s overall function.
4. **Flexibility and Participation:** By allowing members who are present and willing to participate in the plenary meetings, the provision promotes flexibility and encourages a collaborative approach to decision-making. It recognises that Court members may have valuable input to offer even if they are not part of the leadership or Bureau.
5. **Expertise and Representation:** The diverse backgrounds, expertise, and geographical representation of Court members enhance the quality of decisions made by the plenary. This provision allows for a comprehensive consideration of matters relevant to the Court’s activities and the administration of ICC arbitration cases.
6. **Responsive Decision-Making:** The provision facilitates agile decision-making by enabling the plenary to include attending members who can provide insights and contribute to discussions on specific topics on the agenda.
7. **Democratic Participation:** The inclusion of attending Court members aligns with principles of democratic participation and transparency, as it provides an opportunity for a broader range of members to be involved in the decision-making process.

In summary, Article 7(3) of Appendix I to the ICC Arbitration Rules 2021 outlines the composition of the plenary of the Court during its meetings. It ensures representation from the President, Vice-Presidents, and attending Court members, fostering a collaborative and comprehensive decision-making process within the highest governing body of the ICC Court of Arbitration.

**ARTICLE 8 Confidentiality**

**The work of the Court is of a confidential nature which must be respected by everyone who participates in that work in whatever capacity. The Court lays down the rules regarding the persons**

**who can attend the meetings of the Court and its Committees and who are entitled to have access to materials related to the work of the Court and its Secretariat.**

Article 8 of Appendix I to the ICC Arbitration Rules 2021 addresses the confidentiality and access to information related to the work of the International Court of Arbitration (the “Court”). Let us analyse this provision:

1. **Confidential Nature of the Work:** The provision establishes that the work of the Court is of a confidential nature. This emphasises the importance of maintaining the privacy and confidentiality of the discussions, decisions, and information exchanged within the context of the Court’s activities. It reflects a common practice in arbitration to ensure the protection of sensitive and proprietary information.
2. **Respect for Confidentiality:** Participants in the Court’s work are required to respect the confidentiality of the matters discussed and decisions made. This includes individuals who are involved in various capacities within the Court’s proceedings and administration.
3. **Access Rules and Regulations:** The provision gives the Court the authority to establish rules and regulations pertaining to access to meetings, documents, and materials related to the work of the Court and its Secretariat. This authority allows the Court to control and manage access to information, ensuring that sensitive matters remain confidential and are only accessible to authorised individuals.
4. **Controlled Access to Meetings:** The Court determines the individuals who can attend meetings of the Court and its Committees. This controlled access ensures that only those who are directly involved or have a legitimate reason to participate are allowed into the meetings. It safeguards the confidentiality of the discussions and decisions made during these meetings.
5. **Controlled Access to Materials:** The Court also decides who is entitled to access materials related to the work of the Court and its Secretariat. This includes documents, records, and other information that may be generated during the arbitration proceedings or administrative functions of the Court.
6. **Balancing Transparency and Confidentiality:** The provision acknowledges the need to balance transparency with the confidentiality requirements of arbitration proceedings. While transparency is important for accountability and credibility, ensuring confidentiality is essential to protect sensitive commercial and legal information.
7. **Protection of Parties’ Interests:** The confidentiality measures established by the Court aim to safeguard the interests of the parties involved in arbitration cases. Parties can trust that their proprietary information and arbitration-related discussions are protected from unauthorised disclosure.
8. **Preserving Neutrality and Fairness:** Confidentiality measures contribute to maintaining the neutrality and fairness of arbitration proceedings. Protecting confidential information prevents potential biases and ensures that the arbitration process remains impartial.

In summary, Article 8 of Appendix I to the ICC Arbitration Rules 2021 underscores the confidential nature of the Court’s work and empowers the Court to regulate access to its meetings and materials. By maintaining confidentiality, the Court strikes a balance between transparency and the protection

of sensitive information, ultimately enhancing the effectiveness and integrity of the arbitration process.

#### **ARTICLE 9 Modification of the Rules of Arbitration**

**Any proposal of the Court for a modification of the Rules is laid before the Commission on Arbitration and ADR before submission to the Executive Board of ICC for approval, provided, however, that the Court, in order to take account of developments in information technology, may propose to modify or supplement the provisions of Article 3 of the Rules or any related provisions in the Rules without laying any such proposal before the Commission.**

Article 9 of Appendix I to the ICC Arbitration Rules 2021 outlines the process for proposing modifications to the Rules of Arbitration. Let us analyse this provision:

1. **Modification of the Rules:** The primary purpose of Article 9 is to establish the procedure for proposing modifications to the ICC Arbitration Rules. This process ensures that any changes to the Rules are carefully considered, discussed, and approved in a structured manner.
2. **Involvement of Relevant Bodies:** According to the provision, any proposal for modifying the Rules is initially presented to the Commission on Arbitration and ADR (Alternative Dispute Resolution). This demonstrates the importance of involving experts and practitioners in arbitration and ADR in the decision-making process regarding any changes to the Rules.
3. **Review and Approval:** After being reviewed by the Commission on Arbitration and ADR, the proposal is submitted to the Executive Board of the International Chamber of Commerce (ICC) for final approval. This review process adds a layer of scrutiny to ensure that proposed modifications align with the objectives, principles, and overall framework of the ICC Arbitration Rules.
4. **Exception for Information Technology Developments:** A notable exception in this provision is that the Court is allowed to propose modifications or supplements to the provisions of Article 3 of the Rules (which pertains to the Court) and any related provisions without laying these proposals before the Commission. This exception is specifically related to adapting the Rules to developments in information technology, which can have a significant impact on arbitration practices.
5. **Flexibility for Technological Advancements:** The provision acknowledges the evolving nature of technology and its influence on arbitration proceedings. By granting the Court the authority to propose modifications in response to technological developments, the ICC ensures that the Rules remain current and effective in a rapidly changing landscape.
6. **Balance of Authority and Oversight:** While the Court has the flexibility to propose technology-related modifications, the involvement of the Commission and the Executive Board ensures a balance of authority and oversight. Proposals are reviewed by experts in arbitration and ADR, and final approval is given by the highest governing body of the ICC.

7. **Adaptation to Modern Practices:** By allowing the Rules to be updated to accommodate advancements in technology, the ICC demonstrates its commitment to staying abreast of modern practices in arbitration. This can contribute to making the arbitration process more efficient, accessible, and responsive to the needs of the parties involved.

In summary, Article 9 of Appendix I to the ICC Arbitration Rules 2021 outlines a structured process for proposing modifications to the Rules. It highlights the importance of involving relevant bodies in the review and approval of proposed changes, while also providing flexibility for the Court to adapt the Rules to developments in information technology. This balance of oversight and adaptability helps ensure that the ICC Arbitration Rules remain effective and relevant in a dynamic environment.

## ARTICLE 10

### **The decisions of the Court shall be deemed to be made in Paris, France.**

Article 10 of Appendix I to the ICC Arbitration Rules 2021 addresses the geographical attribution of the decisions made by the International Court of Arbitration of the International Chamber of Commerce (the “Court”). Let us analyse this provision:

1. **Geographical Attribution of Decisions:** Article 10 specifies that the decisions of the Court are deemed to be made in Paris, France. This provision establishes the official location where the decisions of the Court are considered to originate.
2. **Clarity and Certainty:** By clearly stating that decisions are made in Paris, France, the provision adds an element of clarity and certainty to the process. Parties and stakeholders involved in ICC arbitration proceedings can confidently attribute the Court’s decisions to a specific jurisdiction.
3. **International Jurisdiction:** The ICC is a well-known and respected international institution for arbitration. Having its decisions deemed to be made in Paris aligns with the ICC’s status as a global arbitration hub. This helps reinforce the international character of the institution and its proceedings.
4. **Jurisdictional Neutrality:** The provision does not indicate that the decisions are exclusively binding under French law or jurisdiction. Instead, it establishes a practical point of reference for attributing the origin of decisions. The legal effect and enforceability of the decisions would still depend on the arbitration agreement, applicable law, and relevant conventions.
5. **Enforcement and Recognition:** The geographical attribution of decisions could be relevant for the purpose of enforcing and recognising ICC arbitration awards in different jurisdictions. Parties seeking to enforce an award in a particular country might refer to Paris as the place where the decision originated.
6. **Preservation of Neutrality:** By not specifying a particular legal jurisdiction for the decisions, the provision helps preserve the neutral and impartial character of ICC arbitration proceedings. Decisions are made by the Court in accordance with its internal procedures and the applicable arbitration rules, rather than being tied to a specific legal system.

7. Consistency: Having a central location for attributing decisions—Paris, France—promotes consistency across ICC arbitration proceedings. This uniformity can be important for parties and practitioners who engage in arbitration under the ICC Rules across various cases.

In conclusion, Article 10 of Appendix I to the ICC Arbitration Rules 2021 designates Paris, France, as the location where the decisions of the Court are deemed to be made. This provision adds clarity to the origin of decisions while preserving the international character and neutrality of the ICC arbitration process. The provision also has practical implications for the enforcement and recognition of ICC arbitration awards in various jurisdictions.



**APPENDIX II — INTERNAL RULES OF THE INTERNATIONAL COURT OF ARBITRATION**

**ARTICLE 1 Confidential Character of the Work of the International Court of Arbitration**

**1 For the purposes of this Appendix, members of the Court include the President and Vice-Presidents of the Court.**

Article 1(1) of Appendix II to the ICC Arbitration Rules 2021 provides a specific definition for the term “members of the Court” within the context of that particular Appendix. Let us analyse this provision:

1. **Scope of Application:** This provision is confined to Appendix II of the ICC Arbitration Rules 2021. It clarifies the meaning of the term “members of the Court” as used in this Appendix.
2. **Definition of “Members of the Court”:** The provision specifies that, for the purposes of Appendix II, the term “members of the Court” includes both the President and the Vice-Presidents of the Court. In this context, “members of the Court” refers to these specific officeholders and does not necessarily encompass all members of the Court as defined elsewhere in the rules.
3. **Limited Application:** This definition is relevant only within the framework of Appendix II. It does not alter the definition or understanding of “members of the Court” in other parts of the ICC Arbitration Rules.
4. **Role of the President and Vice-Presidents:** By including the President and Vice-Presidents of the Court within the definition of “members of the Court”, Appendix II likely pertains to matters in which these high-ranking officials are directly involved or authorised to take certain actions.
5. **Clarity and Precision:** The definition brings clarity and precision to the use of terminology in Appendix II. It ensures that readers understand exactly who falls under the category of “members of the Court” in the context of the provisions outlined in this particular Appendix.
6. **Facilitates Interpretation:** The definition helps avoid confusion by making it clear that, in the context of Appendix II, the President and Vice-Presidents are included in the term “members of the Court”. This can facilitate the accurate interpretation of the Appendix’s provisions.

In summary, Article 1(1) of Appendix II to the ICC Arbitration Rules 2021 defines “members of the Court” specifically for the purposes of that Appendix. It includes the President and Vice-Presidents of the Court within this definition, providing clarity and precision for the interpretation of provisions within Appendix II.

**2 The sessions of the Court are open only to its members and to the Secretariat.**

Article 1(2) of Appendix II to the ICC Arbitration Rules 2021 outlines the scope of attendance for the sessions of the Court. Let us analyse this provision:

1. **Scope and Access Restriction:** This provision pertains to the conduct of sessions of the Court and establishes a limitation on who is allowed to attend these sessions. It states that only two groups of individuals are permitted to participate: the members of the Court and the Secretariat.
2. **Exclusivity of Attendance:** The language of the provision indicates that attendance at Court sessions is limited to the specified parties. This exclusivity aims to maintain the confidentiality, privacy, and efficiency of the proceedings.
3. **Members of the Court:** The primary group eligible to attend Court sessions are its members, which includes the President and Vice-Presidents as defined in Article 1(1) of Appendix II. This includes those who hold decision-making authority and play a crucial role in the operation of the Court.
4. **Role of the Secretariat:** The provision allows members of the Secretariat to attend Court sessions. The Secretariat assists the Court in various administrative and logistical matters related to arbitration proceedings, and their presence can be crucial for smooth functioning.
5. **Confidentiality Considerations:** By restricting attendance to Court members and the Secretariat, the provision underscores the importance of maintaining the confidentiality of the discussions, decisions, and matters under consideration during Court sessions.
6. **Transparency and Efficiency:** The provision's emphasis on limited attendance aims to promote focused and efficient discussions among key decision-makers without undue influence or distraction.
7. **Consistency with Governance Practices:** The provision's approach aligns with common practices in various organisational bodies, where only authorised individuals are allowed to participate in decision-making sessions.
8. **Balancing Transparency and Confidentiality:** While Court sessions are closed to the public, the presence of Court members and the Secretariat helps ensure that relevant parties are involved in the decision-making process while maintaining necessary confidentiality.

In conclusion, Article 1(2) of Appendix II to the ICC Arbitration Rules 2021 establishes the scope of attendance for Court sessions. It limits attendance to Court members (including the President and Vice-Presidents) and the Secretariat, aiming to balance transparency and confidentiality in the Court's proceedings.

**3 However, in exceptional circumstances, the President of the Court may invite other persons to attend. Such persons must respect the confidential nature of the work of the Court.**

Article 1(3) of Appendix II to the ICC Arbitration Rules 2021 introduces the concept of exceptional circumstances and the authority of the President of the Court to invite additional individuals to attend Court sessions. Let us break down this provision:

1. **Exceptional Circumstances:** The provision acknowledges that there might be situations that warrant the inclusion of individuals beyond the Court members and the Secretariat.

These circumstances are considered to be exceptional, implying that they are not the norm and should arise only under specific and compelling conditions.

2. **Authority of the President:** The President of the Court, as a senior official responsible for leading and overseeing the Court's operations, is granted the authority to invite other individuals to attend Court sessions. This underscores the President's role as a key decision-maker and facilitator of the Court's functioning.
3. **Invitations to Attend:** The President's authority allows them to extend invitations to specific individuals who are not regular participants in Court sessions. Such invitations are discretionary and should be made with careful consideration of the need for the additional attendees.
4. **Confidentiality Requirement:** Individuals who receive invitations to attend Court sessions must adhere to the confidential nature of the Court's work. This requirement is vital to maintaining the integrity of the arbitration proceedings, ensuring that sensitive information and discussions remain protected.
5. **Balancing Transparency and Confidentiality:** The provision attempts to strike a balance between transparency and confidentiality. While the Court's work is generally conducted behind closed doors to protect sensitive matters, the provision allows for controlled exceptions where additional perspectives or expertise might be needed.
6. **Preserving Efficiency:** By conferring this authority on the President, the provision ensures that the process remains efficient, allowing the Court to respond quickly to unforeseen situations that may arise during its operations.
7. **Judicious Use of Authority:** The provision underscores the importance of exercising this authority judiciously and within the parameters of the exceptional circumstances defined in the Rules. This helps prevent abuse of power and maintains the integrity of the arbitration process.
8. **Flexibility:** The provision's inclusion of exceptional circumstances provides flexibility for the President to make informed decisions based on the unique needs and challenges that may arise during Court sessions.

In conclusion, Article 1(3) of Appendix II to the ICC Arbitration Rules 2021 empowers the President of the Court to invite individuals to attend Court sessions under exceptional circumstances. While ensuring that confidentiality is respected, this provision aims to address unexpected situations that require the inclusion of additional perspectives while maintaining the integrity of the arbitration proceedings.

**4 The documents submitted to the Court, or drawn up by it or the Secretariat in the course of the Court's proceedings, are communicated only to the members of the Court, to the Secretariat and to persons authorized by the President to attend Court sessions.**

Article 1(4) of Appendix II to the ICC Arbitration Rules 2021 pertains to the confidentiality of documents exchanged and created during the Court's proceedings. Let us analyse this provision:

1. **Scope of Documents:** The provision encompasses documents that are submitted to the Court, documents drawn up by the Court, and documents created by the Secretariat during the course of the Court's proceedings. This includes various forms of written communications, submissions, reports, and internal documents that are essential for the proper functioning of the Court.
2. **Limited Communication:** The provision establishes strict limitations on the communication of these documents. Only specific individuals are allowed access to these documents, and this access is controlled to maintain the confidentiality and integrity of the arbitration process.
3. **Authorised Individuals:** Access to the documents is granted to the following individuals:
4. **Members of the Court:** This includes the President, Vice-Presidents, and other Court members who are part of the decision-making body.
5. **The Secretariat:** The staff responsible for assisting the Court in its administrative and operational functions.
6. **Persons Authorised by the President:** Individuals invited by the President to attend Court sessions under exceptional circumstances (as per Article 1(3) of Appendix II).
7. **Preserving Confidentiality:** The provision aims to preserve the confidentiality of the arbitration proceedings and the materials related to them. This is crucial for maintaining the integrity of the arbitration process, protecting sensitive information, and ensuring that participants can freely discuss matters related to the case.
8. **Controlled Access:** By limiting access to a select group of individuals, the provision helps prevent unauthorised disclosure or dissemination of sensitive information, safeguarding the privacy of the proceedings.
9. **Efficient Decision-Making:** Ensuring that only relevant individuals have access to the documents streamlines the decision-making process within the Court. It also helps in maintaining clear lines of communication and accountability among authorised parties.
10. **Balancing Transparency and Confidentiality:** The provision reflects a careful balance between transparency and confidentiality. While transparency is essential for accountability and fairness, confidentiality is equally vital to protect the interests of the parties involved.
11. **Protection of Information:** The provision reflects the modern understanding of data protection and confidentiality concerns. It aligns with international arbitration best practices by adopting measures to safeguard sensitive information.

In summary, Article 1(4) of Appendix II to the ICC Arbitration Rules 2021 establishes a framework for controlling the communication and access to documents exchanged and created during the Court's proceedings. By limiting access to authorised individuals, the provision aims to strike a balance between transparency and confidentiality, ensuring the effective and secure operation of the arbitration process.

**5 The President or the Secretary General of the Court may authorize researchers undertaking work of an academic nature to acquaint themselves with awards and other documents of general interest, with the exception of memoranda, notes, statements and documents remitted by the parties within the framework of arbitration proceedings.**

Article 1(5) of Appendix II to the ICC Arbitration Rules 2021 addresses the access that researchers undertaking academic work may have to certain documents of the Court. Let us analyse this provision:

1. **Researcher Access:** The provision allows researchers who are engaged in academic work to access certain materials related to the Court’s proceedings. These researchers may include scholars, academics, or individuals conducting in-depth studies or research on international arbitration, the ICC arbitration process, or related subjects.
2. **Scope of Access:** Researchers are permitted to acquaint themselves with “awards and other documents of general interest”. This includes finalised decisions (awards) rendered by the arbitral tribunals under the ICC rules, as well as other documents that may have broader relevance to the field of international arbitration. These documents might offer insights into legal precedents, best practices, or trends within the field.
3. **Exclusions:** Certain categories of documents are explicitly excluded from the researcher’s access:
4. **Memoranda, Notes, Statements:** Documents submitted by the parties during the arbitration proceedings, such as legal arguments, position papers, and other written submissions.
5. **Documents Remitted by Parties:** Documents that the parties provide as part of the arbitration process.
6. **Limited Scope:** The provision carefully limits the scope of documents that researchers can access. By excluding documents directly related to the arbitration proceedings, the provision aims to strike a balance between the need for transparency and the confidentiality of ongoing cases.
7. **Authorised Personnel:** The decision to grant access to researchers is vested in two key individuals:
8. **President of the Court:** The highest-ranking official of the Court who is responsible for overall administration and supervision.
9. **Secretary General of the Court:** The administrative head responsible for managing the Court’s operations.
10. **Academic Nature:** The provision’s focus on researchers engaged in academic work indicates that the access granted is intended for scholarly and educational purposes. It acknowledges the importance of academic research in advancing the understanding and development of arbitration practices.
11. **Balancing Transparency and Confidentiality:** By allowing researchers to access awards and documents of general interest, the provision contributes to transparency and knowledge

dissemination in the field of international arbitration. At the same time, it respects the confidentiality required for effective arbitration proceedings.

12. **Exceptional Nature:** The provision emphasises that access to such materials by researchers is a privilege granted under exceptional circumstances. This underlines the careful consideration given to maintaining the integrity of the arbitration process.

In summary, Article 1(5) of Appendix II to the ICC Arbitration Rules 2021 allows researchers engaged in academic work to access awards and documents of general interest from the Court. This provision demonstrates a commitment to sharing knowledge while safeguarding the confidentiality and sensitivity of documents directly related to ongoing arbitration proceedings.

**6 Such authorization shall not be given unless the beneficiary has undertaken to respect the confidential character of the documents made available and to refrain from publishing anything based upon information contained therein without having previously submitted the text for approval to the Secretary General of the Court.**

Article 1(6) of Appendix II to the ICC Arbitration Rules 2021 outlines the conditions and requirements for granting access to researchers undertaking academic work to certain documents from the Court. Let us analyse this provision:

1. **Authorisation for Access:** The provision specifies that researchers seeking access to the documents covered by Article 1(5) must obtain authorisation from the relevant authorities within the Court. This authorisation is essential before researchers can view the requested materials.
2. **Confidentiality Obligation:** A key requirement for researchers to gain access is their commitment to respecting the confidential nature of the documents they will be allowed to review. This signifies the Court's emphasis on maintaining the confidentiality of its proceedings and the sensitive information contained in the documents.
3. **Publication Restraint:** Researchers who obtain access are further required to refrain from publishing any information, findings, or insights derived from the accessed documents without prior approval. This restriction aims to prevent premature or unauthorised dissemination of information that could compromise the integrity of the arbitration proceedings or breach confidentiality obligations.
4. **Approval for Publication:** Should a researcher intend to publish any material based on the accessed documents, they are obligated to submit the proposed text for approval to the Secretary General of the Court. This additional step ensures that any information shared publicly has been reviewed and authorised by the Court to maintain accuracy, protect sensitive information, and uphold the standards of academic research.
5. **Preventing Unintended Harm:** By requiring approval for publication, the provision aims to prevent potential harm that could arise from the misinterpretation, misrepresentation, or inappropriate use of confidential information by researchers. It establishes a mechanism to ensure that any dissemination of information aligns with the Court's objectives and confidentiality concerns.

6. **Balancing Transparency and Confidentiality:** The provision reflects the Court’s intention to strike a balance between transparency and confidentiality. While allowing limited access to researchers for academic purposes, it imposes safeguards to preserve the integrity of the arbitration process and prevent any unintended negative consequences.
7. **Legal and Ethical Responsibility:** The provision underscores the ethical responsibility of researchers to handle sensitive information with care and professionalism. It aligns with standard practices in research ethics, where confidentiality obligations and approval procedures are common in various fields.

In summary, Article 1(6) of Appendix II to the ICC Arbitration Rules 2021 establishes the conditions under which researchers undertaking academic work can access certain Court documents. By requiring researchers to commit to confidentiality, obtain approval for publication, and respect the Court’s authority over the dissemination of information, the provision seeks to ensure a responsible and balanced approach to knowledge sharing while safeguarding the principles of confidentiality and integrity within arbitration proceedings.

**7 The Secretariat will in each case submitted to arbitration under the Rules retain in the archives of the Court all awards, Terms of Reference and decisions of the Court, as well as copies of the pertinent correspondence of the Secretariat.**

Article 1(7) of Appendix II to the ICC Arbitration Rules 2021 pertains to the retention of documents related to arbitration cases by the Secretariat. Let us analyse this provision:

1. **Archival Retention:** The provision stipulates that the Secretariat is responsible for retaining certain documents in the archives of the Court for each arbitration case conducted under the ICC Arbitration Rules. This archival retention is essential for record-keeping purposes and maintaining historical documentation of arbitration proceedings.
2. **Scope of Retained Documents:** The types of documents to be retained are specified in the provision and include the following:
  - a. **Awards:** Final decisions issued by the arbitral tribunal.
  - b. **Terms of Reference:** Documents that outline the scope and procedural framework of the arbitration.
  - c. **Decisions of the Court:** Rulings or determinations made by the International Court of Arbitration during the course of the arbitration proceedings.
  - d. **Copies of Pertinent Correspondence:** Relevant written communication between the parties and the Secretariat that have a bearing on the arbitration.
3. **Ensuring Accountability and Transparency:** The retention of these documents is intended to ensure accountability and transparency in arbitration proceedings. The availability of historical records allows parties, arbitrators, and the Court itself to refer back to the original documents and decisions in case of disputes, appeals, or other matters that may arise after the conclusion of the arbitration.

4. **Preserving Institutional Knowledge:** Archival retention contributes to the preservation of institutional knowledge within the Court. This allows for consistency in interpreting past decisions, maintaining a record of precedents, and aiding in the development of arbitration practices over time.
5. **Support for Research and Analysis:** Retained documents may serve as valuable resources for academic research, legal analysis, and training purposes. Researchers and practitioners can access these documents to gain insights into various aspects of arbitration proceedings, contributing to the growth and development of international arbitration law and practice.
6. **Mitigating Disputes:** Access to archived materials can help mitigate disputes that may arise from differing interpretations of past decisions or procedural matters. Having a centralised repository of documents enables parties to revisit original documents and avoid potential conflicts related to memory or differing recollections.
7. **Preservation of Confidentiality:** The provision does not specify the treatment of confidential documents in the archives. It is assumed that the Court will take appropriate measures to ensure the confidentiality of sensitive information while still retaining records for future reference.

In summary, Article 1(7) of Appendix II to the ICC Arbitration Rules 2021 highlights the importance of archival retention of key documents related to arbitration cases conducted under the ICC Arbitration Rules. This practice ensures transparency, accountability, and the preservation of institutional knowledge within the Court, benefiting both parties involved in arbitration and the broader legal and academic communities.

**8 Any documents, communications or correspondence submitted by the parties or the arbitrators may be destroyed unless a party or an arbitrator requests in writing within a period fixed by the Secretariat the return of such documents, communications or correspondence. All related costs and expenses for the return of those documents shall be paid by such party or arbitrator.**

Article 1(8) of Appendix II to the ICC Arbitration Rules 2021 addresses the handling and potential destruction of documents, communications, or correspondence submitted by the parties or the arbitrators during arbitration proceedings. Let us analyse this provision:

1. **Document Retention and Destruction:** The provision establishes a default position that documents, communications, or correspondence submitted by the parties or arbitrators during arbitration proceedings may be destroyed after a certain period unless there is a specific request for their return.
2. **Request for Document Return:** If a party or an arbitrator wishes to retain or retrieve the submitted documents, communications, or correspondence, they must make a written request to the Secretariat within a timeframe set by the Secretariat. This request triggers the process for retaining these materials.
3. **Cost Responsibility:** The provision states that any costs and expenses related to the return of these documents are the responsibility of the requesting party or arbitrator. This



includes expenses such as shipping, handling, and any administrative costs associated with the retrieval and return of the materials.

4. **Balancing Confidentiality and Practicality:** The provision seeks to strike a balance between preserving confidentiality and practicality. While maintaining records can be important for accountability and reference, there may also be a need to ensure that sensitive information is not unnecessarily retained beyond the conclusion of the arbitration.
5. **Party and Arbitrator Control:** The provision gives parties and arbitrators control over whether certain documents are retained or destroyed. This recognises that there may be specific circumstances where retaining documents is necessary for potential future proceedings or reference.
6. **Efficiency and Resource Management:** By default, the provision allows for the destruction of documents, which can be a practical approach to managing the vast amount of documentation generated during arbitration. It helps prevent unnecessary clutter and the long-term storage of documents that may have limited relevance once the arbitration is concluded.
7. **Timely Request Required:** The provision emphasises the importance of timely action. If a party or arbitrator wishes to retain certain documents, they must make a written request within the period specified by the Secretariat. This ensures that the process is carried out efficiently and in accordance with established procedures.
8. **Document Management Policy:** The provision indicates that the Court and its Secretariat have a systematic document management policy in place. This policy outlines the handling, retention, and destruction of documents, ensuring that the process is organised and follows established guidelines.

In summary, Article 1(8) of Appendix II to the ICC Arbitration Rules 2021 outlines the process for handling documents, communications, or correspondence submitted during arbitration proceedings. It provides a mechanism for parties and arbitrators to either retain or destroy these materials based on their relevance and need, with associated costs borne by the requesting party or arbitrator. This approach balances practicality, confidentiality, and resource management in the context of arbitration proceedings.

## **ARTICLE 2 Participation of Members of the International Court of Arbitration in ICC Arbitration**

### **1 The President and the members of the Secretariat of the Court may not act as arbitrators or as counsel in cases submitted to ICC Arbitration.**

Article 2(1) of Appendix II to the ICC Arbitration Rules 2021 addresses a restriction placed on the President and the members of the Secretariat of the ICC Court with regard to their participation as arbitrators or counsel in cases submitted to ICC Arbitration. Let us analyse this provision:

1. **Conflict of Interest Avoidance:** The provision aims to prevent any potential conflicts of interest that could arise if the President or members of the Secretariat were to simultaneously serve as arbitrators or counsel in cases that are subject to ICC Arbitration.

2. **Preservation of Neutrality:** By prohibiting the President and members of the Secretariat from acting as arbitrators or counsel in ICC Arbitration cases, the provision helps ensure that they maintain their independence and neutrality in their roles within the ICC's administrative functions.
3. **Promotion of Impartiality:** Impartiality and neutrality are crucial principles in arbitration. Prohibiting the involvement of Court officials as arbitrators or counsel in ICC Arbitration cases reinforces the perception of fairness and integrity in the arbitral process.
4. **Fostering Trust:** The provision contributes to building trust among parties involved in ICC Arbitration proceedings. Parties are more likely to have confidence in the integrity of the process when they know that individuals involved in the administration of the arbitration are not concurrently participating as arbitrators or counsel in those cases.
5. **Preserving ICC's Reputation:** The prohibition helps safeguard the reputation of the ICC and its arbitration process. The ICC's standing as a leading international arbitral institution is founded on principles of professionalism, transparency, and impartiality.
6. **Consistency with International Best Practices:** Many arbitration institutions have similar rules or guidelines to ensure that individuals involved in the administration of arbitration proceedings do not concurrently act as arbitrators or counsel in those proceedings. This helps maintain the integrity of the arbitral process.
7. **Clarity and Transparency:** The provision provides clarity to all parties involved by explicitly stating the restriction on the President and members of the Secretariat. This clarity helps parties understand the parameters and expectations of those involved in the arbitration process.
8. **Role Differentiation:** The provision helps maintain a clear distinction between the roles and functions of the Court officials responsible for administering the arbitration process and those of arbitrators and counsel who participate in the resolution of disputes.

In summary, Article 2(1) of Appendix II to the ICC Arbitration Rules 2021 establishes a clear prohibition on the President and members of the Secretariat of the Court from acting as arbitrators or counsel in cases submitted to ICC Arbitration. This restriction is designed to prevent conflicts of interest, promote impartiality, and uphold the reputation of the ICC as an international arbitral institution.

**2 The Court shall not appoint Vice-Presidents or members of the Court as arbitrators. They may, however, be proposed for such duties by one or more of the parties, or pursuant to any other procedure agreed upon by the parties, subject to confirmation.**

Article 2(2) of Appendix II to the ICC Arbitration Rules 2021 addresses the appointment of Vice-Presidents and members of the Court as arbitrators in ICC Arbitration cases. Let us analyse this provision:

1. **Limitation on Appointments:** The provision establishes a limitation on the Court's authority to appoint Vice-Presidents and members of the Court as arbitrators. It specifies that the Court shall not make such appointments directly.

2. **Preservation of Impartiality:** The provision aims to maintain the impartiality and neutrality of the Vice-Presidents and members of the Court. By restricting their appointment as arbitrators, the provision avoids potential conflicts of interest and preserves the perception of fairness in the arbitration process.
3. **Avoidance of Bias:** By preventing Court officials from acting as arbitrators, the provision helps prevent any perception of bias that might arise if individuals with administrative responsibilities within the ICC were also participating as arbitrators in cases submitted to the ICC.
4. **Flexibility in Appointment:** The provision does not entirely prohibit Vice-Presidents and members of the Court from acting as arbitrators. Instead, it allows them to be proposed for such roles by parties involved in arbitration cases. This provides flexibility while maintaining the requirement of confirmation.
5. **Balancing Transparency and Independence:** Allowing Vice-Presidents and members of the Court to be proposed as arbitrators ensures transparency in the process while preserving the independence and impartiality of the arbitration proceedings.
6. **Party Autonomy:** The provision recognises the importance of party autonomy in the selection of arbitrators. Parties are given the opportunity to propose Vice-Presidents and members of the Court for appointment as arbitrators, provided the parties mutually agree and the proposed arbitrator's confirmation is obtained.
7. **Confirmation Requirement:** Any proposal for a Vice-President or a member of the Court to serve as an arbitrator is subject to confirmation. This requirement ensures that the proposed arbitrator's appointment aligns with the principles of neutrality and impartiality.
8. **Professionalism and Integrity:** The provision underscores the professionalism and integrity of the Vice-Presidents and members of the Court, as they are not automatically appointed as arbitrators and must undergo the same confirmation process as any other proposed arbitrator.

In summary, Article 2(2) of Appendix II to the ICC Arbitration Rules 2021 prohibits the Court from directly appointing Vice-Presidents and members of the Court as arbitrators. However, it allows parties to propose them for such roles, subject to confirmation. This approach balances the need for transparency, party autonomy, and the preservation of impartiality in the arbitration process.

**3 When the President, a Vice-President or a member of the Court or of the Secretariat is involved in any capacity whatsoever in proceedings pending before the Court, such person must inform the Secretary General of the Court upon becoming aware of such involvement.**

Article 2(3) of Appendix II to the ICC Arbitration Rules 2021 addresses the requirement for individuals who hold positions within the ICC Court or Secretariat, such as the President, Vice-Presidents, or members, to disclose their involvement in any capacity in proceedings pending before the Court. Let us analyse this provision:

1. **Disclosure Requirement:** The provision mandates that individuals who are part of the ICC Court or Secretariat, including the President, Vice-Presidents, and members, must disclose their involvement in any capacity in proceedings that are currently pending before the Court.
2. **Transparency:** The provision promotes transparency and openness within the ICC arbitration process. It ensures that any potential conflicts of interest or circumstances that might compromise the impartiality and integrity of the proceedings are promptly disclosed.
3. **Preservation of Impartiality:** The requirement to disclose involvement in proceedings helps maintain the impartiality and neutrality of the individuals involved. By making such disclosures, the ICC aims to prevent any perception of bias or favouritism that could arise due to undisclosed relationships or interests.
4. **Ethical Responsibility:** The provision reflects the ethical responsibility of individuals associated with the ICC Court and Secretariat to act in the best interest of the arbitration process. It emphasises the importance of upholding the integrity of the proceedings.
5. **Promotion of Fairness:** By ensuring that any potential conflicts of interest or involvement are disclosed, the provision contributes to a fair and equitable arbitration process. Parties involved in the proceedings can have confidence that the individuals overseeing the process are transparent about their roles.
6. **Prompt Reporting:** The requirement for individuals to inform the Secretary General upon becoming aware of their involvement emphasises the need for prompt reporting. This ensures that any necessary steps can be taken to address the situation and maintain the integrity of the arbitration.
7. **Minimisation of Risks:** The provision helps mitigate risks associated with conflicts of interest and other ethical concerns. By requiring disclosure, the ICC aims to prevent situations where individuals could inadvertently compromise the arbitration process.
8. **Accountability:** Individuals who are part of the ICC Court or Secretariat are held accountable for fulfilling their obligation to disclose their involvement. This accountability enhances the overall credibility of the ICC arbitration process.

In summary, Article 2(3) of Appendix II to the ICC Arbitration Rules 2021 establishes a requirement for individuals within the ICC Court or Secretariat to disclose their involvement in any capacity in proceedings pending before the Court. This transparency measure contributes to the fairness, impartiality, and integrity of the arbitration process and helps prevent potential conflicts of interest.

**4 Such person must be absent from the Court session whenever the matter is considered by the Court and shall not participate in the discussions or in the decisions of the Court.**

Article 2(4) of Appendix II to the ICC Arbitration Rules 2021 addresses the conduct and participation of individuals who are required to disclose their involvement in proceedings before the Court. Let us analyse this provision:

1. **Non-Participation Requirement:** The provision establishes a strict rule that individuals who are required to disclose their involvement in proceedings before the Court must not participate in the discussions or decisions related to the matter in question.
2. **Avoiding Bias and Influence:** By prohibiting the participation of the individual in discussions and decisions, the provision aims to prevent any potential bias or undue influence that could arise from their involvement in the proceedings. This ensures that the decision-making process remains impartial and unbiased.
3. **Preserving Impartiality:** The requirement for the individual to be absent from the Court session contributes to preserving the impartiality and neutrality of the proceedings. It helps avoid any perception that the individual's presence could influence the decision-making process.
4. **Mitigating Conflicts of Interest:** The provision assists in mitigating conflicts of interest by ensuring that individuals who may have a personal or professional connection to the matter at hand do not participate in the decision-making process.
5. **Enhancing Confidence:** Parties involved in the arbitration process can have greater confidence in the integrity of the proceedings when they know that individuals with potential conflicts of interest are excluded from discussions and decisions.
6. **Maintaining Transparency:** The provision underscores the commitment of the ICC to maintaining transparency and fairness in its arbitration proceedings. It prevents any appearance of impropriety or favouritism that could arise from the participation of conflicted individuals.
7. **Ethical Responsibility:** The requirement for non-participation aligns with the ethical responsibilities of individuals associated with the Court or Secretariat. It emphasises their duty to uphold the highest standards of professionalism and integrity.
8. **Consistency with Due Process:** By ensuring that discussions and decisions are made by individuals who are free from potential conflicts of interest, the provision supports the due process rights of all parties involved in the arbitration.

In summary, Article 2(4) of Appendix II to the ICC Arbitration Rules 2021 mandates that individuals required to disclose their involvement in proceedings before the Court must be absent from Court sessions related to the matter and must refrain from participating in discussions or decisions. This requirement safeguards the integrity of the arbitration process, maintains impartiality, and enhances transparency and fairness.

## **5 Such person will not receive any material documentation or information pertaining to such proceedings.**

Article 2(5) of Appendix II to the ICC Arbitration Rules 2021 outlines an important provision related to the involvement of certain individuals in proceedings before the Court. Let us analyse this provision:

1. **Limited Access to Documentation:** The provision specifies that individuals who are required to disclose their involvement in proceedings before the Court will not receive

any material documentation or information related to those proceedings. This restriction serves to prevent any potential misuse of information and to maintain the confidentiality and integrity of the proceedings.

2. **Avoiding Influence or Bias:** By denying these individuals access to material documentation or information, the provision aims to prevent any influence or bias that their involvement might have on the proceedings. This restriction helps to ensure that the decision-making process remains impartial and uninfluenced by their knowledge of the case.
3. **Preserving Confidentiality:** Arbitration proceedings often involve sensitive and confidential information. This provision ensures that only those individuals who are not conflicted or involved in the matter have access to such information, safeguarding the confidentiality of the proceedings.
4. **Minimising Potential for Conflicts:** The restriction on accessing material documentation or information reduces the risk of potential conflicts of interest arising from their involvement in the proceedings. It helps prevent situations where their knowledge could be used inappropriately or lead to biased decision-making.
5. **Enhancing Transparency:** The provision contributes to maintaining transparency by ensuring that individuals with potential conflicts of interest are not privy to sensitive documents or information that could compromise the fairness of the proceedings.
6. **Upholding Ethical Standards:** By limiting access to material documentation or information, the provision underscores the ethical responsibilities of individuals associated with the Court or Secretariat. It aligns with their obligation to act with integrity and professionalism.
7. **Promoting Fair Decision-Making:** Restricting access to material documentation or information aligns with the overarching goal of achieving fair and impartial decisions in arbitration proceedings, as it prevents any undue advantage or bias from influencing the process.
8. **Conforming to Due Process:** The provision supports due process rights by ensuring that only individuals who can participate impartially and without any conflicts of interest have access to information that could impact the case.

In summary, Article 2(5) of Appendix II to the ICC Arbitration Rules 2021 enforces a restriction on individuals who are required to disclose their involvement in proceedings before the Court. This restriction prevents them from receiving material documentation or information related to the proceedings, promoting impartiality, avoiding conflicts of interest, and upholding the ethical and professional standards of the arbitration process.

### **ARTICLE 3 Relations Between the Members of the Court and the ICC National Committees and**

## Groups

### **1 By virtue of their capacity, the members of the Court are independent of the ICC National Committees and Groups which proposed them for appointment by the ICC World Council.**

Article 3(1) of Appendix II to the ICC Arbitration Rules 2021 establishes an essential principle regarding the independence of members of the Court from the ICC National Committees and Groups that proposed their appointment. Let us analyse this provision:

1. **Independence Assertion:** The provision emphasises that members of the Court, by virtue of their capacity, are independent from the ICC National Committees and Groups that recommended their appointment to the ICC World Council. This independence is crucial for maintaining the integrity, impartiality, and credibility of the Court's decisions.
2. **Preventing Influence:** By underscoring the independence of Court members, the provision aims to prevent any undue influence or pressure that could arise from their connection to the ICC National Committees and Groups. This independence ensures that Court members can make decisions without being swayed by external factors.
3. **Impartial Decision-Making:** The provision supports impartial decision-making by Court members. It establishes a separation between the members and the entities that proposed their appointment, reducing the potential for bias or conflicts of interest that might compromise the fairness of the arbitration process.
4. **Protecting the Arbitration Process:** Ensuring the independence of Court members is vital for protecting the integrity of the arbitration process. It reinforces the perception that the Court's decisions are based solely on the merits of the case and applicable legal principles, rather than external influences.
5. **Safeguarding Against Manipulation:** The provision guards against any attempts to manipulate the Court's decisions or proceedings through undue influence exerted by ICC National Committees and Groups that proposed the members for appointment.
6. **Enhancing Transparency:** Emphasising the independence of Court members from proposing entities enhances the transparency of the arbitration process. It assures parties involved that decisions are made by individuals who are not beholden to any particular group's interests.
7. **Upholding Professional Standards:** By highlighting the independence of Court members, the provision reinforces their commitment to maintaining professional standards, ethical conduct, and the highest level of integrity in their roles within the arbitration process.
8. **Promoting Confidence:** Independence contributes to building confidence in the arbitration process. Parties are more likely to trust that their cases will be adjudicated fairly and objectively when they perceive the Court members as independent and impartial.

In summary, Article 3(1) of Appendix II to the ICC Arbitration Rules 2021 emphasises the independence of members of the Court from the ICC National Committees and Groups that proposed their appointment. This principle ensures impartial decision-making, protects the integrity of the arbitration process, and enhances the overall credibility and transparency of the Court's proceedings.

- 2 Furthermore, they must regard as confidential, visa- vis the said National Committees and Groups, any information concerning individual cases with which they have become acquainted in their capacity as members of the Court, except when they have been requested by the President of the Court, by a Vice-President of the Court authorized by the President of the Court, or by the Court’s Secretary General to communicate specific information to their respective National Committees or Groups.**

Article 3(2) of Appendix II to the ICC Arbitration Rules 2021 outlines an obligation of confidentiality that Court members have towards the ICC National Committees and Groups that proposed their appointment. Let us delve into the analysis of this provision:

1. **Confidentiality Requirement:** The provision establishes a confidentiality requirement for Court members concerning information related to individual cases. Members are obligated to treat such information as confidential vis-à-vis the ICC National Committees and Groups that proposed their appointment.
2. **Limited Exceptions:** The provision provides specific circumstances under which Court members may share information with their respective National Committees or Groups. This sharing of information is permitted only when they have been formally requested to do so by authorised parties, such as the President of the Court, a Vice-President authorised by the President, or the Court’s Secretary General.
3. **Balancing Confidentiality and Transparency:** The provision strikes a balance between maintaining the confidentiality of individual cases and ensuring transparency and accountability in the arbitration process. It recognises the need for limited sharing of information in specific situations while preserving the confidentiality of cases.
4. **Preserving Integrity of the Process:** By requiring Court members to keep case-related information confidential, the provision safeguards the integrity of the arbitration process. It prevents potential breaches of confidentiality that could compromise the privacy and fairness of ongoing or concluded cases.
5. **Respect for Parties’ Privacy:** Confidentiality is crucial for respecting the privacy of the parties involved in arbitration proceedings. It ensures that sensitive information remains protected and is not disclosed to external parties without proper authorisation.
6. **Restricted Disclosure:** The provision limits the disclosure of information to authorised individuals within the National Committees or Groups, ensuring that information is shared only with those who have a legitimate need to know.
7. **Preserving Neutrality and Impartiality:** Upholding confidentiality is also important for maintaining the neutrality and impartiality of Court members. It prevents potential bias or conflicts of interest that could arise from the unauthorised disclosure of case information.
8. **Enhancing Trust:** By clarifying the rules for sharing information with National Committees and Groups, the provision helps build trust in the arbitration process. It assures parties that sensitive information will be handled with discretion and only shared in accordance with specific requirements.



In summary, Article 3(2) of Appendix II to the ICC Arbitration Rules 2021 establishes a confidentiality obligation for Court members with respect to case-related information. It emphasises the limited circumstances under which such information may be shared with the relevant ICC National Committees and Groups, thereby preserving the integrity of the arbitration process while allowing for transparent communication within the appropriate channels.

#### ARTICLE 4 Constitution, Quorum and Decision-Making

**1 The members of Committees, Special Committees and Single-member Committees are appointed by the President from among the Vice-Presidents or the other members of the Court. In the President's absence or otherwise where the President is unable to act, they are appointed by a Vice-President at the request of the Secretary General or the Deputy Secretary General of the Court.**

Article 4(1) of Appendix II to the ICC Arbitration Rules 2021 outlines the process for appointing members to various committees within the Court. Here is an analysis of this provision:

1. **Appointment Authority:** The provision establishes the authority responsible for appointing members to different committees within the Court. The President of the Court has the authority to appoint members to Committees, Special Committees, and Single-member Committees.
2. **Pool of Appointees:** The provision specifies that the pool of appointees consists of Vice-Presidents or other members of the Court. This indicates that those appointed to committees are selected from the existing Court members, ensuring a level of familiarity with the arbitration process and the Court's responsibilities.
3. **Hierarchy of Appointing Authority:** The provision anticipates scenarios where the President might be absent or unable to perform their duties. In such cases, a Vice-President is authorised to make appointments upon request from the Secretary General or the Deputy Secretary General of the Court.
4. **Ensuring Continuity:** By allowing a Vice-President to make appointments in the President's absence, the provision ensures the continuity of the Court's work. This prevents delays in the appointment process when the President is unavailable.
5. **Flexible Structure:** The provision reflects a flexible structure that can adapt to different situations. It acknowledges the importance of administrative efficiency and timely appointments even when the President's direct involvement might be limited.
6. **Authority Delegation:** The provision provides for the delegation of authority to Vice-Presidents by the President, which streamlines the process of committee appointments and contributes to efficient decision-making within the Court.
7. **Responsiveness to Secretary General:** The provision underscores the importance of coordination between the Court's leadership and its administrative arm (Secretary General and Deputy Secretary General). It ensures that appointments are made in consultation with those responsible for managing the Court's day-to-day operations.

8. **Balancing Centralisation and Decentralisation:** By designating both the President and Vice-Presidents to make appointments, the provision balances centralised decision-making with the ability to delegate authority. This supports agility and adaptability in the appointment process.
9. **Preserving the Court's Independence:** The provision reflects the Court's autonomy in selecting its members for committees, emphasising its independence from external entities.

In summary, Article 4(1) of Appendix II to the ICC Arbitration Rules 2021 outlines the process of appointing members to various committees within the Court. The provision ensures a balanced and flexible approach to appointments, allowing both the President and Vice-Presidents to exercise authority in selecting members for committees. This approach supports the Court's efficient functioning and reinforces its independence while providing mechanisms for continuity and delegation of authority.

## **2 Committees and Special Committees meet whenever convened by their president.**

Article 4(2) of Appendix II to the ICC Arbitration Rules 2021 pertains to the convening of meetings for Committees and Special Committees within the Court. Here is an analysis of this provision:

1. **Convening Authority:** The provision designates the president of the respective committee as the authority responsible for convening meetings. This emphasises the autonomy and leadership role of the president within the committee.
2. **Flexibility in Scheduling:** By stating that committees meet "whenever convened by their president", the provision grants flexibility in determining the timing and frequency of meetings. This allows the president to tailor meeting schedules to the needs and priorities of the committee's work.
3. **Ad Hoc Nature:** The provision does not specify a fixed schedule for committee meetings, suggesting that meetings are convened as necessary. This ad hoc approach allows for efficient use of members' time and resources and avoids unnecessary meetings.
4. **Response to Committee Needs:** The provision recognises that committees' workloads and agenda items may vary over time. Allowing the president to convene meetings based on the committee's specific needs ensures that discussions and decisions align with ongoing matters.
5. **Responsibility of Committee Presidents:** The provision underscores the role of the committee president in setting the committee's agenda, organising discussions, and managing the workflow. This highlights the leadership and organisational responsibilities of committee presidents.
6. **Tailored Communication:** As meetings are convened by the committee president, it implies that communication and coordination within committees are structured around their specific requirements and priorities.

7. **Preservation of Efficiency:** The provision contributes to the efficiency of the committee's work by ensuring that meetings are held when necessary and relevant, minimising unnecessary delays and discussions.
8. **Reflective of Autonomy:** The provision reflects the autonomy granted to committees and Special Committees within the Court. It acknowledges that committee presidents have the authority to determine when meetings are needed based on the subject matter and issues being addressed.
9. **Emphasis on Committee Leadership:** By putting the authority to convene meetings in the hands of the committee president, the provision recognises their role as leaders and facilitators of committee activities.

In conclusion, Article 4(2) of Appendix II to the ICC Arbitration Rules 2021 establishes a framework for the convening of meetings for Committees and Special Committees within the Court. The provision underscores the autonomy of committee presidents in determining the timing and frequency of meetings based on the committee's workload, priorities, and specific agenda items. This approach supports efficient communication, focused discussions, and flexible decision-making within the context of the committee's responsibilities.

**3 The President of the Court acts as the president of the Committee, the Special Committee and the plenary. A Vice-President of the Court may act as president of a Committee, Special Committee or the plenary (i) at the request of the President or (ii) in the President's absence or otherwise where the President is unable to act, at the request of the Secretary General or the Deputy Secretary General of the Court. In exceptional circumstances, another member of the Court may act as president of a Committee or Special Committee following the same procedure.**

Article 4(3) of Appendix II to the ICC Arbitration Rules 2021 outlines the roles of the President of the Court, Vice-Presidents, and other members of the Court in acting as presidents of various bodies within the Court. Here is an analysis of this provision:

1. **Role of the President:** The provision establishes that the President of the Court automatically serves as the president of Committees, Special Committees, and the plenary. This aligns with the President's overarching leadership role within the Court and ensures consistency and continuity in decision-making.
2. **Delegation to Vice-Presidents:** The provision allows for Vice-Presidents of the Court to assume the role of president in Committees, Special Committees, or the plenary. The delegation can occur under two circumstances: (i) upon the request of the President or (ii) in the President's absence or incapacity to act, upon the request of the Secretary General or Deputy Secretary General.
3. **Preservation of Leadership Structure:** The provision maintains the established leadership hierarchy within the Court while enabling Vice-Presidents to step in when needed. This ensures that decision-making and proceedings continue smoothly even when the President is unavailable.

4. Responsiveness to Circumstances: The provision acknowledges that exceptional circumstances may arise, necessitating the involvement of another member of the Court as the president of a Committee or Special Committee. This emphasises adaptability in addressing unforeseen situations.
5. Presidential Authority and Expertise: By default, the President’s leadership is assigned to various bodies, showcasing their role as a central figure in overseeing the work of the Court. Their expertise and familiarity with the Court’s operations contribute to efficient decision-making.
6. Delegation Mechanism: The provision provides a clear procedure for Vice-Presidents and other members to assume the role of president, specifying who can make the request and under what circumstances. This structured approach ensures transparency and accountability in the delegation process.
7. Maintaining Consistency: The provision contributes to maintaining consistency and coherence in the work of Committees, Special Committees, and the plenary, even in cases of temporary leadership transitions.
8. Efficient Continuity: By allowing Vice-Presidents to step in as needed, the provision facilitates the continuity of work, discussions, and decision-making without unnecessary disruptions.
9. Flexibility in Leadership: The provision recognises that leadership roles may be assumed based on situational needs. This flexibility enables the Court to address unique situations and tailor leadership arrangements accordingly.
10. Adherence to Procedures: The provision emphasises that the same procedural steps are followed whether the President, a Vice-President, or another member assumes the role of president in exceptional circumstances.

In summary, Article 4(3) of Appendix II to the ICC Arbitration Rules 2021 establishes a framework for the delegation of leadership roles within the Court, outlining the roles of the President, Vice-Presidents, and other members as presidents of Committees, Special Committees, and the plenary. This provision supports efficient and adaptable decision-making while maintaining the overall structure and authority of the Court’s leadership.

#### **4 The President of the Court, a Vice-President and any Court member may act in, and convene, the Single-member Committee.**

Article 4(4) of Appendix II to the ICC Arbitration Rules 2021 outlines the authority and roles of the President of the Court, Vice-Presidents, and Court members in relation to the Single-member Committee. Here is an analysis of this provision:

1. Single-member Committee Authority: The provision grants the President of the Court, Vice-Presidents, and any Court member the authority to both act in and convene the Single-member Committee. This authority is significant, as it allows for the establishment and operation of the Single-member Committee in specific circumstances.

2. **Flexible Decision-Making:** The provision provides flexibility in appointing a single arbitrator to handle certain matters efficiently. This option is particularly relevant for cases that do not require the formation of a full Committee or Special Committee, streamlining the decision-making process.
3. **Preservation of Leadership Roles:** The provision extends the authority of key Court figures, including the President and Vice-Presidents, to the Single-member Committee. This maintains consistency in decision-making and ensures that individuals with significant expertise are involved in the process.
4. **Efficient Handling of Matters:** The provision acknowledges that certain matters can be dealt with effectively by a single arbitrator rather than a larger committee. This approach promotes expeditious resolutions and prevents unnecessary delays.
5. **Responsiveness to the Situation:** The provision aligns with the ICC's commitment to efficiency and adaptability by allowing the President, Vice-Presidents, and Court members to address matters with the most appropriate level of resources, whether that involves a full committee or a single arbitrator.
6. **Balancing Workload:** Allowing the President, Vice-Presidents, and Court members to convene and participate in the Single-member Committee helps balance the workload and responsibilities among different members of the Court.
7. **Promotion of Expertise:** By involving experienced Court members, the provision ensures that matters dealt with by the Single-member Committee benefit from the knowledge and expertise of those who are well-versed in ICC arbitration procedures.
8. **Enhanced Decision-Making:** Involving key figures in the Single-member Committee can lead to well-informed decisions and consistent approaches to resolving issues, aligning with the ICC's reputation for maintaining high standards of arbitration.
9. **Flexibility in Leadership:** The provision recognises that multiple individuals, including the President, Vice-Presidents, and Court members, can contribute to the Single-member Committee's activities. This underscores the Court's adaptability in responding to different circumstances.

In summary, Article 4(4) of Appendix II to the ICC Arbitration Rules 2021 grants the President of the Court, Vice-Presidents, and any Court member the authority to act in and convene the Single-member Committee. This provision facilitates efficient decision-making, responsiveness to different situations, and the application of expertise while ensuring the consistent and balanced functioning of the ICC arbitration process.

## **5 Decisions on the constitution of Committees, Special Committees and Single-member Committees are reported to the Court at one of its next sessions.**

Article 4(5) of Appendix II to the ICC Arbitration Rules 2021 deals with the reporting and transparency aspects related to the constitution of Committees, Special Committees, and Single-member Committees. Here is an analysis of this provision:

1. **Transparency and Accountability:** This provision underscores the importance of transparency and accountability within the ICC’s decision-making processes. It mandates that decisions regarding the formation of Committees, Special Committees, and Single-member Committees are reported to the Court. This reporting mechanism enhances the overall transparency of the arbitration procedures.
2. **Oversight by the Court:** By requiring the decisions to be reported to the Court, the provision ensures that the highest authority within the ICC is kept informed about the composition of various committees. This allows the Court to exercise oversight and maintain control over the functioning of these committees, promoting consistency and alignment with the ICC’s objectives.
3. **Continuity and Consistency:** Reporting decisions to the Court’s next session ensures that decisions are documented and reviewed collectively. This promotes continuity and consistency in the ICC’s arbitration practices, preventing ad hoc decision-making that could lead to discrepancies.
4. **Feedback Mechanism:** The requirement for reporting provides an opportunity for the Court to offer feedback, guidance, or adjustments if needed. This feedback loop contributes to the continuous improvement of the arbitration procedures and the efficiency of committee appointments.
5. **Accountability and Justification:** The reporting requirement encourages accountability by making sure that decisions are subject to scrutiny by the Court. It also prompts the entities making these decisions to justify their choices, reinforcing the principle that appointments should be based on expertise, impartiality, and merit.
6. **Transparency to Stakeholders:** By bringing these decisions to the attention of the Court, the provision indirectly contributes to transparency for stakeholders, including parties involved in arbitration proceedings. This transparency helps maintain trust in the ICC’s arbitration process.
7. **Regular Review:** Requiring decisions to be reported during one of the Court’s sessions ensures a regular review of committee compositions. This review can be an opportunity to assess the effectiveness of committees and to make adjustments if necessary.
8. **Institutional Collaboration:** The reporting mechanism encourages collaboration between different bodies within the ICC. It fosters communication between the Court and the various committees, promoting cohesion and ensuring that the work of the committees aligns with the broader goals of the ICC.

In summary, Article 4(5) of Appendix II to the ICC Arbitration Rules 2021 establishes a reporting mechanism for decisions on the constitution of Committees, Special Committees, and Single-member Committees. This provision enhances transparency, oversight, and accountability within the ICC’s arbitration procedures, fostering consistency and alignment with the organisation’s objectives while maintaining a robust and effective arbitration process.

**6 Deliberations shall be valid:**

- a) At the Committee, when at least two members are present.**
- b) At the Special Committee and plenary, when at least six members, and the President or designated Vice-President, are present.**

Article 4(6) of Appendix II to the ICC Arbitration Rules 2021 outlines the requirements for the validity of deliberations within different committees of the International Court of Arbitration. Let us analyse this provision:

1. **Quorum Requirements:** The provision establishes quorum requirements for different committees within the ICC. A quorum is the minimum number of members needed to be present for the committee's deliberations to be considered valid and decisions to be made.
2. **Committee Composition:** The article sets different quorum thresholds for different types of committees: regular Committees, Special Committees, and the plenary of the Court.
3. **Committee Quorum (a):** For regular Committees, the quorum requirement is at least two members. This means that as long as two members of a Committee are present, the Committee can deliberate and make decisions. This might be applicable to routine matters or decisions that do not require broader input.
4. **Special Committee and Plenary Quorum (b):** For Special Committees and the plenary of the Court, the quorum requirement is more stringent. At least six members of the committee, along with either the President or a designated Vice-President, must be present for deliberations to be valid. This higher quorum threshold is likely due to the importance and complexity of matters discussed at this level.
5. **Importance of Quorum:** Establishing quorum requirements ensures that decisions are made with an appropriate level of participation and representation. It prevents decisions from being made without sufficient input or accountability, maintaining the integrity of the ICC's arbitration procedures.
6. **Ensuring Effective Deliberations:** Requiring a minimum number of members to be present encourages comprehensive discussions and avoids the risk of decisions being made without proper consideration of different viewpoints and expertise.
7. **High-Level Decision Making:** The higher quorum requirement for Special Committees and the plenary reflects the significance of the matters discussed at these levels. It ensures that decisions made by these bodies are representative and carry the weight of broad expertise.
8. **Balancing Flexibility and Participation:** The provision strikes a balance between flexibility and ensuring sufficient participation in decision-making. The requirement for a smaller quorum in regular Committees allows for efficient handling of routine matters, while the stricter quorum for Special Committees and the plenary guarantees careful consideration of substantial issues.

In summary, Article 4(6) of Appendix II to the ICC Arbitration Rules 2021 establishes quorum requirements for different committees within the ICC. It ensures that the minimum number of members needed for deliberations to be valid is met, maintaining the integrity and effectiveness of decision-making processes at various levels of the organisation.

**7 Decisions at Committees are taken unanimously. When a Committee cannot reach a unanimous decision or deems it preferable to abstain, it transfers the case to a Special Committee, making any suggestions it deems appropriate.**

Article 4(7) of Appendix II to the ICC Arbitration Rules 2021 outlines the decision-making process within Committees of the International Court of Arbitration. Let us break down the key points of this provision:

1. **Unanimous Decision-Making:** The provision establishes that decisions made within Committees are taken unanimously. This means that all members of the Committee must agree on a decision for it to be considered valid. Unanimous decision-making aims to ensure a high level of consensus and agreement among Committee members.
2. **Consensus and Impartiality:** Requiring unanimous decisions promotes a high standard of consensus and impartiality within Committees. It ensures that decisions are made only when all members are in agreement, avoiding the potential for decisions to be influenced by a minority or biased viewpoint.
3. **Transfer to Special Committee (Alternative):** If a Committee cannot reach a unanimous decision or deems it preferable to abstain from making a decision, the provision outlines an alternative course of action. In such cases, the Committee transfers the case to a Special Committee. The transfer may occur when there are differing opinions, potential conflicts, or other reasons for the Committee not to proceed with a unanimous decision.
4. **Suggestion for Transfer:** When transferring the case to a Special Committee, the original Committee may make suggestions to the Special Committee that it deems appropriate. These suggestions could include insights, considerations, or recommendations based on the discussions within the original Committee.
5. **Ensuring Thorough Consideration:** Transferring cases to a Special Committee when unanimous decisions cannot be reached ensures that matters of importance are subject to thorough consideration by a different group of experts. This process contributes to the careful examination of complex issues and prevents deadlock within the original Committee.
6. **Preserving Impartiality:** The provision helps preserve the impartiality and integrity of decision-making processes by allowing the transfer of cases when unanimous decisions are not feasible. This promotes fairness and impartiality in addressing challenging arbitration-related matters.
7. **Expert Input in Special Committees:** The involvement of a Special Committee allows for a fresh perspective from a different set of Committee members. This can lead to a more comprehensive analysis and potentially result in a decision that accounts for a broader range of viewpoints.



In summary, Article 4(7) of Appendix II to the ICC Arbitration Rules 2021 establishes the decision-making process within Committees of the ICC. It requires unanimous decisions within Committees and provides an alternative option of transferring cases to a Special Committee when unanimous decisions cannot be reached or when abstaining from a decision is deemed preferable. This approach ensures that matters are thoroughly considered, promotes impartiality, and maintains the quality of decision-making within the ICC.

## **8 Decisions at Special Committees and the plenary are taken by majority, the President or Vice-President, as the case may be, having a casting vote in the event of a tie.**

Article 4(8) of Appendix II to the ICC Arbitration Rules 2021 outlines the decision-making process within Special Committees and the plenary of the International Court of Arbitration. Let us analyse the key aspects of this provision:

1. **Majority Decision-Making:** The provision establishes that decisions made within Special Committees and the plenary are determined by a majority vote. This means that the decision that receives the most votes, exceeding 50% of the total, is considered the final decision. Majority decision-making promotes the acceptance of decisions that reflect the preferences of the majority of Committee members.
2. **Casting Vote in the Event of a Tie:** The provision further specifies that in the event of a tie—when the number of votes for and against a decision is equal—the President or Vice-President (as applicable) has a casting vote. A casting vote is a decisive vote used to break the tie and determine the outcome of the decision. The President or Vice-President may exercise this vote to ensure that a decision is reached and to prevent deadlock.
3. **Balancing Decision-Making:** The use of a majority vote and a casting vote helps balance the decision-making process by ensuring that decisions are made with the input of a majority of Committee members. The provision also recognises the authority of the President or Vice-President to make a decisive contribution when there is an equal division of votes.
4. **Leadership Role of President/Vice-President:** The provision acknowledges the role of the President or Vice-President in overseeing the decision-making process within Special Committees and the plenary. The casting vote power ensures that the President or Vice-President can play a pivotal role in cases where a tie threatens to impede the progress of the proceedings.
5. **Efficiency and Progress:** The casting vote mechanism helps maintain the efficiency of decision-making processes by resolving ties promptly. This ensures that decisions are made and proceedings can continue without undue delays.
6. **Avoiding Deadlock:** The provision's casting vote provision prevents situations where the Committee or plenary is deadlocked due to an equal division of votes. By empowering the President or Vice-President to break ties, the provision helps ensure that decisions are reached even in scenarios where opinions are evenly split.

7. **Preserving Fairness and Impartiality:** The use of majority voting and the casting vote mechanism preserves fairness and impartiality in decision-making by ensuring that decisions are reflective of the overall sentiment of the Committee members.

In summary, Article 4(8) of Appendix II to the ICC Arbitration Rules 2021 establishes the decision-making process within Special Committees and the plenary of the ICC. It employs a majority vote to determine decisions and provides a mechanism for the President or Vice-President to break ties using a casting vote. This approach ensures efficient decision-making, prevents deadlock, and maintains the leadership role of the President or Vice-President in these proceedings.

## ARTICLE 5 Communication of Reasons of Decisions

### 1 **Upon request of any party, the Court will communicate the reasons for Articles 6(4), 10, 12(8), 12(9), 14 and 15(2).**

Article 5(1) of Appendix II to the ICC Arbitration Rules 2021 addresses the communication of reasons for specific articles within the ICC Arbitration Rules. Let us analyse the key points of this provision:

1. **Reasons for Specific Articles:** The provision outlines that upon the request of any party, the International Court of Arbitration (the Court) will communicate the reasons for certain specific articles within the ICC Arbitration Rules. The articles for which reasons can be requested are identified as Articles 6(4), 10, 12(8), 12(9), 14, and 15(2).
2. **Transparency and Accountability:** The provision emphasises transparency and accountability within the arbitration process. By allowing parties to request the reasons for specific articles, the Court promotes openness and clarity in its decision-making and the application of the Rules.
3. **Facilitating Understanding:** The provision aims to facilitate parties' understanding of the underlying rationale behind the application of the specified articles. Parties may seek clarification to comprehend how certain rules have been interpreted or why certain decisions have been made, enhancing their comprehension of the arbitration process.
4. **Promoting Confidence in the Process:** By providing parties with the opportunity to request and receive reasons for the application of specific articles, the provision contributes to maintaining parties' confidence in the arbitration process. Understanding the basis for decisions and rule interpretations can help mitigate misunderstandings and reduce potential disputes.
5. **Preserving Neutrality:** The provision reinforces the Court's impartiality and neutrality by making explanations available to all parties, ensuring that decisions are well-founded and transparent.
6. **Avoiding Ambiguity:** Communication of reasons helps prevent ambiguity or uncertainty that might arise from the application of certain articles. This can be particularly important in cases where the interpretation or application of specific rules is not immediately clear.
7. **Parties' Right to Information:** The provision recognises the parties' right to seek clarification and understanding of specific aspects of the arbitration process. It facilitates

parties' ability to engage more effectively in the proceedings by providing them with access to the reasons behind certain decisions.

In summary, Article 5(1) of Appendix II to the ICC Arbitration Rules 2021 grants parties the right to request the reasons for the application of certain specified articles within the ICC Arbitration Rules. This provision aligns with principles of transparency, accountability, and promoting parties' understanding of the arbitration process. It contributes to building trust in the fairness and integrity of the arbitration proceedings.

**2 Any request for the communications of reasons must be made in advance of the decision in respect of which reasons are sought. For decisions pursuant to Article 15(2), a party shall address its request to the Court when invited to comment pursuant to Article 15(3).**

Article 5(2) of Appendix II to the ICC Arbitration Rules 2021 addresses the procedure and timing for requesting the communication of reasons for certain decisions within the arbitration process. Let us break down the key points of this provision:

1. **Timing of Request:** The provision stipulates that any request for the communication of reasons must be made in advance of the decision in respect of which the reasons are being sought. This requirement emphasises that parties must express their interest in understanding the reasons for a particular decision before that decision is rendered.
2. **Pre-Decision Request:** By mandating that requests for reasons be made prior to the issuance of the decision, the provision encourages parties to seek clarity and explanations proactively, preventing any potential confusion or disputes that may arise from the lack of understanding about a decision.
3. **Decision Under Article 15(2):** The provision specifies that for decisions made under Article 15(2) of the ICC Arbitration Rules (which deals with applications for correction, interpretation, or additional awards), the requesting party should address its request to the Court when invited to comment pursuant to Article 15(3).
4. **Ensuring Timely Communication:** Requiring parties to request reasons before the decision is made ensures that the process of communication of reasons can be timely and effective. Parties have the opportunity to seek explanations while the matter is still under consideration, promoting a clearer understanding of the decision-making process.
5. **Facilitating Meaningful Requests:** By establishing the timing requirement for reasons requests, the provision ensures that parties make informed and well-considered requests for clarification. This helps to prevent the misuse of the procedure for tactical purposes after a decision has been rendered.
6. **Balancing Efficiency and Clarity:** The provision strikes a balance between providing parties with the information they need to understand decisions and maintaining the efficiency of the arbitration process by encouraging parties to seek explanations promptly.
7. **Promoting Transparency:** Requiring parties to request reasons before the decision is rendered aligns with the overarching principle of transparency in arbitration. It allows

parties to engage in a more informed manner and enhances their confidence in the process.

In summary, Article 5(2) of Appendix II to the ICC Arbitration Rules 2021 establishes the procedure for requesting the communication of reasons for certain decisions in advance of their issuance. This approach promotes proactive communication, timely clarifications, and transparency in the arbitration process while ensuring that parties make well-considered requests for reasons.

### **3 In exceptional circumstances, the Court may decide not to communicate the reasons for any of the above decisions.**

Article 5(3) of Appendix II to the ICC Arbitration Rules 2021 addresses situations where the Court has the discretion to withhold the communication of reasons for certain decisions within the arbitration process. Here is an analysis of this provision:

1. **Discretionary Authority:** This article grants the Court discretionary authority to decide whether or not to communicate the reasons for certain specified decisions. This discretion allows the Court to evaluate the circumstances on a case-by-case basis and determine whether there are valid reasons to withhold the communication of reasons.
2. **Exceptional Circumstances:** The provision specifies that the Court's discretion to withhold reasons applies only in "exceptional circumstances". This emphasises that the standard for not communicating reasons is high and that such circumstances must be truly exceptional to warrant the withholding of reasons.
3. **Balance of Interests:** The provision acknowledges that there might be instances where the Court, in exercising its discretion, might find that the interests of the parties or the arbitration process itself would be better served by not disclosing the reasons for certain decisions. This recognises that there could be valid reasons to prioritise confidentiality or other factors over the need for reasons.
4. **Transparency and Fairness:** While the provision allows for the possibility of not communicating reasons, it is essential to maintain transparency and ensure that parties are treated fairly. The provision should not be used to arbitrarily withhold reasons when parties genuinely need explanations to understand the rationale behind a decision.
5. **Consistency and Predictability:** The discretionary nature of this provision should be exercised consistently and in a predictable manner. Parties should have a reasonable expectation of when reasons might be withheld and when they can expect an explanation for decisions.
6. **Protection of Sensitive Information:** In cases where reasons are not communicated due to exceptional circumstances, it might be because the decision involves sensitive or confidential information that should not be disclosed to the parties. The provision recognises that there could be situations where the public communication of reasons might be inappropriate or harmful.

7. **Court's Role as Arbitral Authority:** This article underscores the Court's role as the ultimate authority in the arbitration process, enabling it to make decisions that it deems necessary to ensure the efficiency and fairness of the process.

In summary, Article 5(3) of Appendix II to the ICC Arbitration Rules 2021 provides the Court with discretionary authority to decide whether to communicate the reasons for certain decisions in exceptional circumstances. While this discretion acknowledges the need for flexibility, it should be exercised cautiously to maintain transparency, fairness, and the integrity of the arbitration process.

## ARTICLE 6 Court Secretariat

- 1 In the Secretary General's absence or otherwise at the Secretary General's request, the Deputy Secretary General and/or the General Counsel shall have the authority to refer matters to the Court, confirm arbitrators, certify true copies of awards, request the payment of a provisional advance and authorize the payment of advances in instalments, respectively provided for in Articles 6(3), 13(2), 35(2) and 37(1) of the Rules and Article 1(6) of Appendix III, as well as to take the measure provided for in Article 37(6).**

Article 6(1) of Appendix II to the ICC Arbitration Rules 2021 outlines the authority and responsibilities of certain individuals within the ICC Secretariat in the absence of the Secretary General or at their request. Here is an analysis of this provision:

1. **Delegated Authority:** This article empowers specific individuals within the ICC Secretariat, namely the Deputy Secretary General and/or the General Counsel, to exercise certain functions on behalf of the Court. These functions include referring matters to the Court, confirming arbitrators, certifying true copies of awards, requesting payment of a provisional advance, authorising payment of advances in instalments, and taking measures provided for in Article 37(6).
2. **Continuity and Efficiency:** The provision recognises the importance of ensuring continuity and efficiency in the arbitration process, even in cases where the Secretary General might be absent or unavailable. Delegating authority to individuals who hold key positions within the ICC Secretariat ensures that essential tasks can be carried out without unnecessary delays.
3. **Matters Requiring Prompt Action:** The functions specified in this provision typically involve matters that require prompt action, such as confirming arbitrators or requesting the payment of advances. By granting the Deputy Secretary General and/or the General Counsel the authority to handle such matters, the provision helps maintain the momentum of the arbitration proceedings.
4. **Preservation of ICC's Role:** While specific individuals within the Secretariat are delegated authority, this provision ultimately preserves the role of the ICC and the Court as the governing body overseeing the arbitration process. Decisions and actions taken by the delegated individuals are in line with the rules and procedures set out by the Court and the ICC.

5. **Practical Flexibility:** The provision offers practical flexibility by allowing the Secretary General to request that the Deputy Secretary General and/or the General Counsel perform the delegated functions. This flexibility is valuable in situations where the Secretary General might be unavailable due to unforeseen circumstances.
6. **Consistency with the Rules:** The specific articles and appendices mentioned in this provision (such as Articles 6(3), 13(2), 35(2), and 37(1) of the Rules and Article 1(6) of Appendix III) highlight the alignment of the delegated authority with relevant sections of the ICC Arbitration Rules and appendices.
7. **Emphasis on Accountability:** The provision emphasises that the delegated individuals are authorised to act within the parameters set by the Rules and appendices. This ensures that the actions taken are consistent with the established procedures and guidelines.

In summary, Article 6(1) of Appendix II to the ICC Arbitration Rules 2021 grants the Deputy Secretary General and/or the General Counsel the authority to perform specific functions on behalf of the Court in the absence of the Secretary General or at their request. This delegation of authority is designed to maintain the smooth operation of the arbitration process and uphold the ICC's role as the governing body overseeing arbitration proceedings.

**2 The Secretariat may, with the approval of the Court, issue notes and other documents for the information of the parties and the arbitrators, or as necessary for the proper conduct of the arbitral proceedings.**

Article 6(2) of Appendix II to the ICC Arbitration Rules 2021 outlines the authority and responsibility of the ICC Secretariat to issue notes and other documents for the purpose of informing parties and arbitrators, as well as for ensuring the proper conduct of arbitral proceedings. Here is an analysis of this provision:

1. **Secretariat's Role:** This article highlights the role of the ICC Secretariat in facilitating the smooth conduct of arbitral proceedings. The Secretariat acts as a central administrative body that assists parties, arbitrators, and the Court throughout the arbitration process.
2. **Information Dissemination:** The provision emphasises the Secretariat's authority to issue notes and other documents. These documents are designed to provide important information, guidance, or instructions to parties and arbitrators, contributing to the clarity and transparency of the arbitration process.
3. **Approval of the Court:** While the Secretariat has the authority to issue notes and documents, this authority is subject to the approval of the Court. This requirement ensures that the information provided is consistent with the Court's decisions, policies, and the ICC Arbitration Rules.
4. **Promoting Efficiency:** Issuing notes and documents serves to streamline the arbitration process by providing parties and arbitrators with relevant information, procedural guidelines, and clarifications. This can contribute to the efficient resolution of disputes.
5. **Supporting Parties and Arbitrators:** The provision underscores the Secretariat's role in assisting parties and arbitrators by ensuring that they have access to the necessary

information and instructions. This support helps parties and arbitrators navigate the arbitration process effectively.

6. **Ensuring Proper Conduct:** The notes and documents issued by the Secretariat are meant to ensure the proper conduct of the arbitral proceedings. By providing guidance on procedural matters, timelines, and requirements, the Secretariat helps maintain a structured and organised arbitration process.
7. **Transparency and Consistency:** Issuing documents with the approval of the Court promotes transparency and consistency in communication. This helps prevent misunderstandings and ensures that all parties receive the same information and instructions.
8. **Preservation of Court Oversight:** The requirement for Court approval demonstrates the hierarchy and oversight structure within the ICC. It ensures that the Secretariat's actions are aligned with the Court's overall direction and decisions.

In summary, Article 6(2) of Appendix II to the ICC Arbitration Rules 2021 grants the ICC Secretariat the authority to issue notes and other documents to parties and arbitrators for the purpose of informing them and ensuring the proper conduct of arbitral proceedings. The provision emphasises the Secretariat's supportive role in facilitating efficient and well-organised arbitration processes while maintaining alignment with the Court's oversight and approval.

**3 Offices of the Secretariat may be established outside the headquarters of ICC. The Secretariat shall keep a list of offices designated by the Secretary General. Requests for Arbitration may be submitted to the Secretariat at any of its offices, and the Secretariat's functions under the Rules may be carried out from any of its offices, as instructed by the Secretary General, Deputy Secretary General or General Counsel.**

Article 6(3) of Appendix II to the ICC Arbitration Rules 2021 addresses the establishment of offices by the ICC Secretariat outside its headquarters, the designation of such offices by the Secretary General, and the ability of parties to submit Requests for Arbitration and carry out various functions of the Secretariat at these offices. Here is an analysis of this provision:

1. **Establishment of Offices:** The article acknowledges the possibility of the ICC Secretariat establishing offices outside its headquarters. This recognition reflects the evolving nature of international arbitration and the need to provide efficient and accessible services to parties and participants in different geographic locations.
2. **List of Designated Offices:** The provision mandates that the Secretariat maintains a list of offices designated by the Secretary General. This list serves as a reference point for parties, arbitrators, and other stakeholders to identify the authorised offices where they can interact with the Secretariat.
3. **Flexibility in Office Selection:** Parties are provided with flexibility regarding where they can submit Requests for Arbitration and carry out various Secretariat-related functions. This flexibility recognises that parties involved in international arbitration may be located in different jurisdictions, and they can choose to interact with the Secretariat through an office that is convenient for them.

4. Execution of Secretariat’s Functions: The article allows the Secretariat to carry out its functions under the ICC Arbitration Rules from any of its designated offices, as instructed by the Secretary General, Deputy Secretary General, or General Counsel. This ensures that the Secretariat’s operations can effectively serve the needs of parties and the arbitration community, regardless of their physical location.
5. Enhanced Accessibility: By allowing parties to interact with the Secretariat at various office locations, the provision aims to enhance accessibility and convenience for parties, particularly considering the global nature of international arbitration.
6. Efficiency and Service: The establishment of offices outside the headquarters, along with the ability to conduct Secretariat functions from these offices, is designed to streamline processes, improve efficiency, and provide a higher level of service to parties and stakeholders involved in ICC arbitration.
7. Centralised Control: While the Secretariat can operate from multiple offices, the decision to instruct specific offices to carry out functions is vested in the Secretary General, Deputy Secretary General, or General Counsel. This centralised control ensures consistency and alignment with the ICC’s overall operational strategy.

In summary, Article 6(3) of Appendix II to the ICC Arbitration Rules 2021 recognises the establishment of ICC Secretariat offices outside the headquarters, designates their locations, and allows parties to submit Requests for Arbitration and conduct Secretariat-related functions at these offices. The provision reflects the ICC’s commitment to providing efficient and accessible services to parties involved in international arbitration while maintaining a coordinated and controlled operational framework.

## ARTICLE 7 Scrutiny of Arbitral Awards

**When the Court scrutinizes draft awards in accordance with Article 34 of the Rules, it considers, to the extent practicable, the requirements of mandatory law at the place of the arbitration.**

Article 7 of Appendix II to the ICC Arbitration Rules 2021 pertains to the Court’s scrutiny of draft awards in accordance with Article 34 of the main Rules. This provision emphasises the consideration of mandatory law at the place of arbitration when reviewing draft awards. Here is an analysis of this provision:

1. Scope of Scrutiny: Article 34 of the main ICC Arbitration Rules outlines the process of scrutiny of draft awards by the Court. This scrutiny is a vital step in ensuring that the final award complies with legal requirements, is well-reasoned, and is consistent with the facts and applicable law. Article 7 of Appendix II addresses the specific aspect of this scrutiny related to mandatory law.
2. Mandatory Law: “Mandatory law” refers to legal rules, principles, or regulations that parties and tribunals cannot contractually or procedurally override. These laws often address fundamental public policy considerations and are typically applicable regardless of the parties’ intentions. Article 7 underscores the significance of considering mandatory law relevant to the place of arbitration.



3. **Relevance of Place of Arbitration:** The place of arbitration is the geographic location chosen by the parties for the arbitration proceedings. This provision underscores that the Court, in its scrutiny, should consider the requirements of mandatory law specifically at the place of arbitration. This reflects the acknowledgment that arbitration proceedings should respect local legal norms and principles.
4. **Balancing Party Autonomy and Legal Compliance:** International arbitration is often chosen by parties due to its flexibility and the ability to tailor proceedings to their needs. However, this flexibility must be balanced with the imperative to adhere to essential legal principles. By emphasising consideration of mandatory law, Article 7 aims to ensure that awards maintain a balance between party autonomy and compliance with non-negotiable legal standards.
5. **Extent of Practicability:** The provision acknowledges that the Court's consideration of mandatory law should be to the extent practicable. This recognition reflects the practical reality that not all aspects of mandatory law may be applicable or relevant to a particular case. The Court's review is conducted within the bounds of reasonableness and practicability.
6. **Enhancing Award Quality and Enforcement:** By taking into account the requirements of mandatory law at the place of arbitration, the provision contributes to the quality and enforceability of awards. Awards that align with local legal norms are more likely to be upheld and enforced in courts, both at the place of arbitration and internationally.
7. **Preservation of Party Autonomy:** The provision does not mandate a strict application of local mandatory law. It indicates that the Court's consideration should be to the extent practicable, preserving the parties' autonomy to the extent compatible with essential legal norms.

In summary, Article 7 of Appendix II to the ICC Arbitration Rules 2021 emphasises the importance of considering mandatory law at the place of arbitration when the Court scrutinises draft awards. This provision highlights the need to balance party autonomy with legal compliance and underscores the relevance of local legal norms in the arbitration process. It aims to enhance the quality, validity, and enforceability of final awards while respecting the practicalities of international arbitration.

## APPENDIX III — ARBITRATION COSTS AND FEES

## ARTICLE 1 Advance on Costs

- 1 Each request to commence an arbitration pursuant to the Rules must be accompanied by a filing fee of US\$ 5,000. Such payment is non-refundable and shall be credited to the claimant's portion of the advance on costs.**

Article 1(1) of Appendix III to the ICC Arbitration Rules 2021 addresses the filing fee requirement for commencing arbitration under the ICC Rules. This provision outlines the amount of the filing fee, its purpose, and its non-refundable nature. Here is an analysis of this provision:

- 1. Filing Fee Requirement:** The provision states that any party initiating an arbitration under the ICC Rules is required to submit a request for arbitration along with a filing fee. The filing fee is an essential component of commencing the arbitration process, ensuring that the requesting party is serious and committed to pursuing the dispute resolution procedure.
- 2. Fixed Amount:** The provision specifies that the filing fee is set at US\$ 5,000. This fixed amount applies uniformly to all parties initiating arbitration under the ICC Rules. The fixed amount serves to provide predictability and consistency in the arbitration process, irrespective of the nature or complexity of the dispute.
- 3. Crediting to Advance on Costs:** The provision states that the payment of the filing fee is non-refundable. Instead, the amount paid is credited to the claimant's portion of the advance on costs. The advance on costs is an amount set by the Court to cover the expenses related to the arbitration proceedings, including arbitrator fees, administrative costs, and other related expenses.
- 4. Financial Commitment:** By requiring a filing fee, the provision ensures that parties have a financial stake in the arbitration process. This discourages frivolous or baseless claims and encourages parties to engage meaningfully in the proceedings.
- 5. Supporting Access to Arbitration:** The fixed amount of the filing fee is relatively modest, which aligns with the ICC's goal of promoting access to arbitration for a wide range of disputes, including those involving smaller claims. This can be particularly beneficial for parties with limited financial resources.
- 6. Efficiency and Administrative Costs:** The filing fee serves administrative purposes by contributing to the costs associated with case administration, review, and initial processing. It also aids in the efficient management of the arbitration process.
- 7. Predictability and Transparency:** By explicitly stating the amount of the filing fee and its use, this provision enhances the transparency and predictability of the arbitration process. Parties initiating arbitration can easily anticipate the cost associated with filing a claim under the ICC Rules.

In summary, Article 1(1) of Appendix III to the ICC Arbitration Rules 2021 introduces the concept of a filing fee for parties initiating arbitration under the ICC Rules. It sets a fixed amount for the filing fee, outlines its non-refundable nature, and explains that the fee will be credited to the claimant's portion

of the advance on costs. This provision balances the goal of promoting access to arbitration with the need for financial commitment to the arbitration process.

- 2 The provisional advance fixed by the Secretary General according to Article 37(1) of the Rules shall normally not exceed the amount obtained by adding together the ICC administrative expenses, the minimum of the fees (as set out in the scales hereinafter) based upon the amount of the claim and the expected reimbursable expenses of the arbitral tribunal incurred with respect to the drafting of the Terms of Reference or the holding of the case management conference. If such amount is not quantified, the provisional advance shall be fixed at the discretion of the Secretary General. Payment by the claimant shall be credited to its share of the advance on costs fixed by the Court.**

Article 1(2) of Appendix III to the ICC Arbitration Rules 2021 outlines the calculation and purpose of the provisional advance in the context of arbitration proceedings under the ICC Rules. This provision addresses how the provisional advance is determined, its components, and its relationship with the advance on costs set by the Court. Let us analyse this provision in detail:

1. **Provisional Advance Determination:** The provision stipulates that the Secretary General, in accordance with Article 37(1) of the ICC Rules, fixes the provisional advance amount. The provisional advance serves as an initial payment made by the claimant to cover certain costs associated with the arbitration process.
2. **Components of the Provisional Advance:**
  - a. **ICC Administrative Expenses:** The provision indicates that the provisional advance includes ICC administrative expenses, which are associated with the administrative management of the arbitration proceedings by the ICC.
  - b. **Arbitrator Fees:** The provisional advance includes the minimum amount of arbitrator fees based on the scales set out in the rules. These fees are determined based on the amount of the claim.
  - c. **Reimbursable Expenses:** The provisional advance covers expected reimbursable expenses incurred by the arbitral tribunal related to tasks such as drafting the Terms of Reference or conducting the case management conference.
3. **Quantification of Amount:** If the amount obtained from adding these components is quantified, the provisional advance is calculated based on this amount. However, if this amount is not explicitly defined, the Secretary General has discretion in determining the provisional advance. This discretionary power allows for flexibility in situations where specific costs are not readily determinable.
4. **Relationship with Advance on Costs:** The payment made by the claimant as the provisional advance is credited to the claimant's share of the advance on costs fixed by the Court. The advance on costs is an amount set by the Court to cover various expenses, including arbitrator fees and administrative costs. The provisional advance contributes to the overall advance on costs set by the Court.

5. **Efficiency and Predictability:** By outlining the components and calculation of the provisional advance, this provision aims to enhance the efficiency and predictability of the arbitration process. Parties initiating arbitration can have a clear understanding of the initial financial commitment required.
6. **Fair Allocation of Costs:** The provision ensures that the claimant contributes upfront to the costs associated with the arbitration, including administrative expenses and arbitrator fees. This approach aligns with the principle that parties should share the financial burden of the arbitration process.
7. **Flexibility in Determination:** The provision's allowance for discretionary determination of the provisional advance recognises that certain expenses may not be quantifiable at the outset. This flexibility accommodates various scenarios and prevents undue rigidity in the process.

In summary, Article 1(2) of Appendix III to the ICC Arbitration Rules 2021 outlines the calculation and components of the provisional advance in ICC arbitration proceedings. It ensures the allocation of initial costs, includes ICC administrative expenses and arbitrator fees, addresses potential uncertainties in quantification, and contributes to the overall advance on costs set by the Court.

**3 In general, the arbitral tribunal shall, in accordance with Article 37(6) of the Rules, proceed only with respect to those claims or counterclaims in regard to which the whole of the advance on costs has been paid.**

Article 1(3) of Appendix III to the ICC Arbitration Rules 2021 establishes a principle regarding the arbitral tribunal's authority to proceed with claims and counterclaims based on the payment of the advance on costs. This provision reflects the procedural mechanism through which the arbitral tribunal handles claims and counterclaims in relation to the payment of costs. Let us analyse this provision in detail:

1. **Advance on Costs Requirement:** The provision stipulates that the arbitral tribunal's authority to proceed with claims or counterclaims is contingent upon the payment of the advance on costs. The advance on costs is an amount fixed by the Court to cover various expenses associated with the arbitration, such as arbitrator fees, administrative expenses, and other costs.
2. **Principle of Payment:** According to this provision, the arbitral tribunal generally proceeds only with respect to those claims or counterclaims for which the entire advance on costs has been paid by the parties. This means that parties need to fulfil their financial obligations before the tribunal engages in substantive consideration of the claims or counterclaims.
3. **Ensuring Cost Coverage:** By linking the tribunal's authority to the payment of the advance on costs, this provision serves to ensure that the costs associated with the arbitration are adequately covered. This requirement prevents cases from moving forward without sufficient financial commitment from the parties.
4. **Efficiency and Fairness:** The provision contributes to the efficient conduct of arbitration proceedings by minimising the risk of disputes arising from unpaid costs. It promotes

fairness by requiring both parties to meet their financial obligations before benefiting from the tribunal's consideration of their claims or counterclaims.

5. **Discretion and Exceptions:** While the provision establishes a general rule, it is important to note that exceptional circumstances might warrant deviation from this requirement. In some cases, the tribunal or the Court might consider allowing proceedings to continue even if the entire advance on costs has not been paid, depending on the specific circumstances.
6. **Motivation for Timely Payment:** The provision creates an incentive for parties to promptly pay the advance on costs to avoid delays in the proceedings. This motivation helps maintain the efficiency of the arbitration process.
7. **Coordinated Payment:** The provision encourages parties to coordinate their payment of the advance on costs to ensure that the tribunal can address the claims and counterclaims comprehensively. This coordination reduces the risk of piecemeal proceedings.

In summary, Article 1(3) of Appendix III to the ICC Arbitration Rules 2021 establishes the principle that the arbitral tribunal generally proceeds with claims and counterclaims only when the entire advance on costs has been paid. This provision ensures that parties fulfil their financial obligations and that the arbitration process is conducted efficiently and fairly.

#### **4 The advance on costs fixed by the Court according to Articles 37(2) or 37(4) of the Rules comprises the fees of the arbitrator or arbitrators (hereinafter referred to as “arbitrator”), any arbitration-related expenses of the arbitrator and the ICC administrative expenses.**

Article 1(4) of Appendix III to the ICC Arbitration Rules 2021 outlines the components and scope of the advance on costs that is fixed by the Court according to Articles 37(2) or 37(4) of the Rules. This provision clarifies the specific elements that are covered by the advance on costs, which parties are required to pay to cover various expenses associated with the arbitration process. Let us analyse this provision in detail:

1. **Advance on Costs Components:** This provision specifies that the advance on costs, which is set by the Court pursuant to Articles 37(2) or 37(4) of the Rules, consists of three main components:
  - a. **Fees of the Arbitrator(s):** The provision includes the fees payable to the arbitrator(s) responsible for adjudicating the case. These fees compensate the arbitrator(s) for their time, expertise, and services in resolving the dispute.
  - b. **Arbitration-Related Expenses of the Arbitrator:** Apart from fees, arbitrators may incur various expenses related to the arbitration process, such as travel, accommodation, research materials, and administrative costs. These expenses are covered by the advance on costs.
  - c. **ICC Administrative Expenses:** The provision also encompasses administrative expenses charged by the ICC for managing and facilitating the arbitration proceedings. This includes costs associated with case administration, communication, coordination, and logistical support.

2. **Scope of Coverage:** The advance on costs is designed to comprehensively cover the expenses associated with the arbitration process. It aims to ensure that all necessary costs related to the functioning of the tribunal, the arbitrator's participation, and the administrative aspects of the arbitration are adequately provided for.
3. **Clarity and Transparency:** By explicitly listing the components covered by the advance on costs, this provision enhances clarity and transparency for the parties involved in the arbitration process. Parties are aware of the specific costs included in the advance on costs and can better anticipate their financial obligations.
4. **Distribution of Costs:** The provision highlights that the advance on costs is intended to cover expenses that are shared between the parties in dispute. These expenses include the arbitrator's remuneration and expenses, as well as the administrative costs managed by the ICC.
5. **Consistency with Article 37:** This provision aligns with the broader framework of Article 37 of the ICC Arbitration Rules, which addresses the allocation of costs in the arbitration process. Article 1(4) of Appendix III clarifies the financial aspects of the arbitration process that the advance on costs aims to address.
6. **Importance of Payment:** The provision underscores the significance of timely payment of the advance on costs to ensure that the arbitration proceedings can proceed smoothly and without interruptions. Parties are required to fulfil their financial obligations to facilitate the effective functioning of the arbitration process.

In summary, Article 1(4) of Appendix III to the ICC Arbitration Rules 2021 specifies the components covered by the advance on costs fixed by the Court according to Articles 37(2) or 37(4) of the Rules. It outlines the elements that the advance on costs aims to cover, including arbitrator fees, arbitration-related expenses, and ICC administrative expenses. This provision contributes to transparency, clarity, and effective cost allocation within the arbitration process.

**5 Each party shall pay its share of the total advance on costs in cash. However, if a party's share of the advance on costs is greater than US\$ 500,000 (the "Threshold Amount"), such party may post a bank guarantee for any amount above the Threshold Amount. The Court may modify the Threshold Amount at any time at its discretion.**

Article 1(5) of Appendix III to the ICC Arbitration Rules 2021 addresses the manner in which parties are required to pay their share of the total advance on costs for arbitration proceedings. It introduces a mechanism involving cash payments and bank guarantees, particularly for cases where the party's share of the advance on costs exceeds a specified threshold. Here is a breakdown of the key points of this provision:

1. **Cash Payment of Share:** According to this provision, each party participating in the arbitration is obligated to make a cash payment to cover its respective share of the total advance on costs. This cash payment ensures that the costs associated with the arbitration process are adequately covered to facilitate the proceedings.
2. **Threshold Amount:** A noteworthy feature of this provision is the introduction of the concept of the "Threshold Amount", which is set at US\$ 500,000. This amount serves as

a benchmark to determine whether a party is eligible to adopt an alternative payment method (bank guarantee) for their share of the advance on costs.

3. **Bank Guarantee Option:** If a party's share of the advance on costs exceeds the Threshold Amount of US\$ 500,000, that party is provided the option to post a bank guarantee for the portion of the advance on costs that exceeds the Threshold Amount. A bank guarantee is a form of financial security provided by a bank on behalf of the party to ensure payment to the ICC if the need arises.
4. **Flexibility in Payment:** The provision acknowledges that the choice to post a bank guarantee is available to parties when their financial obligations exceed the Threshold Amount. This option enhances flexibility in payment and allows parties to manage their financial commitments in a way that best suits their circumstances.
5. **Court's Discretion:** The Court retains the discretion to modify the Threshold Amount as it deems necessary. This reflects the Court's authority to adjust the financial parameters of the arbitration process based on various factors, such as economic conditions, changing market practices, and the overall interests of the parties involved.
6. **Balancing Interests:** The provision strikes a balance between the parties' financial capacity and the ICC's need to ensure that costs are appropriately covered. By allowing parties to choose between cash payments and bank guarantees, it accommodates both parties with different financial resources and risk tolerance levels.
7. **Flexibility in Management:** The provision acknowledges the practicalities of managing financial matters in the arbitration process. Parties may have varying preferences and considerations when it comes to making payments, and this provision offers a degree of customisation.

In summary, Article 1(5) of Appendix III to the ICC Arbitration Rules 2021 introduces a mechanism for parties to pay their share of the total advance on costs. The Threshold Amount and the option of using a bank guarantee for amounts exceeding the Threshold Amount provide parties with flexibility while ensuring the financial viability of the arbitration proceedings. The Court's discretion to modify the Threshold Amount reflects its responsiveness to changing circumstances and market conditions.

## **6 The Secretary General may authorize the payment of advances on costs, or any party's share thereof, in instalments, subject to such conditions as the Court thinks fit.**

Article 1(6) of Appendix III to the ICC Arbitration Rules 2021 addresses the possibility of paying advances on costs, or a party's share of those costs, in instalments. This provision introduces flexibility in how parties manage the financial aspects of arbitration proceedings. Here is a breakdown of the key points of this provision:

1. **Payment Flexibility:** This provision acknowledges that parties involved in arbitration proceedings may have varying financial capabilities and preferences. It allows for greater flexibility in managing the financial burden associated with arbitration by permitting parties to make payments in instalments rather than requiring a lump-sum payment.

2. **Secretary General’s Authorisation:** The Secretary General of the ICC has the authority to authorise the payment of advances on costs or a party’s share of those costs in instalments. This authority is subject to the conditions determined by the Court. The Secretary General’s role is pivotal in ensuring that the instalment arrangement is appropriate and adheres to the necessary conditions.
3. **Court’s Discretion:** The Court has the discretion to set the conditions under which instalment payments are allowed. This discretion enables the Court to tailor the instalment arrangement to the specific circumstances of the case, taking into account factors such as the amount of the costs, the parties’ financial circumstances, and the nature of the dispute.
4. **Balancing Interests:** The provision strikes a balance between the need to ensure that the arbitration process is adequately funded and the recognition that parties may face financial constraints that warrant more flexible payment arrangements. It enables parties to participate in arbitration proceedings without being unduly burdened by upfront financial obligations.
5. **Customisation of Payment Plans:** By permitting instalment payments, the provision allows parties to design payment plans that align with their financial capabilities and strategies. This customisation can contribute to a smoother and more accessible arbitration process for all parties involved.
6. **Effective Administration:** The provision contributes to the effective administration of arbitration proceedings. It recognises the practical reality that parties’ financial situations may evolve over time, and the option to pay in instalments accommodates these changes.

In summary, Article 1(6) of Appendix III to the ICC Arbitration Rules 2021 introduces flexibility in the payment of advances on costs by allowing parties to make payments in instalments. The provision is designed to balance the financial needs of the arbitration process with the practical considerations of the parties, promoting accessibility and effective administration of arbitration proceedings. The role of the Secretary General and the Court’s discretion in setting conditions ensure that the instalment arrangement is appropriate and manageable for all parties involved.

**7 A party that has already paid in full its share of the advance on costs fixed by the Court may, in accordance with Article 37(5) of the Rules, pay the unpaid portion of the advance owed by the defaulting party by posting a bank guarantee.**

Article 1(7) of Appendix III to the ICC Arbitration Rules 2021 introduces a mechanism for addressing unpaid portions of the advance on costs in arbitration proceedings. Here is an analysis of this provision:

1. **Unpaid Portion of Advance on Costs:** In arbitration, an advance on costs is typically paid by the parties to cover the expenses of the arbitration process. This provision addresses situations where one party defaults in paying its share of the advance on costs fixed by the Court.
2. **Bank Guarantee Option:** When a party has fully paid its own share of the advance on costs but the opposing party defaults, Article 1(7) allows the compliant party to address the



unpaid portion by posting a bank guarantee. A bank guarantee is a commitment by a bank to pay a specified amount to the recipient if certain conditions are not met.

3. Reference to Article 37(5) of the Rules: The provision refers to Article 37(5) of the ICC Arbitration Rules 2021, which presumably outlines the details and conditions under which a party can use a bank guarantee to cover the unpaid portion of the advance on costs owed by the defaulting party.
4. Remedy for Non-Payment: This provision provides a remedy for a situation where a party fails to fulfil its financial obligation regarding the advance on costs. It allows the compliant party to ensure that the arbitration process can proceed smoothly even in the face of non-payment by the opposing party.
5. Preserving the Integrity of the Arbitration Process: By offering the option of posting a bank guarantee, this provision ensures that the arbitration process can continue without undue delay due to financial disputes between the parties. It also promotes fairness by preventing one party's non-payment from affecting the overall administration of the arbitration.
6. Flexibility and Practicality: The provision recognises the practical reality that parties may encounter financial difficulties or disputes during the course of arbitration. Allowing the use of a bank guarantee to cover unpaid portions of the advance on costs provides a practical solution that balances the financial interests of both parties.

In summary, Article 1(7) of Appendix III to the ICC Arbitration Rules 2021 provides a mechanism for addressing unpaid portions of the advance on costs in arbitration proceedings. It enables a party that has fully paid its share of the costs to utilise a bank guarantee to cover the unpaid portion owed by the defaulting party. This provision promotes the integrity of the arbitration process and provides a practical solution to financial disputes that may arise during the proceedings.

## **8 When the Court has fixed separate advances on costs pursuant to Article 37(3) of the Rules, the Secretariat shall invite each party to pay the amount of the advance corresponding to its respective claim(s).**

Article 1(8) of Appendix III to the ICC Arbitration Rules 2021 pertains to the procedure for collecting separate advances on costs in cases involving counterclaims. Here is an analysis of this provision:

1. Separate Advances on Costs: Article 37(3) of the ICC Arbitration Rules 2021 allows the Court to fix separate advances on costs when counterclaims are submitted by the respondent. This provision builds upon that by specifying the process for collecting these separate advances.
2. Invitation to Pay: This provision states that when separate advances on costs have been fixed, the Secretariat of the Court will send an invitation to each party involved in the arbitration. This invitation requests that each party pay the advance amount corresponding to the specific claim(s) they are advancing.
3. Efficient Cost Allocation: Counterclaims can significantly impact the overall cost of the arbitration. By allocating separate advances for claims and counterclaims, the provision

aims to ensure that each party covers the costs associated with its respective claims. This helps maintain a fair and balanced cost allocation between the parties.

4. **Transparency and Communication:** The provision underscores the role of the Secretariat in communicating the financial obligations to each party. This transparency ensures that parties are aware of the costs associated with their specific claims, enhancing the overall clarity and predictability of the arbitration process.
5. **Minimising Administrative Burden:** By involving the Secretariat in the process of collecting separate advances, the provision minimises the administrative burden on the parties and the arbitral tribunal. The Secretariat's involvement streamlines the process and ensures that each party's financial obligations are properly managed.
6. **Enforcement of Payment:** The provision emphasises the importance of timely payment of separate advances on costs to facilitate the smooth progression of the arbitration proceedings. Adequate and timely payment helps maintain the efficiency of the arbitration process and prevents unnecessary delays.

In summary, Article 1(8) of Appendix III to the ICC Arbitration Rules 2021 outlines the procedure for collecting separate advances on costs when counterclaims are involved. By involving the Secretariat in the communication and collection process, this provision aims to ensure efficient, transparent, and fair allocation of costs between parties, while also reducing administrative complexities.

**9 When, as a result of the fixing of separate advances on costs, the separate advance fixed for the claim of either party exceeds one half of such global advance as was previously fixed (in respect of the same claims and counterclaims that are the subject of separate advances), a bank guarantee may be posted to cover any such excess amount. In the event that the amount of the separate advance is subsequently increased, at least one half of the increase shall be paid in cash.**

Article 1(9) of Appendix III to the ICC Arbitration Rules 2021 addresses the scenario where separate advances on costs have been fixed for claims and counterclaims and the possibility of exceeding a certain threshold for such separate advances. Here is an analysis of this provision:

1. **Threshold for Bank Guarantee:** This provision introduces a specific threshold to determine when a party may need to provide a bank guarantee in addition to the initial separate advance. If the separate advance fixed for a party's claim exceeds half of the global advance previously fixed for the same claims and counterclaims (i.e., the total advance allocated to the entire case), then the possibility of posting a bank guarantee is triggered.
2. **Managing Financial Commitments:** The provision acknowledges that the allocation of separate advances on costs may lead to financial commitments that exceed a certain proportion of the total advance. By allowing the option of posting a bank guarantee for the excess amount, the provision offers flexibility to parties while ensuring that the financial obligations remain manageable.
3. **Bank Guarantee for Excess:** In cases where a party's separate advance exceeds the specified threshold, that party has the option to provide a bank guarantee to cover the

excess amount. A bank guarantee serves as a financial security mechanism, assuring the payment of additional costs if necessary.

4. **Incremental Payment in Cash:** If the amount of a separate advance is subsequently increased, this provision mandates that at least half of the increase must be paid in cash. This requirement aims to ensure that a reasonable portion of the additional costs is covered by cash payment, promoting financial commitment and stability within the arbitration process.
5. **Balancing Financial Considerations:** The provision seeks to strike a balance between the financial commitments of the parties and the need to cover potential costs associated with the claims and counterclaims. By allowing for incremental payments in cash and bank guarantees, the provision offers parties the flexibility to manage their financial responsibilities effectively.
6. **Predictability and Transparency:** This provision contributes to the predictability and transparency of the arbitration process by providing clear guidelines on how separate advances on costs are managed and how potential excess amounts are addressed.

In summary, Article 1(9) of Appendix III to the ICC Arbitration Rules 2021 addresses the situation where separate advances on costs may exceed a certain threshold. It outlines the possibility of posting a bank guarantee for excess amounts, while also stipulating the requirement for incremental cash payments in the event of subsequent increases in separate advances. This provision balances financial considerations and promotes a fair and predictable process for managing costs in ICC arbitrations involving claims and counterclaims.

**10 The Secretariat shall establish the terms governing all bank guarantees which the parties may post pursuant to the above provisions.**

Article 1(10) of Appendix III to the ICC Arbitration Rules 2021 pertains to the establishment of terms governing bank guarantees that parties may post in accordance with the provisions outlined in the preceding articles. Here is an analysis of this provision:

1. **Administrative Clarity:** This article highlights the importance of administrative clarity and consistency in managing bank guarantees within the context of advance on costs. The Secretariat is entrusted with the responsibility of establishing the terms that will govern the bank guarantees.
2. **Customisation:** By granting the Secretariat the authority to establish the terms, the provision allows for a degree of customisation to cater to the specific needs and circumstances of each case. This flexibility ensures that the terms of the bank guarantees are aligned with the requirements of the arbitration process.
3. **Uniform Application:** While there is room for customisation, the provision also aims to maintain uniformity and fairness in the application of bank guarantees across different cases. The Secretariat's role in establishing the terms helps ensure consistency in the process.

4. **Transparency:** By establishing the terms governing bank guarantees, the Secretariat contributes to transparency and predictability in the arbitration process. Parties can be informed in advance about the conditions and expectations related to posting bank guarantees.
5. **Party Protection:** Clear and well-defined terms established by the Secretariat can help protect the interests of both parties involved in the arbitration. The terms can outline matters such as the duration of the bank guarantee, the circumstances under which it may be drawn upon, and the process for its release.
6. **Efficiency:** The provision contributes to the overall efficiency of the arbitration process. With predefined terms, parties can more readily understand and comply with the requirements for posting bank guarantees, reducing the potential for disputes or delays.

In summary, Article 1(10) of Appendix III to the ICC Arbitration Rules 2021 emphasises the importance of establishing clear terms for bank guarantees posted by parties to cover advance on costs. By empowering the Secretariat to set these terms, the provision promotes administrative efficiency, consistency, and transparency in the arbitration process, ultimately contributing to the fair and effective resolution of disputes.

**11 As provided in Article 37(5) of the Rules, the advance on costs may be subject to readjustment at any time during the arbitration, in particular to take into account fluctuations in the amount in dispute, changes in the amount of the estimated expenses of the arbitrator, or the evolving difficulty or complexity of arbitration proceedings.**

Article 1(11) of Appendix III to the ICC Arbitration Rules 2021 addresses the readjustment of the advance on costs during the course of arbitration proceedings. Here is an analysis of this provision:

1. **Flexibility and Adaptability:** This article highlights the need for flexibility and adaptability in the assessment of the advance on costs. Arbitration proceedings can be dynamic and subject to changes, such as fluctuations in the amount in dispute or unexpected shifts in the complexity of the case. Allowing for readjustment acknowledges that these changes may impact the financial requirements of the arbitration process.
2. **Financial Realism:** The provision recognises the importance of maintaining a realistic and proportional financial framework throughout the arbitration. The advance on costs is intended to cover expenses related to the arbitration, and readjustments ensure that the financial contributions align with the actual needs and circumstances of the case.
3. **Equitable Allocation:** Readjustments based on changes in the amount in dispute or other factors contribute to an equitable allocation of costs between the parties. As the proceedings evolve, it becomes crucial to ensure that each party's financial obligation remains fair and proportionate to the scope and complexity of the case.
4. **Minimising Disruption:** By allowing for readjustment, the provision minimises potential disruptions in the arbitration process due to unforeseen changes in circumstances. Parties can continue their engagement in the arbitration without facing undue financial constraints resulting from unexpected developments.

5. **Dispute Avoidance:** The provision can help prevent disputes over financial obligations during the arbitration. If there are changes in circumstances that necessitate a readjustment, parties may be more likely to agree on such adjustments, reducing the likelihood of disagreements over costs.
6. **Administrative Efficiency:** The provision contributes to the overall administrative efficiency of the arbitration process. Parties and the arbitral tribunal can address potential changes in financial requirements in a straightforward manner, without needing to initiate separate proceedings solely for the purpose of adjusting the advance on costs.

In summary, Article 1(11) of Appendix III to the ICC Arbitration Rules 2021 acknowledges the need for readjustment of the advance on costs during arbitration proceedings. This provision aligns with the dynamic nature of arbitration and seeks to ensure that the financial aspects of the process remain realistic, equitable, and adaptable to changing circumstances.

**12 Before any expertise ordered by the arbitral tribunal can be commenced, the parties, or one of them, shall pay an advance on costs fixed by the arbitral tribunal sufficient to cover the expected fees and expenses of the expert as determined by the arbitral tribunal. The arbitral tribunal shall be responsible for ensuring the payment by the parties of such fees and expenses.**

Article 1(12) of Appendix III to the ICC Arbitration Rules 2021 addresses the advance on costs for expertise ordered by the arbitral tribunal. Let us break down the key points of this provision:

1. **Advance on Costs for Expertise:** This article focuses on situations where the arbitral tribunal orders an expertise, which involves the engagement of an expert to provide specialised opinions or analyses related to the case. An advance on costs is required to cover the anticipated fees and expenses of the expert.
2. **Payment Responsibility:** The provision places the responsibility for paying the advance on costs for the expert's fees and expenses on the parties involved in the arbitration. This ensures that the financial burden associated with the expertise is shared by the parties in the case.
3. **Transparency and Predictability:** By requiring the advance on costs to be paid before commencing the expertise, the provision promotes transparency and predictability in the financial aspects of the arbitration. Parties will have a clear understanding of the financial commitment required for obtaining expert opinions.
4. **Expert Determination:** The arbitral tribunal is tasked with determining the expected fees and expenses of the expert. This determination is crucial to establish the appropriate amount for the advance on costs. The arbitral tribunal's role in this process ensures that the amount requested is reasonable and proportionate to the expertise needed.
5. **Efficient Process:** Requiring the advance on costs for expertise ensures that the expert's engagement is not delayed due to financial matters. This contributes to the efficiency of the arbitration process, allowing the case to proceed smoothly.

6. Allocation of Expert Fees: The arbitral tribunal is entrusted with ensuring that the parties fulfil their payment obligations regarding the expert's fees and expenses. This helps prevent delays or disputes that could arise if one party fails to pay its share.
7. Expert Independence: By specifying that the fees and expenses of the expert are covered by the advance on costs, the provision helps preserve the expert's independence. The expert can focus on providing objective opinions without concerns about payment disputes.
8. Protection of Parties: Requiring an advance on costs for expertise helps protect the interests of both parties. It ensures that the expenses associated with engaging an expert are appropriately accounted for, preventing financial imbalances between the parties.

In summary, Article 1(12) of Appendix III to the ICC Arbitration Rules 2021 establishes the procedure for advancing costs related to expertise ordered by the arbitral tribunal. By requiring the parties to pay an advance on costs for expert fees and expenses, this provision ensures transparency, efficiency, and fairness in handling the financial aspects of expertise within the arbitration process.

### **13 The amounts paid as advances on costs do not yield interest for the parties or the arbitrator.**

Article 1(13) of Appendix III to the ICC Arbitration Rules 2021 addresses the issue of whether the amounts paid as advances on costs yield interest for the parties or the arbitrator. Let us delve into the significance of this provision:

1. Interest Exclusion: This article clarifies that the amounts paid as advances on costs do not accrue interest for either the parties involved in the arbitration or the arbitrator. In other words, the advance payments made to cover various costs associated with the arbitration process, including arbitrator fees, administrative expenses, and expert fees, do not generate any additional interest income.
2. Financial Neutrality: By explicitly excluding the possibility of interest accrual on the advance payments, the provision aims to maintain financial neutrality in the arbitration process. It ensures that neither party gains an advantage or disadvantage from the timing of the advance payments.
3. Avoidance of Financial Incentives: The provision prevents parties from potentially delaying payment of the advance on costs in the hope of earning interest on the amounts withheld. This supports the principle of timely and efficient resolution of disputes without introducing any financial incentives for strategic behaviour.
4. Predictable Financial Arrangements: Parties engaging in arbitration proceedings can anticipate that the amounts paid as advances on costs will not be subject to interest, which enhances the predictability of the financial arrangements associated with the arbitration process.
5. Transparency and Fairness: By eliminating any potential for interest accrual, the provision promotes transparency and fairness in the financial aspects of arbitration. It ensures that the parties' financial contributions remain solely focused on covering the actual costs of the arbitration.

6. Consistency: The provision helps maintain consistency with widely recognised arbitration practices, where advance payments are typically not subject to interest.

In summary, Article 1(13) of Appendix III to the ICC Arbitration Rules 2021 clarifies that advance payments made as part of the arbitration process do not yield interest for the parties or the arbitrator. This provision supports financial neutrality, predictability, and fairness in the financial arrangements associated with the arbitration proceedings.

## ARTICLE 2 Costs and Fees

- 1 Subject to Article 38(2) of the Rules, the Court shall fix the fees of the arbitrator in accordance with the scales hereinafter set out or, where the amount in dispute is not stated, at its discretion.**

Article 2(1) of Appendix III to the ICC Arbitration Rules 2021 addresses the determination of arbitrator fees in the arbitration process. Here is an analysis of its significance:

1. Arbitrator Fees: This article pertains to the fees payable to the arbitrator(s) involved in the arbitration proceedings. Arbitrator fees are a crucial aspect of the arbitration process and involve compensation for the time, effort, and expertise put forth by the arbitrator(s) to resolve the dispute.
2. Reference to Article 38(2): The article references Article 38(2) of the ICC Arbitration Rules, indicating that the Court's authority to fix arbitrator fees is subject to the provisions of Article 38(2). Article 38(2) grants the Court the discretion to fix arbitrator fees higher or lower than the prescribed scale in exceptional circumstances.
3. Fee Fixing Authority: The Court is given the authority to determine the fees of the arbitrator(s) based on specific scales set out in the rules. These scales likely consider factors such as the complexity of the dispute, the amount in dispute, the arbitrator's experience, and other relevant considerations.
4. Discretion in Unspecified Disputes: If the amount in dispute is not stated, the article allows the Court to use its discretion in determining the arbitrator fees. This acknowledges that the amount in dispute can be a significant factor in determining the appropriate compensation for arbitrators and provides flexibility in cases where the amount is not clear.
5. Consistency and Fairness: The provision ensures consistency and fairness in arbitrator fee determination by providing a structured approach based on predetermined scales. This helps avoid arbitrary or inconsistent fee determinations.
6. Exceptional Circumstances: The reference to Article 38(2) emphasises that the Court can deviate from the prescribed scales in exceptional cases, further underlining the flexibility of the rules to accommodate unique circumstances.
7. Transparency and Predictability: By explicitly mentioning that the Court will fix arbitrator fees in accordance with the set scales, the article contributes to the transparency and

predictability of the arbitration process. Parties can have reasonable expectations about the financial implications of the arbitration.

In summary, Article 2(1) of Appendix III to the ICC Arbitration Rules 2021 outlines the mechanism for fixing arbitrator fees in arbitration proceedings. It establishes the Court's authority to determine fees based on predetermined scales or, in certain cases, at its discretion. The provision ensures fairness, transparency, and predictability in the arbitrator fee determination process.

**2 In setting the arbitrator's fees, the Court shall take into consideration the diligence and efficiency of the arbitrator, the time spent, the rapidity of the proceedings, the complexity of the dispute and the timeliness of the submission of the draft award, so as to arrive at a figure within the limits specified or, in exceptional circumstances (Article 38(2) of the Rules), at a figure higher or lower than those limits.**

Article 2(2) of Appendix III to the ICC Arbitration Rules 2021 addresses the factors that the Court should consider when setting arbitrator's fees. Here is an analysis of its significance:

1. **Diligence and Efficiency:** The article underscores the importance of arbitrator diligence and efficiency in the arbitration process. This means that arbitrators who actively and effectively manage the proceedings and contribute to a timely resolution of the dispute should be appropriately compensated.
2. **Time Spent:** The time spent by the arbitrator on the case is a significant factor in determining the fees. This recognises that the effort and time dedicated by the arbitrator to understand the complexities of the dispute, review documents, hold hearings, and draft the award warrant appropriate compensation.
3. **Rapidity of Proceedings:** This factor refers to the speed at which the arbitration proceedings are conducted. A more efficient and expedited process can contribute to cost savings and prompt resolution, which may be reflected in the arbitrator's fees.
4. **Complexity of the Dispute:** The complexity of the dispute is a critical consideration. Arbitrators dealing with intricate legal or technical matters may require additional time and expertise, justifying higher compensation.
5. **Timeliness of Draft Award:** The prompt submission of the draft award is vital for efficient resolution. Arbitrators who provide timely draft awards facilitate the timely conclusion of the arbitration process and deserve recognition for their promptness.
6. **Limits and Exceptional Circumstances:** The article clarifies that the Court's determination of arbitrator fees should ideally fall within specified limits set out in the rules. However, it also acknowledges that, in exceptional cases, the Court can deviate from these limits under Article 38(2) of the Rules if deemed necessary.
7. **Balancing Factors:** The provision reflects the need for a balanced approach in determining arbitrator fees. It takes into account various factors, ensuring that arbitrators are adequately compensated for their efforts while maintaining a reasonable and justifiable fee structure.



8. Flexibility: The article provides flexibility in determining arbitrator fees based on the specific circumstances of each case. This approach recognises that not all cases are identical and allows for tailored fee determinations.
9. Encouraging Efficient Process: By considering factors such as diligence, efficiency, and rapidity of proceedings, the article indirectly encourages arbitrators and parties to engage in an efficient arbitration process, benefiting all parties involved.

In summary, Article 2(2) of Appendix III to the ICC Arbitration Rules 2021 outlines the factors that the Court should consider when determining arbitrator fees. It emphasises elements like diligence, efficiency, time spent, complexity, and timeliness of the process. The article aims to strike a balance between fairly compensating arbitrators and encouraging an effective and efficient arbitration process.

**3 When a case is submitted to more than one arbitrator, the Court, at its discretion, shall have the right to increase the total fees up to a maximum which shall normally not exceed three times the fees of one arbitrator.**

Article 2(3) of Appendix III to the ICC Arbitration Rules 2021 addresses the situation when a case is heard by multiple arbitrators and establishes guidelines for adjusting their fees. Here is an analysis of its significance:

1. Multi-Arbitrator Panels: This provision applies to cases where more than one arbitrator is appointed to decide the dispute. Multi-arbitrator panels are common in complex cases where a diverse set of skills and expertise is required to render a comprehensive and well-informed decision.
2. Discretion of the Court: The article highlights that the Court has discretionary authority to adjust the total fees payable to multiple arbitrators. This discretionary power gives the Court the flexibility to make fee adjustments based on the specific circumstances of each case.
3. Maximum Fee Increase: The article sets a cap on the maximum fee increase that the Court can apply when a case is heard by multiple arbitrators. This cap is set at a level that is normally not more than three times the fees of a single arbitrator.
4. Balancing Fair Compensation: The provision seeks to ensure that arbitrators on multi-arbitrator panels are fairly compensated for their participation in complex cases. It recognises that the involvement of multiple arbitrators can add to the time and resources required for the arbitration process.
5. Reasonableness: While the Court has the discretion to increase the total fees, the article implies that the increase should be reasonable and proportionate to the complexity and scope of the case. This helps prevent excessive fee adjustments.
6. Encouraging Quality: By allowing for fee adjustments for multi-arbitrator panels, the article indirectly encourages the appointment of well-qualified arbitrators with relevant expertise, contributing to the overall quality of the arbitral proceedings and the eventual award.

7. **Preservation of Cost Efficiency:** While acknowledging the potential need for additional fees for multi-arbitrator panels, the provision also emphasises that the total fees should remain within reasonable bounds. This ensures that arbitration remains a cost-effective method of dispute resolution.
8. **Flexibility:** The discretionary nature of fee adjustments in multi-arbitrator cases reflects the flexible approach of the ICC Arbitration Rules, which are designed to accommodate a wide range of dispute scenarios.

In summary, Article 2(3) of Appendix III to the ICC Arbitration Rules 2021 provides the Court with discretionary authority to adjust total fees when a case is heard by multiple arbitrators. The provision aims to strike a balance between fair compensation for arbitrators on multi-arbitrator panels and maintaining cost-efficiency in arbitration proceedings.

**4 The arbitrator’s fees and expenses shall be fixed exclusively by the Court as required by the Rules. Separate fee arrangements between the parties and the arbitrator are contrary to the Rules.**

Article 2(4) of Appendix III to the ICC Arbitration Rules 2021 addresses the determination of arbitrator’s fees and expenses and prohibits separate fee arrangements between parties and arbitrators. Here is an analysis of its significance:

1. **Exclusivity of Fee Determination:** This provision underscores that the determination of arbitrator’s fees and expenses is exclusively within the authority of the ICC Court, as mandated by the ICC Arbitration Rules. This ensures consistency and fairness in the fee-setting process and prevents any potential conflicts of interest that might arise from direct fee negotiations between parties and arbitrators.
2. **Maintaining Neutrality and Impartiality:** By preventing separate fee arrangements, the article aims to safeguard the independence, neutrality, and impartiality of arbitrators. If parties were allowed to negotiate fees directly, there could be a risk of arbitrators being influenced by the party providing higher compensation.
3. **Preservation of Arbitral Integrity:** The provision helps maintain the integrity of the arbitration process by preventing any perception that the outcome of the arbitration could be influenced by the amount of compensation an arbitrator receives from a specific party.
4. **Consistency and Transparency:** The centralisation of fee determination ensures that arbitrators are compensated consistently across different cases and that the fee structure is transparent and aligned with the guidelines set out in the ICC Rules.
5. **Mitigation of Conflicts:** By preventing separate fee arrangements, the article mitigates potential conflicts of interest that could arise if an arbitrator is beholden to one party due to a higher fee arrangement.
6. **Rule Enforcement:** The provision reinforces the authority of the ICC Court to enforce its rules and regulations. It sends a clear message that adherence to the established fee-setting process is obligatory for parties, arbitrators, and the Court.

7. Promoting Professionalism: The article encourages professionalism among arbitrators by ensuring that their fees are determined through a recognised and formal process, rather than through direct negotiation with the parties.
8. Preservation of the Arbitration Process: The provision contributes to the preservation of the efficiency, integrity, and effectiveness of the arbitration process by preventing potential disputes and disagreements over arbitrator fees.

In summary, Article 2(4) of Appendix III to the ICC Arbitration Rules 2021 reinforces the ICC's role in setting arbitrator's fees and expenses and explicitly prohibits separate fee arrangements between parties and arbitrators. This measure is designed to maintain neutrality, impartiality, and transparency in the arbitration process and to uphold the professional and ethical standards of arbitration practice.

**5 The Court shall fix the ICC administrative expenses of each arbitration in accordance with the scales hereinafter set out or, where the amount in dispute is not stated, at its discretion. Where the parties have agreed upon additional services, or in exceptional circumstances, the Court may fix the ICC administrative expenses at a lower or higher figure than that which would result from the application of such scale, provided that such expenses shall normally not exceed the maximum amount of the scale.**

Article 2(5) of Appendix III to the ICC Arbitration Rules 2021 addresses the determination of ICC administrative expenses in arbitration cases. Let us analyse its significance:

1. Control and Consistency: This provision grants the ICC Court the authority to fix the administrative expenses associated with each arbitration case. By doing so, the Court ensures that administrative costs are consistent across cases and aligned with the ICC's administrative framework.
2. Predictability: The article offers predictability to parties involved in arbitration by outlining the criteria for calculating ICC administrative expenses. This transparency helps parties anticipate the costs associated with arbitration proceedings.
3. Flexibility in Determination: The Court is allowed to set ICC administrative expenses based on the scales provided or at its discretion when the amount in dispute is not stated. This flexibility allows the Court to take into account specific circumstances and the complexity of the case.
4. Additional Services: If parties have agreed upon additional services beyond the standard administrative services provided by the ICC, or in cases of exceptional circumstances, the Court has the authority to adjust the administrative expenses accordingly. This ensures that the expenses are proportionate to the services rendered.
5. Cost-Effectiveness: The provision encourages cost-effectiveness by allowing the Court to adjust administrative expenses downward if it deems that the scale or the circumstances warrant a lower figure. Conversely, in cases where additional services are required, the Court may adjust the expenses upward.

6. **Maximum Limit:** The article establishes a safeguard by specifying that the administrative expenses set by the Court should normally not exceed the maximum amount indicated in the scale. This limitation prevents excessive administrative costs and promotes fairness.
7. **Balance Between Parties:** The provision aims to strike a balance between the interests of the parties and the needs of the arbitration process. It allows the Court to consider both parties' circumstances and the complexity of the dispute when determining administrative expenses.
8. **Court's Role in Cost Management:** By retaining control over administrative expenses, the Court plays a role in cost management and helps ensure that expenses remain reasonable and proportional to the services provided.
9. **Maintaining ICC's Reputation:** The provision reinforces the ICC's reputation as a leading arbitration institution known for its transparency, fairness, and efficient administration of arbitration proceedings.

In summary, Article 2(5) of Appendix III to the ICC Arbitration Rules 2021 empowers the ICC Court to fix administrative expenses in arbitration cases. The provision offers flexibility, transparency, and fairness in the determination of administrative costs, taking into account the complexity of the case, additional services, and the parties' circumstances.

**6 At any time during the arbitration, the Court may fix as payable a portion of the ICC administrative expenses corresponding to services that have already been performed by the Court and the Secretariat.**

Article 2(6) of Appendix III to the ICC Arbitration Rules 2021 addresses the authority of the ICC Court to fix a portion of the ICC administrative expenses as payable during the course of arbitration. Let us delve into its significance:

1. **Interim Payment:** This provision allows the ICC Court to decide that a portion of the ICC administrative expenses, proportional to the services already rendered by the Court and Secretariat, should be paid by the parties during the ongoing arbitration process. This helps in managing and distributing the financial burden of the arbitration proceedings more evenly.
2. **Flexibility and Fairness:** By permitting the Court to determine the payment of a portion of administrative expenses at various stages of the arbitration, the provision offers flexibility. It ensures that the parties contribute to the administrative costs as services are provided, thus promoting fairness and proportional payment.
3. **Cost Management:** This provision supports cost management during the arbitration process. By requiring payments for services already rendered, it prevents the accumulation of administrative expenses that might become a financial burden for parties if left unpaid until the end of the arbitration.
4. **Efficiency:** Requiring interim payments for services performed encourages efficiency. It ensures that the administrative work is supported by timely payments, allowing the Court

and Secretariat to maintain smooth operations and focus on managing the arbitration effectively.

5. **Financial Transparency:** The provision enhances financial transparency by making parties aware of the costs associated with specific services rendered by the Court and Secretariat. This helps parties understand the basis of the expenses and fosters trust in the administration of the arbitration process.
6. **Mitigation of Default:** Requiring interim payments reduces the risk of parties defaulting on administrative expenses. It ensures that parties remain engaged in fulfilling their financial obligations, avoiding any potential disruptions in the arbitration proceedings due to non-payment.
7. **Overall Management:** By enabling the Court to fix and require payment for services performed, the provision contributes to the overall management of arbitration cases, enhancing the Court's ability to efficiently administer arbitrations.
8. **Customisation:** The provision gives the ICC Court the flexibility to tailor the payment schedule based on the specific needs and progress of each arbitration, ensuring that the financial aspect of the proceedings remains aligned with the procedural developments.

In summary, Article 2(6) of Appendix III to the ICC Arbitration Rules 2021 empowers the ICC Court to fix a portion of ICC administrative expenses as payable during the arbitration process. This provision promotes fairness, cost management, financial transparency, and efficiency in the administration of arbitration proceedings.

## **7 The Court may require the payment of administrative expenses in addition to those provided in the scale of administrative expenses as a condition for holding an arbitration in abeyance at the request of the parties or of one of them with the acquiescence of the other.**

Article 2(7) of Appendix III to the ICC Arbitration Rules 2021 outlines the authority of the ICC Court to demand additional payment of administrative expenses beyond the scale provided in certain circumstances. Let us explore the significance of this provision:

1. **Suspension of Proceedings:** The provision allows the ICC Court to suspend arbitration proceedings upon the request of the parties or one of them with the consent of the other. Such suspension can be granted on the condition that additional administrative expenses are paid. This mechanism enables parties to pause proceedings without unduly burdening the administration's resources.
2. **Flexibility:** By permitting the ICC Court to require additional administrative expenses for the suspension of proceedings, the provision provides flexibility in addressing the financial implications of pausing the arbitration process. This ensures that the costs associated with the suspension are adequately covered.
3. **Control over Proceedings:** The ICC Court's ability to require additional administrative expenses helps maintain control over the proceedings and prevents parties from exploiting suspension requests to manipulate the arbitration process for tactical or dilatory purposes.

4. **Efficient Resource Management:** Requiring extra administrative expenses for suspending proceedings helps offset the costs incurred by the Court and Secretariat during the suspension period. This promotes efficient resource management and prevents the accumulation of unmet financial obligations.
5. **Balancing Interests:** The provision balances the parties' interests in suspending the proceedings with the need to cover administrative expenses. It prevents one party's request for suspension from imposing undue financial burdens on the other party and the administration.
6. **Transparency and Fairness:** By explicitly mentioning the condition of additional administrative expenses for suspension, the provision ensures transparency and fairness in the process. Parties are informed about the cost implications of their decisions regarding suspension.
7. **Disincentive Against Abuse:** Requiring additional payment as a condition for suspension discourages parties from requesting suspensions frivolously or for strategic reasons unrelated to the merits of the case. This discouragement helps prevent abuse of the suspension mechanism.
8. **Financial Responsibility:** The provision emphasises the parties' financial responsibility in managing the arbitration proceedings. Parties must consider the financial consequences of suspension and make informed decisions based on their financial capacity.

In summary, Article 2(7) of Appendix III to the ICC Arbitration Rules 2021 grants the ICC Court the authority to demand additional payment of administrative expenses as a condition for suspending arbitration proceedings upon request. This provision balances the parties' interests in suspension while ensuring that administrative costs are adequately covered, promoting transparency, fairness, and responsible management of arbitration proceedings.

**8 If an arbitration terminates before the rendering of a final award, the Court shall fix the fees and expenses of the arbitrators and the ICC administrative expenses at its discretion, taking into account the stage attained by the arbitral proceedings and any other relevant circumstances.**

Article 2(8) of Appendix III to the ICC Arbitration Rules 2021 addresses the situation where an arbitration terminates before the issuance of a final award. Let us delve into the significance of this provision:

1. **Termination of Arbitration:** The provision is applicable when the arbitration proceedings come to an end before the rendering of a final award. This termination could result from various factors, such as settlement, withdrawal of claims, or procedural issues.
2. **Discretionary Authority:** The provision grants the ICC Court the authority to determine the fees and expenses of the arbitrators as well as the ICC administrative expenses. This discretion allows the Court to consider various factors before making its decision, ensuring fairness and adaptability to the specific circumstances of each case.

3. **Stage of Proceedings:** The provision instructs the Court to consider the stage reached in the arbitral proceedings when determining the fees and expenses of the arbitrators and administrative expenses. This acknowledges that the amount of work done by the arbitrators and the administration might differ depending on how far the proceedings progressed.
4. **Relevant Circumstances:** The Court's discretion includes the consideration of other relevant circumstances beyond the stage of proceedings. This could encompass factors such as the complexity of the dispute, efforts expended by the arbitrators and administration, and the impact of the termination on resources and timelines.
5. **Balancing Interests:** The provision strikes a balance between ensuring that arbitrators and the ICC administration are fairly compensated for the work completed up to the termination point and avoiding excessive financial burden on the parties due to the termination.
6. **Preventing Unjust Enrichment:** By allowing the Court to consider various factors, the provision helps prevent situations of unjust enrichment. It ensures that parties do not benefit unfairly from the termination of the arbitration.
7. **Flexibility:** The provision's discretionary nature provides flexibility in addressing unique situations that may arise in arbitration proceedings. It enables the Court to adapt its decision to the specific circumstances of each case.
8. **Ensuring Fairness:** The provision emphasises the Court's commitment to fairness and equity in determining the financial aspects related to the termination of an arbitration. This helps maintain the integrity of the arbitration process.

In summary, Article 2(8) of Appendix III to the ICC Arbitration Rules 2021 gives the ICC Court the discretion to fix arbitrators' fees and expenses and ICC administrative expenses when an arbitration terminates before the issuance of a final award. The provision ensures that the financial aspects of termination are handled fairly and appropriately, taking into account factors such as the stage of proceedings and other relevant circumstances.

**9 Any amount paid by the parties as an advance on costs exceeding the costs of the arbitration fixed by the Court shall be reimbursed to the parties having regard to the amounts paid.**

Article 2(9) of Appendix III to the ICC Arbitration Rules 2021 addresses the reimbursement of any excess amount paid by the parties as an advance on costs for the arbitration. Let us explore the implications of this provision:

1. **Reimbursement Principle:** This provision establishes the principle that if the total costs of the arbitration, as determined by the Court, are less than the total amount paid by the parties as an advance on costs, the excess amount will be reimbursed to the parties.
2. **Transparency and Fairness:** The provision contributes to the transparency and fairness of the arbitration process. It ensures that parties are only required to cover the actual costs incurred for the arbitration proceedings and not more.

3. **Cost Efficiency:** By allowing for reimbursement of excess amounts, the provision encourages parties to pay only what is necessary for the costs of the arbitration. This can promote cost efficiency and discourage overpayment of advance on costs.
4. **Predictable Financial Commitment:** Parties can have confidence that any excess amounts paid will be returned to them if the actual costs are lower than anticipated. This predictability can influence parties' decisions about advancing funds for the arbitration.
5. **Encouraging Cooperation:** The provision may incentivise parties to cooperate in the management of arbitration costs, as they have a shared interest in avoiding unnecessary expenses.
6. **Flexibility:** The provision recognises that the advance on costs might not always exactly match the final costs of the arbitration. Reimbursement allows for flexibility in adjusting the financial aspects of the proceedings based on the actual expenses incurred.
7. **Fair Allocation of Costs:** The reimbursement ensures that each party pays only its fair share of the actual costs of the arbitration. This contributes to equitable allocation of financial responsibility.
8. **Administrative Convenience:** While the provision guarantees reimbursement, the mechanics of how this process is carried out might depend on the specific administrative procedures of the ICC. It might involve administrative steps to calculate and facilitate the return of excess amounts.

In conclusion, Article 2(9) of Appendix III to the ICC Arbitration Rules 2021 establishes the principle of reimbursing parties for any excess amounts paid as an advance on costs if the actual costs of the arbitration are less than the advance. This provision promotes transparency, fairness, and cost efficiency in the arbitration process by ensuring that parties are only responsible for the actual costs incurred during the proceedings.

**10 In the case of an application under Articles 36(2) or 36(3) of the Rules, or of a remission pursuant to Article 36(5) of the Rules, the Court may fix an advance to cover additional fees and expenses of the arbitral tribunal and additional ICC administrative expenses and may make the transmission of such application to the arbitral tribunal subject to the prior cash payment in full to ICC of such advance. The Court shall fix at its discretion the costs of the procedure following an application or a remission, which shall include any possible fees of the arbitrator and ICC administrative expenses, when approving the decision of the arbitral tribunal.**

Article 2(10) of Appendix III to the ICC Arbitration Rules 2021 deals with the financial aspects related to certain applications and remissions in arbitration proceedings. Here is an analysis of this provision:

1. **Additional Advances:** This provision addresses situations where certain applications are made under Articles 36(2) or 36(3) of the Rules or when there is a remission pursuant to Article 36(5) of the Rules. In such cases, the Court may require an additional advance on costs from the parties. This advance would cover additional fees and expenses of the arbitral tribunal and additional ICC administrative expenses.



2. **Cash Payment Requirement:** The provision stipulates that the transmission of the application to the arbitral tribunal could be subject to the prior full cash payment of this additional advance to the ICC. This requirement ensures that the necessary funds are available before the application is processed further.
3. **Financial Prerequisite:** By requiring a full cash payment in advance, the provision aims to guarantee that the costs associated with the application or remission are covered before they are considered by the arbitral tribunal.
4. **Decision-Related Costs:** The provision also establishes that the Court will determine the costs of the procedure that follows an application or remission. This includes any potential fees of the arbitrator and ICC administrative expenses. The Court exercises its discretion in fixing these costs.
5. **Proportionality and Fairness:** This provision ensures that parties applying for certain actions or remissions are financially prepared to cover the associated expenses. It promotes fairness by preventing a situation where financial constraints could impact the processing of applications.
6. **Transparency and Accountability:** By explicitly outlining the process for additional advances and associated costs, the provision contributes to transparency and accountability in financial matters related to the arbitration proceedings.
7. **Maintaining the Arbitration Process:** Requiring upfront payment for additional costs resulting from certain applications or remissions ensures the smooth continuation of the arbitration process, without any potential financial hindrance.
8. **Protection of Efficiency:** This provision helps in ensuring the efficiency of the arbitration proceedings by addressing potential delays caused by financial matters associated with applications or remissions.

In summary, Article 2(10) of Appendix III to the ICC Arbitration Rules 2021 sets out the procedure for requiring additional advances to cover fees and expenses related to certain applications and remissions. The provision ensures financial preparedness, accountability, and procedural efficiency in handling these situations.

**11 The Secretariat may require the payment of administrative expenses in addition to those provided in the scale of administrative expenses for any expenses arising in relation to a request pursuant to Article 35(5) of the Rules.**

Article 2(11) of Appendix III to the ICC Arbitration Rules 2021 addresses the payment of administrative expenses in connection with a specific situation outlined in Article 35(5) of the Rules. Here is an analysis of this provision:

1. **Administrative Expenses:** This provision empowers the Secretariat to request payment of administrative expenses beyond those stipulated in the scale of administrative expenses. These additional expenses are incurred in relation to a request made pursuant to Article 35(5) of the Rules.

2. Article 35(5) of the Rules: Article 35(5) of the ICC Arbitration Rules pertains to situations where a party seeks consolidation of multiple arbitrations under the same agreement or compatible agreements. The party needs to submit a request to the Secretariat, which then decides whether the arbitrations should be consolidated.
3. Flexibility and Practicality: By allowing the Secretariat to require additional administrative expenses for cases involving consolidation under Article 35(5), this provision offers flexibility to accommodate the additional administrative work that consolidation may entail.
4. Resource Allocation: Consolidating multiple arbitrations involves managing various administrative tasks that may not be covered by the standard scale of administrative expenses. Requiring additional payments ensures that the Secretariat has the necessary resources to effectively handle consolidation requests.
5. Costs Allocation: Parties seeking consolidation should reasonably bear the administrative costs associated with the complexity of the consolidation process. This provision helps to allocate costs appropriately between parties.
6. Efficient Administration: Ensuring that administrative expenses are covered for consolidation requests contributes to the efficient administration of the arbitration proceedings, avoiding delays and uncertainties due to financial issues.
7. Transparency: The provision adds transparency to the process by explicitly stating that additional administrative expenses may be required for consolidation requests, thus preventing any surprise financial burdens for the parties.
8. Administrative Support: The Secretariat's ability to require additional administrative expenses underscores its role in facilitating the arbitration process by providing the necessary administrative support for complex situations like consolidation.

In summary, Article 2(11) of Appendix III to the ICC Arbitration Rules 2021 enables the Secretariat to request the payment of administrative expenses beyond the standard scale for cases involving consolidation under Article 35(5) of the Rules. This provision ensures that the administrative aspects of consolidation are adequately supported and that costs are allocated fairly among the parties involved.

**12 When an arbitration is preceded by proceedings under the ICC Mediation Rules, one half of the ICC administrative expenses paid for such proceedings shall be credited to the ICC administrative expenses of the arbitration.**

Article 2(12) of Appendix III to the ICC Arbitration Rules 2021 deals with the allocation of administrative expenses when an arbitration is preceded by proceedings under the ICC Mediation Rules. Here is an analysis of this provision:

1. Mediation and Arbitration Relationship: This provision recognises that parties might attempt mediation before proceeding to arbitration. Mediation is a voluntary and non-binding process aimed at resolving disputes amicably, while arbitration is a more formal dispute resolution mechanism.

2. **Cost Efficiency:** Encouraging parties to explore mediation before arbitration can lead to cost savings, as mediation is often faster and less expensive than a full-blown arbitration proceeding. This provision incentivises parties to consider mediation by allowing them to credit a portion of the administrative expenses from the mediation process towards the arbitration.
3. **Allocation of Expenses:** The provision establishes a clear and equitable way to allocate administrative expenses when transitioning from mediation to arbitration. It ensures that the costs incurred during the mediation process are not entirely lost if the parties move to arbitration.
4. **Financial Incentive:** By allowing a credit for administrative expenses from mediation to be applied to the arbitration process, parties may be more willing to engage in mediation, knowing that some of the expenses incurred can be applied to the subsequent arbitration if needed.
5. **Encouraging Mediation:** The provision promotes the use of mediation as a valuable alternative dispute resolution method within the ICC framework. Parties may be more inclined to explore mediation first if they know that the expenses invested can be partially recouped for arbitration if mediation does not lead to a full resolution.
6. **Efficiency and Cohesion:** Connecting the administrative expenses of mediation to those of arbitration creates a sense of continuity and cohesion between the two processes. This can facilitate a smoother transition for parties who opt for arbitration after unsuccessful mediation attempts.
7. **Flexibility:** This provision acknowledges the flexible nature of the dispute resolution process. It acknowledges that parties may want to transition from mediation to arbitration if mediation does not yield a satisfactory resolution.
8. **Transparency:** By specifying that half of the ICC administrative expenses from the mediation process will be credited to the administrative expenses of the arbitration, this provision adds transparency and predictability to the cost structure.

In summary, Article 2(12) of Appendix III to the ICC Arbitration Rules 2021 provides a mechanism for allocating administrative expenses when parties move from mediation to arbitration. By crediting a portion of the administrative expenses from the mediation process towards the arbitration, this provision promotes cost efficiency, encourages mediation, and ensures that financial investments in the mediation process are not wasted if the dispute ultimately progresses to arbitration.

**13 Amounts paid to the arbitrator do not include any possible value added tax (VAT) or other taxes or charges and imposts applicable to the arbitrator’s fees. Parties have a duty to pay any such taxes or charges; however, the recovery of any such charges or taxes is a matter solely between the arbitrator and the parties.**

Article 2(13) of Appendix III to the ICC Arbitration Rules 2021 addresses the issue of taxes and charges on arbitrator’s fees. Here is an analysis of this provision:

1. **Clarification of Responsibility:** This provision clarifies the responsibility for handling taxes and charges associated with arbitrator’s fees. It explicitly states that the amounts paid to the arbitrator do not include any applicable value added tax (VAT) or other taxes and charges.
2. **Tax Liability:** By stating that parties have a duty to pay any applicable taxes or charges on arbitrator’s fees, the provision highlights the legal obligation of the parties to fulfil their tax liabilities related to the fees paid to the arbitrator.
3. **Arbitrator-Party Relationship:** The provision underscores that the recovery of any taxes or charges is solely a matter between the arbitrator and the parties. This emphasises the direct relationship between the parties and the arbitrator when it comes to handling tax-related matters.
4. **Financial Clarity:** By distinguishing between the amounts paid to the arbitrator and the potential taxes or charges that may be levied separately, this provision contributes to financial transparency. Parties are made aware that the fees they pay to the arbitrator do not include potential taxes.
5. **Legal Compliance:** Addressing tax obligations is crucial for parties to ensure legal compliance and to avoid potential disputes related to unpaid taxes. This provision guides parties in fulfilling their tax responsibilities.
6. **Arbitrator’s Independence:** The provision recognises that arbitrators, as independent third-party neutrals, are not directly involved in tax matters between the parties and the tax authorities. This separation helps maintain the arbitrator’s independence and impartiality.
7. **Global Applicability:** This provision is relevant in international arbitration, as tax regulations and obligations can vary significantly across jurisdictions. It ensures that the parties are responsible for adhering to the specific tax rules applicable in their respective jurisdictions.
8. **Risk Allocation:** By placing the duty to pay taxes or charges on the parties, the provision allocates the risk associated with tax obligations to the parties involved in the dispute. This helps prevent any potential confusion or disputes arising from tax-related issues.

In summary, Article 2(13) of Appendix III to the ICC Arbitration Rules 2021 clarifies the responsibility of parties to pay any applicable taxes or charges on arbitrator’s fees. It emphasises the direct relationship between the parties and the arbitrator regarding tax-related matters, ensures financial transparency, and supports legal compliance in handling tax obligations associated with arbitration proceedings.

**14 ICC administrative expenses do not include VAT, taxes, imposts or any other charges of a similar nature. They may be increased by the amount of VAT, taxes, imposts or any charges of**

**a similar nature at the prevailing rate. Parties have a duty to pay any such charges pursuant to invoices issued by ICC.**

Article 2(14) of Appendix III to the ICC Arbitration Rules 2021 pertains to ICC administrative expenses and their treatment in relation to value added tax (VAT), taxes, imposts, or similar charges. Here is an analysis of this provision:

1. **Expenses Exclusion:** The provision explicitly states that ICC administrative expenses do not inherently include VAT, taxes, imposts, or similar charges. This clarifies that the administrative expenses themselves do not account for these additional charges.
2. **Possible Additional Charges:** The provision allows for the possibility of increasing ICC administrative expenses by the amount of VAT, taxes, imposts, or similar charges at the prevailing rate. This anticipates that these charges might be added to the administrative expenses and highlights the potential for financial adjustments.
3. **Financial Responsibility:** By stating that parties have a duty to pay any such charges, the provision makes it clear that the responsibility for handling these charges rests with the parties involved in the arbitration proceedings.
4. **Invoice Requirement:** The provision establishes that these charges are to be paid pursuant to invoices issued by ICC. This ensures proper documentation and transparency in the invoicing and payment process for these additional charges.
5. **Legal Compliance:** Addressing VAT, taxes, imposts, and similar charges is essential for parties to meet their legal obligations in their respective jurisdictions. This provision emphasises the requirement for parties to fulfil their financial responsibilities related to these charges.
6. **Financial Transparency:** The provision contributes to financial transparency by clarifying that ICC administrative expenses themselves do not include these additional charges. This helps parties understand the components of their financial obligations.
7. **Risk Allocation:** Allocating the duty to pay these charges to the parties aligns with the principle of risk allocation. Parties are responsible for complying with tax regulations and other financial obligations related to the arbitration proceedings.
8. **Applicability Across Jurisdictions:** The provision acknowledges the potential variability in VAT, taxes, and similar charges across jurisdictions. By allowing for these charges to be added based on the prevailing rate, the provision accommodates different tax regimes.

In summary, Article 2(14) of Appendix III to the ICC Arbitration Rules 2021 clarifies the treatment of VAT, taxes, imposts, and similar charges in relation to ICC administrative expenses. It underscores the parties' financial responsibility to pay these charges, provides clarity on invoicing procedures, and ensures legal compliance and financial transparency in arbitration proceedings.

## ARTICLE 3 Scales of Administrative Expenses and Arbitrator's

### Fees

- 1 The scales of administrative expenses and arbitrator's fees set forth below shall be effective as of 1 January 2017 in respect of all arbitrations commenced on or after such date, irrespective of the version of the Rules applying to such arbitrations.**

Article 3(1) of Appendix III to the ICC Arbitration Rules 2021 deals with the effective date and application of the scales of administrative expenses and arbitrator's fees. Here is an analysis of this provision:

1. **Effective Date:** The provision specifies that the scales of administrative expenses and arbitrator's fees provided in the Appendix are effective as of 1 January 2017. This indicates the date from which these scales are applicable in arbitration proceedings.
2. **Commencement of Arbitrations:** The provision further stipulates that these scales are applicable to arbitrations commenced on or after 1 January 2017. This clarifies that the scales are intended for use in newly initiated arbitration cases.
3. **Irrespective of Rules Version:** The provision emphasises that the application of these scales is not dependent on the version of the ICC Arbitration Rules that govern the arbitration. This means that the scales apply regardless of whether the older version of the rules was in place at the time the arbitration was initiated.
4. **Consistency and Predictability:** By establishing a fixed effective date and applying the scales to arbitrations initiated on or after that date, this provision ensures consistency and predictability in determining administrative expenses and arbitrator's fees.
5. **Transition Period:** The specific effective date sets a clear point of transition from which parties and practitioners can consistently calculate these expenses and fees for newly initiated arbitrations.
6. **Non-Retroactive Application:** The provision avoids retroactively applying the new scales to arbitrations that were initiated before the specified effective date. This ensures that parties are subject to the scales in place at the time they initiated their arbitration.
7. **Clarity in Implementation:** The provision helps avoid confusion and disputes about which version of the scales should apply to a particular arbitration, as it anchors the application to a specific date.
8. **Updates and Revisions:** While the scales were initially set as of 1 January 2017, it is important to note that revisions or updates to these scales may occur in subsequent versions of the rules or through the amendment process.

In summary, Article 3(1) of Appendix III to the ICC Arbitration Rules 2021 establishes the effective date and scope of application for the scales of administrative expenses and arbitrator's fees. It ensures uniformity, consistency, and clarity in determining financial obligations for arbitrations commenced on or after 1 January 2017, regardless of the version of the rules governing those arbitrations.

- 2 To calculate the ICC administrative expenses and the arbitrator’s fees, the amounts calculated for each successive tranche of the amount in dispute must be added together, except that where the amount in dispute is over US\$ 500 million, a flat amount of US\$ 150,000 shall constitute the entirety of the ICC administrative expenses.**

Article 3(2) of Appendix III to the ICC Arbitration Rules 2021 addresses the calculation of ICC administrative expenses and arbitrator’s fees based on different tranches of the amount in dispute. Let us analyse this provision:

1. **Calculation of Fees and Expenses:** The provision states that both ICC administrative expenses and arbitrator’s fees are calculated based on the amount in dispute. This reflects the principle that the costs and fees associated with an arbitration are linked to the complexity and magnitude of the dispute.
2. **Progressive Calculation:** The provision introduces the concept of “successive tranches” of the amount in dispute. This means that as the amount in dispute increases, different tiers or tranches are used to calculate the expenses and fees, reflecting the incremental nature of these costs.
3. **Adding Tranches:** The provision requires adding together the amounts calculated for each successive tranche. This ensures a cumulative approach to calculating expenses and fees as the amount in dispute moves from one tranche to the next.
4. **Exception for High-Value Cases:** The provision introduces an exception for cases where the amount in dispute is over US\$ 500 million. In such cases, a flat amount of US\$ 150,000 is stipulated as the entirety of the ICC administrative expenses. This implies that for cases with very high value disputes, the administrative expenses remain fixed at this flat rate regardless of the actual amount in dispute.
5. **Predictability and Transparency:** The progressive calculation methodology and the exception for high-value cases contribute to predictability and transparency in cost calculations for parties entering into arbitration proceedings.
6. **Incentive for Early Resolution:** The tiered approach to calculating expenses and fees based on the amount in dispute may incentivise parties to resolve their disputes earlier, as moving to a higher tranche could significantly increase costs.
7. **Consideration of Economic Impact:** The flat amount for high-value cases reflects a balance between accurately reflecting costs and not imposing excessive financial burdens on parties involved in particularly large disputes.
8. **Financial Predictability:** Parties involved in an arbitration can anticipate their financial obligations based on the specific tiers mentioned in the scales, including the flat amount for high-value cases.

In summary, Article 3(2) of Appendix III to the ICC Arbitration Rules 2021 outlines a method for calculating ICC administrative expenses and arbitrator’s fees based on different tranches of the amount in dispute. It introduces a progressive calculation approach while also providing an exception for high-value cases, which contributes to predictability, transparency, and fairness in determining the costs associated with ICC arbitration proceedings.

- 3 The scales of administrative expenses and arbitrator’s fees for the expedited procedure set forth below shall be effective as of 1 March 2017 in respect of all arbitrations commenced on or after such date, irrespective of the version of the Rules applying to such arbitrations. When parties have agreed to the expedited procedure pursuant to Article 30(2), subparagraph b), the scales for the expedited procedure will apply.**

Article 3(3) of Appendix III to the ICC Arbitration Rules 2021 addresses the scales of administrative expenses and arbitrator’s fees specifically for cases conducted under the expedited procedure. Let us analyse this provision:

1. **Effective Date:** The provision states that the scales of administrative expenses and arbitrator’s fees for the expedited procedure come into effect on 1 March 2017. This ensures consistency and clarity regarding the calculation of costs for expedited proceedings.
2. **Applicability:** The provision specifies that the scales apply to all arbitrations commenced on or after the effective date, irrespective of the version of the Rules that applies to those arbitrations. This is important to avoid confusion and to ensure that parties have access to the current and applicable cost structures.
3. **Expedited Procedure:** The provision notes that when parties have agreed to the expedited procedure pursuant to Article 30(2), subparagraph b) of the ICC Arbitration Rules, the scales provided for the expedited procedure will be applied. This underscores the connection between the agreed procedure and the corresponding cost framework.
4. **Separate Scales:** The provision highlights the existence of separate scales of administrative expenses and arbitrator’s fees specifically designed for cases conducted under the expedited procedure. This acknowledges that expedited proceedings often involve simplified procedures that should be reflected in the associated costs.
5. **Enhancing Efficiency:** The provision aligns with the overarching goal of the expedited procedure, which is to enhance the efficiency and speed of arbitration. The separate scales for the expedited procedure cater to the streamlined nature of these proceedings.
6. **Clarity and Predictability:** The provision offers parties clear guidelines on how the costs will be calculated for expedited proceedings, which helps parties anticipate and manage their financial obligations.
7. **Consistency:** By specifying a common effective date for the expedited procedure scales, the provision ensures uniformity in cost calculations for similar types of cases.

In summary, Article 3(3) of Appendix III to the ICC Arbitration Rules 2021 establishes the effective date and applicability of the scales of administrative expenses and arbitrator’s fees for cases conducted under the expedited procedure. It emphasises the connection between the expedited procedure and the corresponding cost structure while aiming to enhance efficiency, predictability, and consistency in expedited arbitration proceedings.



**4 All amounts fixed by the Court or pursuant to any of the appendices to the Rules are payable in US\$ except where prohibited by law or decided otherwise by the Court, in which case ICC may apply a different scale and fee arrangement in another currency.**

Article 3(4) of Appendix III to the ICC Arbitration Rules 2021 addresses the currency of payment for the amounts fixed by the Court or pursuant to any of the appendices to the Rules. Let us analyse this provision:

1. **Currency of Payment:** The provision specifies that all amounts fixed by the Court or determined according to the appendices to the Rules are payable in US dollars (US\$). This default currency choice ensures uniformity and simplification in financial transactions related to the arbitration proceedings.
2. **Exceptions for Prohibition or Court Decision:** The provision acknowledges that there might be cases where local laws or regulations prohibit the use of a foreign currency like the US dollar for payment. Additionally, it allows the Court to make a decision to use a different currency in specific cases. This flexibility accommodates potential legal restrictions or exceptional circumstances that could affect the use of US dollars.
3. **Alternative Currency Arrangements:** In situations where the use of US dollars is prohibited by law or where the Court decides otherwise, the provision states that the International Chamber of Commerce (ICC) may apply a different scale and fee arrangement in another currency. This underscores the ICC's adaptability to different legal and practical considerations while ensuring that the financial aspects of the arbitration proceedings remain viable.
4. **Currency Diversification:** Allowing for an alternative currency arrangement aligns with the international nature of arbitration, where parties from different jurisdictions might prefer or be required to use their local currency. This flexibility can help mitigate exchange rate risks and ease financial transactions.
5. **Court's Discretion:** The provision emphasises the role of the Court in making decisions related to currency arrangements. This ensures that any deviation from the default currency choice is considered and decided upon with careful consideration of the specific circumstances.
6. **Transparency and Consistency:** While the provision allows for deviations from the default currency, it maintains transparency and consistency by specifying that any alternative currency arrangements will be determined by the Court and will follow a different scale and fee arrangement.

In summary, Article 3(4) of Appendix III to the ICC Arbitration Rules 2021 addresses the currency in which amounts fixed by the Court or according to the appendices to the Rules should be paid. It highlights the default use of US dollars, while allowing for flexibility in cases of legal restrictions or exceptional circumstances where the Court can determine an alternative currency and fee arrangement. This provision aims to balance practical considerations with the need for consistency and transparency in financial matters related to arbitration proceedings.

**APPENDIX IV — CASE MANAGEMENT TECHNIQUES**

The following are examples of case management techniques that can be used by the arbitral tribunal and the parties for controlling time and cost. Appropriate control of time and cost is important in all cases. In cases of low complexity and low value, it is particularly important to ensure that time and costs are proportionate to what is at stake in the dispute.

- a) **Bifurcating the proceedings or rendering one or more partial awards on key issues, when doing so may genuinely be expected to result in a more efficient resolution of the case.**
- b) **Identifying issues that can be resolved by agreement between the parties or their experts.**
- c) **Identifying issues to be decided solely on the basis of documents rather than through oral evidence or legal argument at a hearing.**
- d) **Production of documentary evidence:**
  - (i) **requiring the parties to produce with their submissions the documents on which they rely;**
  - (ii) **avoiding requests for document production when appropriate in order to control time and cost;**
  - (iii) **in those cases where requests for document production are considered appropriate, limiting such requests to documents or categories of documents that are relevant and material to the outcome of the case;**
  - (iv) **establishing reasonable time limits for the production of documents;**
  - (v) **using a schedule of document production to facilitate the resolution of issues in relation to the production of documents.**
- e) **Limiting the length and scope of written submissions and written and oral witness evidence (both fact witnesses and experts) so as to avoid repetition and maintain a focus on key issues.**
- f) **Using telephone or video conferencing for procedural and other hearings where attendance in person is not essential and use of IT that enables online communication among the parties, the arbitral tribunal and the Secretariat of the Court.**
- g) **Organizing a pre-hearing conference with the arbitral tribunal at which arrangements for a hearing can be discussed and agreed and the arbitral tribunal can indicate to the parties issues on which it would like the parties to focus at the hearing.**
- h) **Settlement of disputes:**
  - (i) **encouraging the parties to consider settlement of all or part of the dispute either by negotiation or through any form of amicable dispute resolution methods such as, for example, mediation under the ICC Mediation Rules;**

- (ii) where agreed between the parties and the arbitral tribunal, the arbitral tribunal may take steps to facilitate settlement of the dispute, provided that every effort is made to ensure that any subsequent award is enforceable at law.

**Additional techniques are described in the ICC publication entitled “Controlling Time and Costs in Arbitration”.**

Appendix IV of the ICC Arbitration Rules 2021 provides a list of case management techniques aimed at controlling time and cost in arbitration proceedings. These techniques are crucial to ensure that the arbitration process remains efficient and proportionate to the dispute's complexity and value. Let us analyse each of these techniques:

1. Bifurcating the proceedings or rendering partial awards: This technique involves splitting the arbitration process into distinct phases or rendering partial awards on key issues. It is useful when resolving some issues upfront may lead to a more efficient resolution of the case. For example, if there is a fundamental legal issue, it can be decided before proceeding to other aspects of the dispute.
2. Identifying issues for agreement: Parties and their experts can identify and agree upon certain issues in the dispute that do not require extensive arbitration proceedings. Resolving these issues through agreement can save time and costs.
3. Deciding issues based on documents: Certain issues may not necessitate oral evidence or legal argument at a hearing. Instead, they can be decided solely based on documentary evidence. This can streamline the process and reduce the need for lengthy hearings.
4. Production of documentary evidence: This includes various measures to manage document production efficiently, such as requiring parties to submit relevant documents with their submissions, limiting requests for document production, and establishing reasonable time limits. A schedule of document production can help organize this process.
5. Limiting written submissions and witness evidence: To prevent repetition and maintain focus on key issues, arbitration tribunals can limit the length and scope of written submissions and both fact and expert witness evidence. This helps control costs and ensures that the evidence presented is essential to the case.
6. Using technology for hearings: Utilizing telephone or video conferencing and online communication tools can save time and costs when in-person attendance is unnecessary. This is especially relevant in modern arbitration where international parties may not always be physically present.
7. Pre-hearing conference: Organizing a pre-hearing conference allows the arbitral tribunal and parties to discuss arrangements for the main hearing, including the issues to be addressed. It helps streamline the proceedings and ensures that the hearing is efficient.
8. Settlement of disputes: Encouraging parties to consider settlement options, such as negotiation or mediation under the ICC Mediation Rules, can be an effective way to resolve all or part of the dispute without going through a full arbitration process. The arbitral tribunal may assist in facilitating settlement if both parties agree.

These techniques aim to strike a balance between ensuring a fair and thorough arbitration process while also controlling time and costs. They are essential tools for managing disputes effectively under the ICC Arbitration Rules and align with the broader goal of achieving a just and efficient resolution of disputes. Parties and tribunals should carefully consider these techniques to tailor the arbitration process to the specific circumstances of each case. Additional techniques can also be explored in the ICC publication "Controlling Time and Costs in Arbitration" for further guidance.

## APPENDIX V — EMERGENCY ARBITRATOR RULES.

## ARTICLE 1 Application for Emergency Measures

- 1 A party wishing to have recourse to an emergency arbitrator pursuant to Article 29 of the Rules of Arbitration of ICC (the “Rules”) shall submit its Application for Emergency Measures (the “Application”) to the Secretariat at any of the offices specified in the Internal Rules of the Court in Appendix II to the Rules.**

Article 1(1) of Appendix V to the ICC Arbitration Rules 2021 outlines the procedure for a party to request the appointment of an emergency arbitrator under Article 29 of the Rules. Let us analyse this provision:

1. **Scope of Provision:** The provision addresses the process for a party to seek emergency measures through the appointment of an emergency arbitrator under Article 29 of the ICC Arbitration Rules.
2. **Emergency Arbitrator Procedure:** The provision establishes that a party seeking recourse to an emergency arbitrator should submit an “Application for Emergency Measures” (referred to as the “Application”). This application is the formal request by the party to initiate the emergency arbitrator procedure.
3. **Recipient of Application:** The provision states that the Application should be submitted to the Secretariat of the ICC at any of the offices specified in the Internal Rules of the Court. This underscores the flexibility provided to parties to submit their Application to different ICC offices as specified in the Internal Rules.
4. **Reference to Internal Rules:** The provision refers to the Internal Rules of the Court contained in Appendix II to the ICC Arbitration Rules. These Internal Rules contain specific details and guidance on various administrative and procedural matters related to the conduct of ICC arbitration proceedings, including the role of the Secretariat and the procedures for different stages of arbitration.
5. **Consistency and Flexibility:** By referencing the Internal Rules, the provision ensures consistency in the procedures while allowing for flexibility in choosing the specific office within the ICC where the Application should be submitted. This flexibility is important given the international nature of ICC arbitration and the various regional offices that parties can choose from.
6. **Formalising the Request:** The provision emphasises that the submission of the Application is a formal step to initiate the emergency arbitrator procedure. This demonstrates the seriousness of the process and the commitment of the party to seeking urgent relief.
7. **Party Autonomy:** The provision respects party autonomy by allowing the party to choose the specific ICC office to which they wish to submit their Application. This aligns with the overarching principle of ICC arbitration, where parties have a degree of control over procedural matters.

In summary, Article 1(1) of Appendix V to the ICC Arbitration Rules 2021 outlines the process for a party to request emergency measures by submitting an Application for Emergency Measures to the Secretariat at any of the ICC offices specified in the Internal Rules of the Court. This provision

underscores the formal nature of the emergency arbitrator procedure, the importance of the Application as the initiating step, and the flexibility in selecting the ICC office to which the Application is submitted.

**2 The Application shall be supplied in a number of copies sufficient to provide one copy for each party, plus one for the emergency arbitrator, and one for the Secretariat where the party submitting the Application requests transmission thereof by delivery against receipt, registered post or courier.**

Article 1(2) of Appendix V to the ICC Arbitration Rules 2021 details the requirements for submitting the Application for Emergency Measures to the ICC Secretariat. Let us analyse this provision:

1. **Number of Copies:** The provision specifies that the Application should be supplied in a number of copies that are sufficient to provide one copy for each party involved in the arbitration. Additionally, it should include one copy each for the emergency arbitrator and the ICC Secretariat.
2. **Distribution of Copies:** This requirement ensures that all parties, the emergency arbitrator, and the ICC Secretariat receive a copy of the Application. This distribution is essential for transparency, fairness, and to facilitate efficient handling of the emergency arbitrator proceedings.
3. **Modes of Transmission:** The provision outlines that the party submitting the Application can request transmission of the copies through specific methods: delivery against receipt, registered post, or courier. This allows the submitting party to choose a secure and reliable mode of transmitting the Application to the relevant recipients.
4. **Documentation of Submission:** The provision underscores the importance of having a clear record of the submission of the Application by allowing for various methods of transmission. It ensures that the submitting party can provide evidence of the timely submission of the Application as required by the Rules.
5. **Efficiency and Clarity:** By specifying the number of copies required and the methods of transmission, this provision enhances the efficiency and clarity of the process. It eliminates potential confusion and helps parties and the Secretariat manage the emergency arbitrator procedure more effectively.
6. **Respect for Party Autonomy:** The provision does not impose a specific mode of transmission; rather, it offers options for the submitting party to choose the most suitable method. This respect for party autonomy is consistent with the principles of ICC arbitration.

In summary, Article 1(2) of Appendix V to the ICC Arbitration Rules 2021 outlines the requirements for submitting the Application for Emergency Measures. It mandates the submission of a sufficient number of copies to ensure distribution to all relevant parties, the emergency arbitrator, and the ICC Secretariat. The provision also grants flexibility to the submitting party to choose the mode of transmission, which helps ensure clear communication and documentation of the process.

**3 The Application shall contain the following information:**

- a) the name in full, description, address and other contact details of each of the parties;
- b) the name in full, address and other contact details of any person(s) representing the applicant;
- c) a description of the circumstances giving rise to the Application and of the underlying dispute referred or to be referred to arbitration;
- d) a statement of the Emergency Measures sought;
- e) the reasons why the applicant needs urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal;
- f) any relevant agreements and, in particular, the arbitration agreement;
- g) any agreement as to the place of the arbitration, the applicable rules of law or the language of the arbitration;
- h) proof of payment of the amount referred to in Article 7(1) of this Appendix; and
- i) any Request for Arbitration and any other submissions in connection with the underlying dispute, which have been filed with the Secretariat by any of the parties to the emergency arbitrator proceedings prior to the making of the Application.

**The Application may contain such other documents or information as the applicant considers appropriate or as may contribute to the efficient examination of the Application.**

Article 1(3) of Appendix V to the ICC Arbitration Rules 2021 outlines the information that must be included in the Application for Emergency Measures to an emergency arbitrator. Let us analyse the components of this provision:

1. **Party Information:** The Application should include comprehensive details about each party involved in the arbitration. This includes the full name, description, address, and other contact information of each party. This information is essential for identification and communication purposes.
2. **Representatives:** The names, addresses, and contact details of any individuals representing the applicant should be provided. This helps establish the authorised representatives of the party submitting the Application.
3. **Description of Circumstances:** The Application should outline the circumstances that have given rise to the need for emergency measures. This involves describing the background and context of the dispute, including relevant events or actions leading to the Application.
4. **Emergency Measures Sought:** The Application must specify the emergency measures being sought by the applicant. This clarity ensures that the emergency arbitrator comprehends the requested relief precisely.

5. **Urgent Need for Measures:** The reasons for seeking urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal should be explained. This justification is crucial in demonstrating the urgency and necessity of the requested measures.
6. **Arbitration Agreement:** Any pertinent agreements should be disclosed, particularly the arbitration agreement itself, which establishes the parties' consent to arbitration under ICC rules.
7. **Arbitration Details:** Details about the arbitration process, such as the agreed place of arbitration, applicable rules of law, or the arbitration language, should be provided. These details contribute to the context in which the emergency measures are sought.
8. **Proof of Payment:** The Application should include proof of payment of the required amount as referenced in Article 7(1) of Appendix V. This payment ensures that the applicant's request is formally considered.
9. **Relevant Submissions:** Any relevant documents submitted in connection with the underlying dispute should be included. This can involve the Request for Arbitration and other submissions previously filed with the Secretariat.
10. **Additional Documents:** The Application may include any other documents or information that the applicant deems appropriate or that could contribute to the efficient examination of the Application. This provision allows the applicant to present additional context or evidence to support their request.

In summary, Article 1(3) of Appendix V to the ICC Arbitration Rules 2021 outlines the comprehensive information required in the Application for Emergency Measures. By detailing the specific elements that must be included, this provision ensures transparency, facilitates the emergency arbitrator's understanding of the case, and contributes to a fair and efficient process.

#### **4 The Application shall be drawn up in the language of the arbitration if agreed upon by the parties or, in the absence of any such agreement, in the language of the arbitration agreement.**

Article 1(4) of Appendix V to the ICC Arbitration Rules 2021 specifies the language in which the Application for Emergency Measures should be drafted. Let us analyse this provision:

1. The provision states that the Application must be drawn up in a particular language. The language of the Application depends on the following scenarios:
  - a. **Agreement on Language:** If the parties have previously agreed upon a specific language for the arbitration, then the Application should be drafted in that agreed-upon language. This recognises the parties' intent and ensures that the Application is presented in a language familiar to all parties.
  - b. **No Agreement on Language:** In cases where there is no prior agreement on the language of the arbitration, the Application should be drafted in the language of the arbitration agreement itself. The arbitration agreement is the foundational



document that establishes the parties' consent to arbitration and sets the framework for the arbitration process.

2. The purpose of this provision is to ensure clarity and consistency in the communication of the Application to all parties involved. Using a common language facilitates understanding and avoids potential misunderstandings or disputes related to language barriers. It also respects the principle of party autonomy, allowing parties to specify the language for their arbitration proceedings or relying on the language chosen in the arbitration agreement.

In summary, Article 1(4) of Appendix V serves to establish the language in which the Application for Emergency Measures should be written, either based on the parties' prior agreement or, in the absence of such agreement, the language of the arbitration agreement. This ensures effective communication and enhances the overall efficiency and fairness of the emergency arbitrator proceedings.

- 5 **If and to the extent that the President of the Court (the "President") considers, on the basis of the information contained in the Application, that the Emergency Arbitrator Provisions apply with reference to Article 29(5) and Article 29(6) of the Rules, the Secretariat shall transmit a copy of the Application and the documents annexed thereto to the responding party. If and to the extent that the President considers otherwise, the Secretariat shall inform the parties that the emergency arbitrator proceedings shall not take place with respect to some or all of the parties and shall transmit a copy of the Application to them for information.**

Article 1(5) of Appendix V to the ICC Arbitration Rules 2021 outlines the role of the President of the Court in determining whether the Emergency Arbitrator Provisions apply and the subsequent actions to be taken by the Secretariat. Let us analyse this provision:

1. The provision focuses on the President's role in assessing whether the Application for Emergency Measures meets the criteria outlined in Article 29(5) and Article 29(6) of the ICC Arbitration Rules. These criteria pertain to the nature of the requested emergency measures and their urgency. Here is a breakdown of the steps described in Article 1(5):
2. **Assessment by the President:** The President of the Court reviews the information presented in the Application to determine whether the conditions specified in Article 29(5) and Article 29(6) of the Rules are satisfied. These conditions generally relate to the need for urgent interim or conservatory measures that cannot await the constitution of the arbitral tribunal.
3. **Transmitting the Application:** If the President concludes that the Emergency Arbitrator Provisions apply, the Secretariat is directed to provide a copy of the Application along with its annexed documents to the party against whom the measures are sought. This step ensures that the responding party is made aware of the Application and has the opportunity to respond to the requested measures.
4. **Notifying Non-Applicability:** If the President determines that the Emergency Arbitrator Provisions do not apply to the situation described in the Application, the Secretariat informs the parties accordingly. Additionally, if the President decides that the emergency

arbitrator proceedings should not take place for some or all of the parties, the Secretariat transmits a copy of the Application to those parties for informational purposes.

5. The purpose of this provision is to establish a clear and structured process for determining the applicability of the Emergency Arbitrator Provisions and ensuring proper communication between the parties and the Secretariat. It reflects the ICC's commitment to addressing urgent matters promptly and fairly through the emergency arbitrator mechanism.

In summary, Article 1(5) of Appendix V outlines the President's role in assessing whether the Emergency Arbitrator Provisions apply based on the Application's content. It also describes the actions to be taken by the Secretariat depending on the President's determination, ensuring transparency and proper communication between the parties and the ICC Secretariat.

**6 The President shall terminate the emergency arbitrator proceedings if a Request for Arbitration has not been received by the Secretariat from the applicant within 10 days from the Secretariat's receipt of the Application, unless the emergency arbitrator determines that a longer period of time is necessary.**

Article 1(6) of Appendix V to the ICC Arbitration Rules 2021 outlines the conditions under which the President of the Court can terminate emergency arbitrator proceedings in case a Request for Arbitration is not received within a specified timeframe. Let us analyse this provision:

1. This provision introduces a mechanism to ensure that emergency arbitrator proceedings are not prolonged indefinitely in situations where the party seeking emergency measures does not follow up with a formal Request for Arbitration. Here is a breakdown of the key aspects of Article 1(6):
2. **Timely Submission of Request for Arbitration:** The provision establishes a time limit of 10 days from the Secretariat's receipt of the Application for the applicant to submit a Request for Arbitration. This Request for Arbitration is the formal step to initiate the main arbitration proceedings.
3. **Termination of Emergency Arbitrator Proceedings:** If the applicant does not submit a Request for Arbitration within the prescribed 10-day period, the President has the authority to terminate the emergency arbitrator proceedings. This termination is automatic, indicating the efficiency and procedural control that the ICC seeks to maintain in these situations.
4. **Exceptional Extension:** However, the provision also allows for flexibility. It permits the emergency arbitrator to determine that a longer period of time is necessary for the submission of the Request for Arbitration. This recognises that there may be valid reasons for an extension, such as complexities in the case or external factors affecting the applicant's ability to submit the formal request within the original timeframe.
5. The purpose of Article 1(6) is to strike a balance between ensuring the efficient resolution of urgent matters through emergency arbitrator proceedings and recognising that there might be situations where an extension is warranted. The provision empowers the

President to manage the proceedings effectively and prevent undue delays, while still accommodating exceptional circumstances.

In summary, Article 1(6) of Appendix V establishes a time limit for the submission of a Request for Arbitration following the Application for Emergency Measures. It provides for the automatic termination of emergency arbitrator proceedings if the request is not received within 10 days, unless the emergency arbitrator determines that a longer period is necessary due to exceptional circumstances. This provision aims to streamline the process while allowing for flexibility when needed.

## **ARTICLE 2 Appointment of the Emergency Arbitrator;**

### **Transmission of the File**

#### **1 The President shall appoint an emergency arbitrator within as short a time as possible, normally within two days from the Secretariat's receipt of the Application.**

Article 2(1) of Appendix V to the ICC Arbitration Rules 2021 outlines the procedure for appointing an emergency arbitrator and sets a time frame for this appointment. Let us break down the key elements of this provision:

1. **Appointment of Emergency Arbitrator:** This provision empowers the President of the Court to appoint an emergency arbitrator. An emergency arbitrator is an arbitrator who has the authority to decide on urgent interim or conservatory measures requested by a party before the arbitral tribunal is constituted.
2. **Time Frame for Appointment:** The provision establishes a specific time frame for the appointment of the emergency arbitrator. It states that the President shall appoint the emergency arbitrator "within as short a time as possible, normally within two days" from the Secretariat's receipt of the Application for Emergency Measures.
3. **Efficiency and Urgency:** The requirement to appoint the emergency arbitrator as quickly as possible underscores the urgency and efficiency of the emergency arbitrator proceedings. The provision acknowledges the need to promptly address situations where parties seek immediate relief, emphasising the ICC's commitment to offering a timely resolution mechanism.
4. **Flexibility in Time Frame:** The phrase "normally within two days" acknowledges that the time frame may vary based on the specific circumstances of each case. While two days is the general benchmark, the ICC recognises that certain factors might require a slight deviation from this timeline.

Overall, Article 2(1) of Appendix V reflects the ICC's commitment to providing a responsive and effective mechanism for emergency relief. By requiring the President to appoint an emergency arbitrator within a short timeframe, the provision ensures that parties can promptly address urgent matters and obtain the necessary interim measures while awaiting the constitution of the main arbitral tribunal.

- 2 No emergency arbitrator shall be appointed after the file has been transmitted to the arbitral tribunal pursuant to Article 16 of the Rules. An emergency arbitrator appointed prior thereto shall retain the power to make an order within the time limit permitted by Article 6(4) of this Appendix.**

Article 2(2) of Appendix V to the ICC Arbitration Rules 2021 addresses the timing of the appointment of an emergency arbitrator and their authority to issue orders. Here is a breakdown of its key points:

1. **Timing of Appointment:** The provision states that no emergency arbitrator shall be appointed after the file has been transmitted to the arbitral tribunal pursuant to Article 16 of the ICC Arbitration Rules. Article 16 pertains to the formation of the arbitral tribunal, which is the main panel of arbitrators that will decide the dispute. This means that the appointment of an emergency arbitrator can only take place before the formal constitution of the arbitral tribunal.
2. **Continued Authority:** If an emergency arbitrator is appointed before the file has been transmitted to the arbitral tribunal, that emergency arbitrator retains the authority to make orders even after the arbitral tribunal has been constituted. This authority is subject to the time limit specified in Article 6(4) of Appendix V.
3. **Time Limit for Orders:** The reference to “Article 6(4) of this Appendix” indicates that the emergency arbitrator’s power to make orders continues until the time limit specified in that provision. Article 6(4) of Appendix V sets a time limit for the emergency arbitrator to issue an order after their appointment.

In summary, Article 2(2) of Appendix V establishes the cut-off point for the appointment of an emergency arbitrator, specifying that it cannot happen after the file has been transmitted to the main arbitral tribunal. However, an emergency arbitrator appointed prior to the file transmission retains the authority to issue orders for a defined period, as outlined in Article 6(4) of the same Appendix. This provision clarifies the scope and timeline of the emergency arbitrator’s authority within the arbitration process.

- 3 Once the emergency arbitrator has been appointed, the Secretariat shall so notify the parties and shall transmit the file to the emergency arbitrator. Thereafter, all written communications from the parties shall be submitted directly to the emergency arbitrator with a copy to each other party and the Secretariat. A copy of any written communications from the emergency arbitrator to the parties shall be submitted to the Secretariat.**

Article 2(3) of Appendix V to the ICC Arbitration Rules 2021 addresses the procedural aspects once an emergency arbitrator has been appointed. Here is an analysis of its key points:

1. **Notification and Transmission:** After the appointment of the emergency arbitrator, the Secretariat is responsible for notifying the parties of the appointment and subsequently transmitting the relevant case file to the emergency arbitrator. This marks the transition of the case from the preliminary stages to the emergency arbitrator’s jurisdiction.
2. **Direct Communication with the Emergency Arbitrator:** Following the appointment, the provision requires that all written communications from the parties are to be submitted directly to the emergency arbitrator. This means that parties should communicate directly

with the emergency arbitrator regarding matters related to the emergency measures being sought. Each party is also required to send a copy of their communication to both the other party and the Secretariat.

3. Copy to Secretariat: In addition to communicating directly with the parties, the emergency arbitrator must also provide a copy of any written communications sent to the parties to the Secretariat. This provision ensures transparency and allows the Secretariat to stay informed about the progress of the emergency arbitrator proceedings.

In summary, Article 2(3) of Appendix V outlines the procedural steps that follow the appointment of an emergency arbitrator. It emphasises the direct communication between the parties and the emergency arbitrator, with the Secretariat receiving copies of relevant communications for the purpose of transparency and record-keeping. This article ensures clear communication channels and accountability throughout the emergency arbitration process.

#### **4 Every emergency arbitrator shall be and remain impartial and independent of the parties involved in the dispute.**

Article 2(4) of Appendix V to the ICC Arbitration Rules 2021 establishes a fundamental principle for the conduct of emergency arbitrators. Here is an analysis of this provision:

1. Impartiality and Independence: This article explicitly states that every emergency arbitrator must be impartial and independent. Impartiality means that the emergency arbitrator does not favour any particular party and approaches the case without bias. Independence implies that the emergency arbitrator is not influenced or controlled by any of the parties, ensuring that their decisions are based solely on the merits of the case and applicable law.
2. Confidence in the Process: Impartiality and independence are crucial to maintaining confidence in the emergency arbitration process. Parties involved in a dispute need to have faith that the emergency arbitrator will objectively evaluate the situation and render a fair decision.
3. Preserving the Integrity of the Process: Impartiality and independence are essential to the integrity of arbitration proceedings, as they ensure that the arbitrator's decisions are free from external pressures and personal interests. These principles contribute to the credibility of the emergency arbitration process and the legitimacy of the resulting orders.
4. Avoiding Conflicts of Interest: Emergency arbitrators must also avoid any conflicts of interest that could compromise their ability to make objective decisions. Parties can challenge an emergency arbitrator if they believe there is a conflict that affects the arbitrator's impartiality or independence.

In summary, Article 2(4) of Appendix V reinforces the vital role of impartiality and independence in emergency arbitrator proceedings. These principles ensure the fairness and credibility of the process and maintain the parties' trust in the resolution of their dispute.

**5 Before being appointed, a prospective emergency arbitrator shall sign a statement of acceptance, availability, impartiality and independence. The Secretariat shall provide a copy of such statement to the parties.**

Article 2(5) of Appendix V to the ICC Arbitration Rules 2021 outlines an important procedural requirement related to the appointment of a prospective emergency arbitrator. Let us analyse this provision:

1. **Statement of Acceptance and Independence:** This article mandates that a prospective emergency arbitrator must sign a statement confirming their acceptance of the role, their availability to carry out the responsibilities, and their commitment to impartiality and independence. This statement serves as an affirmation of the arbitrator's willingness to perform their duties objectively and without bias.
2. **Pre-appointment Assurance:** Requiring a prospective emergency arbitrator to sign this statement before their appointment helps ensure that individuals chosen for the role understand and commit to the fundamental principles of impartiality and independence. It creates an upfront assurance that the arbitrator will approach the case with an open mind, free from any conflicts of interest.
3. **Transparency:** The article also stipulates that a copy of the signed statement is provided to the parties involved in the arbitration. This promotes transparency by allowing the parties to be aware of the arbitrator's commitment to these essential principles even before they officially assume the role.
4. **Maintaining Trust:** Requiring a prospective emergency arbitrator to sign such a statement helps maintain the parties' trust in the arbitration process. It assures them that the appointed arbitrator is fully aware of their ethical responsibilities and is prepared to uphold the highest standards of professionalism.
5. **Compliance with Best Practices:** The practice of having arbitrators sign statements of acceptance, availability, impartiality, and independence is consistent with modern arbitration practices and international norms. Such statements help align emergency arbitrator proceedings with widely recognised standards for arbitration ethics.

In conclusion, Article 2(5) of Appendix V reinforces the importance of transparency, impartiality, and independence by requiring prospective emergency arbitrators to sign a statement of acceptance and commitment before their appointment. This practice contributes to a credible and fair emergency arbitration process.

**6 An emergency arbitrator shall not act as an arbitrator in any arbitration relating to the dispute that gave rise to the Application.**

Article 2(6) of Appendix V to the ICC Arbitration Rules 2021 addresses a crucial ethical consideration in emergency arbitration proceedings. Let us analyse this provision:

1. **Conflict of Interest Avoidance:** This article emphasises the importance of avoiding conflicts of interest. It prohibits an emergency arbitrator who has been appointed in a particular case from subsequently acting as an arbitrator in any arbitration that pertains

to the same dispute which led to the initial Application for Emergency Measures. This prohibition helps maintain the integrity of the arbitration process and ensures that arbitrators remain impartial and independent.

2. **Preserving Neutrality:** The provision aims to prevent any potential bias or perception of bias that could arise if the same emergency arbitrator were to later participate in a full arbitration related to the same dispute. By preventing an emergency arbitrator's involvement in subsequent arbitration proceedings, the parties can have confidence that the arbitrator's decision in the emergency phase was not influenced by any future interests or roles.
3. **Consistency with Best Practices:** The principle of avoiding multiple roles in a dispute is consistent with well-established international arbitration standards, which stress the importance of arbitrators' neutrality and independence. This principle helps safeguard the parties' trust in the arbitration process.
4. **Maintaining Impartiality:** The prohibition reinforces the emergency arbitrator's obligation to remain impartial and free from any real or perceived conflicts of interest. This is crucial for ensuring fairness in the proceedings and preserving the credibility of the arbitration system.
5. **Confidence in the System:** By preventing an emergency arbitrator from later acting as an arbitrator in the same dispute, the provision ensures that parties have confidence that their emergency application is being evaluated by an arbitrator who will not subsequently become an advocate or decision-maker in the same dispute.

In conclusion, Article 2(6) of Appendix V underlines the importance of impartiality and independence by preventing an emergency arbitrator from subsequently acting as an arbitrator in the same dispute. This ethical safeguard contributes to the integrity of the arbitration process and maintains the parties' trust in the system.

### ARTICLE 3 Challenge of an Emergency Arbitrator

- 1 A challenge against the emergency arbitrator must be made within three days from receipt by the party making the challenge of the notification of the appointment or from the date when that party was informed of the facts and circumstances on which the challenge is based if such date is subsequent to the receipt of such notification.**

Article 3(1) of Appendix V to the ICC Arbitration Rules 2021 outlines the procedural requirements and time frame for making a challenge against an emergency arbitrator. Let us analyse the key points of this provision:

1. **Challenge Period:** The article establishes a specific time frame within which a party must make a challenge against the emergency arbitrator. This challenge period is three days, calculated from either the date of receipt of the notification of the emergency arbitrator's appointment or from the date when the challenging party becomes aware of the facts and circumstances that form the basis of their challenge.

2. **Clarity in Timing:** The provision ensures clarity about when the challenge period begins. It recognises that the three-day period starts either from the date of receiving the formal notice of the emergency arbitrator’s appointment or from the date the challenging party becomes aware of information that might give rise to a challenge.
3. **Efficiency and Timeliness:** The relatively short challenge period of three days reflects the expedited nature of emergency arbitration proceedings. Such a concise timeline is designed to maintain the efficiency and rapidity that parties expect from the emergency arbitration process.
4. **Protecting the Process:** The specified time limit encourages parties to promptly raise any concerns they may have about the appointment of the emergency arbitrator. This helps avoid unnecessary delays in the proceedings and ensures that challenges are addressed early in the process.
5. **Prompt Resolution:** The requirement to make challenges within a short time frame underscores the importance of promptly addressing any perceived issues with the emergency arbitrator’s appointment. This promotes a swift resolution of challenges and prevents unnecessary disruptions to the proceedings.
6. **Legal Certainty:** By clearly stipulating the challenge period, the article provides legal certainty to parties involved in the emergency arbitration process. Parties are aware of their window of opportunity for challenging the emergency arbitrator’s appointment.

In conclusion, Article 3(1) of Appendix V serves to establish a specific three-day challenge period within which a party must raise any objections to the appointment of an emergency arbitrator. This provision contributes to the efficient and timely resolution of challenges, while ensuring legal clarity and procedural fairness in emergency arbitration proceedings.

**2 The challenge shall be decided by the Court after the Secretariat has afforded an opportunity for the emergency arbitrator and the other party or parties to provide comments in writing within a suitable period of time.**

Article 3(2) of Appendix V to the ICC Arbitration Rules 2021 outlines the procedure for handling challenges against an emergency arbitrator. Let us analyse the key aspects of this provision:

1. **Challenge Adjudication:** The article establishes that challenges against an emergency arbitrator will be decided by the Court. This demonstrates the importance of ensuring impartial and competent emergency arbitrators in the process and provides a mechanism to address concerns.
2. **Involvement of Secretariat:** The Secretariat plays a role in the challenge process by facilitating communication and coordination between the parties involved. The Secretariat’s involvement helps ensure that the challenge process is organised and structured.
3. **Opportunity for Comments:** The article requires the Secretariat to provide an opportunity for the emergency arbitrator and the other party or parties to provide written comments



regarding the challenge. This step allows both the challenged arbitrator and the opposing party to present their perspectives on the challenge and any relevant information.

4. **Fairness and Due Process:** The provision aims to uphold principles of fairness and due process by allowing all parties involved to present their viewpoints on the challenge. This contributes to the overall integrity of the challenge process and the emergency arbitration proceedings.
5. **Suitable Period of Time:** The provision does not specify a fixed period for providing comments but emphasises that a suitable period of time will be granted for this purpose. This approach allows flexibility based on the circumstances of each case, ensuring that parties have sufficient time to provide their input.
6. **Transparency:** By providing an opportunity for written comments, the process becomes more transparent, and parties have a chance to explain their positions. This enhances transparency and accountability in the challenge process.
7. **Objective Decision-Making:** The involvement of the Court and the opportunity for parties to provide comments contribute to an objective assessment of the challenge. This helps ensure that the decision is based on a comprehensive understanding of the situation.

In conclusion, Article 3(2) of Appendix V establishes a structured process for handling challenges against an emergency arbitrator. The involvement of the Court, the Secretariat, and the opportunity for parties to provide written comments all work together to promote fairness, transparency, and objective decision-making in emergency arbitration proceedings.

#### **ARTICLE 4 Place of the Emergency Arbitrator Proceedings**

- 1 If the parties have agreed upon the place of the arbitration, such place shall be the place of the emergency arbitrator proceedings. In the absence of such agreement, the President shall fix the place of the emergency arbitrator proceedings, without prejudice to the determination of the place of the arbitration pursuant to Article 18(1) of the Rules.**

Article 4(1) of Appendix V to the ICC Arbitration Rules 2021 addresses the determination of the place of the emergency arbitrator proceedings. Here is an analysis of its key elements:

1. **Place of the Arbitration:** The provision emphasises that if the parties have already agreed upon the place of the arbitration, that agreed-upon place will also serve as the place of the emergency arbitrator proceedings. This ensures consistency between the general arbitration process and the specific emergency arbitration proceedings.
2. **Default Determination:** In cases where the parties have not reached an agreement regarding the place of the arbitration, the provision grants the President of the Court the authority to determine the place of the emergency arbitrator proceedings. This determination is made independently of the determination of the place of arbitration according to Article 18(1) of the ICC Arbitration Rules.
3. **Preservation of Future Determinations:** The provision clarifies that the President's decision regarding the place of the emergency arbitrator proceedings does not prejudice

or affect the determination of the place of arbitration for the main arbitral proceedings. This means that the place determined for the emergency arbitrator proceedings does not bind the parties in the context of the full arbitration process.

4. **Consistency and Efficiency:** The provision contributes to the efficiency of the emergency arbitration process by providing a clear and straightforward method for determining the place of the emergency arbitrator proceedings. This can help prevent delays or disputes related to procedural matters.
5. **Preserving Neutrality and Independence:** The provision does not stipulate that the place of the emergency arbitrator proceedings must be the same as the place of arbitration for the main proceedings. This ensures that the emergency arbitrator's proceedings can take place independently of the eventual place of the arbitration, helping to maintain the arbitrator's neutrality and independence.

In summary, Article 4(1) of Appendix V to the ICC Arbitration Rules outlines the rules for determining the place of the emergency arbitrator proceedings. Whether based on a party agreement or a determination by the President, this provision ensures that the place of the emergency arbitrator proceedings is efficiently and fairly established while preserving the autonomy of the emergency arbitration process from the broader arbitration proceedings.

## **2 Any meetings with the emergency arbitrator may be conducted through a meeting in person at any location the emergency arbitrator considers appropriate or by video conference, telephone or similar means of communication.**

Article 4(2) of Appendix V to the ICC Arbitration Rules 2021 addresses the conduct of meetings with the emergency arbitrator. Here is an analysis of its key points:

1. **Flexibility in Meeting Methods:** The provision acknowledges the diverse technological means available for communication in modern times. It allows for various methods of conducting meetings with the emergency arbitrator, providing flexibility based on practical considerations and the preferences of the parties involved.
2. **In-Person Meetings:** The provision allows for in-person meetings to be held at any location that the emergency arbitrator deems appropriate. This recognises that certain circumstances might warrant face-to-face interactions, such as complex hearings or when parties and the arbitrator agree on the benefits of personal presence.
3. **Virtual Meetings:** The provision includes the option for meetings to be conducted through video conference, telephone, or similar means of communication. This recognises the growing trend towards virtual communication, which has become increasingly common in international arbitration proceedings.
4. **Ensuring Fairness and Efficiency:** The flexibility in meeting methods ensures that the emergency arbitration process can adapt to various practical and logistical challenges that parties might face, such as geographical distances or travel restrictions. This contributes to the efficiency of the proceedings and minimises any potential delays.

5. **Cost and Time Savings:** Virtual communication methods can help parties save costs associated with travel and accommodation. Additionally, they can expedite the proceedings by eliminating the need for extensive planning and travel arrangements.
6. **Maintaining Due Process:** The provision implies that the chosen method of communication should allow for meaningful participation and due process for all parties. Regardless of the chosen method, it is crucial that all parties have the opportunity to present their arguments and evidence effectively.

In summary, Article 4(2) of Appendix V to the ICC Arbitration Rules acknowledges the modern options available for conducting meetings with the emergency arbitrator. By offering flexibility in communication methods, the provision ensures that parties can engage in the emergency arbitration process in a manner that is efficient, cost-effective, and consistent with the principles of due process.

## ARTICLE 5 Proceedings

### **1 The emergency arbitrator shall establish a procedural timetable for the emergency arbitrator proceedings within as short a time as possible, normally within two days from the transmission of the file to the emergency arbitrator pursuant to Article 2(3) of this Appendix.**

Article 5(1) of Appendix V to the ICC Arbitration Rules 2021 outlines the requirement for the emergency arbitrator to establish a procedural timetable for the emergency arbitrator proceedings. Let us analyse the key points of this article:

1. **Timely Establishment of Procedural Timetable:** The article emphasises the need for prompt action by the emergency arbitrator. It mandates that the emergency arbitrator should establish a procedural timetable for the emergency arbitrator proceedings without unnecessary delay. This underscores the urgency and time-sensitive nature of emergency arbitration.
2. **Setting the Procedural Schedule:** The emergency arbitrator's role in establishing the procedural timetable involves determining key milestones and deadlines for various stages of the emergency arbitration process. This includes deadlines for the submission of written pleadings, evidence, and other documents.
3. **Two-Day Norm:** The article suggests a benchmark of two days from the transmission of the file to the emergency arbitrator for establishing the procedural timetable. This timeframe aims to ensure a swift initiation of the emergency arbitration process, aligning with the overall goal of emergency arbitration to provide interim relief promptly.
4. **Efficiency and Fairness:** By setting a procedural timetable promptly, the emergency arbitrator helps ensure the efficient conduct of the proceedings. This contributes to maintaining a fair and balanced process for all parties, allowing them sufficient time to prepare their submissions and present their case effectively.
5. **Addressing Urgency:** The requirement to establish a procedural timetable promptly is essential in emergency arbitrations where urgent relief is sought. Parties often turn to emergency arbitration to address situations that require immediate attention, such as

preserving assets or preventing irreparable harm. The timely establishment of a timetable is crucial to addressing the urgency of such cases.

6. **Consistency with ICC's Approach:** This provision aligns with the ICC's approach to ensuring that emergency arbitration proceedings are conducted in a time-efficient manner. By providing a clear timeframe for establishing the procedural timetable, parties and the emergency arbitrator are guided by a practical framework to expedite the proceedings.

In conclusion, Article 5(1) of Appendix V to the ICC Arbitration Rules 2021 underscores the importance of promptly establishing a procedural timetable for emergency arbitrator proceedings. This requirement reflects the time-sensitive nature of emergency arbitration cases and aims to facilitate the efficient and fair conduct of the proceedings.

**2 The emergency arbitrator shall conduct the proceedings in the manner which the emergency arbitrator considers to be appropriate, taking into account the nature and the urgency of the Application. In all cases, the emergency arbitrator shall act fairly and impartially and ensure that each party has a reasonable opportunity to present its case.**

Article 5(2) of Appendix V to the ICC Arbitration Rules 2021 outlines the discretion and responsibilities of the emergency arbitrator in conducting the emergency arbitration proceedings. Let us analyse the key points of this article:

1. **Discretion in Conducting Proceedings:** The article empowers the emergency arbitrator to determine the manner in which the emergency arbitration proceedings should be conducted. This discretion allows the emergency arbitrator to tailor the procedural approach to the specific circumstances of the case, including considering the nature of the dispute and the urgency of the relief sought.
2. **Balancing Nature and Urgency:** The emergency arbitrator is instructed to take into account both the nature of the Application (the interim measures sought) and the urgency of the situation. This underscores the recognition that emergency arbitration is designed to address time-sensitive matters that require swift action.
3. **Fairness and Impartiality:** The article explicitly mandates that the emergency arbitrator must act fairly and impartially throughout the proceedings. This requirement is fundamental to maintaining the integrity and legitimacy of the emergency arbitration process.
4. **Reasonable Opportunity to Present Case:** The article highlights the emergency arbitrator's responsibility to ensure that each party has a reasonable opportunity to present its case. This principle aligns with the broader principles of due process and natural justice, which are essential to a fair and equitable resolution of disputes.
5. **Tailored Approach:** The flexibility given to the emergency arbitrator in determining the appropriate manner of conducting proceedings recognises that each emergency arbitration case may present unique circumstances. This approach allows the emergency arbitrator to adapt the process to best address the specific needs of the case.

6. **Efficiency and Effectiveness:** By allowing the emergency arbitrator to adopt a tailored approach, the proceedings can be conducted efficiently and effectively, even in situations where time is of the essence. This supports the overarching objective of emergency arbitration – providing swift relief to parties in urgent situations.
7. **Preserving Integrity of the Process:** The emphasis on fairness, impartiality, and reasonable opportunity helps ensure that parties are provided a level playing field in presenting their arguments and evidence. This contributes to upholding the credibility and integrity of the emergency arbitration process.

In conclusion, Article 5(2) of Appendix V to the ICC Arbitration Rules 2021 empowers the emergency arbitrator to conduct proceedings in a manner that suits the nature and urgency of the Application. This approach emphasises the importance of fairness, impartiality, and providing parties with a reasonable opportunity to present their cases, while recognising the need for expedited resolution in emergency situations.

## ARTICLE 6 Order

### 1 Pursuant to Article 29(2) of the Rules, the emergency arbitrator’s decision shall take the form of an order (the “Order”).

Article 6(1) of Appendix V to the ICC Arbitration Rules 2021 pertains to the form and content of the decision rendered by the emergency arbitrator and is closely linked to Article 29(2) of the main Rules. Let us analyse this article:

1. **Reference to Article 29(2) of the Rules:** The article starts by referencing Article 29(2) of the main ICC Arbitration Rules. This cross-reference indicates that the content of the decision rendered by the emergency arbitrator should follow the provisions outlined in Article 29(2).
2. **Form of the Decision – an Order:** The article specifies that the decision rendered by the emergency arbitrator shall take the form of an order, which is commonly used for interim relief or measures. An “order” in this context refers to a decision that commands a specific action or provides for specific interim measures to be taken by the parties.
3. **Consistency with Article 29(2):** The mention of Article 29(2) highlights the correlation between emergency arbitrator proceedings and the main arbitration process. This helps ensure consistency and coherence between the two stages of the arbitration – emergency arbitration and the subsequent full arbitration proceedings.
4. **Interim Measures:** Emergency arbitrators are often called upon to grant interim relief, which is a temporary measure intended to maintain the status quo or provide necessary protection while the arbitration proceedings progress. The decision in the form of an order aligns with the nature of interim measures, which are typically time-sensitive and aimed at addressing the immediate needs of the parties.
5. **Clarity and Enforcement:** The use of an “order” as the form of decision provides clarity to the parties on the steps they are required to take or refrain from taking. It also enhances

the enforceability of the emergency arbitrator’s decision, as orders are generally more readily enforceable than other types of decisions.

6. **Legal Certainty:** By prescribing that the decision should take the form of an order, the article contributes to legal certainty, ensuring that parties understand the binding nature of the decision and the actions they are required to undertake.
7. **Immediate Effect:** An “order” implies that the decision takes immediate effect and that parties must comply promptly with the specified measures. This aligns with the essence of emergency arbitration, which seeks to provide swift and effective relief to parties in urgent situations.

In summary, Article 6(1) of Appendix V to the ICC Arbitration Rules 2021 stipulates that the decision of the emergency arbitrator shall be in the form of an order, in line with Article 29(2) of the main Rules. This form of decision underscores the interim and time-sensitive nature of the measures granted by emergency arbitrators, as well as the enforceability and clarity of the decisions.

## **2 In the Order, the emergency arbitrator shall determine whether the Application is admissible pursuant to Article 29(1) of the Rules and whether the emergency arbitrator has jurisdiction to order Emergency Measures.**

Article 6(2) of Appendix V to the ICC Arbitration Rules 2021 outlines the specific matters that the emergency arbitrator is required to address within the order they issue. Let us analyse this article:

1. **Admissibility and Jurisdiction:** The article begins by indicating that the emergency arbitrator’s order should include determinations on two key aspects: admissibility and jurisdiction. This reflects the foundational elements that the emergency arbitrator needs to assess before proceeding with the substantive issues raised in the Application.
2. **Reference to Article 29(1) of the Rules:** The article references Article 29(1) of the main ICC Arbitration Rules, which pertains to the admissibility of the application for emergency measures. This signifies that the emergency arbitrator’s determination of admissibility aligns with the requirements and criteria outlined in Article 29(1).
3. **Jurisdiction over Emergency Measures:** The article also requires the emergency arbitrator to determine whether they have the jurisdiction to order emergency measures. This emphasises that not only does the emergency arbitrator need to assess whether the application meets the criteria for admissibility but also whether they possess the authority to grant the specific relief requested.
4. **Foundation for Substantive Decision:** The determinations regarding admissibility and jurisdiction serve as a foundational basis for the emergency arbitrator’s subsequent decision on the emergency measures requested by the applicant. Without establishing the admissibility of the application and the arbitrator’s jurisdiction, the emergency arbitrator would lack the authority to proceed with the substantive aspects of the case.
5. **Efficiency and Clarity:** Including these determinations in the order itself ensures clarity for the parties and streamlines the process. By addressing admissibility and jurisdiction in the

order, the emergency arbitrator avoids the need for separate procedural decisions on these matters, which could prolong the proceedings.

6. **Transparency:** The requirement to include these determinations in the order enhances transparency in the decision-making process. This transparency is important given the urgency of emergency arbitrations and the need for parties to understand the basis upon which the emergency measures are granted or denied.

In summary, Article 6(2) of Appendix V to the ICC Arbitration Rules 2021 specifies that the emergency arbitrator's order should address the admissibility of the application pursuant to Article 29(1) and whether the emergency arbitrator has jurisdiction to order emergency measures. These determinations establish the groundwork for the emergency arbitrator's subsequent decision on the requested emergency measures.

### **3 The Order shall be made in writing and shall state the reasons upon which it is based. It shall be dated and signed by the emergency arbitrator.**

Article 6(3) of Appendix V to the ICC Arbitration Rules 2021 outlines the requirements for the form and content of the emergency arbitrator's order. Let us analyse this article:

1. **Written Form:** The article stipulates that the emergency arbitrator's order must be in writing. This requirement ensures clarity, formalisation, and durability of the decision. A written order serves as an official record of the emergency arbitrator's decision and the rationale behind it.
2. **Reasons for the Decision:** The order must state the reasons upon which it is based. This provision underscores the importance of transparency and accountability in the emergency arbitration process. By providing reasons, the emergency arbitrator communicates the legal and factual grounds for their decision, which allows the parties to understand the rationale behind the granted or denied emergency measures.
3. **Transparency and Parties' Understanding:** The requirement to state reasons helps ensure transparency in the decision-making process, enabling the parties to comprehend the legal basis for the emergency arbitrator's ruling. This is crucial, especially in urgent situations where parties need to quickly grasp the reasoning behind the decision.
4. **Date and Signature:** The article further mandates that the order must be dated and signed by the emergency arbitrator. This formalises the issuance of the order, indicating its validity and authenticity. The signature also signifies the emergency arbitrator's approval and authorisation of the order.
5. **Legal Formality:** The requirement for a dated and signed order adds a legal formality to the decision, enhancing its official nature and enforceability. It ensures that the parties can rely on a clear, documented decision in their interactions with relevant authorities or institutions, if necessary.
6. **Record-Keeping:** The written, dated, and signed order becomes a crucial part of the arbitration record. It allows the parties, arbitral tribunal, and any relevant court to have a

complete understanding of the emergency arbitrator’s decision, the reasoning behind it, and the context in which it was issued.

7. **Legal Certainty:** The inclusion of specific details such as the date and signature enhances the order’s legal certainty. This clarity is essential in ensuring that the order is not only binding but also effectively enforceable by the parties.

In summary, Article 6(3) of Appendix V to the ICC Arbitration Rules 2021 sets forth the requirements for the form and content of the emergency arbitrator’s order. It emphasises transparency, accountability, legal formality, and the importance of providing reasons for the decision. These provisions contribute to the efficacy and integrity of the emergency arbitration process.

**4 The Order shall be made no later than 15 days from the date on which the file was transmitted to the emergency arbitrator pursuant to Article 2(3) of this Appendix. The President may extend the time limit pursuant to a reasoned request from the emergency arbitrator or on the President’s own initiative if the President decides it is necessary to do so.**

Article 6(4) of Appendix V to the ICC Arbitration Rules 2021 outlines the timeframe for issuing the emergency arbitrator’s order and the possibility of extending this timeframe. Let us analyse this article:

1. **Time Limit for Issuing the Order:** According to this article, the emergency arbitrator’s order must be issued within 15 days from the date on which the file was transmitted to the emergency arbitrator, as per Article 2(3) of the same Appendix. This timeframe emphasises the need for expeditious resolution in emergency situations. It ensures that parties receive a prompt decision to address their urgent concerns.
2. **Urgency and Efficiency:** The 15-day time limit reflects the swift nature of emergency arbitration proceedings. Emergencies often require timely responses to prevent irreparable harm or secure essential rights. This provision aligns with the purpose of the emergency arbitrator procedure, which is designed to provide quick relief while maintaining due process.
3. **Extension of Time Limit:** The article acknowledges that there may be circumstances warranting an extension of the 15-day time limit. Such extensions can be granted by the President of the Court. The extension may be requested by the emergency arbitrator or initiated by the President if deemed necessary. This flexibility acknowledges the potential complexities of certain cases and the need to ensure that the emergency arbitrator can adequately assess the matter before issuing a decision.
4. **Reasoned Request:** If an extension is requested, it must be accompanied by a reasoned request. This requirement ensures that the extension is not arbitrary and that there are valid justifications for delaying the issuance of the order. It maintains a level of transparency and accountability within the arbitration process.
5. **Presidential Discretion:** The President has the authority to decide whether an extension is necessary based on the circumstances presented. This discretionary power enables the President to balance the urgency of the situation against the need for a thorough and well-reasoned decision.



6. **Balancing Timeliness and Quality:** While timeliness is essential in emergency situations, it is equally important that the order is well-considered and reasoned. The possibility of an extension underlines the ICC’s commitment to delivering both timely and well-founded decisions in emergency arbitrator proceedings.

In summary, Article 6(4) of Appendix V to the ICC Arbitration Rules 2021 sets out the timeframe within which the emergency arbitrator’s order should be issued and allows for the President to extend this timeframe under certain circumstances. This provision strikes a balance between addressing urgent matters promptly and ensuring that due process and careful consideration are maintained in emergency arbitration proceedings.

**5 Within the time limit established pursuant to Article 6(4) of this Appendix, the emergency arbitrator shall send the Order to the parties, with a copy to the Secretariat, by any of the means of communication permitted by Article 3(2) of the Rules that the emergency arbitrator considers will ensure prompt receipt.**

Article 6(5) of Appendix V to the ICC Arbitration Rules 2021 pertains to the communication and distribution of the emergency arbitrator’s order after it has been issued. Let us break down the provisions of this article:

1. **Time Limit for Communication:** This provision establishes that the emergency arbitrator must send the issued order to the parties within the same time limit specified in Article 6(4) of the same Appendix. In other words, the emergency arbitrator must ensure that the parties receive the order within the 15-day period (or within an extended timeframe if granted).
2. **Means of Communication:** The article refers to the means of communication permitted by Article 3(2) of the ICC Rules of Arbitration. Article 3(2) allows for various communication methods, including meetings in person, video conferences, telephone calls, and other similar means. Therefore, the emergency arbitrator has discretion in selecting the most appropriate method for transmitting the order to ensure that the parties receive it promptly.
3. **Ensuring Prompt Receipt:** The emergency arbitrator’s choice of communication method should prioritise the prompt receipt of the order by the parties. This consideration is in line with the urgency of emergency arbitrator proceedings and the need for parties to be informed of the decision as soon as possible.
4. **Copy to the Secretariat:** Additionally, the article requires the emergency arbitrator to provide a copy of the order to the ICC Secretariat. This step ensures that the institution is informed of the order and can appropriately track and manage the emergency arbitrator proceedings.
5. **Efficient and Prompt Communication:** The article underscores the importance of efficient and timely communication in emergency arbitrator proceedings. It acknowledges the significance of promptly notifying the parties and the institution of the emergency arbitrator’s decision, enabling them to take appropriate actions based on the outcome.

In summary, Article 6(5) of Appendix V to the ICC Arbitration Rules 2021 outlines the process for transmitting the emergency arbitrator’s order to the parties and the Secretariat, emphasising the use of communication methods that ensure prompt receipt. This provision contributes to the overall efficiency and effectiveness of emergency arbitrator proceedings by ensuring that parties receive the decision within the prescribed timeframe and can take immediate action based on the outcome.

**6 The Order shall cease to be binding on the parties upon:**

- a) the President’s termination of the emergency arbitrator proceedings pursuant to Article 1(6) of this Appendix;**
- b) the acceptance by the Court of a challenge against the emergency arbitrator pursuant to Article 3 of this Appendix;**
- c) the arbitral tribunal’s final award, unless the arbitral tribunal expressly decides otherwise; or**
- d) the withdrawal of all claims or the termination of the arbitration before the rendering of a final award.**

Article 6(6) of Appendix V to the ICC Arbitration Rules 2021 specifies the circumstances under which the emergency arbitrator’s order ceases to be binding on the parties. This provision enumerates various scenarios in which the order no longer carries legal effect:

1. **President’s Termination:** The order will cease to be binding if the President of the Court terminates the emergency arbitrator proceedings as per Article 1(6) of the same Appendix. This likely refers to situations where the applicant fails to submit a Request for Arbitration within the specified timeframe following the appointment of the emergency arbitrator.
2. **Challenge Acceptance by the Court:** If the Court accepts a challenge against the emergency arbitrator under Article 3 of the Appendix, the order will no longer be binding. This emphasises that the challenge process can impact the validity of the order if it is successful.
3. **Arbitral Tribunal’s Final Award:** The order becomes non-binding when the arbitral tribunal renders a final award, unless the arbitral tribunal explicitly decides otherwise. This recognises the potential for the arbitral tribunal to either affirm or modify the emergency arbitrator’s measures in its final award.
4. **Withdrawal or Termination of Arbitration:** The order ceases to be binding if all claims are withdrawn or if the arbitration is terminated before the issuance of a final award. This accounts for situations in which the dispute is resolved or discontinued prior to reaching a conclusive resolution through a final award.

The main purpose of Article 6(6) is to delineate the circumstances under which the effects of the emergency arbitrator’s order come to an end. By providing a clear framework for when the order no longer binds the parties, this provision adds predictability and clarity to the consequences of the order within the context of the arbitration proceedings. It also ensures that parties understand the

limitations of the order and how its enforceability can be affected by subsequent developments in the case.

**7 The emergency arbitrator may make the Order subject to such conditions as the emergency arbitrator thinks fit, including requiring the provision of appropriate security.**

Article 6(7) of Appendix V to the ICC Arbitration Rules 2021 empowers the emergency arbitrator to impose conditions on the order that they issue, including the possibility of requiring the provision of security by the parties. This provision gives the emergency arbitrator a wide discretion to tailor the order based on the circumstances of the case. Here is a breakdown of the key points of this provision:

1. **Emergency Arbitrator's Discretion:** This provision grants the emergency arbitrator the authority to decide on the conditions that may accompany the order they issue. These conditions are at the discretion of the emergency arbitrator and can be based on the particular facts and circumstances of the case.
2. **Conditions for Security:** One of the specific conditions that the emergency arbitrator can impose is the requirement for the parties to provide security. Security in this context typically refers to a form of financial guarantee or collateral that a party provides to ensure compliance with the order. This could be in the form of a payment or a bond.
3. **Ensuring Enforcement:** Requiring the provision of security can serve multiple purposes. It can help ensure that the parties adhere to the emergency measures ordered, especially if the measures involve some form of restraint or obligation. It can also serve to compensate the party adversely affected by the emergency measures if it is later determined that the measures were improperly granted.
4. **Flexibility:** The provision's language is intentionally broad, allowing the emergency arbitrator to tailor conditions as they see fit. This flexibility acknowledges that different cases may require different measures, and the emergency arbitrator should have the discretion to adapt accordingly.
5. **Balance of Interests:** The provision highlights the necessity for a balanced approach. While emergency measures aim to address urgent and potentially irreparable harm, the conditions imposed by the emergency arbitrator should also be proportionate and fair.

In summary, Article 6(7) of Appendix V to the ICC Arbitration Rules 2021 underscores the emergency arbitrator's authority to impose appropriate conditions, such as requiring security, to accompany the order they issue. This authority is designed to ensure the effective enforcement of the order and to strike a balance between the interests of the parties involved.

**8 Upon a reasoned request by a party made prior to the transmission of the file to the arbitral tribunal pursuant to Article 16 of the Rules, the emergency arbitrator may modify, terminate or annul the Order.**

Article 6(8) of Appendix V to the ICC Arbitration Rules 2021 addresses the emergency arbitrator's authority to modify, terminate, or annul the order they have issued, upon a reasoned request by a

party. This provision recognises the need for flexibility in emergency arbitrator proceedings to accommodate changing circumstances and parties' evolving needs. Here is a breakdown of the key points of this provision:

1. **Modification, Termination, or Annulment:** This provision allows the emergency arbitrator to take three types of actions in response to a reasoned request by a party:
2. **Modification:** The emergency arbitrator can change the terms or conditions of the order based on new information or developments.
3. **Termination:** The emergency arbitrator can end the order before its intended duration if circumstances warrant it.
4. **Annulment:** The emergency arbitrator can completely nullify the order if it is determined that the grounds for the order no longer exist or were improperly granted.
5. **Reasoned Request:** The request made by a party for modification, termination, or annulment must be "reasoned". This means that the party must provide clear and substantiated grounds for their request, explaining why they believe the order should be changed, ended, or nullified. This requirement ensures that the emergency arbitrator has sufficient information to make an informed decision.
6. **Timing:** The request must be made before the transmission of the case to the arbitral tribunal pursuant to Article 16 of the ICC Arbitration Rules. This emphasises the pre-arbitration phase when the emergency arbitrator still has jurisdiction over the matter. Once the case is transmitted to the arbitral tribunal, the emergency arbitrator's authority ceases.
7. **Flexibility and Responsiveness:** This provision reflects the need for emergency arbitrator proceedings to remain flexible and responsive to changing circumstances. It acknowledges that the situation may evolve after the issuance of the emergency order, and the emergency arbitrator should have the ability to adapt the order accordingly.
8. **Protection Against Abuse:** While this provision allows parties to seek modifications or termination of the order, it requires a reasoned request. This safeguards against frivolous or abusive attempts to challenge or undo the emergency measures.

In summary, Article 6(8) of Appendix V to the ICC Arbitration Rules 2021 grants the emergency arbitrator the authority to modify, terminate, or annul an order upon a reasoned request by a party. This provision recognises the importance of accommodating changing circumstances and ensuring that emergency measures remain relevant and fair throughout the proceedings.

#### **ARTICLE 7 Costs of the Emergency Arbitrator Proceedings**

- 1 The applicant must pay an amount of US\$ 40,000, consisting of US\$ 10,000 for ICC administrative expenses and US\$ 30,000 for the emergency arbitrator's fees and expenses.**

**Notwithstanding Article 1(5) of this Appendix, the Application shall not be notified until the payment of US\$ 40,000 is received by the Secretariat.**

Article 7(1) of Appendix V to the ICC Arbitration Rules 2021 outlines the requirement for the applicant to make a specific payment before the emergency arbitrator proceedings can commence. This provision establishes the necessary financial prerequisites for initiating emergency arbitrator proceedings and ensuring the orderly administration of the process. Here is a breakdown of the key points of this provision:

1. **Payment Requirement:** The applicant seeking emergency measures must make a payment of US\$ 40,000 as a prerequisite for commencing the emergency arbitrator proceedings. This payment consists of two components: US\$ 10,000 for ICC administrative expenses and US\$ 30,000 for the emergency arbitrator's fees and expenses.
2. **Allocation of Payment:** The US\$ 10,000 portion allocated to ICC administrative expenses covers the costs associated with the administrative functions of the ICC Secretariat in managing the emergency arbitrator proceedings. The US\$ 30,000 portion allocated to the emergency arbitrator's fees and expenses compensates the emergency arbitrator for their time, expertise, and services in handling the case.
3. **Initiating Proceedings:** The Article emphasises that the emergency arbitrator proceedings shall not be initiated or formally notified until the full payment of US\$ 40,000 is received by the ICC Secretariat. This underscores the importance of timely and complete payment for the efficient commencement of proceedings.
4. **Deviation from Article 1(5):** Article 1(5) of the same Appendix outlines provisions related to advance costs and thresholds for regular arbitration proceedings. However, Article 7(1) explicitly specifies that the payment requirement outlined therein shall prevail over the provisions of Article 1(5). This highlights the distinct nature of emergency arbitrator proceedings and the specific payment structure established for them.

In summary, Article 7(1) of Appendix V to the ICC Arbitration Rules 2021 establishes the financial requirements for initiating emergency arbitrator proceedings. It mandates that the applicant must make a payment of US\$ 40,000, comprising ICC administrative expenses and the emergency arbitrator's fees and expenses, before the proceedings can begin. This provision ensures that parties provide the necessary funds to support the swift and effective resolution of urgent disputes through the emergency arbitrator mechanism.

- 2 The President may, at any time during the emergency arbitrator proceedings, decide to increase the emergency arbitrator's fees or the ICC administrative expenses taking into account, inter alia, the nature of the case and the nature and amount of work performed by the emergency arbitrator, the Court, the President and the Secretariat. If the party which submitted the Application fails to pay the increased costs within the time limit fixed by the Secretariat, the Application shall be considered as withdrawn.**

Article 7(2) of Appendix V to the ICC Arbitration Rules 2021 addresses the potential for adjustments to the financial aspects of the emergency arbitrator proceedings. This provision grants authority to the President of the ICC Court to modify the emergency arbitrator's fees or the ICC administrative expenses during the course of the proceedings. It also outlines the consequences of failure to pay the increased

costs by the party that initiated the application for emergency measures. Here is a breakdown of the key points of this provision:

1. **Fee and Expense Adjustment:** The provision allows the President of the ICC Court to make adjustments to both the emergency arbitrator's fees and the ICC administrative expenses. This adjustment could be prompted by factors such as the complexity of the case, the work performed by various parties involved, and other relevant considerations.
2. **Consideration Factors:** The President's decision to adjust the fees and expenses takes into account several factors, including the nature of the case and the extent of work carried out by the emergency arbitrator, the ICC Court, the President, and the ICC Secretariat.
3. **Increased Costs Payment:** If the President decides to increase the emergency arbitrator's fees or the ICC administrative expenses, the party that submitted the Application is required to pay the increased costs within a specified time limit set by the ICC Secretariat. Failure to meet this payment deadline could result in significant consequences.
4. **Application Withdrawal:** If the party initiating the Application for Emergency Measures fails to pay the increased costs within the stipulated time frame, the provision states that the Application shall be considered as withdrawn. In other words, if the payment is not made in accordance with the prescribed deadline, the party's right to pursue the emergency arbitrator proceedings may be forfeited.

In summary, Article 7(2) of Appendix V to the ICC Arbitration Rules 2021 allows the President of the ICC Court to adjust the emergency arbitrator's fees or the ICC administrative expenses during the emergency arbitrator proceedings. This adjustment is based on various factors related to the case's complexity and the efforts expended by relevant parties. The provision emphasises the importance of timely payment of any increased costs and specifies that failure to meet such payments could lead to the withdrawal of the Application for Emergency Measures.

### **3 The emergency arbitrator's Order shall fix the costs of the emergency arbitrator proceedings and decide which of the parties shall bear them or in what proportion they shall be borne by the parties.**

Article 7(3) of Appendix V to the ICC Arbitration Rules 2021 pertains to the allocation and determination of costs associated with the emergency arbitrator proceedings. This provision outlines the role of the emergency arbitrator in setting and assigning the costs related to these proceedings. Here is a closer analysis:

1. **Costs Determination by the Emergency Arbitrator:** This provision specifies that the emergency arbitrator's Order will include a determination of the costs of the emergency arbitrator proceedings. The emergency arbitrator is thus entrusted with the responsibility of assessing and quantifying the costs associated with the proceedings.
2. **Allocation of Costs:** The Order issued by the emergency arbitrator will not only determine the total costs of the proceedings but also address the allocation of these costs among the parties. In other words, the emergency arbitrator will decide which party or parties are responsible for bearing the costs and whether they should be apportioned in a specific manner.

3. Discretion in Allocation: The language used in the provision—“decide which of the parties shall bear them or in what proportion they shall be borne by the parties”—indicates that the emergency arbitrator has discretion in determining the allocation of costs. This discretion allows the emergency arbitrator to consider the facts and circumstances of the case when making a fair and appropriate decision regarding cost distribution.

In summary, Article 7(3) of Appendix V to the ICC Arbitration Rules 2021 empowers the emergency arbitrator to set the costs of the emergency arbitrator proceedings and to determine how these costs will be allocated among the parties involved. This provision ensures that the emergency arbitrator has the authority to make a comprehensive decision regarding the financial aspects of the proceedings, including both the quantification of costs and their distribution among the parties.

#### **4 The costs of the emergency arbitrator proceedings include the ICC administrative expenses, the emergency arbitrator’s fees and expenses and the reasonable legal and other costs incurred by the parties for the emergency arbitrator proceedings.**

Article 7(4) of Appendix V to the ICC Arbitration Rules 2021 outlines the components that constitute the “costs of the emergency arbitrator proceedings”. This provision clarifies the various elements that contribute to the overall financial expenses associated with the emergency arbitrator proceedings. Here is a closer analysis:

1. ICC Administrative Expenses: The provision explicitly states that the costs of the emergency arbitrator proceedings encompass the ICC administrative expenses. These expenses cover the administrative services provided by the International Chamber of Commerce (ICC) Secretariat in facilitating and managing the emergency arbitrator proceedings.
2. Emergency Arbitrator’s Fees and Expenses: Another component of the costs is the fees and expenses incurred by the emergency arbitrator for their role in the proceedings. This includes the remuneration for the emergency arbitrator’s time, expertise, and decision-making during the course of the proceedings.
3. Reasonable Legal and Other Costs: The provision goes on to include “reasonable legal and other costs incurred by the parties for the emergency arbitrator proceedings” in the definition of costs. This encompasses the legal fees and expenses that the parties might incur in relation to the emergency arbitrator proceedings. These costs may include fees for legal representation, preparation of submissions, and other expenses related to presenting their case before the emergency arbitrator.

By specifying these components, Article 7(4) ensures transparency and clarity in determining what constitutes the costs associated with the emergency arbitrator proceedings. The inclusion of ICC administrative expenses, emergency arbitrator fees and expenses, and the reasonable legal and other costs incurred by the parties ensures a comprehensive understanding of the financial aspects of these proceedings. This clarity is essential for parties to understand the financial implications of seeking emergency relief through arbitration and to be prepared for the associated costs.

- 5 In the event that the emergency arbitrator proceedings do not take place pursuant to Article 1(5) of this Appendix or are otherwise terminated prior to the making of an Order, the President shall determine the amount to be reimbursed to the applicant, if any. An amount of US\$ 5,000 for ICC administrative expenses is nonrefundable in all cases.**

Article 7(5) of Appendix V to the ICC Arbitration Rules 2021 addresses the reimbursement of costs in cases where the emergency arbitrator proceedings do not proceed or are terminated before the issuance of an order. Here is an analysis of this provision:

1. **Reimbursement of Costs:** The provision stipulates that if the emergency arbitrator proceedings do not take place as outlined in Article 1(5) of the Appendix (which involves the payment of a specified amount to initiate the proceedings) or if the proceedings are terminated before an order is issued, the President of the Court shall determine whether and to what extent the applicant is entitled to be reimbursed for any costs paid. This provision ensures that if the proceedings do not advance as planned or are halted prematurely, the applicant is not automatically responsible for the full costs.
2. **Non-refundable Administrative Expenses:** The provision clarifies that a certain amount of US\$ 5,000, specified as ICC administrative expenses, is nonrefundable in all cases. This means that regardless of the outcome or circumstances leading to the termination of the proceedings, this specific portion of the paid fees will not be subject to reimbursement.

The purpose of Article 7(5) is to establish a fair and transparent approach to cost reimbursement in situations where the emergency arbitrator proceedings do not fully proceed or are concluded without an order being issued. It ensures that the non-refundable administrative expenses are clearly outlined and that any potential reimbursement is determined by the President of the Court, taking into account the circumstances of each case. This provision aims to strike a balance between the parties' financial considerations and the administrative processes of the arbitration institution.

## **ARTICLE 8 General Rule**

- 1 The President shall have the power to decide, at the President's discretion, all matters relating to the administration of the emergency arbitrator proceedings not expressly provided for in this Appendix.**

Article 8(1) of Appendix V to the ICC Arbitration Rules 2021 grants the President of the ICC Court the authority to make discretionary decisions regarding various aspects of the administration of the emergency arbitrator proceedings. Here is an analysis of this provision:

1. **Scope of Power:** The provision vests the President with discretionary decision-making authority over matters that are not explicitly covered by the provisions outlined within Appendix V. This underscores the President's role in managing the practical and procedural aspects of the emergency arbitrator proceedings, even if they are not specifically addressed in the Appendix.
2. **Flexibility:** This provision adds flexibility to the process by allowing the President to address unforeseen or unique circumstances that may arise during the emergency arbitrator proceedings. As emergencies can vary widely in nature and complexity, having



discretionary authority enables the President to respond appropriately to these situations.

3. **Efficiency:** Granting the President this discretionary power streamlines the administration of the emergency arbitrator proceedings. Instead of needing to amend the Appendix for every procedural issue that might arise, the President can make efficient decisions to ensure the smooth functioning of the proceedings.
4. **Maintaining Consistency:** While the President’s discretionary authority offers flexibility, it is important to note that the President will likely exercise this authority in a manner consistent with the principles of fairness, impartiality, and efficiency that underlie the ICC Arbitration Rules as a whole.
5. **Balancing Interests:** This provision is designed to balance the need for procedural clarity with the necessity of responding quickly and effectively to emergency situations. It allows the President to ensure that the emergency arbitrator proceedings are conducted in a manner that aligns with the overarching goals of the ICC Arbitration Rules.

Overall, Article 8(1) serves as a mechanism to empower the President of the ICC Court to address various practical and procedural matters that may arise during emergency arbitrator proceedings. The discretionary power granted to the President in this provision underscores the ICC’s commitment to handling emergency situations efficiently and fairly while maintaining the integrity of the arbitration process.

## **2 In the President’s absence or otherwise at the President’s request, any of the Vice-Presidents of the Court shall have the power to take decisions on behalf of the President.**

Article 8(2) of Appendix V to the ICC Arbitration Rules 2021 outlines a provision related to the delegation of decision-making authority within the context of emergency arbitrator proceedings. Here is an analysis of this provision:

1. **Delegation of Authority:** This provision allows for the delegation of decision-making authority from the President of the ICC Court to any of the Vice-Presidents of the Court in case the President is absent or requests such delegation. This delegation ensures that decision-making processes continue even in the absence of the President.
2. **Continuity:** The provision aims to maintain the efficient functioning of emergency arbitrator proceedings by ensuring continuity in decision-making. In situations where the President is unavailable due to absence or other reasons, the Vice-Presidents can step in to make necessary decisions without causing delays in the proceedings.
3. **High-Level Authority:** Vice-Presidents of the Court are high-ranking officials within the ICC structure. This provision recognises their role as suitable alternatives to the President when it comes to decision-making within the framework of emergency arbitrator proceedings.
4. **Preservation of Fairness:** While the provision allows for the delegation of authority, it is important to note that any decisions made by the Vice-Presidents must align with the principles of fairness, impartiality, and integrity that are core to the ICC Arbitration Rules.

This ensures that parties' rights are protected and that the proceedings remain consistent with the overall rules and principles of ICC arbitration.

5. Efficiency: The provision contributes to the efficiency of the emergency arbitrator proceedings by enabling timely decision-making, even when the President is temporarily unavailable. Delays in decision-making could be detrimental in emergency situations, and this provision addresses that concern.
6. Hierarchical Structure: The ICC Court's hierarchical structure is evident in this provision, as it designates Vice-Presidents as suitable individuals to assume the President's responsibilities in their absence. This structure helps maintain a smooth flow of operations within the ICC.

In summary, Article 8(2) of Appendix V to the ICC Arbitration Rules 2021 establishes a mechanism for the delegation of decision-making authority from the President to Vice-Presidents of the Court in situations where the President is absent or requests such delegation. This provision ensures the continuation of decision-making processes and contributes to the efficiency and effectiveness of emergency arbitrator proceedings.

**3 In all matters concerning emergency arbitrator proceedings not expressly provided for in this Appendix, the Court, the President and the emergency arbitrator shall act in the spirit of the Rules and this Appendix.**

Article 8(3) of Appendix V to the ICC Arbitration Rules 2021 addresses the approach that should be taken in situations where specific provisions are not explicitly outlined in the appendix. Here is an analysis of this provision:

1. Guiding Principle: This provision establishes a guiding principle that dictates the approach to be taken when dealing with matters that are not covered by the specific provisions of the appendix. It emphasises that the decision-makers involved, including the Court, the President, and the emergency arbitrator, should operate in alignment with the broader principles and framework of both the ICC Arbitration Rules and the specific appendix (Appendix V).
2. Flexibility: The provision recognises that not all possible scenarios or issues related to emergency arbitrator proceedings can be exhaustively detailed in the appendix. It provides flexibility for decision-makers to address novel or unforeseen circumstances by considering the spirit and intent of the Rules and the appendix.
3. Consistency: By referring to the "spirit of the Rules and this Appendix", this provision underscores the importance of consistency in decision-making. Even though certain matters may not be explicitly addressed, the decision-makers are expected to ensure that their actions are in harmony with the fundamental principles, objectives, and procedural fairness outlined in the ICC Arbitration Rules and Appendix V.
4. Preservation of Integrity: The provision highlights the overarching goal of maintaining the integrity and effectiveness of emergency arbitrator proceedings. Decision-makers are expected to act in a manner that upholds the fairness, impartiality, and efficiency that are fundamental to the ICC arbitration process.

5. **Balancing Discretion:** The provision does not restrict the discretion of decision-makers but rather provides them with a framework for decision-making when confronted with matters not explicitly covered. It encourages a balanced approach that respects the essence of the arbitration rules and appendix while accommodating unique circumstances.
6. **Legal Certainty:** While the provision recognises the need for flexibility, it also contributes to legal certainty by setting a standard for decision-making in situations not contemplated by the specific provisions. This ensures that parties can reasonably anticipate the principles that will guide decisions even in situations not expressly addressed.

In summary, Article 8(3) of Appendix V to the ICC Arbitration Rules 2021 establishes a guiding principle for decision-making in matters that are not expressly provided for in the appendix. It directs the Court, the President, and the emergency arbitrator to act in alignment with the overarching principles of the ICC Arbitration Rules and Appendix V, ensuring consistency, fairness, and efficiency in emergency arbitrator proceedings.

## APPENDIX VI — EXPEDITED PROCEDURE RULES

## ARTICLE 1 Application of the Expedited Procedure Rules

- 1 Insofar as Article 30 of the Rules of Arbitration of ICC (the “Rules”) and this Appendix VI do not provide otherwise, the Rules shall apply to an arbitration under the Expedited Procedure Rules.**

Article 1(1) of Appendix VI to the ICC Arbitration Rules 2021 outlines the relationship between the Expedited Procedure Rules and the general Rules of Arbitration. Here is an analysis of this provision:

1. **Incorporation by Reference:** This provision establishes that the general ICC Arbitration Rules, particularly Article 30, continue to apply to arbitrations conducted under the Expedited Procedure Rules. It indicates that the Expedited Procedure Rules (as outlined in this appendix) complement and operate in conjunction with the general ICC Arbitration Rules.
2. **Expedited Procedure Rules:** The term “Expedited Procedure Rules” refers to the specific set of procedural rules outlined in Appendix VI. These rules are designed to streamline and expedite the arbitration process for cases with lower amounts in dispute or when parties specifically opt for the expedited procedure.
3. **Primacy of Article 30:** Article 30 of the ICC Arbitration Rules introduces the concept of expedited arbitration and provides the framework for cases that qualify for the expedited procedure. This provision clarifies that in cases where Article 30 and the Expedited Procedure Rules do not specify otherwise, the general ICC Arbitration Rules shall apply. It ensures that the core principles of the general arbitration process are still maintained even in the context of an expedited procedure.
4. **Harmonisation of Procedures:** By stipulating that the general Rules apply “insofar as Article 30... and this Appendix VI do not provide otherwise”, the provision establishes a hierarchy that harmonises the rules applicable to expedited arbitrations. The Expedited Procedure Rules have priority where they address specific aspects of the expedited procedure. However, where these rules are silent, the general ICC Arbitration Rules step in to provide the necessary procedural framework.
5. **Preserving Essential Principles:** The provision ensures that fundamental principles of arbitration such as due process, procedural fairness, and impartiality are upheld, even within the context of an expedited procedure. This helps maintain the integrity of the arbitration process and prevents the expedited nature of the proceedings from compromising essential rights.
6. **Clarity and Consistency:** By making it clear that the general ICC Arbitration Rules continue to apply, this provision contributes to clarity and consistency in the application of the expedited procedure. Parties can be assured that the basic procedural framework remains intact while benefiting from the efficiency offered by the expedited procedure.

In summary, Article 1(1) of Appendix VI to the ICC Arbitration Rules 2021 establishes that, unless otherwise specified in Article 30 and the Expedited Procedure Rules, the general ICC Arbitration Rules apply to cases conducted under the Expedited Procedure Rules. This provision ensures that while

parties benefit from the expedited process, they continue to receive the core guarantees and principles of arbitration inherent in the general rules.

**2 The amount referred to in Article 30(2), subparagraph a) of the Rules is:**

- a) US\$ 2,000,000 if the arbitration agreement under the Rules was concluded on or after 1 March 2017 and before 1 January 2021; or**
- b) US\$ 3,000,000 if the arbitration agreement under the Rules was concluded on or after 1 January 2021.**

Article 1(2) of Appendix VI to the ICC Arbitration Rules 2021 provides specific thresholds for the amount in dispute that determine whether a case qualifies for the expedited procedure. Here is an analysis of this provision:

1. **Thresholds for Expedited Procedure:** This provision sets out the monetary thresholds that determine whether a case is eligible for the expedited procedure under the ICC Arbitration Rules. The expedited procedure is designed to streamline the arbitration process for cases with lower amounts in dispute, offering parties a more efficient and cost-effective way to resolve their disputes.
2. **Distinction Based on Timing:** The provision introduces two distinct monetary thresholds based on the timing of the arbitration agreement. The thresholds are linked to specific periods in time when the arbitration agreement was concluded.
3. **Effective Dates:** The provision establishes two different effective dates for the monetary thresholds: March 1, 2017, and January 1, 2021. These dates determine when the different thresholds come into effect and apply to arbitration agreements concluded around those times.
4. **Threshold Amounts:** The specific threshold amounts outlined are as follows:
  - a. **US\$ 2,000,000:** This threshold applies if the arbitration agreement under the ICC Rules was concluded between March 1, 2017, and January 1, 2021.
  - b. **US\$ 3,000,000:** This threshold applies if the arbitration agreement under the ICC Rules was concluded on or after January 1, 2021.
5. **Transitional Period:** The provision acknowledges a transitional period during which arbitration agreements may have been concluded under different threshold amounts. This reflects the evolving nature of arbitration rules and aims to accommodate cases with agreements concluded around the time of rule changes.
6. **Precision and Clarity:** By providing specific threshold amounts and effective dates, this provision adds clarity to the application of the expedited procedure. Parties and practitioners can easily determine whether their case qualifies for the expedited procedure based on the relevant threshold and effective date.

7. Impact on Expedited Procedure: Cases that fall within the specified monetary thresholds are eligible for the expedited procedure, which includes features such as a simplified arbitration process, shortened timelines, and reduced administrative expenses. This promotes efficiency and expeditious resolution of disputes for lower-value cases.
8. Flexibility in Rule Changes: The provision reflects the ICC’s approach to adapting its rules to changing circumstances. By adjusting the threshold amount over time, the ICC can better align the expedited procedure with prevailing economic conditions and market practices.

In summary, Article 1(2) of Appendix VI to the ICC Arbitration Rules 2021 sets forth the monetary thresholds that determine whether a case is eligible for the expedited procedure. It differentiates between cases based on the timing of the arbitration agreement and aims to provide an efficient and cost-effective mechanism for resolving disputes involving lower amounts in dispute.

**3 Upon receipt of the Answer to the Request pursuant to Article 5 of the Rules, or upon expiry of the time limit for the Answer or at any relevant time thereafter and subject to Article 30(3) of the Rules, the Secretariat will inform the parties that the Expedited Procedure Provisions shall apply in the case.**

Article 1(3) of Appendix VI to the ICC Arbitration Rules 2021 addresses the application of the Expedited Procedure Provisions in cases subject to the expedited procedure. Here is an analysis of this provision:

1. Trigger for Application: This provision outlines the trigger points at which the application of the Expedited Procedure Provisions is initiated. The Expedited Procedure Provisions are designed to streamline the arbitration process for cases with lower amounts in dispute, offering a faster and more efficient resolution mechanism.
2. Receipt of the Answer: The first trigger for applying the Expedited Procedure Provisions is upon the receipt of the Answer to the Request for Arbitration as specified in Article 5 of the ICC Arbitration Rules. This marks the initial stage when both parties’ positions are known, and the Secretariat can assess whether the case meets the criteria for the expedited procedure.
3. Expiry of Time Limit: The second trigger is the expiry of the time limit for submitting the Answer. If the Answer is not received within the stipulated time frame, the Secretariat can move forward with applying the Expedited Procedure Provisions, considering that the case meets the criteria for expedited treatment.
4. Relevant Times Thereafter: The provision also anticipates the application of the Expedited Procedure Provisions at any relevant time after the receipt of the Answer or its expiration. This reflects the flexibility of the ICC Arbitration Rules to adapt to changing circumstances during the arbitration process.
5. Subject to Article 30(3) of the Rules: This phrase emphasises that the application of the Expedited Procedure Provisions is subject to the conditions outlined in Article 30(3) of the ICC Arbitration Rules. Article 30(3) addresses situations where, despite the monetary threshold being met, the complexity of the case warrants the regular procedure rather than the expedited procedure.

6. **Secretariat's Role:** The provision assigns the Secretariat the responsibility of informing the parties when the Expedited Procedure Provisions shall apply. This communication ensures transparency and clarity for the parties regarding the procedural approach that will be followed.
7. **Efficiency and Streamlining:** By specifying when the Expedited Procedure Provisions are triggered, this provision contributes to the efficiency and expediency of the arbitration process. It allows parties to be aware of the procedural track their case will follow, especially in terms of shorter time frames for submissions and hearings.
8. **Responsive to Case Dynamics:** The provision's recognition of the possibility of applying the Expedited Procedure Provisions at "any relevant time thereafter" underscores the ICC's ability to adapt to changing circumstances during the arbitration, ensuring that the most appropriate procedure is used.

In summary, Article 1(3) of Appendix VI to the ICC Arbitration Rules 2021 outlines the points at which the Expedited Procedure Provisions shall be applied in cases subject to the expedited procedure. It establishes clear trigger points, including the receipt of the Answer, the expiration of the time limit for the Answer, and any subsequent relevant times, while also emphasizing that application is subject to specific conditions laid out in the Rules.

**4 The Court may, at any time during the arbitral proceedings, on its own motion or upon the request of a party, and after consultation with the arbitral tribunal and the parties, decide that the Expedited Procedure Provisions shall no longer apply to the case. In such case, unless the Court considers that it is appropriate to replace and/or reconstitute the arbitral tribunal, the arbitral tribunal shall remain in place.**

Article 1(4) of Appendix VI to the ICC Arbitration Rules 2021 deals with the Court's authority to discontinue the application of the Expedited Procedure Provisions in a given arbitration. Here is an analysis of this provision:

1. **Flexibility and Review Mechanism:** This provision reflects the ICC's commitment to ensuring that the chosen procedural mechanism remains appropriate throughout the course of the arbitration. It grants the Court the power to review and potentially modify the procedural track chosen at the outset of the arbitration.
2. **Court's Discretion:** The provision establishes that the Court has discretion in deciding whether to discontinue the application of the Expedited Procedure Provisions. This discretion is important to address situations where circumstances change, or it becomes apparent that the complexity of the case warrants a more comprehensive procedure.
3. **Trigger for Review:** The Court's review can be initiated either on its own motion or upon the request of a party. This demonstrates the Court's proactive role in overseeing the arbitration process and its responsiveness to parties' concerns.
4. **Consultation with Tribunal and Parties:** The provision requires the Court to consult both the arbitral tribunal and the parties before making a decision to discontinue the expedited procedure. This ensures transparency and fairness in the decision-making process.

5. **Continuity of the Tribunal:** The provision addresses the potential scenario where the Expedited Procedure Provisions are discontinued. It specifies that unless the Court deems it necessary to replace or reconstitute the arbitral tribunal, the existing tribunal shall remain in place. This promotes continuity and efficiency in the arbitration process.
6. **Balancing Efficiency and Fairness:** By giving the Court the authority to decide whether to continue or discontinue the expedited procedure, this provision balances the need for efficiency with the principles of fairness and due process. It acknowledges that, as the case progresses, the initial choice of procedure might need to be re-evaluated.
7. **Responsive to Changing Dynamics:** The provision recognises that the nature of disputes may evolve as the arbitration proceeds, requiring a shift in the procedural approach. It ensures that the ICC remains adaptive to the changing dynamics of the case.
8. **Preservation of Tribunal:** The provision's emphasis on preserving the arbitral tribunal, unless exceptional circumstances warrant a change, underscores the importance of maintaining the continuity of the tribunal members' understanding of the case.

In summary, Article 1(4) of Appendix VI to the ICC Arbitration Rules 2021 grants the Court the authority to discontinue the application of the Expedited Procedure Provisions if circumstances warrant. It highlights the Court's role in overseeing the arbitration process, maintaining a balance between efficiency and fairness, and ensures that the choice of procedure remains aligned with the evolving nature of the dispute.

## ARTICLE 2 Constitution of the Arbitral Tribunal

### 1 The Court may, notwithstanding any contrary provision of the arbitration agreement, appoint a sole arbitrator.

Article 2(1) of Appendix VI to the ICC Arbitration Rules 2021 addresses the authority of the Court to appoint a sole arbitrator in cases governed by the Expedited Procedure Provisions. Here is an analysis of this provision:

1. **Flexibility in Arbitrator Appointment:** This provision demonstrates the ICC's commitment to ensuring the efficiency of the arbitration process under the Expedited Procedure Provisions. By allowing the Court to appoint a sole arbitrator regardless of any contrary provision in the arbitration agreement, the ICC aims to streamline the procedure and expedite the resolution of disputes.
2. **Responding to the Nature of Expedited Proceedings:** Expedited proceedings are characterised by their streamlined nature and shorter timelines. The appointment of a sole arbitrator aligns with the goal of efficiency by reducing the complexities associated with multi-member tribunals.
3. **Reducing Delays:** The provision aims to avoid potential delays that could arise from disputes or disagreements among parties regarding the appointment of multiple arbitrators. A sole arbitrator can make prompt decisions without the need for consensus among tribunal members.



4. **Avoiding Potential Deadlocks:** Multi-member tribunals might lead to disagreements or potential deadlocks during the decision-making process. By appointing a sole arbitrator, this provision mitigates the risk of such deadlocks and ensures a smoother arbitration process.
5. **Maintaining Fairness and Impartiality:** While the provision allows for the appointment of a sole arbitrator, it does not compromise the principles of fairness and impartiality. The appointed arbitrator is expected to adhere to these fundamental principles throughout the arbitration process.
6. **Party Autonomy:** Although the provision allows the Court to appoint a sole arbitrator, it does not override the parties' autonomy. If the parties agree on a different number of arbitrators, they can still specify their preference in their arbitration agreement.
7. **Balancing Efficiency and Quality:** While a sole arbitrator can expedite the proceedings, it is important to ensure that the quality and fairness of the arbitration are not compromised. The provision suggests that the ICC is attuned to this balance and aims to achieve a fair and efficient process.
8. **ICC's Role in Case Management:** By allowing the Court to appoint a sole arbitrator, the provision underscores the ICC's active role in managing the arbitration process under the Expedited Procedure Provisions. This role ensures that the arbitration is conducted in accordance with the desired efficiency and effectiveness.

In conclusion, Article 2(1) of Appendix VI to the ICC Arbitration Rules 2021 empowers the Court to appoint a sole arbitrator, even if the arbitration agreement contains contrary provisions. This approach aligns with the goal of expediting the arbitration process while maintaining fairness and impartiality. It reflects the ICC's proactive role in achieving efficient and effective dispute resolution in cases subject to the Expedited Procedure Provisions.

**2 The parties may nominate the sole arbitrator within a time limit to be fixed by the Secretariat. In the absence of such nomination, the sole arbitrator shall be appointed by the Court within as short a time as possible.**

Article 2(2) of Appendix VI to the ICC Arbitration Rules 2021 addresses the process of appointing a sole arbitrator in cases governed by the Expedited Procedure Provisions. Let us analyse this provision:

1. **Party Participation:** This provision emphasises the parties' active role in the appointment process. It allows the parties to nominate a sole arbitrator, providing them with a degree of control and participation in the composition of the arbitral tribunal.
2. **Time Limit for Nomination:** The provision introduces a mechanism for the parties to nominate the sole arbitrator within a specific time frame set by the Secretariat. This time limit underscores the expedited nature of the proceedings and ensures that the arbitration process moves swiftly.
3. **Efficiency and Timeliness:** The provision aligns with the overall objective of the Expedited Procedure Provisions to facilitate quicker dispute resolution. By requiring parties to

nominate an arbitrator promptly, the provision aims to avoid unnecessary delays in the appointment process.

4. **Fallback Mechanism:** In cases where the parties fail to nominate a sole arbitrator within the specified time frame, the provision outlines a fallback mechanism. It empowers the Court to step in and make the appointment to ensure that the arbitration proceedings can proceed without undue delay.
5. **Court's Role in Facilitating the Process:** By providing a mechanism for the Court to appoint a sole arbitrator in the absence of party nominations, the provision demonstrates the ICC's commitment to maintaining an efficient and orderly arbitration process.
6. **Balancing Party Autonomy and Efficiency:** While parties have the opportunity to nominate a sole arbitrator, the provision ensures that the process remains efficient. If the parties do not nominate an arbitrator within the stipulated time, the Court's involvement helps prevent unnecessary delays.
7. **Secretariat's Role in Facilitation:** The role of the Secretariat in fixing the time limit for party nominations highlights the ICC's administrative involvement in ensuring that the process is managed smoothly.
8. **Prompt Appointment:** The provision underscores the importance of a swift appointment of the sole arbitrator, whether through party nomination or Court appointment. This aligns with the overarching goal of expedited proceedings.
9. **Optimal Use of Resources:** By establishing a clear procedure for sole arbitrator appointment, the provision optimises the use of resources and prevents potential disputes or disagreements from hindering the arbitration process.

In summary, Article 2(2) of Appendix VI to the ICC Arbitration Rules 2021 establishes a process for appointing a sole arbitrator in expedited proceedings. It empowers the parties to nominate an arbitrator within a set timeframe and outlines the Court's role in appointing an arbitrator if parties do not make a nomination. This mechanism aims to strike a balance between party autonomy and procedural efficiency in the arbitration process.

## ARTICLE 3 Proceedings

### 1 Article 23 of the Rules shall not apply to an arbitration under the Expedited Procedure Rules.

Article 3(1) of Appendix VI to the ICC Arbitration Rules 2021 addresses the application of Article 23 of the Rules in arbitrations conducted under the Expedited Procedure Provisions. Let us analyse this provision:

1. **Exclusion of Article 23:** This provision explicitly states that Article 23 of the ICC Arbitration Rules shall not apply to arbitrations conducted under the Expedited Procedure Rules. Article 23 of the main Rules pertains to the appointment of arbitrators, including the process for appointment of a three-member arbitral tribunal and the role of the Court in such appointments.

2. **Focus on Expediency:** By excluding Article 23 from expedited proceedings, the provision underscores the primary objective of the Expedited Procedure Provisions: expeditious and efficient resolution of disputes. The procedures laid out in Article 23, which may involve more intricate processes for arbitrator appointments, are not suitable for the streamlined nature of expedited cases.
3. **Customisation of Procedure:** This provision demonstrates the flexibility of the ICC Arbitration Rules to adapt to specific circumstances. The ICC recognises that in expedited cases, a different approach to arbitrator appointments is necessary to ensure swift resolution without compromising the quality of the process.
4. **Simplification of Arbitrator Appointments:** The exclusion of Article 23 suggests that the process for appointing arbitrators in expedited proceedings is simplified compared to the process in standard arbitrations. This simplification aligns with the overall goal of the Expedited Procedure Provisions to reduce procedural complexities.
5. **Minimisation of Delays:** Standard arbitrations may involve more extended periods for arbitrator appointments, especially when dealing with three-member tribunals. Excluding Article 23 helps minimise any potential delays that could arise in arbitrator selection, ensuring that expedited proceedings remain efficient.
6. **Preservation of the Spirit of Expedited Proceedings:** By omitting Article 23, the provision ensures that arbitrator appointments in expedited cases are in harmony with the streamlined nature of the proceedings. This approach reflects the commitment to achieving faster dispute resolution while maintaining procedural fairness.
7. **Clarity for Parties:** The exclusion of Article 23 in expedited cases provides clarity to parties and arbitrators regarding the specific procedures that apply. This clarity helps avoid confusion and facilitates a focused approach to the arbitration process.

In summary, Article 3(1) of Appendix VI to the ICC Arbitration Rules 2021 excludes the application of Article 23 of the Rules in expedited proceedings. This exclusion aligns with the objective of expediting the arbitration process, simplifying arbitrator appointments, and ensuring that the procedures remain tailored to the fast-track nature of the case.

**2 After the arbitral tribunal has been constituted, no party shall make new claims, unless it has been authorized to do so by the arbitral tribunal, which shall consider the nature of such new claims, the stage of the arbitration, any cost implications and any other relevant circumstances.**

Article 3(2) of Appendix VI to the ICC Arbitration Rules 2021 addresses the issue of making new claims after the arbitral tribunal has been constituted in arbitrations conducted under the Expedited Procedure Provisions. Let us analyse this provision:

1. **Restriction on New Claims:** The provision sets a restriction on parties making new claims after the arbitral tribunal has been constituted. This restriction is in place to maintain the efficiency and expedited nature of the proceedings. It prevents the introduction of new claims that could potentially complicate and prolong the arbitration process.

2. **Authorisation by Arbitral Tribunal:** The provision allows for exceptions to the restriction if a party seeks to make new claims. To do so, the party must obtain authorisation from the arbitral tribunal. This emphasises the role of the tribunal in overseeing the scope and progression of the case, even in expedited proceedings.
3. **Consideration of Relevant Factors:** The arbitral tribunal’s decision to authorise new claims is not automatic. The tribunal is required to consider several factors before granting such authorisation. These factors include the nature of the new claims, the current stage of the arbitration, potential cost implications, and any other relevant circumstances.
4. **Balancing Expediency and Fairness:** The provision strikes a balance between the expedited nature of the proceedings and ensuring that parties are treated fairly. It acknowledges that unforeseen circumstances or developments might necessitate the introduction of new claims. However, this should be done in a manner that does not compromise the efficiency of the process.
5. **Avoidance of Procedural Delays:** The provision aims to prevent last-minute introductions of new claims that could disrupt the arbitration timeline. Such disruptions could lead to procedural delays and defeat the purpose of the expedited procedure.
6. **Incentive for Early Identification:** The requirement for authorisation from the arbitral tribunal incentivises parties to identify all relevant claims at an early stage of the proceedings. This contributes to the predictability and clarity of the arbitration process.
7. **Promotion of Transparency:** By allowing parties to seek authorisation for new claims, the provision promotes transparency and communication between the parties and the arbitral tribunal. It allows for open discussions about the potential impact of new claims on the proceedings.
8. **Arbitral Tribunal’s Discretion:** The arbitral tribunal has discretion in determining whether to grant authorisation for new claims. This discretionary power is in line with the tribunal’s overall responsibility to manage the proceedings effectively.

In summary, Article 3(2) of Appendix VI to the ICC Arbitration Rules 2021 restricts parties from making new claims after the arbitral tribunal has been constituted in expedited proceedings. It outlines a process through which parties can seek authorisation for new claims and underscores the importance of considering various factors to ensure that the introduction of new claims does not hinder the efficiency and effectiveness of the arbitration process.

**3 The case management conference convened pursuant to Article 24 of the Rules shall take place no later than 15 days from the date on which the file was transmitted to the arbitral tribunal. The Court may extend this time limit pursuant to a reasoned request from the arbitral tribunal or on its own initiative if it decides it is necessary to do so.**

Article 3(3) of Appendix VI to the ICC Arbitration Rules 2021 addresses the timing of the case management conference in arbitrations conducted under the Expedited Procedure Provisions. Let us analyse this provision:

1. **Mandatory Case Management Conference:** The provision stipulates that a case management conference must be convened pursuant to Article 24 of the ICC Arbitration Rules. This conference is a key procedural step that allows the arbitral tribunal to address various matters related to the conduct of the arbitration.
2. **Timeliness:** The provision emphasises the importance of conducting the case management conference promptly. It sets a specific time limit for the conference, requiring that it take place no later than 15 days from the date on which the arbitral tribunal received the case file. This aligns with the overarching goal of expedited proceedings to achieve a swift resolution of the dispute.
3. **Efficient Case Management:** The provision reflects the need for efficient case management in expedited proceedings. By convening the case management conference within a relatively short period, the parties, the arbitral tribunal, and the Secretariat can promptly address issues related to the proceedings, such as procedural steps, timelines, and potential challenges.
4. **Court’s Discretion to Extend:** The provision recognises that there might be exceptional circumstances where an extension of the 15-day time limit is necessary. In such cases, the arbitral tribunal can submit a reasoned request to the Court, or the Court can extend the time limit on its own initiative if it deems it necessary.
5. **Balancing Expediency and Fairness:** The provision aims to balance the expediency of the proceedings with the parties’ right to present their case and prepare adequately. While the time limit is set to ensure swift proceedings, the provision also acknowledges the need to ensure a fair and reasonable process for all parties involved.
6. **Flexibility in Application:** The provision is flexible in nature, recognising that not all cases will have the same procedural requirements or complexities. The arbitral tribunal and the Court can tailor the timing and procedures of the case management conference to suit the specific circumstances of each case.
7. **Support for the Arbitral Tribunal:** By requiring the case management conference, the provision underscores the role of the arbitral tribunal in actively managing the proceedings and guiding the parties through the arbitration process.

In summary, Article 3(3) of Appendix VI to the ICC Arbitration Rules 2021 establishes a time limit for convening the case management conference in expedited proceedings. The provision underscores the importance of conducting the conference promptly to facilitate efficient case management while allowing for flexibility in extending the time limit when necessary to ensure a fair and effective arbitration process.

**4 The arbitral tribunal shall have discretion to adopt such procedural measures as it considers appropriate. In particular, the arbitral tribunal may, after consultation with the parties, decide**

**not to allow requests for document production or to limit the number, length and scope of written submissions and written witness evidence (both fact witnesses and experts).**

Article 3(4) of Appendix VI to the ICC Arbitration Rules 2021 pertains to the procedural powers of the arbitral tribunal in arbitrations conducted under the Expedited Procedure Provisions. Here is an analysis of this provision:

1. **Discretion of the Arbitral Tribunal:** The provision emphasises the arbitral tribunal's discretion in shaping the procedural aspects of the expedited arbitration. This aligns with the overall goal of expedited proceedings, which is to achieve a swift and cost-effective resolution of the dispute while maintaining a fair and efficient process.
2. **Procedural Measures:** The provision grants the arbitral tribunal the authority to adopt procedural measures it deems appropriate. This includes the ability to tailor the proceedings to suit the specific circumstances of the case, allowing the tribunal to address any unique or complex issues that may arise.
3. **Limiting Procedural Steps:** One specific aspect highlighted in the provision is the tribunal's authority to limit certain procedural steps. For instance, the arbitral tribunal has the power to decide not to allow requests for document production. This is significant, as document production can often be time-consuming and resource-intensive. Additionally, the tribunal can limit the number, length, and scope of written submissions and written witness evidence, both from fact witnesses and experts.
4. **Consultation with Parties:** The provision requires the arbitral tribunal to consult with the parties before implementing these procedural measures. This consultation is vital to ensure that parties have the opportunity to express their views and concerns regarding the proposed limitations on procedural steps.
5. **Balancing Expediency and Fairness:** The provision reflects the need to strike a balance between expediency and fairness in expedited proceedings. While the aim is to streamline the process, it is crucial to ensure that parties still have an opportunity to present their case and evidence effectively.
6. **Efficiency and Cost Savings:** By providing the arbitral tribunal with the discretion to limit certain procedural steps, the provision contributes to the efficiency and cost savings associated with expedited proceedings. Parties can avoid unnecessary procedural hurdles and focus on the key issues at hand.
7. **Adaptive Approach:** The provision supports an adaptive approach to procedural decision-making, allowing the arbitral tribunal to tailor its measures to the specific needs and complexities of each individual case.

In summary, Article 3(4) of Appendix VI to the ICC Arbitration Rules 2021 empowers the arbitral tribunal in expedited proceedings to adopt procedural measures it deems suitable. This includes the authority to limit certain procedural steps, such as document production and written submissions, after consulting with the parties. The provision underscores the balance between expediency and fairness in expedited proceedings, while also supporting an efficient and cost-effective arbitration process.

**5 The arbitral tribunal may, after consulting the parties, decide the dispute solely on the basis of the documents submitted by the parties, with no hearing and no examination of witnesses or experts.**

Article 3(5) of Appendix VI to the ICC Arbitration Rules 2021 addresses the authority of the arbitral tribunal to make decisions solely based on the documents submitted by the parties, without holding a hearing or examining witnesses or experts. Here is an analysis of this provision:

1. **Document-Based Decision:** The provision grants the arbitral tribunal the discretion to decide the dispute based solely on the written documents provided by the parties. This means that the tribunal can render its decision without conducting a formal hearing or allowing witness or expert testimony.
2. **Consultation with Parties:** Before making such a decision, the provision requires the arbitral tribunal to consult with the parties. This consultation ensures that the parties are aware of the tribunal's intention to proceed with a document-based decision and provides them with an opportunity to express their views on the matter.
3. **Efficiency and Expediency:** The primary goal of allowing document-based decisions is to enhance the efficiency and expedience of the arbitration process. In expedited proceedings, where time is of the essence, this approach can help accelerate the resolution of disputes.
4. **Balancing Factors:** The provision does not preclude the arbitral tribunal from conducting a hearing or examining witnesses and experts if it deems it necessary. The decision to proceed with a document-based decision is made after considering the circumstances of the case, including its complexity, the nature of the issues, and the preferences of the parties.
5. **Impact on Parties' Rights:** While document-based decisions offer efficiency benefits, they also raise concerns regarding the parties' ability to present their case fully and the principle of due process. The provision recognises the importance of maintaining a balance between procedural efficiency and safeguarding parties' rights.
6. **Consensual Nature:** The provision's requirement for consulting the parties underscores the consensual nature of arbitration. The parties' input is crucial in determining whether a document-based decision is appropriate for the specific case.
7. **Flexibility and Adaptability:** The provision aligns with the general principles of arbitration that allow for flexibility and adaptability in procedure. It acknowledges that different cases may warrant different procedural approaches.

In summary, Article 3(5) of Appendix VI to the ICC Arbitration Rules 2021 grants the arbitral tribunal the authority to decide a dispute solely based on the documents submitted by the parties, without conducting a hearing or examining witnesses or experts. This approach aims to enhance the efficiency of the proceedings, but it also emphasises the importance of consulting with the parties to ensure that their rights are respected and that the chosen procedure aligns with the circumstances of the case.

## ARTICLE 4 Award

- 1 The time limit within which the arbitral tribunal must render its final award is six months from the date of the case management conference. The Court may extend the time limit pursuant to Article 31(2) of the Rules.**

Article 4(1) of Appendix VI to the ICC Arbitration Rules 2021 establishes a time limit for the arbitral tribunal to render its final award in expedited arbitration proceedings. Here is an analysis of this provision:

- 1. Time Limit:** The provision sets a specific time frame within which the arbitral tribunal is required to render its final award in expedited arbitration cases. According to this provision, the tribunal must issue its final award within six months from the date of the case management conference.
- 2. Efficiency and Expediency:** The primary objective of the six-month time limit is to ensure the efficiency and expediency of the arbitration process. Expedited proceedings are generally intended to resolve disputes quickly, and imposing a specific deadline on the tribunal helps achieve this goal.
- 3. Predictability:** By setting a clear time limit for rendering the final award, the provision contributes to predictability for the parties involved. This predictability allows the parties to plan their activities accordingly and facilitates the timely resolution of disputes.
- 4. Court's Authority to Extend:** The provision acknowledges that there may be exceptional circumstances that warrant an extension of the time limit. In such cases, the Court has the authority to extend the six-month period, pursuant to Article 31(2) of the ICC Arbitration Rules. This flexibility ensures that the tribunal can address unforeseen challenges without compromising the integrity of the arbitration process.
- 5. Balancing Efficiency and Quality:** While efficiency is a key consideration in expedited proceedings, the provision also recognises the importance of maintaining the quality and fairness of the arbitral process. The time limit strikes a balance between expeditious resolution and the tribunal's thorough consideration of the case.
- 6. Court's Oversight:** The provision reinforces the role of the ICC Court in supervising the arbitration proceedings. The Court's ability to extend the time limit demonstrates its oversight of the arbitration process to ensure fairness and procedural integrity.
- 7. Procedural Certainty:** The provision offers procedural certainty by specifying a fixed timeline for issuing the final award. This certainty benefits both the parties and the tribunal, as they can plan their activities and resources accordingly.

In summary, Article 4(1) of Appendix VI to the ICC Arbitration Rules 2021 establishes a six-month time limit for the arbitral tribunal to render its final award in expedited arbitration proceedings. This provision balances the need for efficiency with the flexibility to extend the timeline under exceptional circumstances, while also ensuring the quality and fairness of the arbitration process.



**2 The fees of the arbitral tribunal shall be fixed according to the scales of administrative expenses and arbitrator’s fees for the expedited procedure set out in Appendix III.**

Article 4(2) of Appendix VI to the ICC Arbitration Rules 2021 addresses the determination of the fees of the arbitral tribunal in cases conducted under the expedited procedure. Here is an analysis of this provision:

1. **Fee Determination:** This provision specifies that the fees of the arbitral tribunal in expedited arbitration cases shall be determined according to the scales of administrative expenses and arbitrator’s fees set out in Appendix III of the ICC Arbitration Rules. These scales provide a structured framework for calculating the fees, taking into account the amount in dispute and other relevant factors.
2. **Reference to Appendix III:** By incorporating the scales from Appendix III, the provision streamlines the fee determination process for expedited proceedings. This reference ensures consistency and predictability in calculating the tribunal’s fees, as parties can refer directly to the established scales.
3. **Simplicity and Expediency:** The use of predetermined scales simplifies the fee calculation process, making it easier for both parties and the arbitral tribunal to understand and apply the fee structure. In expedited proceedings, efficiency and speed are crucial, and using predefined scales contributes to expediency.
4. **Correlation with Amount in Dispute:** The scales in Appendix III consider the amount in dispute, which is often a significant factor in determining arbitration fees. This ensures that the fees remain proportional to the size and complexity of the dispute, regardless of the expedited procedure.
5. **Transparency:** By referencing Appendix III, the provision promotes transparency in fee determination. Parties can readily access the scales to understand how fees are calculated, which contributes to building trust in the arbitration process.
6. **Alignment with ICC Rules:** Incorporating the scales from Appendix III ensures alignment with the overall ICC Arbitration Rules framework. This consistency helps parties and arbitrators navigate the rules more effectively.
7. **Consistency with Expedited Nature:** While the use of predefined scales is consistent with the streamlined nature of expedited proceedings, it is important to note that these scales are designed to be reflective of the reduced complexity often associated with such cases.

In summary, Article 4(2) of Appendix VI to the ICC Arbitration Rules 2021 specifies that the fees of the arbitral tribunal in expedited arbitration cases shall be determined based on the scales of administrative expenses and arbitrator’s fees set out in Appendix III. This provision aligns fee determination with established scales, ensuring efficiency, transparency, and fairness in the arbitration process.

## ARTICLE 5 General Rule

**In all matters concerning the expedited procedure not expressly provided for in this Appendix, the Court and the arbitral tribunal shall act in the spirit of the Rules and this Appendix.**

Article 5 of Appendix VI to the ICC Arbitration Rules 2021 outlines a principle that guides the conduct of the Court and the arbitral tribunal in matters concerning the expedited procedure. Here is an analysis of this provision:

1. **Guiding Principle:** Article 5 establishes a guiding principle that governs matters not specifically addressed within Appendix VI. It underscores the importance of aligning decisions and actions with both the broader ICC Arbitration Rules and the specific provisions of the expedited procedure outlined in the Appendix.
2. **Uniformity and Consistency:** By emphasising that the Court and the arbitral tribunal should act in the “spirit of the Rules and this Appendix”, the provision seeks to ensure uniformity and consistency in the application of the expedited procedure. It prevents the inadvertent creation of contradictions or discrepancies between the expedited procedure and the rest of the ICC Arbitration Rules.
3. **Balancing Flexibility and Standardisation:** While the expedited procedure is designed to offer more efficient and streamlined arbitration, it is essential to maintain a balance between flexibility and standardisation. This provision encourages the application of established principles and standards while allowing for adjustments that align with the unique features of expedited proceedings.
4. **Promotion of Fairness and Integrity:** This guiding principle aims to maintain the integrity and fairness of the arbitration process, even in the context of expedited proceedings. It reinforces the ICC’s commitment to upholding its reputation for providing effective and impartial dispute resolution mechanisms.
5. **Adaptation to Specific Cases:** Expedited procedures often involve cases with distinct circumstances, complexities, and nuances. While Appendix VI provides specific guidelines for expedited proceedings, this provision ensures that the Court and arbitral tribunal can adapt to unforeseen situations without deviating from the core principles of the ICC Arbitration Rules.
6. **Enhanced Party Confidence:** Parties involved in expedited proceedings can have confidence that their cases will be handled in a manner consistent with the broader principles and standards established by the ICC. This alignment with the spirit of the Rules bolsters trust in the arbitration process.
7. **Harmonisation of Interpretation:** In situations where a specific matter is not expressly addressed within Appendix VI, this provision helps ensure that decisions are made in a way that harmonises with the overall ICC Arbitration Rules framework. It prevents inadvertent divergences in interpretation that might arise in expedited proceedings.

In summary, Article 5 of Appendix VI to the ICC Arbitration Rules 2021 establishes a guiding principle for the Court and the arbitral tribunal to follow in matters not explicitly covered by the Appendix. It promotes uniformity, consistency, fairness, and adaptation within the broader framework of the ICC Arbitration Rules, ensuring that the expedited procedure aligns with the ICC’s standards and values.

**GALADARI**

ADVOCATES & LEGAL CONSULTANTS  
محامون ومستشارون قانونيون

كالدري



### **DUBAI**

Galadari Building  
Al Ghubaiba Street  
Al Souq Al Kabeer  
P.O. Box 7992  
Dubai, UAE

### **DIFC**

Gate Precinct Building  
5 Sheikh Zayed Road  
DIFC  
P.O. Box 50696  
Dubai, UAE

### **ABU DHABI**

Addax Tower  
Hydra Avenue  
Al Reem Island  
P.O. Box 47634  
Abu Dhabi, UAE

[www.galadarilaw.com](http://www.galadarilaw.com)