



AI COMMENTARY: UNCITRAL ARBITRATION RULES 2021

Prepared by Galadari Advocates & Legal Consultants with ChatGPT

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About Galadari

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

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

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

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

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



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Editors' Preface

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ChatGPT: *“Article 4.1 of the DIAC Arbitration Rules outlines the requirements for submitting a Request to commence an arbitration under the Rules. Let us analyse each component of this*

article: [...] Copy of relevant agreement: The Request ~~should~~ include a copy of any relevant agreement between the parties that contains the agreement to arbitrate, which is the basis for the claim being made.”

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

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

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

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

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

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

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

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

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

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UNCITRAL ARBITRATION RULES 2021¹

Section I. Introductory rules

Scope of application

Article 1

1. Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the UNCITRAL Arbitration Rules, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree.

Article 1(1) of the UNCITRAL Arbitration Rules 2021 establishes the scope and applicability of these rules to disputes between parties who have agreed to refer their disputes to arbitration under the UNCITRAL Arbitration Rules. Let us break down the key points of this article:

1. **Agreement of the Parties:** The article applies when the parties involved have mutually agreed that any disputes arising from a defined legal relationship, whether it is a contractual relationship or not, will be resolved through arbitration under the UNCITRAL Arbitration Rules. This means that the parties have expressly chosen arbitration as the preferred method of dispute resolution rather than going to court.
2. **Defined Legal Relationship:** The scope of application is broad and covers disputes related to any legal relationship, regardless of whether it is contractual or non-contractual. This includes disputes arising from commercial contracts, business relationships, joint ventures, investment agreements, and various other types of legal relationships.
3. **Reference to UNCITRAL Arbitration Rules:** The parties have specifically chosen the UNCITRAL Arbitration Rules to govern the arbitration proceedings. UNCITRAL stands for the United Nations Commission on International Trade Law, and its Arbitration Rules provide a well-established framework for international commercial arbitration.
4. **Settlement in Accordance with the Rules:** The disputes between the parties must be resolved in accordance with the UNCITRAL Arbitration Rules. These rules cover various aspects of the arbitration process, such as appointment of arbitrators, conduct of the arbitration, submission of evidence, and issuance of the final award.
5. **Flexibility in Modifications:** While the disputes are generally settled following the UNCITRAL Arbitration Rules, Article 1(1) allows the parties to modify certain aspects of the rules by mutual agreement. This gives the parties the flexibility to adapt the arbitration process to suit their specific needs or circumstances.

Overall, Article 1(1) aims to promote the use of arbitration as an efficient and effective means of resolving disputes in international commercial transactions. By adopting the UNCITRAL Arbitration

¹ Source: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/21-07996_expedited-arbitration-e-ebook.pdf.

Rules, parties can benefit from a well-recognised and comprehensive set of rules while retaining the flexibility to tailor the process to their particular situation through mutual agreement.

2. The parties to an arbitration agreement concluded after 15 August 2010 shall be presumed to have referred to the Rules in effect on the date of commencement of the arbitration, unless the parties have agreed to apply a particular version of the Rules. That presumption does not apply where the arbitration agreement has been concluded by accepting after 15 August 2010 an offer made before that date.

Article 1(2) of the UNCITRAL Arbitration Rules 2021 deals with the presumption regarding the version of the Rules that will apply to arbitration agreements concluded after 15 August 2010. Let us analyse its key components:

1. **Presumption of Referring to Current Rules:** The article establishes a presumption that the parties to an arbitration agreement concluded after 15 August 2010 have intended to refer to the UNCITRAL Arbitration Rules in effect on the date of commencement of the arbitration. This means that if the parties have not explicitly specified a particular version of the Rules to apply, the version in effect at the time the arbitration process begins will govern the proceedings.
2. **Exception for Express Agreement:** The presumption is subject to an exception. If the parties have expressly agreed to apply a specific version of the UNCITRAL Arbitration Rules, then that agreed-upon version will prevail instead of the version in effect on the date of commencement.
3. **Exception for Pre-existing Offers:** The presumption also does not apply when the arbitration agreement has been formed by accepting an offer made before 15 August 2010. In such cases, the version of the UNCITRAL Arbitration Rules in effect at the time the offer was made will be applicable, rather than the version in effect at the commencement of the arbitration.

The purpose of Article 1(2) is to provide clarity and predictability in determining which version of the UNCITRAL Arbitration Rules will apply to arbitration agreements concluded after 15 August 2010. By establishing a presumption in favour of the current version, unless the parties have agreed otherwise, it promotes consistency in the application of the Rules and avoids potential disputes over which version should govern the arbitration proceedings. However, it also recognises the importance of parties' express agreements and the impact of pre-existing offers on the choice of applicable Rules.

3. These Rules shall govern the arbitration except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

Article 1(3) of the UNCITRAL Arbitration Rules 2021 deals with the relationship between the Rules and the applicable law governing the arbitration. Let us analyse its key elements:

1. **Governing Scope of the Rules:** The article explicitly states that the UNCITRAL Arbitration Rules shall govern the arbitration process between the parties. This means that the Rules

will apply to various aspects of the arbitration, including the appointment of arbitrators, conduct of the proceedings, submission of evidence, issuance of the award, and other procedural matters.

2. **Conflict with Applicable Law:** The article recognises that there may be instances where a provision of the UNCITRAL Arbitration Rules conflicts with a mandatory provision of the law applicable to the arbitration. The applicable law could be the law of the seat of arbitration (the legal jurisdiction where the arbitration is taking place) or any other law that the parties cannot derogate from (cannot override or modify).
3. **Primacy of Mandatory Applicable Law:** In case of a conflict, the provision of the law applicable to the arbitration, which the parties cannot derogate from, will prevail over the conflicting provision in the UNCITRAL Arbitration Rules. In other words, if a mandatory provision of the applicable law requires something different from what the Rules prescribe, the law's requirement will take precedence.
4. The purpose of Article 1(3) is to ensure that the UNCITRAL Arbitration Rules function harmoniously with the applicable law while preserving the integrity of the legal system of the seat of arbitration. While the Rules provide a comprehensive framework for arbitration, they cannot override or disregard mandatory provisions of the applicable law that parties are obligated to follow.

By acknowledging the supremacy of the mandatory applicable law, the article ensures that parties' rights and obligations under such law are respected during the arbitration process. This also helps prevent conflicts between the Rules and national legal systems and promotes the enforceability of arbitral awards by making sure they comply with the law of the seat of arbitration.

4. For investor-State arbitration initiated pursuant to a treaty providing for the protection of investments or investors, these Rules include the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration ("Rules on Transparency"), subject to article 1 of the Rules on Transparency.

Article 1(4) of the UNCITRAL Arbitration Rules 2021, which pertains to investor-State arbitration initiated pursuant to a treaty providing for the protection of investments or investors, includes a reference to the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration ("Rules on Transparency").

1. This provision essentially means that when the arbitration involves a dispute between an investor and a State, and the arbitration is based on a treaty that aims to protect investments or investors, the UNCITRAL Arbitration Rules 2021 will incorporate the provisions of the UNCITRAL Rules on Transparency. This incorporation is subject to the conditions set forth in Article 1 of the Rules on Transparency.
2. The Rules on Transparency are designed to enhance the openness and public accessibility of investor-State arbitration proceedings. They provide mechanisms for making certain information and documents related to the arbitration process available to the public, allowing for greater transparency in these types of arbitrations.

It is important to note that the reference to the Rules on Transparency in Article 1(4) suggests that in investor-State arbitrations, the procedural aspects of transparency established in the UNCITRAL Rules on Transparency will apply in conjunction with the UNCITRAL Arbitration Rules 2021.

5. The Expedited Arbitration Rules in the appendix shall apply to the arbitration where the parties so agree.

This provision indicates that the Expedited Arbitration Rules, which are provided in an appendix to the UNCITRAL Arbitration Rules 2021, will be applicable to an arbitration if the parties involved in the arbitration mutually agree to apply these rules. Here is a breakdown of what this article means:

1. **Expedited Arbitration Rules:** These are likely a set of rules designed to expedite the arbitration process. Expedited arbitration is generally used for simpler cases or cases where urgency is paramount. These rules often involve shorter timeframes, streamlined procedures, and reduced steps compared to traditional arbitration.
2. **Appendix:** The Expedited Arbitration Rules are provided as an appendix to the UNCITRAL Arbitration Rules 2021. An appendix is an additional section or document that is supplementary to the main body of rules.
3. **Application by Agreement:** The key point of Article 1(5) is that the Expedited Arbitration Rules will apply only if the parties explicitly agree to their application. In other words, the parties have the autonomy to decide whether they want the standard arbitration rules or the expedited rules to govern their dispute resolution process.

This article underscores the importance of party autonomy in arbitration. It allows the parties to tailor the arbitration process to their specific needs and preferences, whether they prefer a more streamlined and quicker process through the Expedited Arbitration Rules or a more comprehensive approach under the standard UNCITRAL Arbitration Rules.

Notice and calculation of periods of time

Article 2

1. A notice, including a notification, communication or proposal, may be transmitted by any means of communication that provides or allows for a record of its transmission.

This article addresses the method by which notices, notifications, communications, or proposals can be transmitted between the parties involved in arbitration proceedings under the UNCITRAL Arbitration Rules. Here is an analysis of this provision:

1. **Flexibility in Communication:** Article 2(1) emphasises the flexibility of communication methods in arbitration proceedings. It recognises that various modern forms of communication can be used, as long as they allow for a record of transmission. This is in line with the increasingly digital and technologically advanced methods of communication available today.

2. **Broad Scope of Applicability:** The article covers a wide range of communications, including notices, notifications, communications, and proposals. This includes formal documents such as notices of arbitration, statements of claim, counterclaims, and other important documents exchanged between the parties during the arbitration process.
3. **Record of Transmission:** The key requirement for the chosen means of communication is that it should provide or allow for a record of its transmission. This is important for evidentiary purposes. In case of disputes regarding the receipt or content of a communication, having a record of transmission can help establish the facts and intentions of the parties.
4. **Technological Neutrality:** By allowing any means of communication, the rule is technologically neutral. It acknowledges that the mode of communication may evolve over time and does not prescribe specific methods. Parties can choose communication methods that suit their convenience and preferences, as long as they satisfy the requirement of providing a record.
5. **Promotion of Efficiency and Transparency:** This provision promotes efficiency in the arbitration process by allowing parties to use modern and convenient communication methods. It also contributes to transparency since a record of transmission can help avoid disputes over whether a communication was sent or received.

Overall, Article 2(1) reflects a modern approach to communication in arbitration, taking into account technological advancements while ensuring that a reliable record of transmission is maintained. It aligns with the UNCITRAL Arbitration Rules' objective of providing a balanced and effective framework for international arbitration proceedings.

2. If an address has been designated by a party specifically for this purpose or authorized by the arbitral tribunal, any notice shall be delivered to that party at that address, and if so delivered shall be deemed to have been received. Delivery by electronic means such as facsimile or e-mail may only be made to an address so designated or authorized.

Article 2(2) of the UNCITRAL Arbitration Rules 2021 pertains to the delivery of notices during arbitration proceedings. Here is an analysis of this provision:

1. **Designated or Authorised Address:** This article establishes a clear method for delivering notices, communications, or proposals during arbitration proceedings. A party can designate a specific address for receiving such communications, or the arbitral tribunal can authorise an address for this purpose. This approach ensures that there is a designated and reliable point of contact for communication between the parties and the arbitral tribunal.
2. **Legal Presumption of Receipt:** If a notice is delivered to the designated or authorised address, it is deemed to have been received. This establishes a legal presumption that the communication has reached the intended recipient, which is important for determining timelines and meeting procedural requirements. This presumption simplifies the process of proving receipt.

3. **Electronic Means of Delivery:** The article recognises the use of electronic means, such as facsimile or e-mail, for delivering notices. However, such electronic delivery is limited to addresses that have been specifically designated or authorised for this purpose. This adds an element of security and control to electronic communication, ensuring that parties have actively chosen to receive communications through these channels.
4. **Balancing Flexibility and Control:** By allowing parties to designate their own addresses and choose electronic means of communication, the article strikes a balance between flexibility and control. Parties can adapt the communication process to their preferences and needs, while the requirement for authorisation or designation adds a level of formality and safeguards against potential misuse.
5. **Promotion of Efficiency:** This provision promotes efficiency in arbitration proceedings by allowing electronic communication, which can be faster and more convenient than traditional methods. However, it also ensures that parties have explicitly agreed to electronic delivery, reducing the risk of misunderstandings or disputes.

In summary, Article 2(2) focuses on establishing a reliable and efficient method for delivering communications during arbitration. It accommodates electronic communication while maintaining a level of control and formality through designated or authorised addresses. This approach aligns with the broader objectives of the UNCITRAL Arbitration Rules to provide a balanced and effective framework for international arbitration.

3. In the absence of such designation or authorization, a notice is:

- (a) Received if it is physically delivered to the addressee; or**
- (b) Deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee.**

This article deals with the delivery and receipt of notices in the absence of a designated or authorised address for communication. Here is an analysis of this provision:

1. **Fallback Mechanism:** Article 2(3) provides a fallback mechanism for the delivery and receipt of notices when there is no specific address designated or authorised by the parties or the arbitral tribunal. In such cases, the default rules in this article apply.
2. **Physical Delivery:** Subsection (a) states that a notice is considered “received” when it is physically delivered to the intended recipient. This could involve hand delivery or any other means where the notice physically reaches the addressee.
3. **Deemed Receipt:** Subsection (b) establishes a deemed receipt mechanism. A notice is “deemed to have been received” if it is delivered to the place of business, habitual residence, or mailing address of the intended recipient. This recognises the practical reality that important communications are often delivered to these locations and assumes that the notice will be brought to the attention of the addressee.
4. **Balancing Certainty and Practicality:** This article seeks to strike a balance between ensuring that notices are received and providing practical methods for achieving this.

While physical delivery provides a high level of certainty, the deemed receipt option acknowledges that in many cases, delivering a notice to a relevant location will likely achieve the intended purpose.

5. **Reflecting Real-World Scenarios:** Article 2(3) reflects the diverse scenarios that may arise in the international context of arbitration. Parties may not always have designated addresses, and the provision recognises the need for workable solutions in such cases.
6. **Importance of Record-Keeping:** To avoid disputes, it is crucial to maintain records of delivery attempts, especially when relying on the deemed receipt mechanism. Parties should be diligent in keeping records of the delivery process, including tracking information or proof of delivery.

Overall, Article 2(3) provides a practical framework for delivering and receiving notices when no specific address has been designated or authorised. It acknowledges the realities of cross-border communications while maintaining a level of certainty in the arbitration process.

4. If, after reasonable efforts, delivery cannot be effected in accordance with paragraphs 2 or 3, a notice is deemed to have been received if it is sent to the addressee’s last-known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.

This article addresses the situation where the designated or authorised address for delivering notices is not effective due to certain circumstances. Here is an analysis of this provision:

1. **Fallback Mechanism:** Article 2(4) provides a fallback mechanism for situations when delivery cannot be achieved as per the methods outlined in paragraphs 2 or 3. It recognises that despite the best efforts, there may be instances where communication remains unachieved due to various reasons.
2. **Reasonable Efforts:** The provision requires that reasonable efforts should be made to effect delivery as per the methods outlined in paragraphs 2 or 3. If these efforts fail, only then does this fallback mechanism come into play. This reinforces the principle that parties should actively attempt to communicate before resorting to fallback methods.
3. **Deemed Receipt:** If reasonable efforts are unsuccessful, a notice is “deemed to have been received” when it is sent to the addressee’s last-known place of business, habitual residence, or mailing address. This means that even if physical delivery could not be achieved, the act of sending the notice through reliable means is sufficient to establish receipt.
4. **Registered Letter or Record of Delivery:** The article specifies that sending the notice by registered letter or any other means providing a record of delivery or attempted delivery is required. This ensures that there is evidence of the communication process, which is crucial for maintaining transparency and addressing potential disputes.
5. **Importance of Documentation:** The provision emphasises the importance of documentation in the communication process. Keeping records of delivery attempts or delivery failures is crucial to demonstrate that reasonable efforts were indeed made.

6. Balancing Certainty and Practicality: Article 2(4) strikes a balance between ensuring certainty in the arbitration process while accommodating practical challenges that may arise in cross-border communications.

Overall, Article 2(4) adds another layer of contingency for ensuring that notices are effectively received, even when the designated methods fail. It promotes a structured and documented approach to communication, aligning with the overall goals of the UNCITRAL Arbitration Rules to provide a fair and transparent framework for international arbitration.

5. A notice shall be deemed to have been received on the day it is delivered in accordance with paragraphs 2, 3 or 4, or attempted to be delivered in accordance with paragraph 4. A notice transmitted by electronic means is deemed to have been received on the day it is sent, except that a notice of arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee’s electronic address.

This article addresses the issue of when a notice is considered to have been received. Here is an analysis of this provision:

1. Receipt Deemed Upon Delivery: The article establishes the principle that a notice is considered “received” on the day it is successfully delivered or attempted to be delivered as per the methods outlined in paragraphs 2, 3, or 4. This clarifies the point at which the recipient is presumed to have received the communication.
2. Electronic Transmission: For notices transmitted by electronic means, there are specific rules for determining the deemed receipt. In general, a notice sent electronically is deemed to have been received on the day it is sent. This acknowledges the speed of electronic communication and aligns with the practicalities of modern communication methods.
3. Notice of Arbitration: Notably, there is a special provision regarding a notice of arbitration sent electronically. In this case, the notice is only deemed to have been received on the day it reaches the addressee’s electronic address. This acknowledges the importance of ensuring that a notice of arbitration reaches the intended recipient to initiate the arbitration process.
4. Balancing Principles: Article 2(5) strikes a balance between the timing of notice delivery and the realities of different forms of communication. It sets clear rules for establishing the moment when a notice is deemed to have been received, regardless of the method used.
5. Importance of Electronic Address: The provision underscores the significance of the addressee’s electronic address, particularly in the context of initiating arbitration with a notice of arbitration. It ensures that the commencement of arbitration is based on actual receipt at the appropriate electronic address.
6. Certainty and Transparency: By specifying the timing of receipt for both physical and electronic communications, Article 2(5) contributes to the transparency and predictability of the arbitration process.

In summary, Article 2(5) clarifies the timing of deemed receipt for notices under different circumstances, emphasising the importance of successful delivery and acknowledging the characteristics of electronic communication. This article aims to provide a reliable framework for determining when communication is considered effective in arbitration proceedings.

6. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

This article addresses the calculation of time periods in the context of arbitration proceedings. Here is an analysis of this provision:

1. **Commencement of Period:** The article establishes the starting point for calculating any period of time under the UNCITRAL Arbitration Rules 2021. The period begins on the day following the day when a notice is received. This ensures a clear and consistent way to measure timeframes in the arbitration process.
2. **Extension for Holidays and Non-Business Days:** If the last day of the calculated period falls on an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day that follows. This provision acknowledges the practical challenge of adhering to deadlines when they fall on days when business activities are not typically conducted.
3. **Inclusion of Holidays or Non-Business Days:** The article clarifies that official holidays or non-business days that occur during the running of the period of time are included when calculating the period. This ensures that such days are taken into account and do not unfairly limit the time available for a party to act.
4. **Ensuring Fair and Practical Calculation:** Article 2(6) contributes to fairness in arbitration proceedings by accounting for factors beyond the parties' control, such as holidays and non-business days. It also aligns with the principle of providing a reasonable amount of time for parties to fulfil their obligations.
5. **Predictability and Transparency:** By establishing a clear method for calculating time periods and providing for extensions due to holidays or non-business days, this article adds to the predictability and transparency of the arbitration process.
6. **Efficiency and Flexibility:** While ensuring fairness, the provision also promotes efficiency by allowing for extensions only when necessary, thus maintaining the overall progress of the arbitration.

In summary, Article 2(6) sets out a structured approach for calculating time periods in arbitration proceedings. It addresses challenges posed by holidays and non-business days, ensuring that parties have a reasonable and practical timeframe to fulfil their obligations while maintaining the integrity of the process.

Notice of arbitration

Article 3

1. The party or parties initiating recourse to arbitration (hereinafter called the “claimant”) shall communicate to the other party or parties (hereinafter called the “respondent”) a notice of arbitration.

This article outlines the requirement for the party or parties initiating arbitration (the claimant) to provide a notice of arbitration to the other party or parties (the respondent). Here is an analysis of this provision:

1. **Notice of Arbitration:** Article 3(1) emphasises the formal commencement of arbitration through the act of communication. The notice of arbitration serves as the official communication that initiates the arbitration proceedings.
2. **Identification of Parties:** The article establishes the terminology used in the rules: “claimant” refers to the party or parties initiating the arbitration, and “respondent” refers to the other party or parties. This standardises the language used throughout the rules.
3. **Initiating Recourse to Arbitration:** The provision underscores that the notice of arbitration is a formal step in initiating arbitration. It indicates that the party or parties seeking to resolve their dispute through arbitration must take an active step to communicate their intention to the other party or parties.
4. **Importance of Communication:** This article highlights the significance of clear and timely communication in the arbitration process. The notice of arbitration provides the respondent with essential information about the initiation of proceedings, facilitating a structured and organised process.
5. **Triggering Timeframes:** Once the notice of arbitration is communicated, it triggers various timeframes and procedural steps outlined in the UNCITRAL Arbitration Rules. This includes deadlines for the respondent to submit a response and the overall progression of the arbitration process.
6. **Equitable Process:** Article 3(1) contributes to the fairness and balance of the arbitration process by ensuring that both parties are informed and aware of the initiation of proceedings. It prevents unilateral action by the claimant without due notice to the respondent.
7. **Adaptable to Multiple Parties:** The reference to “party or parties” in both the claimant and respondent roles acknowledges that arbitration can involve more than two parties. This adaptable language accommodates various scenarios where multiple parties may be involved.

In summary, Article 3(1) of the UNCITRAL Arbitration Rules 2021 sets the foundation for the arbitration process by requiring the claimant to formally communicate their intention to initiate arbitration to the respondent. This formal notice serves as a starting point for the structured and organised resolution of disputes through arbitration.

2. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent.

This article establishes a crucial point in the arbitration process by specifying when arbitral proceedings officially commence. Here is an analysis of this provision:

1. **Commencement of Arbitral Proceedings:** Article 3(2) defines the exact moment when the arbitral proceedings begin. It states that the proceedings are deemed to commence on the date when the notice of arbitration is received by the respondent. This point marks the transition from pre-arbitration discussions to the formal arbitration process.
2. **Formal Trigger:** The provision provides a clear and objective trigger for the commencement of arbitration. This clarity is essential for parties, arbitrators, and institutions to understand when procedural timelines and obligations are activated.
3. **Notice of Arbitration Importance:** The provision underscores the significance of the notice of arbitration. It is not only a formal communication but also the event that formally initiates the arbitration process.
4. **Balanced Timing:** By tying the commencement of proceedings to the receipt of the notice by the respondent, Article 3(2) ensures that both parties are equally aware of the start of arbitration. This promotes fairness and transparency in the process.
5. **Timeframe Reference:** The date of commencement serves as a reference point for calculating various timeframes throughout the arbitration, such as the time within which the respondent needs to submit its response or counterclaims.
6. **Avoiding Ambiguity:** The provision eliminates any potential ambiguity regarding the start of arbitral proceedings. By providing a clear and objective criterion, it helps prevent disputes or disagreements related to the initiation of the process.
7. **Predictability and Uniformity:** Article 3(2) adds predictability and uniformity to the arbitration process. Parties, arbitrators, and institutions can rely on a consistent standard for determining when proceedings officially begin.

In summary, Article 3(2) of the UNCITRAL Arbitration Rules 2021 establishes the exact moment when arbitral proceedings commence – upon the receipt of the notice of arbitration by the respondent. This provision ensures clarity, fairness, and predictability in the arbitration process, providing a solid foundation for the parties to proceed with their dispute resolution.

3. The notice of arbitration shall include the following:

- (a) A demand that the dispute be referred to arbitration;**
- (b) The names and contact details of the parties;**
- (c) Identification of the arbitration agreement that is invoked;**
- (d) Identification of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;**
- (e) A brief description of the claim and an indication of the amount involved, if any;**
- (f) The relief or remedy sought;**
- (g) A proposal as to the number of arbitrators, language and place of arbitration, if the parties have not previously agreed thereon.**

This article outlines the specific information that must be included in the notice of arbitration, which is a critical document that initiates the arbitration process. Here is an analysis of this provision:

1. **Demand for Arbitration:** Subsection (a) emphasises that the notice of arbitration must contain a clear demand for the dispute to be referred to arbitration. This demand is a fundamental aspect of initiating arbitration proceedings and expressing the intent to resolve the dispute through arbitration.
2. **Party Details:** Subsection (b) requires the names and contact details of the parties involved in the dispute. This information ensures that the parties' identities are established and facilitates communication throughout the arbitration process.
3. **Identification of Arbitration Agreement:** Subsection (c) mandates the identification of the arbitration agreement that is being invoked. This clarifies the legal basis for the arbitration and ensures that the parties are in agreement about the reference to arbitration.
4. **Identification of Underlying Contract or Relationship:** Subsection (d) requires the identification of any contract or legal instrument that is the source of the dispute. In the absence of such a document, a brief description of the relevant relationship should be provided. This provides context for the nature of the dispute.
5. **Description of Claim and Amount:** Subsection (e) necessitates a brief description of the claim itself, along with an indication of the amount involved, if applicable. This helps the respondent understand the nature and scope of the dispute.
6. **Relief or Remedy Sought:** Subsection (f) mandates the inclusion of the specific relief or remedy sought by the claimant. This information is crucial for the respondent and the arbitral tribunal to understand the objectives of the claimant.
7. **Proposals for Arbitration Process:** Subsection (g) requires the claimant to propose the number of arbitrators, the language of the arbitration, and the place of arbitration, if

these details have not been previously agreed upon by the parties. This proposal guides the initial procedural aspects of the arbitration.

8. **Promoting Clarity and Efficiency:** Article 3(3) ensures that the notice of arbitration provides essential information for the efficient initiation of arbitration proceedings. The specified details offer clarity and help parties, respondents, and arbitrators navigate the early stages of the process.

In summary, Article 3(3) of the UNCITRAL Arbitration Rules 2021 outlines the required contents of the notice of arbitration, which is a crucial document for initiating arbitration proceedings. The detailed information specified in this provision promotes transparency, fairness, and efficiency in the arbitration process by providing a clear framework for the parties to communicate their intentions and claims.

4. The notice of arbitration may also include:

- (a) A proposal for the designation of an appointing authority referred to in article 6, paragraph 1;**
- (b) A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1;**
- (c) Notification of the appointment of an arbitrator referred to in article 9 or 10.**

This article expands on the content of the notice of arbitration by providing additional elements that the claimant may include. Here is an analysis of this provision:

1. **Proposals for Designation and Appointment:** Subsections (a) and (b) introduce the possibility for the claimant to include proposals for certain appointments. These proposals demonstrate the proactive approach of the claimant and can help streamline the process of selecting an appointing authority (article 6, paragraph 1) or a sole arbitrator (article 8, paragraph 1).
2. **Enhancing Procedural Efficiency:** By allowing the claimant to propose designations and appointments, Article 3(4) seeks to enhance the efficiency of the arbitration process. It can reduce delays and ensure that the procedural aspects of arbitration are set in motion promptly.
3. **Notification of Arbitrator Appointment:** Subsection (c) specifies that the notice of arbitration may also include notification of the appointment of an arbitrator, as referred to in articles 9 or 10. This reinforces the importance of timely communication regarding the composition of the arbitral tribunal.
4. **Early Steps in the Arbitration Process:** Including proposals for appointments and notifying arbitrator appointments in the notice of arbitration underscores the claimant's involvement in the arbitration process from its inception. This can contribute to a well-organised and structured arbitration process.
5. **Promotion of Cooperation:** Article 3(4) promotes a cooperative approach to arbitration proceedings. It encourages parties to actively engage in the selection and appointment of key individuals and bodies, which can facilitate smoother proceedings overall.

6. **Efficient Formation of Arbitral Tribunal:** By allowing the claimant to propose an appointing authority and a sole arbitrator, this provision aids in the efficient formation of the arbitral tribunal, which is a crucial component of the arbitration process.

In summary, Article 3(4) of the UNCITRAL Arbitration Rules 2021 expands the scope of the notice of arbitration by allowing the claimant to include proposals for appointing authorities and sole arbitrators, as well as notifications of arbitrator appointments. These provisions contribute to the efficiency, transparency, and cooperative spirit of the arbitration process, emphasising the importance of well-structured proceedings from the outset.

5. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

This article addresses the issue of controversies arising from the sufficiency of the notice of arbitration in relation to the constitution of the arbitral tribunal. Here is an analysis of this provision:

1. **Sufficiency of Notice:** Article 3(5) emphasises that any controversy related to the sufficiency of the notice of arbitration should not hinder the constitution of the arbitral tribunal. The sufficiency of the notice refers to whether the information provided in the notice is adequate and in compliance with the requirements set forth in the arbitration rules.
2. **Unimpeded Constitution of the Tribunal:** This provision highlights the importance of avoiding delays or obstacles in the formation of the arbitral tribunal due to disputes over the sufficiency of the notice. It ensures that parties can proceed with the arbitration process without unnecessary hindrances.
3. **Role of the Arbitral Tribunal:** The article establishes that any controversy regarding the sufficiency of the notice of arbitration will be finally resolved by the arbitral tribunal. This grants the arbitral tribunal the authority to decide on disputes related to the notice, thus avoiding the need for separate proceedings or litigation on this matter.
4. **Efficiency and Expertise:** By entrusting the arbitral tribunal with resolving controversies over notice sufficiency, Article 3(5) promotes efficiency and benefits from the expertise of the arbitrators in understanding the practical and procedural aspects of the case.
5. **Clarity and Finality:** The provision ensures clarity and finality by placing the resolution of notice-related controversies within the scope of the arbitral tribunal's jurisdiction. This minimises potential uncertainties and provides parties with a single forum for addressing such issues.
6. **Maintaining Arbitration's Advantages:** Article 3(5) aligns with the advantages of arbitration, such as speed and flexibility. It prevents procedural disputes from derailing the arbitration process, preserving one of the key benefits of choosing arbitration as a method of dispute resolution.
7. **Balancing Interests:** While allowing the arbitral tribunal to resolve notice-related controversies, the provision maintains a balance by not unduly restricting the parties'

ability to raise such issues. Parties still have a platform to present their concerns, but the resolution rests with the arbitral tribunal.

In summary, Article 3(5) of the UNCITRAL Arbitration Rules 2021 ensures that controversies concerning the sufficiency of the notice of arbitration do not hinder the constitution of the arbitral tribunal. By granting the arbitral tribunal the authority to resolve such controversies, the provision promotes efficiency, clarity, and the unimpeded progress of the arbitration process.

Response to the notice of arbitration

Article 4

1. Within 30 days of the receipt of the notice of arbitration, the respondent shall communicate to the claimant a response to the notice of arbitration, which shall include:

(a) The name and contact details of each respondent;

(b) A response to the information set forth in the notice of arbitration, pursuant to article 3, paragraphs 3 (c) to (g).

This article outlines the requirements for the respondent's response to the notice of arbitration and sets a timeline for this response. Here is an analysis of this provision:

1. **Timeline for Responding:** Article 4(1) establishes a clear timeline for the respondent to provide a response to the notice of arbitration. The response is to be communicated within 30 days of receiving the notice. This time limit adds to the predictability and efficiency of the arbitration process.
2. **Respondent's Obligation:** The provision places an obligation on the respondent to provide a response to the claimant's notice of arbitration. This ensures that both parties are actively engaged in the arbitration process from the outset.
3. **Contact Details:** Subsection (a) requires the respondent to provide the name and contact details of each respondent. This information ensures proper communication and identification of the parties involved in the arbitration.
4. **Response to Notice of Arbitration:** Subsection (b) mandates that the respondent's response must include a response to the information provided in the notice of arbitration, specifically addressing the details outlined in Article 3, paragraphs 3 (c) to (g). This requirement ensures that the respondent engages with the key information presented by the claimant.
5. **Ensuring Balance:** By requiring the respondent to address the information provided by the claimant, Article 4(1) helps maintain a balanced and transparent exchange of information between the parties. This is important for the fair and effective resolution of disputes.

6. **Promotion of Efficiency:** The provision's timeframe for responding (30 days) encourages a prompt and efficient start to the arbitration process. It ensures that parties promptly address the claims and issues raised, preventing unnecessary delays.
7. **Framework for Communication:** Article 4(1) contributes to the establishment of a structured communication framework between the parties. It sets expectations for timely responses and information sharing, fostering a more organised arbitration process.
8. **Early Clarification and Focus:** Requiring the respondent to address specific information outlined in the notice of arbitration helps clarify the key issues at the outset. This can lead to a more focused and efficient arbitration process.

In summary, Article 4(1) of the UNCITRAL Arbitration Rules 2021 outlines the respondent's obligations and timeline for providing a response to the notice of arbitration. By specifying the content and timeframe for the response, this provision contributes to the effectiveness, transparency, and efficiency of the arbitration process, ensuring that both parties actively engage in the dispute resolution process.

2. The response to the notice of arbitration may also include:

- (a) Any plea that an arbitral tribunal to be constituted under these Rules lacks jurisdiction;**
- (b) A proposal for the designation of an appointing authority referred to in article 6, paragraph 1;**
- (c) A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1;**
- (d) Notification of the appointment of an arbitrator referred to in article 9 or 10;**
- (e) A brief description of counterclaims or claims for the purpose of a set-off, if any, including where relevant, an indication of the amounts involved, and the relief or remedy sought;**
- (f) A notice of arbitration in accordance with article 3 in case the respondent formulates a claim against a party to the arbitration agreement other than the claimant.**

This article outlines the additional elements that the respondent may include in their response to the notice of arbitration. Here is an analysis of this provision:

1. **Jurisdictional Plea:** Subsection (a) allows the respondent to include a plea that the arbitral tribunal lacks jurisdiction. This gives the respondent the opportunity to challenge the tribunal's jurisdiction based on the arbitration agreement or other relevant considerations.
2. **Proposals for Appointments:** Subsections (b) and (c) allow the respondent to propose the designation of an appointing authority or the appointment of a sole arbitrator. This provision acknowledges the respondent's role in initiating key procedural steps.

3. Notification of Arbitrator Appointment: Subsection (d) allows the respondent to notify the claimant of the appointment of an arbitrator, as referred to in articles 9 or 10. This contributes to transparency in the formation of the arbitral tribunal.
4. Counterclaims and Set-Off: Subsection (e) permits the respondent to provide a brief description of any counterclaims or claims for the purpose of a set-off. This enables the respondent to assert its own claims, indicating the amounts involved and the relief sought.
5. Respondent's Claims: By allowing the respondent to submit counterclaims or claims for set-off, Article 4(2)(e) ensures that both parties have an avenue to assert their rights and seek remedies within the same arbitration process.
6. Claim Against Another Party: Subsection (f) acknowledges the possibility that the respondent might formulate a claim against a party to the arbitration agreement other than the claimant. In such cases, the respondent must provide a notice of arbitration, similar to what is required of the claimant under Article 3.
7. Comprehensive Response: Article 4(2) encourages a comprehensive response from the respondent, promoting transparency and clarity in the dispute resolution process.
8. Efficiency and Streamlining: Allowing the respondent to raise jurisdictional challenges, make proposals, and submit counterclaims within the same response streamlines the initial stages of arbitration, contributing to efficiency.

In summary, Article 4(2) of the UNCITRAL Arbitration Rules 2021 expands the scope of the respondent's response to the notice of arbitration by allowing the inclusion of various elements. This provision encourages a well-structured and comprehensive response, facilitating a balanced and efficient arbitration process where both parties have the opportunity to assert their rights and address important procedural aspects.

3. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the respondent's failure to communicate a response to the notice of arbitration, or an incomplete or late response to the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

This article addresses potential controversies arising from the respondent's failure to provide a response to the notice of arbitration, or from providing an incomplete or late response. Here is an analysis of this provision:

1. Unimpeded Constitution of the Arbitral Tribunal: Article 4(3) emphasises that controversies related to the respondent's failure to communicate a response or the adequacy of the response should not hinder the constitution of the arbitral tribunal. This ensures that procedural obstacles do not unnecessarily delay the arbitration process.
2. Controversies Addressed by the Tribunal: The provision establishes that any controversy concerning the respondent's response – whether it is missing, incomplete, or submitted late – will be finally resolved by the arbitral tribunal. This grants the tribunal the authority to address and resolve procedural issues related to the respondent's response.

3. **Tribunal's Role in Ensuring Progress:** By entrusting the arbitral tribunal with resolving such controversies, Article 4(3) promotes the tribunal's active role in ensuring the smooth progress of the arbitration process, even when procedural challenges arise.
4. **Balance and Fairness:** The article ensures a balanced approach by allowing the tribunal to decide on issues related to both parties' compliance with procedural requirements. This helps maintain fairness and prevents one party's procedural missteps from impeding the entire arbitration.
5. **Efficiency and Clarity:** The provision contributes to the efficiency and clarity of the arbitration process by setting a framework for addressing controversies related to the respondent's response. This helps parties, arbitrators, and institutions navigate procedural issues more effectively.
6. **Maintaining the Advantages of Arbitration:** By resolving controversies within the arbitration framework, Article 4(3) maintains one of the key advantages of arbitration – the ability to address disputes promptly and effectively without resorting to separate court proceedings.
7. **Avoiding Disruption:** The provision ensures that the constitution of the arbitral tribunal can proceed despite potential procedural challenges. This avoids disruptions and delays in the overall arbitration timeline.
8. **Procedural Predictability:** Parties can expect consistent treatment of controversies related to the respondent's response, as these issues are resolved within the same arbitration process.

In summary, Article 4(3) of the UNCITRAL Arbitration Rules 2021 establishes that controversies arising from the respondent's failure to provide a response to the notice of arbitration, or from providing an incomplete or late response, will not hinder the constitution of the arbitral tribunal. The tribunal is empowered to address and resolve such issues, contributing to the efficiency, transparency, and fairness of the arbitration process.

Representation and assistance

Article 5

Each party may be represented or assisted by persons chosen by it. The names and addresses of such persons must be communicated to all parties and to the arbitral tribunal. Such communication must specify whether the appointment is being made for purposes of representation or assistance. Where a person is to act as a representative of a party, the arbitral tribunal, on its own initiative or at the request of any party, may at any time require proof of authority granted to the representative in such a form as the arbitral tribunal may determine.

Article 5 of the UNCITRAL Arbitration Rules 2021 addresses the representation and assistance of parties in arbitration proceedings. Here is an analysis of Article 5:

1. Representation and Assistance: Article 5 highlights the right of each party to be represented or assisted by individuals chosen by that party. This ensures that parties have the opportunity to have legal counsel, advisors, or experts involved in the arbitration process.
2. Communication of Names and Addresses: The provision establishes a requirement that the names and addresses of the individuals chosen for representation or assistance must be communicated to all parties involved in the arbitration and to the arbitral tribunal. This ensures transparency and allows all parties and the tribunal to know who is acting on behalf of each party.
3. Purpose Specification: The communication of names and addresses must also specify whether the appointed individuals are acting for purposes of representation or assistance. This distinction clarifies the roles and functions of the appointed persons, ensuring that everyone involved understands their role.
4. Proof of Authority for Representatives: If a person is designated to act as a representative of a party, the arbitral tribunal has the authority to require proof of the representative's authority. This ensures that individuals claiming to represent a party have the necessary authorisation to do so, preventing unauthorised representation.
5. Tribunal's Role in Authority Verification: The provision empowers the arbitral tribunal to request proof of authority from representatives. This reflects the tribunal's role in maintaining the integrity of the arbitration process and ensuring that only authorised individuals participate in the proceedings.
6. Flexibility and Customisation: Article 5 provides flexibility by allowing the arbitral tribunal to determine the form of proof of authority. This acknowledges that different circumstances may require different types of proof, and the tribunal has discretion to adapt as needed.
7. Balancing Rights and Procedures: The article strikes a balance between parties' rights to be represented or assisted and the need for proper verification of representatives' authority. This balance ensures a fair and effective arbitration process.
8. Promotion of Orderliness: By requiring communication of names and addresses and allowing for verification of authority, Article 5 contributes to the orderly and structured conduct of the arbitration process.

In summary, Article 5 of the UNCITRAL Arbitration Rules 2021 ensures that parties have the right to be represented or assisted by individuals of their choice in arbitration. The provision emphasises transparency and proper authorisation of representatives while allowing flexibility in the form of proof of authority. This helps maintain the integrity and fairness of the arbitration process.

Designating and appointing authorities

Article 6

1. Unless the parties have already agreed on the choice of an appointing authority, a party may at any time propose the name or names of one or more institutions or persons, including the Secretary-General of the Permanent Court of Arbitration at The Hague (hereinafter called the “PCA”), one of whom would serve as appointing authority.

This article addresses the process of selecting an appointing authority in the absence of prior agreement by the parties. Here is an analysis of this provision:

1. **Choice of Appointing Authority:** Article 6(1) deals with the appointment of an authority responsible for appointing arbitrators when the parties have not already agreed on a specific appointing authority. This authority is crucial for the formation of the arbitral tribunal.
2. **Party Proposals:** The provision allows a party to propose one or more names of institutions or individuals to serve as the appointing authority. This empowers parties to have a say in the selection process, maintaining a level of control over the appointment of the tribunal.
3. **Inclusiveness:** By permitting the proposal of multiple names, Article 6(1) promotes inclusiveness and flexibility in the selection of the appointing authority. This ensures that parties have the opportunity to suggest institutions or individuals that they consider suitable.
4. **Role of Institutions and Individuals:** The provision acknowledges that the appointing authority can be either an institution (such as an arbitral institution) or an individual (such as the Secretary-General of the PCA). This offers a range of options to suit the parties’ preferences.
5. **Secretary-General of the PCA:** Article 6(1) specifically mentions the Secretary-General of the Permanent Court of Arbitration at The Hague (PCA) as a potential appointing authority. This highlights the PCA’s established role in facilitating arbitral appointments.
6. **Timing of Proposal:** The provision permits a party to propose names for the appointing authority at any time during the arbitration process. This flexibility allows parties to adapt their approach based on the evolving circumstances of the case.
7. **Unilateral Proposal:** Article 6(1) enables a single party to make a proposal for the appointing authority. This allows a party to take initiative in advancing the appointment process.
8. **Appointment Independence:** The provision respects the principle of independence by allowing parties to propose names, which the appointing authority may consider without direct influence from the parties.
9. **Ensuring Tribunal Formation:** By setting out a mechanism for appointing an appointing authority, Article 6(1) ensures that the arbitral tribunal can be effectively constituted even when parties have not agreed on this aspect.

In summary, Article 6(1) of the UNCITRAL Arbitration Rules 2021 outlines the process of proposing an appointing authority in cases where the parties have not previously agreed on one. This provision empowers parties to suggest names of institutions or individuals, including the Secretary-General of the PCA, to fulfil this critical role in the arbitration process. It promotes flexibility, inclusiveness, and independence in the selection of the appointing authority.

2. If all parties have not agreed on the choice of an appointing authority within 30 days after a proposal made in accordance with paragraph 1 has been received by all other parties, any party may request the Secretary-General of the PCA to designate the appointing authority.

This article outlines the procedure to be followed if the parties are unable to agree on the choice of an appointing authority within a specified timeframe. Here is an analysis of this provision:

1. **Timeframe for Agreement:** Article 6(2) establishes a 30-day timeframe from the receipt of a proposal for the parties to reach an agreement on the choice of an appointing authority. This timeframe adds clarity and promotes efficiency in the appointment process.
2. **Parties' Agreement Requirement:** The provision underscores the importance of parties reaching an agreement on the appointing authority. It reflects the principle of party autonomy and collaboration in the arbitration process.
3. **Designation by Secretary-General of PCA:** If the parties fail to agree on an appointing authority within the designated timeframe, any party is granted the right to request the Secretary-General of the PCA to designate the appointing authority.
4. **Neutral and Unbiased Designation:** Designating the Secretary-General of the PCA as the responsible entity for making the appointment helps ensure neutrality and impartiality. This is particularly important in cases where the parties cannot agree on an appointing authority themselves.
5. **Fail-Safe Mechanism:** Article 6(2) serves as a fail-safe mechanism to prevent a deadlock in the appointment process. It provides a clear path forward if parties are unable to agree on the appointing authority, helping to keep the arbitration process on track.
6. **Role of PCA:** The provision recognises the PCA's expertise and established role in international arbitration. The PCA's involvement adds credibility to the appointment process and instils confidence in the parties.
7. **Protecting the Arbitration Process:** By providing a procedure for appointing an authority when parties cannot agree, Article 6(2) safeguards the overall arbitration process and prevents unnecessary delays.
8. **Promotion of Efficiency:** The provision contributes to the efficiency of the arbitration process by ensuring that the appointment of an authority is resolved promptly, even if parties encounter difficulties in agreeing on this aspect.

9. Preservation of Party Autonomy: While the article provides a mechanism for the Secretary-General of the PCA to step in, it does not undermine party autonomy entirely, as parties have the initial opportunity to propose their preferred appointing authority.

In summary, Article 6(2) of the UNCITRAL Arbitration Rules 2021 outlines a procedure to designate an appointing authority by the Secretary-General of the PCA when parties are unable to agree on one within the specified timeframe. This provision ensures that the arbitration process can move forward smoothly and efficiently, even in cases where agreement between the parties cannot be reached.

3. Where these Rules provide for a period of time within which a party must refer a matter to an appointing authority and no appointing authority has been agreed on or designated, the period is suspended from the date on which a party initiates the procedure for agreeing on or designating an appointing authority until the date of such agreement or designation.

This article addresses the suspension of a time period within which a party must refer a matter to an appointing authority when no such authority has been agreed upon or designated. Here is an analysis of this provision:

1. Suspension of Time Period: Article 6(3) establishes a mechanism for suspending a time period specified in the UNCITRAL Arbitration Rules when it involves referring a matter to an appointing authority.
2. Lack of Agreed or Designated Authority: The provision applies when no appointing authority has been agreed upon by the parties or designated by the Secretary-General of the PCA, as outlined in the previous paragraphs. In such cases, the article comes into play.
3. Initiation of Procedure: The suspension is triggered when a party initiates the procedure for agreeing on or designating an appointing authority. This marks the beginning of the suspension period.
4. Preservation of Procedural Fairness: Article 6(3) ensures that parties are not disadvantaged due to a lack of agreed or designated appointing authority. It suspends the time period to ensure that parties have the opportunity to establish the necessary mechanism.
5. Facilitating Agreement or Designation: The suspension period allows parties the time they need to negotiate and agree on an appointing authority or to follow the procedure for designation by the Secretary-General of the PCA.
6. Flexibility and Adaptability: By suspending the time period, Article 6(3) acknowledges that the initial time constraints may need to be adjusted to account for the process of agreeing on or designating an appointing authority.
7. Uninterrupted Progress: The provision helps ensure the uninterrupted progress of the arbitration process, even when procedural matters such as the appointment of an authority need to be resolved.

8. **Balancing Efficiency and Fairness:** Article 6(3) strikes a balance between procedural efficiency and fairness, allowing parties the necessary time to address a crucial aspect of the arbitration process.
9. **Preventing Rushed Decisions:** The suspension prevents parties from making rushed decisions on the choice of appointing authority due to time constraints. It encourages thoughtful consideration and negotiation.

In summary, Article 6(3) of the UNCITRAL Arbitration Rules 2021 outlines a rule for suspending a time period within which a party must refer a matter to an appointing authority in cases where no such authority has been agreed upon or designated. This provision ensures that parties have adequate time to establish the necessary mechanism for appointing an authority, balancing procedural fairness and efficiency.

4. Except as referred to in article 41, paragraph 4, if the appointing authority refuses to act, or if it fails to appoint an arbitrator within 30 days after it receives a party's request to do so, fails to act within any other period provided by these Rules, or fails to decide on a challenge to an arbitrator within a reasonable time after receiving a party's request to do so, any party may request the Secretary-General of the PCA to designate a substitute appointing authority.

This article deals with situations where the initially designated appointing authority fails to fulfil its role, and outlines the procedure for designating a substitute appointing authority. Here is an analysis of this provision:

1. **Failures of the Appointing Authority:** Article 6(4) addresses potential scenarios where the appointing authority does not fulfil its responsibilities as required under the UNCITRAL Arbitration Rules. This could include refusing to act, failing to appoint an arbitrator within the specified timeframe, not acting within any other prescribed period, or not deciding on a challenge to an arbitrator within a reasonable time.
2. **Substitute Appointing Authority:** The provision allows for the possibility of designating a substitute appointing authority when the initially chosen authority fails to perform its duties. This ensures that the arbitration process is not hindered due to the inaction or refusal of the original appointing authority.
3. **Protection against Delays:** By permitting parties to request the Secretary-General of the PCA to designate a substitute appointing authority, Article 6(4) protects against unnecessary delays and ensures the timely progression of the arbitration process.
4. **Ensuring Functionality of Process:** The article emphasises the importance of maintaining a functional and effective appointment mechanism, even in cases where the initially selected appointing authority encounters difficulties.
5. **Role of the PCA:** The provision designates the Secretary-General of the PCA as the entity responsible for designating a substitute appointing authority. This choice reinforces the PCA's recognised expertise and neutrality in international arbitration matters.

6. **Timely Decision on Challenges:** The provision particularly highlights the need for a timely decision by the appointing authority on challenges to arbitrators. Delays in resolving challenges could impact the impartiality and efficiency of the arbitral tribunal.
7. **Party's Right to Request:** Article 6(4) gives parties the right to request the Secretary-General of the PCA to designate a substitute appointing authority. This empowers parties to take action when the appointing authority's inaction could negatively affect the arbitration process.
8. **Preserving the Arbitration Process:** The provision contributes to the preservation of the arbitration process by offering an avenue for addressing failures or refusals by the appointing authority, ensuring that the parties' arbitration rights are upheld.
9. **Efficiency and Fairness:** Article 6(4) strikes a balance between procedural efficiency and fairness, allowing parties to seek intervention when the appointing authority's actions or inactions could potentially compromise the arbitration process.

In summary, Article 6(4) of the UNCITRAL Arbitration Rules 2021 outlines a procedure for designating a substitute appointing authority when the original appointing authority refuses to act, fails to fulfil its duties within the specified timeframes, or does not timely decide on challenges to arbitrators. This provision ensures that parties have a mechanism to address such failures and continue with the arbitration process efficiently and fairly.

5. In exercising their functions under these Rules, the appointing authority and the Secretary-General of the PCA may require from any party and the arbitrators the information they deem necessary and they shall give the parties and, where appropriate, the arbitrators, an opportunity to present their views in any manner they consider appropriate. All such communications to and from the appointing authority and the Secretary-General of the PCA shall also be provided by the sender to all other parties.

This article outlines the authority and procedural requirements for the appointing authority and the Secretary-General of the PCA when exercising their functions under the UNCITRAL Arbitration Rules. Here is an analysis of this provision:

1. **Information Gathering Authority:** Article 6(5) grants the appointing authority and the Secretary-General of the PCA the authority to request necessary information from any party or arbitrator. This is important to ensure that they have the information required to make informed decisions.
2. **Opportunity for Parties and Arbitrators to Present Views:** The provision mandates that the appointing authority and the Secretary-General shall provide parties and arbitrators with an opportunity to present their views. This ensures fairness and transparency in the decision-making process.
3. **Flexibility in Presentation:** The article allows the appointing authority and the Secretary-General to determine the appropriate manner for parties and arbitrators to present their views. This flexibility allows for adaptation to different circumstances.

4. **Communication and Transparency:** The provision ensures that all communications between the appointing authority or the Secretary-General and the parties, as well as any communication between them, are shared with all other parties. This transparency helps prevent any party from being uninformed about relevant communications.
5. **Effective Decision-Making:** By requiring the provision of necessary information and the opportunity for parties to present their views, Article 6(5) contributes to effective and well-informed decision-making by the appointing authority and the Secretary-General.
6. **Ensuring Party Involvement:** The article emphasises the importance of involving parties and arbitrators in the decision-making process. This aligns with principles of procedural fairness and the parties' right to participate.
7. **Balancing Authority and Participation:** Article 6(5) strikes a balance between the authority of the appointing authority and the Secretary-General and the rights of parties and arbitrators to be heard. This balance is crucial for maintaining procedural integrity.
8. **Facilitation of Communication:** The requirement for communication to be shared with all parties ensures that there are no information gaps, misunderstandings, or biases in the process.
9. **Role of the PCA:** By involving the Secretary-General of the PCA in this process, the article leverages the PCA's expertise and established role in international arbitration.

In summary, Article 6(5) of the UNCITRAL Arbitration Rules 2021 outlines the procedures and requirements for the appointing authority and the Secretary-General of the PCA when exercising their functions. It emphasises the importance of information gathering, providing an opportunity for parties and arbitrators to present views, and maintaining transparency through effective communication. This ensures that decisions are well-informed, fair, and aligned with the principles of arbitration.

6. When the appointing authority is requested to appoint an arbitrator pursuant to articles 8, 9, 10 or 14, the party making the request shall send to the appointing authority copies of the notice of arbitration and, if it exists, any response to the notice of arbitration.

This article outlines the requirements for parties when requesting the appointing authority to appoint an arbitrator in specific situations. Here is an analysis of this provision:

1. **Appointing Authority Request:** Article 6(6) specifies that the provision applies when a party requests the appointing authority to appoint an arbitrator under certain circumstances, as detailed in articles 8, 9, 10, or 14 of the UNCITRAL Arbitration Rules 2021.
2. **Documentation Requirement:** The provision mandates that the party making the request must provide copies of the notice of arbitration and, if applicable, any response to the notice of arbitration. This documentation ensures that the appointing authority has a clear understanding of the context and background of the arbitration.

3. **Ensuring Informed Decisions:** By requiring the submission of the notice of arbitration and any response, Article 6(6) ensures that the appointing authority is well-informed when making decisions related to the appointment of an arbitrator.
4. **Contextual Understanding:** The notice of arbitration and response, if available, provide essential information about the nature of the dispute, the parties involved, and the initial claims and counterclaims. This contextual understanding is crucial for the appointing authority's decision-making.
5. **Transparency and Fairness:** Requiring the submission of these documents promotes transparency and fairness, as the appointing authority can consider the same information that the parties have provided.
6. **Consistency and Integrity:** Article 6(6) contributes to the consistency and integrity of the arbitration process by ensuring that the appointing authority has access to relevant documents.
7. **Facilitating Decision-Making:** The article assists the appointing authority in making well-informed and appropriate decisions, especially when selecting arbitrators or responding to requests related to the arbitral tribunal's composition.
8. **Efficient Process:** By requiring parties to submit the necessary documents, Article 6(6) helps streamline the decision-making process for the appointing authority.
9. **Appropriate Parties' Participation:** The requirement aligns with the principle of involving all parties in the decision-making process and ensures that parties have the opportunity to present their claims and positions.

In summary, Article 6(6) of the UNCITRAL Arbitration Rules 2021 mandates that parties requesting the appointing authority to appoint an arbitrator provide copies of the notice of arbitration and, if available, any response to the notice of arbitration. This provision ensures that the appointing authority has access to relevant information to make informed and fair decisions related to the appointment of arbitrators and other matters specified in articles 8, 9, 10, or 14.

7. The appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

This article outlines the guiding principles and factors that the appointing authority should consider when appointing an arbitrator. Here is an analysis of this provision:

1. **Appointment of Independent and Impartial Arbitrator:** Article 6(7) emphasises the importance of appointing an arbitrator who is independent and impartial. This principle is fundamental to maintaining the integrity and fairness of the arbitration process.
2. **Guiding Considerations:** The provision mandates that the appointing authority should consider factors that are likely to secure the appointment of an arbitrator who possesses independence and impartiality. These factors could include the arbitrator's professional background, experience, and reputation.

3. **Nationality Consideration:** Article 6(7) also highlights the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties. This consideration aims to enhance the perception of neutrality and prevent any potential bias.
4. **Neutral and Diverse Composition:** By encouraging the appointment of arbitrators with nationalities distinct from those of the parties, the provision contributes to the diverse and neutral composition of the arbitral tribunal.
5. **Prevention of Bias:** The provision's emphasis on independence, impartiality, and diverse nationalities helps prevent any perceived bias or conflict of interest that may arise from having arbitrators with close national affiliations to the parties.
6. **Professional Reputation:** Article 6(7) underscores the importance of an arbitrator's professional reputation and standing. This ensures that the appointing authority takes into account an arbitrator's track record of fairness and integrity.
7. **Preserving Confidence in Arbitration:** By requiring the appointing authority to consider these factors, the provision helps preserve confidence in the arbitration process and promotes public trust in the final outcome.
8. **Flexible and Case-Specific Application:** The considerations outlined in Article 6(7) provide a flexible framework that can be applied on a case-by-case basis, taking into account the specific circumstances of each arbitration.
9. **Global Best Practices:** The principle of appointing independent and impartial arbitrators from diverse nationalities aligns with global best practices in international arbitration, ensuring fairness and legitimacy.

In summary, Article 6(7) of the UNCITRAL Arbitration Rules 2021 guides the appointing authority in considering factors that contribute to the appointment of an independent and impartial arbitrator. It also highlights the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties to enhance neutrality and prevent potential bias. These considerations ensure the integrity, fairness, and diversity of the arbitral tribunal and contribute to the overall effectiveness of the arbitration process.

Section II. Composition of the arbitral tribunal

Number of arbitrators

Article 7

1. If the parties have not previously agreed on the number of arbitrators, and if within 30 days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed.

This article addresses the situation where the parties have not agreed on the number of arbitrators for the arbitral tribunal. Here is an analysis of this provision:

1. **Default Number of Arbitrators:** Article 7(1) provides a default rule for the number of arbitrators when the parties have not agreed on a specific number. If no agreement exists, the default number is set at three arbitrators.
2. **Party Autonomy:** The provision recognises party autonomy by allowing the parties to decide on the number of arbitrators if they have previously agreed upon it. This aligns with the principle that parties should have control over key aspects of the arbitration process.
3. **Timeframe for Agreement:** Article 7(1) sets a specific timeframe for the parties to reach an agreement on the number of arbitrators. The parties have 30 days from the receipt of the notice of arbitration by the respondent to make this decision.
4. **Encouraging Efficiency:** By imposing a timeframe, the provision encourages parties to promptly address and resolve the issue of the number of arbitrators. This contributes to the efficiency of the arbitration process.
5. **Default Three-Arbitrator Panel:** If parties do not reach an agreement within the designated timeframe, the default setting is for a three-arbitrator panel. This is a balanced approach that ensures a diverse and multi-member tribunal.
6. **Preventing Deadlocks:** The provision helps prevent potential deadlocks that could arise if parties fail to agree on the number of arbitrators. The default rule ensures that the arbitration can proceed smoothly.
7. **Flexibility and Party Choice:** While the default is set at three arbitrators, parties can still agree to have a single arbitrator if they reach such an agreement within the specified timeframe.
8. **Balancing Cost and Expertise:** The three-arbitrator panel strikes a balance between the potential cost of a larger panel and the benefit of having a diverse and experienced tribunal.
9. **Efficient and Timely Process:** Article 7(1) ensures that the question of the number of arbitrators is addressed promptly, promoting a timely and effective arbitration process.

In summary, Article 7(1) of the UNCITRAL Arbitration Rules 2021 establishes a default rule for the number of arbitrators when the parties have not agreed on a specific number. If no agreement exists

within 30 days after the receipt of the notice of arbitration by the respondent, three arbitrators shall be appointed. This provision balances party autonomy with the need for an efficient and effective arbitration process while also allowing parties the flexibility to decide on a different number if they reach an agreement within the designated timeframe.

2. Notwithstanding paragraph 1, if no other parties have responded to a party’s proposal to appoint a sole arbitrator within the time limit provided for in paragraph 1 and the party or parties concerned have failed to appoint a second arbitrator in accordance with article 9 or 10, the appointing authority may, at the request of a party, appoint a sole arbitrator pursuant to the procedure provided for in article 8, paragraph 2, if it determines that, in view of the circumstances of the case, this is more appropriate.

This article addresses the situation when parties fail to reach an agreement on the number of arbitrators and the appointment of arbitrators becomes complicated. Here is an analysis of this provision:

1. **Alternative Procedure:** Article 7(2) provides an alternative procedure for the appointment of a sole arbitrator when the parties have failed to reach an agreement on the number of arbitrators or the appointment of arbitrators becomes stalled.
2. **No Response to Proposal:** The provision applies when no other parties respond to a proposal made by a party to appoint a sole arbitrator within the timeframe specified in Article 7(1).
3. **Failure to Appoint Second Arbitrator:** Additionally, the provision applies when the party or parties concerned fail to appoint a second arbitrator in accordance with Article 9 or 10 of the UNCITRAL Arbitration Rules 2021.
4. **Appointing Authority Intervention:** In such circumstances, Article 7(2) empowers the appointing authority to step in and make a decision regarding the appointment of a sole arbitrator.
5. **Request by a Party:** The provision requires a request from a party for the appointing authority to intervene and appoint a sole arbitrator.
6. **More Appropriate Sole Arbitrator:** The appointing authority’s intervention is subject to a determination that, given the circumstances of the case, appointing a sole arbitrator is more appropriate. This discretion is crucial in ensuring the most suitable resolution.
7. **Balancing Efficiency and Suitability:** Article 7(2) strikes a balance between the need for efficient resolution and the suitability of the arbitration panel. If the circumstances warrant it, a sole arbitrator might be more appropriate to avoid delays.
8. **Promotion of Progress:** The article ensures that the arbitration process can move forward even when parties are unable to agree on the appointment of arbitrators, safeguarding the efficiency and integrity of the arbitration proceedings.

9. **Case-Specific Determination:** The “circumstances of the case” requirement allows for flexibility and case-specific considerations, acknowledging that each arbitration scenario is unique.
10. **Preventing Stalemates:** The provision helps prevent situations where parties are unable to reach agreements, leading to delays or potential impasses in the arbitration process.

In summary, Article 7(2) of the UNCITRAL Arbitration Rules 2021 provides a mechanism for the appointing authority to appoint a sole arbitrator when parties fail to respond to a proposal for a sole arbitrator, fail to appoint a second arbitrator, and the appointing authority deems this approach more appropriate given the circumstances of the case. This provision promotes the efficient and effective resolution of disputes, even in situations where parties are unable to agree on the arbitration panel’s composition.

Appointment of arbitrators (articles 8 to 10)

Article 8

1. If the parties have agreed that a sole arbitrator is to be appointed and if within 30 days after receipt by all other parties of a proposal for the appointment of a sole arbitrator the parties have not reached agreement thereon, a sole arbitrator shall, at the request of a party, be appointed by the appointing authority.

This article addresses the appointment of a sole arbitrator when the parties have agreed on this option but are unable to reach an agreement within a specified timeframe. Here is an analysis of this provision:

1. **Sole Arbitrator Appointment:** Article 8(1) deals specifically with the appointment of a sole arbitrator when the parties have already agreed that a sole arbitrator should be appointed to handle the dispute.
2. **Party Agreement and Timeframe:** The provision is triggered when the parties have agreed on the appointment of a sole arbitrator but have not reached an agreement within 30 days after all other parties have received a proposal for the appointment.
3. **Appointing Authority’s Role:** Article 8(1) empowers the appointing authority to step in and appoint the sole arbitrator if the parties have not been able to agree within the designated timeframe.
4. **Request by a Party:** The appointing authority’s intervention is subject to a request by a party. This ensures that the process is initiated by the parties themselves, maintaining a balance between party autonomy and administrative intervention.
5. **Efficiency and Progress:** The provision ensures the continuity and progress of the arbitration process, even when parties encounter difficulties in reaching an agreement on the sole arbitrator’s appointment.

6. **Preventing Delays:** By imposing a timeframe and allowing the appointing authority to intervene, Article 8(1) prevents unnecessary delays that could arise from protracted negotiations over the sole arbitrator's appointment.
7. **Expertise and Impartiality:** In cases where parties are unable to agree, the appointing authority's appointment ensures that the sole arbitrator selected possesses the necessary expertise and is impartial.
8. **Promotion of Fairness:** Article 8(1) promotes fairness by ensuring that the arbitration process can move forward with a neutral and qualified sole arbitrator, even when parties are unable to come to a mutual decision.
9. **Balanced Approach:** The provision strikes a balance between party autonomy and the need to ensure that the arbitration process remains effective and timely.
10. **Supporting Party Intent:** Article 8(1) aligns with the parties' original agreement to have a sole arbitrator and ensures that their intent is upheld, even when practical challenges arise.

In summary, Article 8(1) of the UNCITRAL Arbitration Rules 2021 addresses situations where parties have agreed on the appointment of a sole arbitrator but have not reached an agreement within the specified timeframe. It empowers the appointing authority to appoint a sole arbitrator upon the request of a party, ensuring the continuity and fairness of the arbitration process and preventing unnecessary delays. This provision maintains a balance between party autonomy and administrative intervention to facilitate an effective and efficient resolution of disputes.

2. The appointing authority shall appoint the sole arbitrator as promptly as possible. In making the appointment, the appointing authority shall use the following list-procedure, unless the parties agree that the list-procedure should not be used or unless the appointing authority determines in its discretion that the use of the list-procedure is not appropriate for the case:

- (a) The appointing authority shall communicate to each of the parties an identical list containing at least three names;**
- (b) Within 15 days after the receipt of this list, each party may return the list to the appointing authority after having deleted the name or names to which it objects and numbered the remaining names on the list in the order of its preference;**
- (c) After the expiration of the above period of time the appointing authority shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;**
- (d) If for any reason the appointment cannot be made according to this procedure, the appointing authority may exercise its discretion in appointing the sole arbitrator.**

This article outlines the procedure for the appointment of a sole arbitrator by the appointing authority. Here is an analysis of this provision:

1. **Prompt Appointment:** Article 8(2) emphasises the need for a prompt appointment of the sole arbitrator by the appointing authority. This supports the timely progression of the arbitration proceedings.
2. **List-Procedure:** The provision introduces a list-procedure that the appointing authority shall use for making the appointment. The list-procedure involves the presentation of a list of potential arbitrators from which the parties can choose.
3. **Parties' Agreement and Discretion:** The appointing authority is required to use the list-procedure unless the parties agree otherwise or if the appointing authority, in its discretion, deems that the use of the list-procedure is not suitable for the specific case.
4. **List of Names:** The appointing authority communicates an identical list of at least three names to each party. This list represents potential sole arbitrators who are qualified to hear the case.
5. **Party Participation:** Within 15 days of receiving the list, each party has the opportunity to object to certain names on the list and indicate their preferred order of preference for the remaining names.
6. **Preference-Based Appointment:** After the specified period, the appointing authority selects the sole arbitrator from the names approved by the parties, taking into account the order of preference indicated by the parties.
7. **Flexibility and Tailoring:** The list-procedure balances flexibility with structure, allowing parties to participate in the selection process while ensuring a streamlined and efficient appointment.
8. **Fallback Discretion:** In cases where the appointment cannot be made according to the list-procedure, the appointing authority has the discretion to appoint the sole arbitrator in a manner it deems appropriate.
9. **Fairness and Neutrality:** The list-procedure enhances fairness and neutrality by involving parties in the selection process and enabling them to express preferences and objections.
10. **Case-Specific Decision:** The appointing authority's discretion to deviate from the list-procedure ensures that the appointment method aligns with the specific circumstances of each case.

In summary, Article 8(2) of the UNCITRAL Arbitration Rules 2021 outlines the procedure for appointing a sole arbitrator by the appointing authority. It introduces a list-procedure that involves presenting a list of potential arbitrators to the parties, allowing them to express preferences and objections. This procedure balances party participation, flexibility, and the appointing authority's discretion to ensure a fair and efficient appointment process.

Article 9

1. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal.

1. This article outlines the process for appointing a three-member arbitral tribunal when parties have agreed on three arbitrators. Here is an analysis of this provision:
2. **Three-Arbitrator Tribunal:** Article 9(1) applies when parties have decided to appoint a panel of three arbitrators to handle the arbitration proceedings. This often ensures a diverse and balanced composition of the tribunal.
3. **Party Autonomy:** The provision respects party autonomy by allowing each party to appoint one arbitrator. This empowers the parties to be directly involved in the selection of their arbitrator.
4. **Presiding Arbitrator Selection:** After the parties each appoint their arbitrator, the two arbitrators chosen by the parties collaborate to select the third arbitrator, who will serve as the presiding arbitrator of the arbitral tribunal.
5. **Presiding Arbitrator's Role:** The presiding arbitrator typically holds a significant role in managing the proceedings, ensuring procedural fairness, and maintaining order during the arbitration process.
6. **Collaborative Process:** The process of appointing the presiding arbitrator involves collaboration between the arbitrators chosen by the parties, promoting a cooperative atmosphere within the tribunal.
7. **Arbitrator Selection:** The arbitrators chosen by the parties are likely to have a good understanding of their respective parties' interests and positions, which can contribute to a comprehensive and balanced decision-making process.
8. **Balanced Tribunal Composition:** By allowing each party to appoint an arbitrator, and then having those arbitrators select a presiding arbitrator, the provision ensures that the arbitral tribunal represents a balanced perspective and minimises the risk of potential bias.
9. **Efficiency and Expertise:** The collaborative appointment process facilitates an efficient and timely constitution of the arbitral tribunal while ensuring that the presiding arbitrator possesses the required expertise and qualifications.
10. **Fair and Impartial Process:** Article 9(1) contributes to the fairness and impartiality of the arbitration process by involving both parties and the arbitrators in the selection of the tribunal members.
11. **Case-Specific Application:** While Article 9(1) outlines a general framework, the specific details of the appointment process may vary based on the parties' agreement and the circumstances of each case.

In summary, Article 9(1) of the UNCITRAL Arbitration Rules 2021 establishes a procedure for the appointment of a three-member arbitral tribunal. Each party appoints one arbitrator, and the two arbitrators chosen by the parties collaborate to select the presiding arbitrator. This process ensures a balanced and effective tribunal composition while upholding party autonomy and procedural fairness.

2. If within 30 days after the receipt of a party’s notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator it has appointed, the first party may request the appointing authority to appoint the second arbitrator.

1. This article addresses the situation when one party has appointed an arbitrator, but the other party fails to appoint its own arbitrator within a specified timeframe. Here is an analysis of this provision:
2. **Timely Appointment:** Article 9(2) emphasises the importance of a timely appointment of arbitrators to ensure the smooth progression of the arbitration proceedings.
3. **Notification of Appointments:** The provision requires that each party notify the other party of the arbitrator it has appointed within 30 days after the receipt of the initial appointment notification.
4. **Possible Delayed Response:** If one party (the “first party”) promptly appoints an arbitrator and notifies the other party but the other party (the “second party”) does not respond with its own appointment within the designated timeframe, the provision comes into play.
5. **Request for Appointing Authority Intervention:** In the event of a delayed response or lack of response from the second party, the first party has the right to request the appointing authority to appoint the second arbitrator.
6. **Ensuring Tribunal Composition:** Article 9(2) helps ensure the timely constitution of the arbitral tribunal by allowing the first party to seek the appointing authority’s intervention when the second party’s appointment is delayed or lacking.
7. **Preventing Delays:** The provision is designed to prevent undue delays in the appointment process, which could potentially hinder the efficient progression of the arbitration proceedings.
8. **Maintaining Equilibrium:** By enabling the first party to request the appointing authority’s intervention, Article 9(2) aims to maintain a balanced and equitable tribunal composition even in situations where one party is unresponsive.
9. **Party Autonomy and Administrative Support:** While party autonomy is respected in the initial appointment, the provision introduces an element of administrative support through the appointing authority when the second party does not fulfil its appointment obligations.
10. **Efficient and Fair Process:** Article 9(2) strikes a balance between ensuring an efficient arbitration process and safeguarding fairness by allowing the tribunal to be promptly constituted.

11. Case-Specific Application: The provision's application is contingent on the specific circumstances and timelines of each case, ensuring flexibility in its implementation.

In summary, Article 9(2) of the UNCITRAL Arbitration Rules 2021 addresses situations where one party promptly appoints an arbitrator but the other party fails to respond with its own appointment within the designated timeframe. It allows the first party to request the appointing authority to intervene and appoint the second arbitrator, ensuring the timely constitution of the arbitral tribunal and maintaining equilibrium in the process.

3. If within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by the appointing authority in the same way as a sole arbitrator would be appointed under article 8.

This article addresses the situation where a three-member arbitral tribunal is being appointed, but the two arbitrators already appointed by the parties have not been able to agree on the selection of the presiding arbitrator. Here is an analysis of this provision:

1. Presiding Arbitrator Selection: Article 9(3) deals specifically with the appointment of the presiding arbitrator within a three-member arbitral tribunal.
2. Preserving Process Efficiency: The provision emphasises the need for efficiency in the appointment process, particularly in situations where the two arbitrators have not been able to reach a consensus on the selection of the presiding arbitrator.
3. Time Limit: The provision imposes a time limit of 30 days after the appointment of the second arbitrator within which the two arbitrators must agree on the choice of the presiding arbitrator.
4. Intervention by Appointing Authority: If the two arbitrators fail to reach an agreement within the specified timeframe, the appointing authority steps in to appoint the presiding arbitrator.
5. Consistency with Sole Arbitrator Appointment: Article 9(3) draws a parallel with the appointment of a sole arbitrator under Article 8, emphasising the similar procedure that will be followed by the appointing authority in selecting the presiding arbitrator.
6. Avoiding Stalemates: The provision prevents potential deadlock situations within the arbitral tribunal by ensuring that the process of appointing the presiding arbitrator continues even if the two arbitrators are unable to agree.
7. Administrative Role: Article 9(3) underscores the administrative role of the appointing authority in ensuring that the tribunal composition is complete and that the arbitration process can proceed smoothly.
8. Balanced and Impartial Tribunal: By ensuring the appointment of the presiding arbitrator, the provision contributes to a balanced and impartial composition of the arbitral tribunal, enhancing the overall fairness of the proceedings.

9. **Efficiency and Timeliness:** The article promotes the timely appointment of the presiding arbitrator to avoid unnecessary delays in the arbitration process, supporting the parties' goal of achieving a prompt resolution.
10. **Case-Specific Application:** The provision's application is contingent on the specific timelines and circumstances of each case, providing flexibility while maintaining the overall integrity of the appointment process.

In summary, Article 9(3) of the UNCITRAL Arbitration Rules 2021 addresses the appointment of the presiding arbitrator within a three-member arbitral tribunal when the two appointed arbitrators have not been able to agree on the selection. It ensures that the appointing authority intervenes to appoint the presiding arbitrator, following a procedure similar to the appointment of a sole arbitrator under Article 8. This provision upholds process efficiency, fairness, and the overall functioning of the arbitral tribunal.

Article 10

1. For the purposes of article 9, paragraph 1, where three arbitrators are to be appointed and there are multiple parties as claimant or as respondent, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as claimant or as respondent, shall appoint an arbitrator.

This article provides a specific provision relating to the appointment of arbitrators in situations involving multiple parties in a three-member arbitral tribunal. Here is an analysis of this provision:

1. **Contextual Reference:** Article 10(1) pertains to the context of Article 9, paragraph 1, which deals with the appointment of arbitrators when three arbitrators are to be selected.
2. **Multilateral Party Scenarios:** The provision addresses cases where there are multiple parties acting as claimants or respondents in the arbitration. Such multilateral scenarios require a clear procedure for arbitrator appointments.
3. **Joint Appointment:** When multiple parties are involved, Article 10(1) emphasises the joint appointment of an arbitrator. This joint appointment mechanism ensures that parties collectively participate in the selection process.
4. **Claimants and Respondents:** The provision is agnostic about the parties' roles as claimants or respondents. Whether the multiple parties are claimants or respondents, they are required to jointly appoint an arbitrator.
5. **Preserving Balance:** By requiring joint appointments, Article 10(1) ensures that the arbitral tribunal's composition remains balanced and representative of the parties involved.
6. **Party Cooperation:** The provision encourages cooperation among multiple parties, as they must collaboratively agree on the appointment of an arbitrator.
7. **Flexibility Through Agreement:** Parties have the flexibility to agree on an alternative method of arbitrator appointment if they find it suitable for their specific case.

8. Efficiency in Multilateral Scenarios: In cases with numerous parties, joint appointment streamlines the process, avoiding potential delays that could arise from individual appointments.
9. Ensuring Fairness: The provision contributes to the overall fairness of the arbitration process by ensuring that the joint appointment reflects the consensus of all relevant parties.
10. Customisation Through Agreement: Parties can customise their approach to arbitrator appointments through mutual agreement, if they believe an alternative method better suits their situation.

In summary, Article 10(1) of the UNCITRAL Arbitration Rules 2021 addresses the appointment of arbitrators in situations involving multiple parties in a three-member arbitral tribunal. It mandates joint appointment by multiple parties, promoting fairness, efficiency, and cooperation among the parties. The provision's flexibility allows parties to adapt the process through mutual agreement while ensuring a balanced tribunal composition.

2. If the parties have agreed that the arbitral tribunal is to be composed of a number of arbitrators other than one or three, the arbitrators shall be appointed according to the method agreed upon by the parties.

This article addresses the appointment of arbitrators when the arbitral tribunal is to be composed of a number of arbitrators other than one or three, as specifically agreed upon by the parties. Here is an analysis of this provision:

1. Customised Tribunal Composition: Article 10(2) recognises the parties' autonomy in determining the composition of the arbitral tribunal by specifying a number of arbitrators other than one or three.
2. Party Autonomy: The provision underscores the principle of party autonomy in arbitration. Parties have the freedom to tailor the number of arbitrators to suit the complexity and needs of their dispute.
3. Agreed Appointment Method: The appointment of arbitrators in such cases is determined by the method agreed upon by the parties. This reflects the parties' specific intentions and preferences.
4. Tailored Arbitrator Selection: By allowing parties to define the method for appointing arbitrators, Article 10(2) enables them to design a process that best fits the unique circumstances of their dispute.
5. Flexibility in Tribunal Size: The provision recognises that disputes vary in complexity and may require a different number of arbitrators. Parties can opt for a tribunal size that they believe will ensure a fair and efficient resolution.
6. Efficiency and Consent: By adhering to the method agreed upon, the provision promotes efficiency in the appointment process and ensures that arbitrators are appointed with the consent of the parties.

7. **Clear and Predictable Process:** Parties benefit from the clarity and predictability provided by Article 10(2), as they know in advance how arbitrators will be appointed based on their chosen tribunal composition.
8. **Enhancing Party Confidence:** The provision contributes to parties' confidence in the arbitration process, as it allows them to participate in shaping the composition of the tribunal.
9. **Balanced Tribunal Dynamics:** Parties can consider the dynamics and balance of the tribunal when choosing the number of arbitrators, ensuring representation and impartiality.
10. **Case-Specific Flexibility:** Article 10(2) recognises that there is not a one-size-fits-all approach to tribunal composition, empowering parties to craft a solution that best serves their needs.

In summary, Article 10(2) of the UNCITRAL Arbitration Rules 2021 addresses the appointment of arbitrators when parties agree that the arbitral tribunal will be composed of a number of arbitrators other than one or three. The provision acknowledges party autonomy and allows parties to determine the method of arbitrator appointment based on their chosen tribunal composition. This customised approach ensures efficiency, clarity, and fairness in the arbitration process.

3. In the event of any failure to constitute the arbitral tribunal under these Rules, the appointing authority shall, at the request of any party, constitute the arbitral tribunal and, in doing so, may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

This article addresses situations where the constitution of the arbitral tribunal fails according to the provisions of the UNCITRAL Arbitration Rules 2021. Here is an analysis of this provision:

1. **Fallback Mechanism:** Article 10(3) acts as a fallback mechanism in case the process of constituting the arbitral tribunal under the rules encounters difficulties or fails for any reason.
2. **Appointing Authority's Role:** The provision highlights the important role of the appointing authority in ensuring the functioning and constitution of the arbitral tribunal.
3. **Request-Based Intervention:** The appointing authority's intervention is initiated at the request of any party involved in the arbitration.
4. **Arbitrator Reappointment:** If the arbitral tribunal's constitution fails, the appointing authority has the authority to revoke any appointment previously made and reappoint or appoint arbitrators to ensure a properly constituted tribunal.
5. **Presiding Arbitrator Designation:** The appointing authority can also designate one of the arbitrators as the presiding arbitrator when reconstituting the tribunal.

6. **Preventing Delays:** The provision aims to prevent unnecessary delays in the arbitration process by empowering the appointing authority to take appropriate action in case of constitution failure.
7. **Efficiency and Continuity:** By allowing the appointing authority to reappoint or designate arbitrators, Article 10(3) ensures the continuation of the arbitration proceedings without undue interruptions.
8. **Resolution of Deadlocks:** In cases where parties face a deadlock or encounter difficulties in constituting the tribunal, the appointing authority's intervention can facilitate a resolution.
9. **Final Authority:** Article 10(3) grants final authority to the appointing authority to address the constitution failure, ensuring that the tribunal's composition is in line with the parties' intentions and the principles of fairness and impartiality.
10. **Guaranteeing Due Process:** The provision ensures that the arbitration process remains fair and unbiased, even in cases where constitution difficulties arise.

In summary, Article 10(3) of the UNCITRAL Arbitration Rules 2021 provides a mechanism to address the failure to constitute the arbitral tribunal. It empowers the appointing authority to reappoint or designate arbitrators and ensure the proper functioning of the tribunal, contributing to the efficiency and integrity of the arbitration process.

Disclosures by and challenge of arbitrators

Article 11

When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties and the other arbitrators unless they have already been informed by him or her of these circumstances.

Article 11 of the UNCITRAL Arbitration Rules 2021 establishes the duty of arbitrators to disclose any circumstances that could cast doubt on their impartiality or independence. Here is an analysis of this provision:

1. **Duty of Full Disclosure:** Article 11 places a clear and unequivocal duty on individuals approached for potential appointment as arbitrators to disclose any circumstances that may reasonably raise doubts about their impartiality or independence.
2. **Early Disclosure:** The provision emphasises the importance of disclosing such circumstances at the outset, even before formal appointment. This ensures transparency and allows parties to make informed decisions about arbitrator selection.
3. **Maintaining Trust in Arbitration:** The requirement for early disclosure contributes to upholding the integrity and trustworthiness of the arbitration process by addressing concerns about potential biases or conflicts of interest.

4. **Impartiality and Independence:** The provision underscores the fundamental principles of impartiality and independence that arbitrators must uphold throughout the arbitral proceedings.
5. **Timely Disclosure Throughout:** Once appointed, arbitrators are obligated to continuously monitor and disclose any circumstances that could impact their impartiality or independence. This obligation extends throughout the entire arbitration process.
6. **Open Communication:** The provision promotes open and transparent communication between arbitrators, parties, and co-arbitrators, fostering an environment of fairness and trust.
7. **Prompt Disclosure:** The requirement for “without delay” disclosure underscores the urgency of promptly informing relevant parties and co-arbitrators about any circumstances that may affect impartiality or independence.
8. **Informed Decision-Making:** Timely disclosure enables parties to assess potential conflicts and make informed decisions about whether the arbitrator’s involvement is appropriate for the case.
9. **Mutual Obligations:** Article 11 recognises that all arbitrators have a shared responsibility to maintain the integrity of the proceedings and prevent any appearance of bias or lack of independence.
10. **Promoting Best Practices:** By explicitly outlining the duty to disclose, Article 11 contributes to the promotion of ethical standards and best practices within the realm of international arbitration.

In summary, Article 11 of the UNCITRAL Arbitration Rules 2021 sets forth the duty of arbitrators to disclose circumstances that could create justifiable doubts about their impartiality or independence. This duty encompasses both the pre-appointment phase and the entire duration of the arbitral proceedings. The provision ensures transparency, promotes ethical conduct, and upholds the principles of fairness and trust in international arbitration.

Article 12

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator’s impartiality or independence.

Article 12(1) of the UNCITRAL Arbitration Rules 2021 addresses the procedure for challenging an arbitrator based on concerns regarding their impartiality or independence. Here is a detailed analysis of this provision:

1. **Right to Challenge:** The article establishes a fundamental right for any party to challenge an arbitrator if they believe that circumstances exist that cast doubt on the arbitrator’s impartiality or independence.

2. **Preserving Integrity:** The provision reflects the importance of maintaining the integrity and fairness of the arbitration process. Parties should have confidence that their dispute is being resolved by unbiased and independent arbitrators.
3. **Objective Standard:** The threshold for challenging an arbitrator is set at “justifiable doubts”. This implies that the doubts must be reasonable and supported by objective circumstances that could lead a reasonable person to question the arbitrator’s impartiality or independence.
4. **Avoiding Conflicts:** Article 12(1) aligns with the principle of preventing conflicts of interest. Challenging an arbitrator when there are valid concerns helps prevent situations where an arbitrator’s personal, financial, or other interests could influence their decisions.
5. **Ensuring Due Process:** Allowing challenges based on impartiality or independence concerns ensures that the parties’ right to a fair and impartial tribunal is upheld.
6. **Confidence in the Process:** The provision contributes to building confidence in the arbitration process by providing a mechanism to address any perceived biases or conflicts.
7. **Proactive Approach:** By including this provision, the UNCITRAL Arbitration Rules emphasise the importance of addressing concerns at an early stage, contributing to efficient and transparent proceedings.
8. **Party Autonomy:** The article empowers parties to safeguard their interests by raising challenges. It respects party autonomy by allowing them to assess and decide whether doubts about an arbitrator’s impartiality or independence are justifiable.
9. **Promotion of Impartiality:** Article 12(1) encourages arbitrators to maintain a high level of impartiality and independence to prevent challenges that could delay or disrupt the arbitration process.
10. **Procedural Flexibility:** The provision offers procedural flexibility by allowing parties to raise challenges based on specific circumstances, further adapting the arbitration to the needs of the dispute.

In summary, Article 12(1) of the UNCITRAL Arbitration Rules 2021 grants parties the right to challenge an arbitrator if circumstances arise that raise justifiable doubts about their impartiality or independence. This provision reinforces the principles of fairness, transparency, and impartiality within the arbitration process while maintaining a balance between party rights and procedural efficiency.

2. A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.

Article 12(2) of the UNCITRAL Arbitration Rules 2021 introduces a limitation on when a party may challenge an arbitrator appointed by them. Here is a detailed analysis of this provision:

1. **Post-Appointment Challenges:** Article 12(2) establishes a specific time frame for challenges to arbitrators appointed by a party. Challenges can only be made based on

reasons that become known to the challenging party after the appointment has been made.

2. **Balancing Interests:** The provision strikes a balance between party autonomy and the need to ensure an impartial and independent tribunal. It prevents parties from using post-appointment challenges as a strategic tool to delay proceedings.
3. **Legal Certainty:** By limiting the grounds for challenging an arbitrator appointed by a party to post-appointment reasons, the provision promotes legal certainty and finality in the arbitration process.
4. **Preventing Tactical Manipulation:** Article 12(2) discourages parties from intentionally withholding known reasons for challenging an arbitrator until after the appointment, preventing tactical manipulation of the arbitration proceedings.
5. **Prompt Disclosure:** The provision indirectly encourages parties to promptly disclose any concerns they may have about a prospective arbitrator during the selection process, rather than waiting until after appointment.
6. **Efficiency of Proceedings:** By imposing a restriction on post-appointment challenges, the provision contributes to the efficiency and smooth functioning of the arbitration process.
7. **Protection of Arbitrators:** Article 12(2) helps protect arbitrators from challenges based on reasons that parties might have known before the appointment but chose not to raise.
8. **Clarifying Timing:** The provision clarifies that parties are not allowed to challenge arbitrators based on reasons that were known or reasonably discoverable before the appointment.
9. **Encouraging Diligence:** Article 12(2) encourages parties to conduct due diligence and thoroughly assess the qualifications and potential conflicts of arbitrators during the selection process.
10. **Preserving Due Process:** By setting clear guidelines for challenges, the provision ensures that due process is maintained and that challenges are based on genuine reasons rather than tactical considerations.

In summary, Article 12(2) of the UNCITRAL Arbitration Rules 2021 limits parties' ability to challenge an arbitrator they appointed only to reasons that become known after the appointment. This provision aims to balance party autonomy with the need for an efficient and fair arbitration process, discouraging tactical challenges and promoting transparency and diligence in arbitrator selection.

3. In the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of his or her performing his or her functions, the procedure in respect of the challenge of an arbitrator as provided in article 13 shall apply.

Article 12(3) of the UNCITRAL Arbitration Rules 2021 addresses the procedure to be followed when an arbitrator is unable to fulfil their functions or fails to act. Here is a detailed analysis of this provision:

1. **Addressing Vacancies or Inability:** The provision anticipates situations where an arbitrator is unable to act due to reasons such as resignation, incapacitation, or inability to perform their functions. It establishes a clear procedure to handle such situations.
2. **Ensuring Continuity:** The purpose of Article 12(3) is to ensure the continuity of the arbitration proceedings even in the event of an arbitrator's inability to continue serving on the tribunal.
3. **Incorporation of Article 13:** Article 12(3) explicitly states that the procedure outlined in Article 13 of the UNCITRAL Arbitration Rules 2021 shall apply in cases of an arbitrator's failure to act or impossibility of performing their functions.
4. **Smooth Transition:** By incorporating the challenge procedure from Article 13, this provision helps ensure a smooth transition when replacing an arbitrator who is no longer able to fulfil their role.
5. **Balancing Interests:** The provision balances the need for efficient proceedings with the need for fairness. It offers a mechanism to address challenges or vacancies while safeguarding the parties' rights.
6. **Applicability of Challenge Procedure:** The reference to Article 13 indicates that the challenge procedure, which is designed to handle concerns about an arbitrator's impartiality or independence, will also apply in cases of inability to act.
7. **Promoting Transparency:** The incorporation of a formal procedure for replacing an arbitrator contributes to transparency and predictability in the arbitration process.
8. **Protecting Due Process:** Article 12(3) ensures that the parties have an established process to address the replacement of an arbitrator, safeguarding the overall due process of the proceedings.
9. **Efficiency and Expediency:** By referencing Article 13, the provision streamlines the process for replacing an arbitrator, which is especially important to maintain the efficiency and timeliness of the arbitration.
10. **Legal Certainty:** The provision promotes legal certainty by clearly outlining the steps to be followed in case an arbitrator is unable to act, thereby preventing confusion or disputes in such situations.

In summary, Article 12(3) of the UNCITRAL Arbitration Rules 2021 addresses the procedure to be followed when an arbitrator fails to act or is unable to perform their functions. By referencing Article 13, the provision ensures that the challenge procedure is applied in a consistent and orderly manner to address vacancies or incapacities among arbitrators, contributing to the integrity and efficiency of the arbitration process.

Article 13

1. A party that intends to challenge an arbitrator shall send notice of its challenge within 15 days after it has been notified of the appointment of the challenged arbitrator, or within 15 days after the circumstances mentioned in articles 11 and 12 became known to that party.

Article 13(1) of the UNCITRAL Arbitration Rules 2021 sets out the time frame and requirements for challenging an arbitrator. Here is a detailed analysis of this provision:

1. **Time Limit for Challenge:** The article establishes a clear time limit for parties intending to challenge an arbitrator. A party must send notice of its challenge within 15 days of two key triggering events: (a) being notified of the appointment of the challenged arbitrator, or (b) becoming aware of circumstances mentioned in Articles 11 and 12 (impartiality or independence concerns).
2. **Promptness and Efficiency:** Article 13(1) emphasises the importance of prompt action. The 15-day time limit ensures that challenges are raised in a timely manner to prevent unnecessary delays in the arbitration process.
3. **Clarity in Procedure:** By specifying the time frame for challenges, the provision provides clarity and predictability for parties and arbitrators, contributing to the smooth functioning of the arbitration.
4. **Balancing Party Rights:** The time limit strikes a balance between a party's right to challenge an arbitrator and the need to maintain the efficiency and progress of the arbitration proceedings.
5. **Protecting Due Process:** The provision ensures that challenges are brought forward at an early stage, preserving due process and preventing challenges that could be raised strategically or as a tactic during the later stages of the arbitration.
6. **Awareness Trigger:** The provision recognises that parties may not always be immediately aware of circumstances that could lead to a challenge. The clock starts ticking when a party becomes aware of these circumstances.
7. **Integration with Article 11 and 12:** Article 13(1) interacts with Articles 11 and 12 by incorporating the concept of "circumstances mentioned in articles 11 and 12". This means that challenges based on impartiality or independence concerns can be raised within the same 15-day window.
8. **Promotion of Transparency:** The clear time limit encourages transparency in the challenge process by ensuring that challenges are raised promptly and are not used as a means of undue delay.
9. **Minimisation of Disruption:** The provision contributes to minimising disruptions in the proceedings caused by last-minute challenges, safeguarding the overall efficiency and fairness of the arbitration.
10. **Procedural Fairness:** By requiring timely challenges, Article 13(1) helps ensure that parties have the opportunity to raise valid concerns about arbitrators' impartiality or independence without unduly affecting the arbitration schedule.

In summary, Article 13(1) of the UNCITRAL Arbitration Rules 2021 establishes a 15-day time limit for parties to challenge an arbitrator. This provision promotes efficiency, transparency, and procedural fairness in addressing concerns about arbitrators' qualifications, impartiality, or independence within a defined and reasonable timeframe.

2. The notice of challenge shall be communicated to all other parties, to the arbitrator who is challenged and to the other arbitrators. The notice of challenge shall state the reasons for the challenge.

Article 13(2) of the UNCITRAL Arbitration Rules 2021 outlines the communication and content requirements for a notice of challenge to an arbitrator. Here is a detailed analysis of this provision:

1. **Notification Requirement:** The provision mandates that the party issuing a challenge must communicate the notice of challenge to three categories: (a) all other parties involved in the arbitration, (b) the arbitrator being challenged, and (c) the other arbitrators on the tribunal.
2. **Transparency and Equal Information:** By requiring the notice of challenge to be shared with all relevant parties and arbitrators, the provision promotes transparency and ensures that everyone involved is aware of the challenge and its reasons.
3. **Preserving Fairness and Due Process:** Article 13(2) aims to uphold due process and fairness by ensuring that all parties and arbitrators are informed of the challenge and can respond accordingly.
4. **Facilitating Response:** Communicating the challenge to the challenged arbitrator and the other arbitrators enables them to understand the concerns and potentially respond or take appropriate action.
5. **Encouraging Informed Decisions:** Requiring the notice of challenge to state the reasons for the challenge provides clarity to all parties and arbitrators, helping them make informed decisions regarding the challenge.
6. **Substantiating Challenges:** The provision obligates the challenging party to articulate specific reasons for the challenge. This encourages parties to provide substantive grounds rather than resorting to frivolous challenges.
7. **Avoiding Ambiguity:** By stipulating that the reasons for the challenge must be stated, the provision reduces the risk of vague or unsupported challenges, which could otherwise disrupt the proceedings.
8. **Transparency in Decision-Making:** The requirement for stating reasons enhances transparency in the challenge process, enabling parties and arbitrators to understand the basis for the challenge and any potential implications.
9. **Promotion of Open Dialogue:** Requiring reasons for the challenge encourages open dialogue and may even prompt resolution of issues before a formal challenge proceeds further.

10. Efficiency and Accountability: Clear communication of the challenge and its reasons contributes to efficient proceedings and holds parties accountable for their challenge submissions.

In summary, Article 13(2) of the UNCITRAL Arbitration Rules 2021 emphasises transparency, accountability, and procedural fairness in the challenge process. By requiring the notice of challenge to be communicated to all relevant parties and arbitrators, and by mandating the provision of reasons for the challenge, this provision contributes to a well-informed and well-substantiated challenge process that upholds the principles of due process and efficient arbitration proceedings.

3. When an arbitrator has been challenged by a party, all parties may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.

Article 13(3) of the UNCITRAL Arbitration Rules 2021 addresses the consequences and options available when an arbitrator is challenged by a party. Here is a detailed analysis of this provision:

1. Agreed Challenge: The provision allows all parties involved in the arbitration to agree to the challenge of an arbitrator. This acknowledges that parties may collectively decide to remove an arbitrator based on the challenge raised by one party.
2. Party Consensus: Allowing parties to collectively agree to a challenge promotes party autonomy and consensus in shaping the composition of the arbitral tribunal.
3. Withdrawal Option: The provision also recognises that an arbitrator who has been challenged may choose to withdraw from their office voluntarily. This offers the arbitrator an option to avoid potential conflicts or disruptions arising from the challenge.
4. No Acceptance of Validity: Importantly, the provision clarifies that the acceptance of a challenge by parties or the voluntary withdrawal of the arbitrator does not imply an acknowledgment of the validity of the grounds for the challenge. This protects the reputation of the arbitrator and avoids any inference of wrongdoing.
5. Protecting Arbitrator’s Reputation: By explicitly stating that acceptance of the challenge or withdrawal does not imply acceptance of the challenge’s validity, the provision safeguards the arbitrator’s reputation and integrity.
6. Efficient Resolution: The provision’s flexibility in allowing parties to agree to a challenge or permitting an arbitrator to withdraw helps facilitate efficient resolution of challenges, minimising disruptions in the arbitration proceedings.
7. Party Autonomy: Article 13(3) respects the parties’ autonomy to decide on the composition of the arbitral tribunal and acknowledges their role in the challenge process.
8. Balancing Interests: The provision strikes a balance between parties’ interests and the need to maintain a fair and impartial arbitral tribunal. It ensures that the challenge process is not used as a means to unduly influence the composition of the tribunal.

9. **Avoiding Unnecessary Disputes:** By allowing challenges to be resolved through agreement or arbitrator withdrawal, the provision helps avoid unnecessary disputes and promotes a more cooperative approach to resolving challenges.
10. **Integrity of the Process:** By explicitly stating that acceptance or withdrawal does not imply acceptance of the challenge's validity, the provision reinforces the integrity of the challenge process and the overall arbitration proceedings.

In summary, Article 13(3) of the UNCITRAL Arbitration Rules 2021 provides options for addressing challenges to arbitrators by allowing parties to collectively agree to a challenge or allowing the challenged arbitrator to voluntarily withdraw. It emphasises that these actions do not imply acceptance of the challenge's validity, maintaining the integrity of the challenge process and upholding the principles of fairness and autonomy in the arbitration proceedings.

4. If, within 15 days from the date of the notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may elect to pursue it. In that case, within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by the appointing authority.

Article 13(4) of the UNCITRAL Arbitration Rules 2021 outlines the steps to be taken when a party's challenge to an arbitrator is not agreed upon by all parties or when the challenged arbitrator does not voluntarily withdraw. Here is a detailed analysis of this provision:

1. **Decision to Pursue Challenge:** When a party's challenge to an arbitrator is not resolved through agreement or withdrawal within 15 days from the date of the notice of challenge, the challenging party has the option to continue pursuing the challenge.
2. **Party Autonomy and Resolution:** The provision respects the autonomy of the party making the challenge by allowing them to decide whether to escalate the challenge process.
3. **Time Limit for Pursuit:** If the party chooses to pursue the challenge, it must do so within the subsequent 30 days from the date of the notice of challenge. This establishes a clear and reasonable timeframe for initiating the formal challenge process.
4. **Involvement of Appointing Authority:** The provision introduces the role of the appointing authority in resolving challenges that have not been resolved through party agreement or voluntary withdrawal. The appointing authority becomes involved in determining the outcome of the challenge.
5. **Formalising Challenge Process:** By seeking a decision on the challenge by the appointing authority, the process is formalised and moves to the next stage, involving a higher authority in the resolution of the challenge.
6. **Efficiency and Timeliness:** The provision encourages efficiency by setting time limits for both the party's decision to pursue the challenge and the subsequent action of seeking a decision from the appointing authority.

7. **Avoidance of Protracted Disputes:** The time limits and involvement of the appointing authority help prevent challenges from lingering and causing prolonged disruptions to the arbitration proceedings.
8. **Balance of Interests:** Article 13(4) maintains a balance between the challenging party's right to pursue a challenge and the need to ensure a fair and efficient resolution process.
9. **Formal Safeguard:** By involving the appointing authority, the provision offers a formal safeguard against unwarranted challenges and ensures that challenges are examined by an impartial and higher authority.
10. **Preservation of Impartiality:** Involving the appointing authority can help preserve the impartiality and integrity of the arbitral tribunal, as challenges are resolved through an external and neutral entity.

In summary, Article 13(4) of the UNCITRAL Arbitration Rules 2021 outlines the process to be followed when a party's challenge to an arbitrator is not resolved through agreement or withdrawal. The provision allows the challenging party to escalate the challenge to the appointing authority if certain conditions are met, thereby formalising the challenge process and ensuring a timely and fair resolution.

Replacement of an arbitrator

Article 14

1. Subject to paragraph 2, in any event where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in articles 8 to 11 that was applicable to the appointment or choice of the arbitrator being replaced. This procedure shall apply even if during the process of appointing the arbitrator to be replaced, a party had failed to exercise its right to appoint or to participate in the appointment.

Article 14(1) of the UNCITRAL Arbitration Rules 2021 addresses the replacement of an arbitrator during the course of arbitral proceedings. Here is a detailed analysis of this provision:

1. **Replacement of Arbitrator:** The provision sets out the process to be followed when an arbitrator needs to be replaced after the arbitral proceedings have commenced. This could be due to various reasons, such as the arbitrator's inability to continue, resignation, or challenge.
2. **Continuation of Procedure:** The provision ensures that the process for appointing or choosing a substitute arbitrator mirrors the procedure that was originally used for appointing or choosing the arbitrator being replaced. This maintains consistency in the appointment process.
3. **Preservation of Equilibrium:** By utilising the same procedure for replacement, the provision aims to preserve the equilibrium of the arbitral tribunal and maintain the same level of fairness and impartiality.

4. **Applicability of Articles 8 to 11:** The procedure for selecting a substitute arbitrator is to be conducted according to the rules outlined in Articles 8 to 11 of the UNCITRAL Arbitration Rules 2021. These articles cover the appointment and challenge of arbitrators, as well as the method of appointment when parties fail to agree.
5. **Procedural Certainty:** Article 14(1) provides procedural certainty by explicitly stating that the same appointment procedure applies even if, during the process of appointing the arbitrator being replaced, a party had failed to exercise its right to appoint or participate in the appointment.
6. **Consistency and Efficiency:** By maintaining the same procedure, the provision promotes efficiency and avoids unnecessary disruptions that might arise from a different method of appointment.
7. **Resolving Vacancies:** The provision ensures that any vacancies or replacements among the arbitrators are addressed in a systematic and consistent manner, contributing to the overall stability of the arbitral tribunal.
8. **Mitigation of Potential Delays:** Utilising the same procedure reduces the potential for delays that could result from changing the appointment process and ensures a swift replacement of the arbitrator.
9. **Party Rights:** While ensuring procedural consistency, the provision also respects the parties' rights as established in the original appointment process.
10. **Procedural Fairness:** Article 14(1) ultimately contributes to procedural fairness by ensuring that the replacement of an arbitrator is conducted in a manner consistent with the original appointment process, regardless of any previous party omissions or failures to participate.

In summary, Article 14(1) of the UNCITRAL Arbitration Rules 2021 outlines the procedure for replacing an arbitrator during the course of arbitral proceedings. By maintaining the same procedure as that used for the original appointment, the provision ensures consistency, efficiency, and procedural fairness in the replacement process.

2. If, at the request of a party, the appointing authority determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to appoint a substitute arbitrator, the appointing authority may, after giving an opportunity to the parties and the remaining arbitrators to express their views: (a) appoint the substitute arbitrator; or (b) after the closure of the hearings, authorize the other arbitrators to proceed with the arbitration and make any decision or award.

Article 14(2) of the UNCITRAL Arbitration Rules 2021 deals with exceptional circumstances where a party's right to appoint a substitute arbitrator may be modified by the appointing authority. Here is a detailed analysis of this provision:

1. **Deprivation of Party's Right:** This provision allows for the exceptional situation where a party may be deprived of its right to appoint a substitute arbitrator. This would only be done in circumstances that are truly exceptional and justify such an intervention.

2. **Justified Exceptional Circumstances:** The provision requires the appointing authority to determine that exceptional circumstances exist to warrant the deprivation of a party's right. The bar for such exceptional circumstances is intentionally set high, ensuring this power is only exercised under compelling situations.
3. **Party Request:** The process is initiated by a request from a party. This emphasises the party-driven nature of arbitration while recognising that there might be circumstances where a party's exercise of its right could be prejudicial or disruptive.
4. **Balancing Party Autonomy and Procedural Efficiency:** The provision strikes a balance between respecting party autonomy and maintaining the efficiency of the arbitration process. It allows for intervention to prevent potential delays or disruptions caused by a party's appointment of a substitute arbitrator.
5. **Opportunity to Express Views:** The provision ensures fairness by requiring the appointing authority to give all parties and the remaining arbitrators an opportunity to express their views before making a decision. This consultation process safeguards procedural integrity.
6. **Appointment of Substitute Arbitrator:** Under this provision, the appointing authority has the discretion to appoint a substitute arbitrator directly, bypassing the party's right to appoint. This action could be taken if it is deemed necessary to maintain the smooth progression of the arbitration.
7. **Proceeding without Substitute Arbitrator:** Alternatively, the provision allows the appointing authority to authorise the remaining arbitrators to proceed with the arbitration and make any decision or award. This option ensures that the arbitration process is not stalled even if a substitute arbitrator is not appointed.
8. **Closure of Hearings:** The provision specifically mentions that the option of authorising other arbitrators to proceed without a substitute arbitrator is considered "after the closure of the hearings". This indicates that this exceptional measure is considered when substantive proceedings are complete.
9. **Preservation of Fairness:** While this provision empowers the appointing authority to modify a party's right, it ensures that the other parties and the remaining arbitrators have an opportunity to provide their input, thus safeguarding fairness and transparency.
10. **Preservation of Arbitration Process:** Article 14(2) demonstrates the UNCITRAL Arbitration Rules' flexibility to handle extraordinary situations while maintaining the overall integrity of the arbitration process.

In summary, Article 14(2) of the UNCITRAL Arbitration Rules 2021 provides a mechanism for exceptional circumstances where a party's right to appoint a substitute arbitrator may be deprived. This provision underscores the need to balance party autonomy with the efficient and fair conduct of arbitration proceedings and ensures that any intervention is made with careful consideration and consultation.

Repetition of hearings in the event of the replacement of an arbitrator

Article 15

If an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his or her functions, unless the arbitral tribunal decides otherwise.

Article 15 of the UNCITRAL Arbitration Rules 2021 addresses the situation where an arbitrator is replaced during the course of arbitral proceedings. Here is a detailed analysis of this provision:

1. **Continuity of Proceedings:** The primary purpose of Article 15 is to ensure the continuity and efficiency of arbitral proceedings in the event of an arbitrator's replacement. It establishes a general principle that the proceedings should pick up from where they were left off when the replaced arbitrator ceased to perform their functions.
2. **Resumption of Proceedings:** The provision mandates that, by default, the proceedings should continue from the point at which the replaced arbitrator left. This rule prevents unnecessary repetition or disruption in the proceedings due to the change in the composition of the arbitral tribunal.
3. **Avoiding Redundancy:** Resuming the proceedings at the stage where the replaced arbitrator left helps to avoid repetition of hearings, presentations, and arguments that had already taken place before the replacement. This is crucial for saving time, costs, and resources.
4. **Arbitral Tribunal's Discretion:** The provision recognises that the arbitral tribunal may have reasons to deviate from the default rule. It grants the arbitral tribunal the discretion to decide otherwise if specific circumstances warrant it. This reflects the flexible nature of arbitration proceedings.
5. **Flexibility and Adaptability:** Article 15 reflects the adaptability of arbitration to unique situations. The arbitral tribunal's discretion allows for tailored decisions based on the needs of the case and the parties.
6. **Safeguarding Procedural Fairness:** While resuming proceedings from the same stage is the general rule, the arbitral tribunal's discretion provides a safeguard against potential unfairness or procedural deficiencies that may arise from blindly following the default rule.
7. **Consideration of Case Progression:** The arbitral tribunal's decision to resume proceedings at the same stage or modify the process may depend on the extent to which the case has progressed since the arbitrator's replacement. This decision is made in the interest of fairness and procedural efficiency.
8. **Minimising Disruption:** The provision aligns with the overall goal of minimising disruption to the arbitration process, which is especially important in complex and lengthy disputes.
9. **Preserving Party Expectations:** Article 15 aims to ensure that the parties' expectations of a consistent and efficient process are met, while also accommodating necessary changes that may arise.

10. **Balancing Interests:** By combining a default rule with the arbitral tribunal's discretionary power, Article 15 strikes a balance between preserving the progress of the proceedings and allowing the tribunal to adapt to changing circumstances.

In summary, Article 15 of the UNCITRAL Arbitration Rules 2021 emphasises the principle of continuity in arbitral proceedings in the event of an arbitrator's replacement. It establishes a default rule that proceedings should resume from the point of replacement, while also allowing the arbitral tribunal the flexibility to make adjustments based on the specific circumstances of the case. This provision reflects the essence of arbitration in maintaining a fair, efficient, and adaptable dispute resolution process.

Exclusion of liability

Article 16

Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the arbitrators, the appointing authority and any person appointed by the arbitral tribunal based on any act or omission in connection with the arbitration.

Article 16 of the UNCITRAL Arbitration Rules 2021 addresses the issue of waiving claims against arbitrators, the appointing authority, and other persons involved in the arbitration process. Here is a detailed analysis of this provision:

1. **Scope of Waiver:** The provision specifies that parties to the arbitration waive any potential claims, to the fullest extent allowed by the applicable law, against arbitrators, the appointing authority, and any person appointed by the arbitral tribunal. This waiver applies to claims arising from any act or omission in connection with the arbitration.
2. **Intentional Wrongdoing Exception:** The waiver does not extend to intentional wrongdoing. Parties are not precluded from pursuing claims if intentional misconduct or wrongdoing is alleged against the arbitrators, appointing authority, or individuals appointed by the arbitral tribunal.
3. **Promotion of Finality:** Article 16 supports the principle of finality in arbitration. It discourages parties from pursuing claims against individuals involved in the arbitration process, except in cases of intentional wrongdoing, ensuring that once an arbitration award is rendered, parties generally cannot seek recourse against the arbitral participants.
4. **Predictability and Certainty:** By waiving claims, parties contribute to the predictability and certainty of the arbitration process. This can help in maintaining the integrity of arbitration as an efficient and effective dispute resolution mechanism.
5. **Balancing Accountability and Efficiency:** The provision balances the need for accountability with the desire for efficient dispute resolution. While preserving the right to address intentional wrongdoing, it also prevents unnecessary and potentially frivolous claims against arbitrators and related parties.

6. **Respect for Arbitrator Independence:** By waiving claims, parties recognise the importance of arbitrator independence and impartiality. This provision reinforces the expectation that arbitrators should be able to perform their roles without undue concern about potential legal action.
7. **Applicable Law:** The provision acknowledges that the extent of the waiver may vary based on the applicable law. Parties cannot waive claims beyond what is permissible under the relevant legal framework.
8. **Finality and Enforceability:** The provision contributes to the enforceability of arbitration awards. By waiving claims, parties facilitate the enforcement process and avoid potential challenges to the award on the basis of alleged arbitrator misconduct.
9. **Efficiency and Cost Savings:** By waiving claims, parties can potentially avoid lengthy and costly post-arbitration litigation related to alleged arbitrator misconduct, which could otherwise undermine the efficiency benefits of arbitration.
10. **Preservation of Exceptions:** The provision's exception for intentional wrongdoing ensures that parties can still seek appropriate redress in cases of serious misconduct, preserving a safeguard against arbitrator misconduct.

In summary, Article 16 of the UNCITRAL Arbitration Rules 2021 promotes the finality, efficiency, and integrity of the arbitration process by establishing a waiver of claims against arbitrators, the appointing authority, and persons appointed by the arbitral tribunal. This waiver is subject to the exception of intentional wrongdoing, ensuring a balanced approach between accountability and the efficient resolution of disputes through arbitration.

Section III. Arbitral proceedings

General provisions

Article 17

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute.

Article 17(1) of the UNCITRAL Arbitration Rules 2021 addresses the arbitral tribunal's authority and discretion in conducting the arbitration proceedings. Here is a detailed analysis of this provision:

1. **Discretion and Authority:** The provision establishes the arbitral tribunal's broad discretion and authority to determine the manner in which the arbitration proceedings are conducted. This reflects the flexibility and adaptability inherent in arbitration as a dispute resolution mechanism.
2. **Balancing Principles:** The arbitral tribunal's discretion is subject to two key principles: treating the parties with equality and ensuring that each party has a reasonable opportunity to present its case. This balance safeguards the fairness of the process and the parties' right to be heard.
3. **Equality of Treatment:** The provision underscores the importance of equal treatment of the parties. This principle ensures that neither party is unfairly advantaged or disadvantaged in the proceedings, contributing to the integrity of the arbitration process.
4. **Opportunity to Present Case:** Each party must be given a reasonable opportunity to present its case. This requirement aligns with the fundamental principle of due process, where parties must have the chance to present their arguments, evidence, and defences before an impartial tribunal.
5. **Efficiency and Avoidance of Delay:** The arbitral tribunal is directed to exercise its discretion in a manner that avoids unnecessary delay and expense. This directive reflects the desire to maintain an efficient and streamlined arbitration process, which is one of the key advantages of arbitration over traditional litigation.
6. **Fairness and Efficiency:** The provision underscores the importance of both fairness and efficiency in arbitration. While efficiency is prioritised, it should not come at the expense of a fair and thorough consideration of the parties' claims and defences.
7. **Minimising Costs:** By conducting proceedings efficiently and avoiding unnecessary delay, the arbitration process can help minimise costs for the parties, which is often a significant factor in their choice of arbitration as a dispute resolution method.
8. **Flexibility to Adapt:** The provision recognises that the arbitral tribunal has the discretion to adapt the proceedings to the unique circumstances of each case. This reflects the

principle that arbitration can be tailored to the specific needs of the parties and the dispute.

9. **Preserving the Parties' Rights:** While the arbitral tribunal has discretion, it must still ensure that the parties' rights are respected and upheld throughout the process. This includes ensuring that each party has a genuine opportunity to present its case and that procedural fairness is maintained.
10. **Fair and Efficient Resolution:** Article 17(1) encapsulates the overarching objective of providing a fair and efficient process for resolving the parties' dispute through arbitration. It underscores the importance of balancing various considerations to achieve a just outcome.

In summary, Article 17(1) of the UNCITRAL Arbitration Rules 2021 emphasises the arbitral tribunal's discretion to conduct the arbitration proceedings while ensuring the parties' equality and opportunity to present their cases. The provision highlights the dual goals of avoiding unnecessary delay and expense while providing a fair and efficient resolution process. This balance is essential for maintaining the integrity and effectiveness of arbitration as a means of dispute resolution.

2. As soon as practicable after its constitution and after inviting the parties to express their views, the arbitral tribunal shall establish the provisional timetable of the arbitration. The arbitral tribunal may, at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under these Rules or agreed by the parties.

1. Article 17(2) of the UNCITRAL Arbitration Rules 2021 addresses the establishment of a provisional timetable for the arbitration proceedings and the arbitral tribunal's authority to adjust timeframes. Here is a detailed analysis of this provision:
2. **Provisional Timetable:** The provision emphasises the importance of creating a provisional timetable for the arbitration proceedings. This timetable outlines the schedule and deadlines for various stages of the arbitration process, such as submitting statements of claim, counterclaims, evidence, and conducting hearings.
3. **Prompt Establishment:** The arbitral tribunal is required to establish the provisional timetable "as soon as practicable" after its constitution. This underscores the need for efficiency and timely planning to guide the arbitration process.
4. **Party Involvement:** Before establishing the provisional timetable, the arbitral tribunal is directed to invite the parties to express their views. This reflects the collaborative nature of arbitration, where the parties' input is considered in shaping the proceedings.
5. **Flexibility and Adaptability:** The provisional timetable allows for flexibility and adaptability to the specific circumstances of the case. It takes into account the complexity of the dispute, the availability of the parties and witnesses, and other relevant factors.
6. **Efficient Progression:** The provision contributes to the efficient progression of the arbitration proceedings by providing a structured plan and timeline. This can help prevent unnecessary delays and ensure that the case moves forward in a timely manner.

7. **Balancing Time and Fairness:** While efficiency is important, the provision does not sacrifice fairness. The arbitral tribunal must strike a balance between ensuring an expeditious process and allowing each party sufficient time to present its case.
8. **Extension or Abridgment of Time:** The provision grants the arbitral tribunal the authority to extend or abridge any period of time prescribed under the UNCITRAL Arbitration Rules or agreed upon by the parties. This flexibility is crucial for accommodating unexpected developments or addressing specific needs of the case.
9. **Party Participation:** The arbitral tribunal's decision to adjust timeframes is made after inviting the parties to express their views. This ensures that parties have the opportunity to provide input and raise any concerns before changes are implemented.
10. **Fairness and Procedural Equality:** The provision maintains the principle of procedural equality by allowing the arbitral tribunal to extend or abridge timeframes for all parties equally. This prevents any undue advantage or disadvantage for any party.
11. **Efficient and Effective Process:** Article 17(2) contributes to the overall efficiency and effectiveness of the arbitration process. It promotes a well-organised and structured approach to handling the case while recognising the need for flexibility in response to changing circumstances.

In summary, Article 17(2) of the UNCITRAL Arbitration Rules 2021 underscores the importance of establishing a provisional timetable for the arbitration proceedings and grants the arbitral tribunal the authority to adjust timeframes as needed. This provision strikes a balance between efficiency and fairness, ensuring that the arbitration process is conducted in a timely and effective manner while upholding the parties' right to present their cases.

3. If at an appropriate stage of the proceedings any party so requests, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.

Article 17(3) of the UNCITRAL Arbitration Rules 2021 pertains to the conduct of hearings and the presentation of evidence in arbitration proceedings. Here is a detailed analysis of this provision:

1. **Hearings and Evidence Presentation:** The provision addresses the issue of whether hearings should be held for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. It emphasises that the arbitral tribunal must consider requests from parties for such hearings.
2. **Party Autonomy:** The provision recognises the principle of party autonomy. It allows a party to request a hearing if they deem it necessary for presenting their evidence or oral arguments. This reflects the parties' control over the presentation of their case.
3. **Appropriate Stage of Proceedings:** The arbitral tribunal is required to consider requests for hearings at an "appropriate stage" of the proceedings. This implies that the tribunal

must assess the timing and relevance of the requested hearing in the context of the case's progression.

4. **Balance Between Efficiency and Fairness:** The provision reflects the balance between efficiency and fairness in arbitration. While hearings can be essential for a comprehensive presentation of evidence, they may also add to the time and cost of the proceedings.
5. **Tribunal's Discretion:** If a party requests a hearing, the arbitral tribunal is obligated to hold one. However, in the absence of such a request, the tribunal has the discretion to decide whether to hold hearings or to proceed based on documents and other materials.
6. **Document-Only Proceedings:** If no party requests a hearing, the arbitral tribunal may decide to conduct proceedings solely based on documents and other materials. This could include written submissions, expert reports, and documentary evidence.
7. **Efficiency and Expediency:** The provision aligns with the principle of efficiency in arbitration. It allows the arbitral tribunal to streamline proceedings by opting for document-only proceedings when appropriate.
8. **Party Participation:** The provision ensures that parties have the opportunity to make their case effectively. If a party requests a hearing, the arbitral tribunal must grant it, ensuring that each party has a fair chance to present evidence and arguments.
9. **Expert Witnesses:** The provision explicitly includes expert witnesses among those for whom evidence can be presented during a hearing. This recognises the importance of expert testimony in certain disputes.
10. **Decision-Making Process:** The provision demonstrates the arbitral tribunal's role as the decision-maker. It has the authority to decide whether hearings are necessary based on the parties' requests and the circumstances of the case.

In summary, Article 17(3) of the UNCITRAL Arbitration Rules 2021 gives parties the right to request hearings for evidence presentation or oral argument at an appropriate stage of the proceedings. It also grants the arbitral tribunal the discretion to decide whether hearings should be held or whether the proceedings will be conducted based on documents and materials. This provision balances the parties' right to present their case effectively with the need for an efficient and fair arbitration process.

4. All communications to the arbitral tribunal by one party shall be communicated by that party to all other parties. Such communications shall be made at the same time, except as otherwise permitted by the arbitral tribunal if it may do so under applicable law.

Article 17(4) of the UNCITRAL Arbitration Rules 2021 addresses the principle of transparency and fairness in the communication process between parties and the arbitral tribunal. Here is a detailed analysis of this provision:

1. **Transparency and Communication:** The provision underscores the importance of transparency and open communication in arbitration proceedings. It requires that any communication sent by one party to the arbitral tribunal must also be shared with all other parties involved in the arbitration.

2. **Equal Access to Information:** By ensuring that all parties receive the same communications simultaneously, the provision promotes equal access to information. No party should have an advantage over others due to receiving information earlier.
3. **Promoting Fairness:** The provision contributes to the fairness of the arbitration process. Allowing parties to have access to the same information prevents any party from being blindsided or unfairly disadvantaged.
4. **Mutual Exchange of Information:** The requirement for parties to share communications with each other reflects the cooperative nature of arbitration. It encourages parties to engage in a constructive exchange of information, facilitating a more informed and balanced proceeding.
5. **Timely Communication:** The provision establishes the expectation that communications to the arbitral tribunal should be shared with all parties “at the same time”. This emphasises the importance of timely communication to prevent delays or inequities.
6. **Tribunal’s Discretion:** The provision allows for exceptions to the simultaneous communication requirement if the arbitral tribunal deems it permissible under applicable law. This recognises that certain situations or legal requirements may necessitate deviations from the general rule.
7. **Balance with Confidentiality:** While transparency is important, the provision should be read in conjunction with the need to protect confidential or sensitive information. The parties and the tribunal must balance transparency with appropriate safeguards for confidential materials.
8. **Consistency with Due Process:** Simultaneous communication helps ensure that parties have a reasonable opportunity to respond to each other’s submissions. This upholds the principle of due process and prevents unfair surprises.
9. **Efficient Proceedings:** By encouraging parties to share communications promptly, the provision contributes to the efficiency of the arbitration process. Timely sharing of information can lead to more focused and productive proceedings.
10. **International Consistency:** The provision aligns with international best practices for arbitration, which emphasise transparency, equality, and procedural fairness.

In summary, Article 17(4) of the UNCITRAL Arbitration Rules 2021 reinforces the principles of transparency and fairness by requiring parties to communicate with the arbitral tribunal in a way that ensures simultaneous sharing of information with all other parties. This provision helps maintain an equitable and informed arbitration process while allowing for exceptions when permissible under applicable law.

5. The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those

parties. The arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration.

Article 17(5) of the UNCITRAL Arbitration Rules 2021 addresses the joinder of third parties to arbitration proceedings. Here is a detailed analysis of this provision:

1. **Joinder of Third Parties:** The provision acknowledges the possibility of joining one or more third persons as parties to the ongoing arbitration proceedings. This means that an additional party, who is also a party to the arbitration agreement, can be brought into the arbitration.
2. **Request for Joinder:** The provision specifies that the joinder must occur at the request of any party involved in the arbitration. This ensures that the parties have control over the decision to involve third parties in the proceedings.
3. **Consent of Third Parties:** Third parties can only be joined if they are parties to the underlying arbitration agreement. This implies that their consent to be part of the arbitration process is already established through the existence of the arbitration agreement.
4. **Prejudice Consideration:** The arbitral tribunal's discretion to allow joinder is contingent upon whether joining the third person(s) would result in prejudice to any of the existing parties. The tribunal must assess potential prejudice and determine whether it outweighs the benefits of joinder.
5. **Opportunity to Be Heard:** The provision underscores the importance of due process and fairness. All parties, including the third person(s) to be joined, must be given the opportunity to present their views before a decision on joinder is made.
6. **Prevention of Prejudice:** The provision aims to prevent prejudice to any party resulting from the joinder of third parties. If the tribunal determines that such prejudice would occur, it has the authority to deny the request for joinder.
7. **Single or Several Awards:** The arbitral tribunal is granted the authority to decide whether to issue a single award or multiple awards in the case involving all parties, including the third persons joined. This allows the tribunal flexibility in structuring the awards based on the complexity of the dispute.
8. **Efficiency and Consolidation:** The provision allows for the consolidation of claims involving multiple parties, promoting efficiency in dispute resolution. This can be especially valuable when there are related disputes arising from a common set of facts or contractual relationships.
9. **Balancing Interests:** Article 17(5) balances the interests of ensuring efficient proceedings and preserving the rights of parties to a fair and equitable process.
10. **Preservation of Autonomy:** While allowing joinder, the provision respects the autonomy of arbitration agreements and ensures that parties to the arbitration agreement retain control over the addition of third parties.

In summary, Article 17(5) of the UNCITRAL Arbitration Rules 2021 provides a mechanism for allowing the joinder of third parties to arbitration proceedings. It emphasises fairness, the prevention of prejudice, and the flexibility to issue single or multiple awards based on the involvement of all parties, including the joined third persons. This provision strikes a balance between efficiency and procedural integrity in arbitration proceedings involving multiple parties.

Place of arbitration

Article 18

1. If the parties have not previously agreed on the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case. The award shall be deemed to have been made at the place of arbitration.

Article 18(1) of the UNCITRAL Arbitration Rules 2021 addresses the determination of the place of arbitration when the parties have not agreed on it in advance. Here is a detailed analysis of this provision:

1. **Place of Arbitration:** The provision focuses on the determination of the geographical location where the arbitration proceedings will take place. This location is commonly referred to as the “place of arbitration”.
2. **Absence of Prior Agreement:** The provision applies specifically when the parties have not included a clause in their contract specifying the place of arbitration. In such cases, the arbitral tribunal is tasked with making this determination.
3. **Arbitral Tribunal’s Discretion:** The arbitral tribunal is given the authority and discretion to decide the place of arbitration. This discretionary power is to be exercised with consideration for the circumstances of the case.
4. **Circumstances of the Case:** The arbitral tribunal must take into account various factors and circumstances relevant to the arbitration. This could include factors such as the parties’ locations, the subject matter of the dispute, the convenience of witnesses, and other practical considerations.
5. **Flexibility and Pragmatism:** By allowing the arbitral tribunal to consider the circumstances, the provision promotes flexibility and adaptability in choosing a suitable location for the arbitration proceedings.
6. **Award’s Place of Origin:** The provision clarifies that the award shall be deemed to have been made at the determined place of arbitration. This has implications for the legal characterisation of the award, including potential challenges and enforcement.
7. **Clarity and Legal Certainty:** By designating the place of arbitration for the purpose of the award’s origin, the provision contributes to legal clarity and certainty in the arbitral process.

8. Party Autonomy: While the parties did not pre-agree on the place of arbitration, Article 18(1) respects the parties' autonomy by leaving this determination to the arbitral tribunal rather than imposing a specific location.
9. Balancing Interests: The provision balances the need for a determined location for the arbitral proceedings with the recognition that the specific circumstances of each case may warrant different choices.
10. International Character: The provision is well-suited for international arbitration, where parties from different jurisdictions may be involved and where flexibility in determining the place of arbitration can be crucial.

In summary, Article 18(1) of the UNCITRAL Arbitration Rules 2021 gives the arbitral tribunal the authority to determine the place of arbitration in cases where the parties have not previously agreed on it. This provision ensures flexibility, practicality, and the consideration of relevant circumstances, while also establishing the place of origin for the resulting award. It reflects the inherent adaptability of arbitration to diverse situations while promoting legal clarity.

2. The arbitral tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including hearings.

Article 18(2) of the UNCITRAL Arbitration Rules 2021 addresses the flexibility and autonomy of the arbitral tribunal in determining the locations for various aspects of the arbitration proceedings. Here is a detailed analysis of this provision:

1. Tribunal's Flexibility: The provision underscores the flexibility given to the arbitral tribunal in deciding the locations where it conducts its activities related to the arbitration.
2. Deliberations Location: The first part of the provision allows the arbitral tribunal to meet at any location it deems suitable for its deliberations. This acknowledges that discussions and decision-making processes can occur at diverse venues based on practical considerations.
3. Hearings Location: The provision extends the tribunal's authority beyond deliberations. It states that, unless the parties have agreed otherwise, the arbitral tribunal can choose any location it finds appropriate for various purposes, including conducting hearings.
4. Party Agreement: The provision acknowledges the importance of party agreement. If the parties have previously agreed on specific locations for hearings or other proceedings, the arbitral tribunal would be bound by that agreement.
5. Consideration of Practicality: By permitting the arbitral tribunal to determine suitable locations, the provision acknowledges that factors such as the convenience of the parties, witnesses, and arbitrators, as well as the potential impact on costs and efficiency, may influence the choice.

6. **Autonomy of Arbitral Tribunal:** This provision reflects the principle of arbitral tribunal autonomy, which is a hallmark of arbitration. It enables the tribunal to make decisions tailored to the specific circumstances of each case.
7. **Balancing Interests:** The provision strikes a balance between the arbitral tribunal's autonomy and party interests. While the tribunal has broad discretion, it is still subject to party agreement, especially if the parties have previously specified locations.
8. **Efficiency and Convenience:** By allowing the arbitral tribunal to choose suitable locations, the provision promotes the efficient conduct of the arbitration and accommodates the convenience of all parties involved.
9. **International Character:** The provision aligns with the international nature of many arbitration proceedings, where parties and arbitrators may be located in different jurisdictions, necessitating practical choices for meeting and hearing locations.
10. **Enhancing Fairness:** The provision's flexibility ensures that all parties have a reasonable opportunity to participate in the arbitration process, regardless of their geographical locations.

In summary, Article 18(2) of the UNCITRAL Arbitration Rules 2021 emphasises the arbitral tribunal's flexibility and discretion in selecting appropriate locations for deliberations, hearings, and other proceedings. The provision acknowledges the practical realities of modern arbitration, enabling efficient proceedings while respecting party agreements and ensuring fairness to all participants.

Language

Article 19

1. Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.

Article 19(1) of the UNCITRAL Arbitration Rules 2021 addresses the important issue of determining the language or languages to be used in the arbitration proceedings. Here is a detailed analysis of this provision:

1. **Tribunal's Duty:** The provision establishes the responsibility of the arbitral tribunal to decide on the language or languages to be used in the arbitration proceedings.
2. **Prompt Determination:** The provision emphasises the need for the tribunal to make this determination promptly after its appointment. This ensures that parties have clarity on the language of proceedings from an early stage.
3. **Party Agreement:** The provision acknowledges that the determination of the language(s) is subject to an agreement by the parties. This reflects the principle of party autonomy, allowing parties to tailor the arbitration to their preferences.

4. **Default Rule:** If the parties do not reach an agreement on the language(s), the arbitral tribunal steps in to make the determination. This ensures that proceedings can move forward even in the absence of party agreement.
5. **Scope of Determination:** The language determination applies to various written submissions, including the statement of claim, statement of defence, and any further written statements. It also extends to oral hearings, indicating that the language(s) to be used during hearings will be part of the determination.
6. **Clarity and Efficiency:** By specifying the language(s) to be used, the provision enhances clarity and efficiency in the proceedings. All participants can communicate effectively without language barriers.
7. **Fair Treatment:** The provision supports the principle of treating parties fairly by ensuring that no party is disadvantaged due to a language barrier. It promotes equal participation and understanding.
8. **Flexibility:** The provision offers flexibility by allowing the arbitral tribunal to determine the language(s) based on the specific circumstances of the case. This flexibility can accommodate the backgrounds and preferences of the parties and arbitrators.
9. **Balancing Interests:** The provision strikes a balance between party autonomy and the tribunal's authority. While parties can agree on the language, the tribunal steps in if they do not reach an agreement.
10. **International Nature:** Many arbitration proceedings involve parties and arbitrators from different jurisdictions. The provision acknowledges this international character and provides a mechanism for effective communication.
11. **Efficient Proceedings:** By determining the language(s) early in the process, the provision contributes to the efficiency of the proceedings, reducing potential delays arising from language-related issues.

In summary, Article 19(1) of the UNCITRAL Arbitration Rules 2021 highlights the importance of promptly determining the language or languages to be used in the arbitration proceedings. It reflects the principles of party autonomy, fairness, and efficiency, allowing for effective communication and equal participation among all parties involved. The provision strikes a balance between party preferences and the tribunal's responsibility to ensure smooth proceedings.

2. The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Article 19(2) of the UNCITRAL Arbitration Rules 2021 addresses the issue of translations of documents submitted during the arbitration proceedings. Here is a detailed analysis of this provision:

1. **Tribunal's Discretion:** This provision grants discretion to the arbitral tribunal to order the translation of documents. The tribunal can decide whether documents, including those

annexed to the statement of claim or statement of defence, should be accompanied by translations.

2. **Scope of Documents:** The provision covers various types of documents, including those annexed to the initial statements and any supplementary documents or exhibits introduced during the proceedings. It emphasises the importance of ensuring that parties have a clear understanding of the contents of these documents.
3. **Original Language and Translation:** Documents are initially delivered in their original language. However, the tribunal can require that these documents be accompanied by a translation into a language or languages agreed upon by the parties or determined by the tribunal.
4. **Party Agreement:** The provision respects the principle of party autonomy by allowing parties to agree on the language(s) for translations. This reflects the parties' preferences and ensures their active participation in shaping the proceedings.
5. **Tribunal's Determination:** If parties have not agreed on the language(s) for translations, the arbitral tribunal can step in and determine the appropriate language(s) for translations. This ensures that parties are provided with translations even in the absence of agreement.
6. **Effective Communication:** The provision recognises the importance of effective communication between the parties and the arbitral tribunal. Translations help eliminate language barriers and ensure that all participants can fully understand the documents presented.
7. **Balancing Interests:** The provision strikes a balance between the need for translations to facilitate understanding and the potential costs and time involved in preparing translations. The tribunal's discretion allows for flexibility in making practical decisions.
8. **Equitable Treatment:** By ordering translations, the provision promotes equitable treatment of all parties, ensuring that no party is disadvantaged due to a language barrier.
9. **Efficiency and Fairness:** The provision contributes to the overall efficiency and fairness of the proceedings by ensuring that parties have access to translated versions of important documents, enhancing their ability to present their case effectively.
10. **Preserving Evidence:** The requirement for translated documents helps preserve the integrity of the evidentiary record. Allowing parties and arbitrators to fully comprehend the documents submitted enhances the reliability of the arbitration process.

In summary, Article 19(2) of the UNCITRAL Arbitration Rules 2021 gives the arbitral tribunal the authority to order translations of documents submitted during the arbitration proceedings. It emphasises effective communication, equitable treatment, and the preservation of the evidentiary record. The provision provides flexibility by allowing parties to agree on the language(s) for translations while enabling the tribunal to determine the language(s) if necessary.

Statement of claim

Article 20

1. The claimant shall communicate its statement of claim in writing to the respondent and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The claimant may elect to treat its notice of arbitration referred to in article 3 as a statement of claim, provided that the notice of arbitration also complies with the requirements of paragraphs 2 to 4 of this article.

Article 20(1) of the UNCITRAL Arbitration Rules 2021 deals with the communication of the claimant's statement of claim during the arbitration proceedings. Here is an in-depth analysis of this provision:

1. **Statement of Claim:** The provision focuses on the requirement for the claimant to present its case in writing through a formal document called the "statement of claim". This document outlines the factual and legal basis for the claimant's position and provides a structured presentation of its arguments.
2. **Communication Requirement:** The claimant is required to communicate the statement of claim in writing to both the respondent and each of the arbitrators. This ensures that all relevant parties, including the opposing party and the arbitral tribunal, are informed of the claimant's case.
3. **Timing:** The provision emphasises that the timing for communicating the statement of claim is determined by the arbitral tribunal. This allows flexibility to accommodate the specific circumstances of each case and ensures that the parties have sufficient time to prepare their responses.
4. **Notice of Arbitration as Statement of Claim:** The provision offers the claimant the option to use its notice of arbitration (as provided in Article 3) as the statement of claim, provided certain requirements are met. This option aims to streamline the process and avoids duplicative submissions.
5. **Compliance Requirements:** If the claimant chooses to treat the notice of arbitration as a statement of claim, it must ensure that the notice of arbitration complies with the requirements outlined in paragraphs 2 to 4 of Article 20. This ensures that essential information is provided for the proper presentation of the claim.
6. **Procedural Efficiency:** By allowing the claimant to use the notice of arbitration as the statement of claim, the provision promotes procedural efficiency and avoids unnecessary repetition of information already provided.
7. **Clarity and Structure:** The provision contributes to the orderly conduct of the arbitration by requiring the claimant to present its case in a clear and structured manner. This helps both the respondent and the arbitral tribunal understand the basis of the claim.
8. **Equal Treatment:** The provision ensures equal treatment of the parties by requiring the claimant to follow specific procedures when presenting its case. This helps maintain a fair and balanced arbitration process.

9. **Arbitral Tribunal's Role:** The arbitral tribunal plays a significant role in setting the timing for communication and ensuring compliance with procedural requirements. This reflects the tribunal's authority to manage the arbitration effectively.
10. **Flexibility:** By allowing the arbitral tribunal to determine the timing of communication and providing the option to use the notice of arbitration as the statement of claim, the provision offers flexibility tailored to the needs of each arbitration.

In summary, Article 20(1) of the UNCITRAL Arbitration Rules 2021 outlines the requirements for the claimant to communicate its statement of claim in writing to the respondent and the arbitrators. It provides an option to use the notice of arbitration as the statement of claim while ensuring compliance with specific requirements. The provision promotes procedural efficiency, clarity, and equal treatment among the parties, with the arbitral tribunal overseeing the process.

2. The statement of claim shall include the following particulars:

- (a) The names and contact details of the parties;**
- (b) A statement of the facts supporting the claim;**
- (c) The points at issue;**
- (d) The relief or remedy sought;**
- (e) The legal grounds or arguments supporting the claim.**

Article 20(2) of the UNCITRAL Arbitration Rules 2021 outlines the specific requirements for the contents of the claimant's statement of claim in an arbitration proceeding. Here is an in-depth analysis of this provision:

1. **Party Information:** The provision mandates the inclusion of the names and contact details of the parties involved in the arbitration. This ensures clear identification of the parties and facilitates effective communication throughout the proceedings.
2. **Statement of Facts:** The claimant is required to provide a clear and comprehensive statement of the factual basis supporting the claim. This includes a description of the relevant events, actions, and circumstances that give rise to the dispute.
3. **Points at Issue:** The statement of claim must identify the key points at issue between the parties. This helps the opposing party and the arbitral tribunal understand the main areas of contention and focus their responses and deliberations accordingly.
4. **Relief or Remedy Sought:** The claimant must specify the specific relief or remedy it is seeking through the arbitration. This could include damages, specific performance, injunctions, or other forms of relief. Clear identification of the sought-after remedy helps in clarifying the purpose of the arbitration.
5. **Legal Grounds and Arguments:** The provision requires the claimant to set out the legal grounds or arguments that support the claim. This entails explaining the legal principles,

provisions, or doctrines upon which the claim is based and presenting a coherent legal analysis.

6. **Completeness and Clarity:** By listing these particulars, the provision ensures that the statement of claim is comprehensive, clear, and well-structured. This helps in facilitating a smooth and focused arbitration process.
7. **Fair Presentation:** Requiring the claimant to provide a statement of facts, points at issue, relief sought, and legal grounds ensures that the opposing party and the arbitral tribunal have a fair understanding of the claim and can respond appropriately.
8. **Effective Adjudication:** The provision contributes to the effective adjudication of the dispute by enabling the arbitral tribunal to assess the validity and merits of the claim based on a well-organised and substantiated submission.
9. **Evidentiary Focus:** By specifying the factual basis and legal arguments, the provision encourages the claimant to present evidence and legal authority that directly relate to the dispute, which enhances the efficiency and relevance of the proceedings.
10. **Transparency and Due Process:** Requiring the claimant to provide a detailed statement of claim ensures transparency and upholds the principle of due process, allowing both parties to present their case fully and fairly.

In summary, Article 20(2) of the UNCITRAL Arbitration Rules 2021 sets out the essential components that must be included in the claimant's statement of claim. These particulars ensure that the statement is well-prepared, focused, and provides the necessary information for a thorough understanding of the claim. The provision aims to promote a fair, transparent, and effective arbitration process by guiding the claimant in presenting its case in a structured and comprehensive manner.

3. A copy of any contract or other legal instrument out of or in relation to which the dispute arises and of the arbitration agreement shall be annexed to the statement of claim.

Article 20(3) of the UNCITRAL Arbitration Rules 2021 addresses an important requirement for the claimant's statement of claim in arbitration proceedings. Here is a detailed analysis of this provision:

1. **Relevance and Context:** This provision emphasises the importance of providing context and background to the dispute. By requiring the claimant to annex a copy of the contract or any other relevant legal instrument that is at the heart of the dispute, the provision ensures that the arbitral tribunal and the opposing party have access to the primary document that underlies the dispute.
2. **Transparency and Clarity:** Attaching the contract or legal instrument to the statement of claim promotes transparency and clarity. It allows the arbitral tribunal and the opposing party to verify the terms and provisions of the agreement that are being disputed, ensuring a common understanding of the factual and legal context.
3. **Arbitration Agreement:** In addition to the contract, the provision also requires the annexation of the arbitration agreement itself. This is crucial as it demonstrates the

parties' agreement to resolve their disputes through arbitration rather than litigation. It also helps establish the arbitral tribunal's jurisdiction over the matter.

4. **Facilitates Assessment:** The provision assists the arbitral tribunal in assessing the validity and scope of the arbitration agreement. It allows the tribunal to determine whether the dispute falls within the ambit of the agreement and whether the parties have agreed to submit their dispute to arbitration.
5. **Efficient Proceedings:** By providing all relevant documents upfront, the provision contributes to the efficiency of the proceedings. The arbitral tribunal and the parties can commence the arbitration process with a clear understanding of the contractual relationship and the issues in dispute.
6. **Avoids Delay and Disputes:** Attaching the contract and arbitration agreement at the outset helps prevent disputes over the terms of the contract or the existence of a valid arbitration agreement later in the proceedings. It minimises the potential for delay due to disagreements on these fundamental aspects.
7. **Equitable Presentation:** Annexing the contract and arbitration agreement ensures that both parties have an equal opportunity to review and understand the basis of the claim. This promotes fairness and the principle of equality between the parties.
8. **Fosters Informed Decision-Making:** The requirement for annexing these documents supports informed decision-making by the arbitral tribunal. It allows the tribunal to consider the contractual provisions and the parties' intentions when making its determinations.
9. **Enhances Predictability:** Providing the relevant documents upfront enhances predictability and consistency in the arbitration process. It enables the arbitral tribunal to apply the applicable contractual terms and the agreed dispute resolution mechanism.

In summary, Article 20(3) of the UNCITRAL Arbitration Rules 2021 underscores the importance of transparency, clarity, and context in arbitration proceedings. Requiring the claimant to attach a copy of the contract or relevant legal instrument, along with the arbitration agreement, to the statement of claim ensures that all parties and the arbitral tribunal have a comprehensive understanding of the dispute's background and scope. This provision contributes to a more efficient, informed, and equitable arbitration process.

4. The statement of claim should, as far as possible, be accompanied by all documents and other evidence relied upon by the claimant, or contain references to them.

Article 20(4) of the UNCITRAL Arbitration Rules 2021 addresses a key aspect of the claimant's statement of claim in arbitration proceedings. Here is a detailed analysis of this provision:

1. **Completeness of Presentation:** This provision underscores the importance of presenting a comprehensive and complete case. It requires the claimant to include in its statement of claim all documents and evidence upon which it intends to rely to support its claims. This helps ensure that the arbitral tribunal and the opposing party have access to the factual and evidentiary basis of the claim from the outset.

2. **Efficiency and Clarity:** By providing all relevant documents and evidence upfront, the provision contributes to the efficiency of the arbitration proceedings. It allows the arbitral tribunal and the opposing party to understand the claimant's case without the need for repeated requests for additional information or evidence.
3. **Fairness and Equality:** Requiring the claimant to submit all supporting documents and evidence promotes fairness and equality between the parties. It ensures that both sides have access to the same information, enabling them to effectively prepare their arguments and respond to the claims.
4. **Focused Proceedings:** Presenting evidence along with the statement of claim streamlines the arbitration process. It allows the proceedings to be more focused and targeted, as the parties and the tribunal can immediately address the substance of the dispute.
5. **Facilitates Evaluation:** Having access to the evidence upfront enables the arbitral tribunal to evaluate the merits of the claim at an early stage. It helps the tribunal assess the credibility and relevance of the evidence and its alignment with the claims being made.
6. **Avoids Delays:** Providing evidence at the outset reduces the risk of delays that could arise from the need to produce evidence later in the proceedings. This contributes to a smoother and more expeditious arbitration process.
7. **Transparency and Informed Decision-Making:** The requirement for the claimant to either include documents or reference them in the statement of claim promotes transparency. It ensures that the arbitral tribunal and the opposing party are aware of the evidentiary basis for the claimant's case, facilitating informed decision-making.
8. **Prevents Surprise:** Requiring the claimant to disclose its evidence early on prevents surprise and ambush tactics during the course of the proceedings. Both parties are aware of the evidence and arguments being presented, allowing them to prepare and respond effectively.
9. **Encourages Well-Structured Claims:** To comply with this provision, claimants are incentivised to present well-structured and organised claims, enhancing the clarity and coherence of their arguments.

In summary, Article 20(4) of the UNCITRAL Arbitration Rules 2021 promotes transparency, efficiency, and fairness in arbitration proceedings. By requiring the claimant to provide all documents and evidence it relies upon or references them in the statement of claim, the provision ensures that the arbitral tribunal and the opposing party have a clear understanding of the claimant's case and can engage in a focused and informed resolution of the dispute.

Statement of defence

Article 21

1. The respondent shall communicate its statement of defence in writing to the claimant and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The respondent

may elect to treat its response to the notice of arbitration referred to in article 4 as a statement of defence, provided that the response to the notice of arbitration also complies with the requirements of paragraph 2 of this article.

Article 21(1) outlines the requirements for the respondent's statement of defence in arbitration proceedings. Here is a detailed analysis of this provision:

1. **Written Response:** The provision emphasises that the respondent must provide its response in writing. This requirement ensures that the respondent's position is clearly articulated and documented for the arbitral tribunal's consideration.
2. **Timely Submission:** The respondent is obliged to communicate its statement of defence within a period of time determined by the arbitral tribunal. The specific timeframe for submission may be set by the tribunal in accordance with the procedural timetable established in the early stages of the arbitration. This promotes the timely progress of the proceedings.
3. **Equitable Treatment:** Similar to the claimant's statement of claim, the provision ensures that both parties are treated equally. By requiring the respondent to submit a statement of defence, the arbitral tribunal ensures that the respondent's arguments and defences are properly presented and considered.
4. **Optional Use of Response to Notice of Arbitration:** The provision allows the respondent to use its response to the notice of arbitration (referred to in Article 4) as its statement of defence. However, this is contingent upon the response to the notice of arbitration complying with the requirements specified in paragraph 2 of Article 21.
5. **Requirements for Statement of Defence:** The respondent's statement of defence, whether in the form of a separate submission or based on the response to the notice of arbitration, must comply with the requirements outlined in paragraph 2 of Article 21.
6. **Clarity and Particulars:** The statement of defence should provide clarity and specificity. It must address the essential elements set out in paragraph 2, including a statement of facts supporting the respondent's position and any legal arguments or grounds for defence.
7. **Facilitation of Adjudication:** Requiring a written statement of defence assists the arbitral tribunal in understanding the respondent's perspective fully. This facilitates a fair and informed adjudication of the dispute.
8. **Submission of Documents and Evidence:** Although not explicitly stated in this provision, it is common practice for the respondent's statement of defence to be accompanied by relevant documents and evidence supporting its defence. This assists in the tribunal's assessment of the case.

In summary, Article 21(1) of the UNCITRAL Arbitration Rules 2021 mandates that the respondent provide a written statement of defence within the time determined by the arbitral tribunal. It also permits the respondent to use its response to the notice of arbitration as the statement of defence, provided it complies with the requirements set out in paragraph 2 of the same article. By adhering to these requirements, the parties can present their respective cases effectively, and the arbitral tribunal can proceed with a fair and efficient resolution of the dispute.

2. The statement of defence shall reply to the particulars (b) to (e) of the statement of claim (art. 20, para. 2). The statement of defence should, as far as possible, be accompanied by all documents and other evidence relied upon by the respondent, or contain references to them.

Article 21(2) provides additional requirements and guidelines for the respondent's statement of defence in arbitration proceedings. Here is a detailed analysis of this provision:

1. **Reply to Particulars:** The respondent's statement of defence must address the particulars outlined in paragraphs (b) to (e) of the statement of claim (Article 20, paragraph 2). These particulars include:
 - a. A statement of the facts supporting the claim;
 - b. The points at issue;
 - c. The relief or remedy sought;
 - d. The legal grounds or arguments supporting the claim.
2. **Thorough Response:** By requiring the respondent's statement of defence to address these particulars, the arbitral tribunal ensures that both parties' arguments are fully examined and that the tribunal is well-informed about the factual and legal aspects of the dispute.
3. **Documents and Evidence:** The respondent's statement of defence should, as far as possible, be accompanied by all relevant documents and evidence that support the respondent's position. Including this information facilitates a comprehensive evaluation of the case by the arbitral tribunal.
4. **References to Evidence:** In cases where the respondent cannot provide all documents and evidence directly, the statement of defence should contain references to them. This allows the tribunal and the claimant to locate and review the referenced documents during the course of the proceedings.
5. **Fair Presentation of Defence:** Requiring the respondent to address the particulars of the claimant's statement of claim ensures that the respondent's defence is responsive to the claimant's allegations. It promotes a balanced and fair exchange of arguments during the arbitration.
6. **Efficient and Focused Proceedings:** By specifying the particular aspects of the claimant's statement of claim that the respondent should address, Article 21(2) contributes to a more focused and efficient arbitration process.
7. **Transparency and Full Disclosure:** The provision promotes transparency and full disclosure of the respondent's arguments and supporting evidence. This allows all parties and the arbitral tribunal to assess the strengths and weaknesses of each party's case accurately.

In summary, Article 21(2) of the UNCITRAL Arbitration Rules 2021 requires the respondent's statement of defence to address the particulars (b) to (e) of the statement of claim as outlined in Article 20, paragraph 2. It also encourages the respondent to include all relevant documents and evidence in its

statement of defence, or at least provide references to them. By adhering to these requirements, the respondent can present its defence effectively and contribute to a fair and efficient resolution of the dispute.

3. In its statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counterclaim or rely on a claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it.

Article 21(3) addresses the respondent’s ability to make a counterclaim or rely on a claim for the purpose of a set-off in the arbitral proceedings. Here is a detailed analysis of this provision:

1. **Counterclaims and Set-off:** The respondent is given the opportunity to assert a counterclaim against the claimant or rely on a claim for the purpose of a set-off. A counterclaim is a claim made by the respondent against the claimant, while a set-off allows the respondent to use a claim it has against the claimant to reduce the amount owed on the claimant’s original claim.
2. **Timing of Assertion:** The respondent can assert its counterclaim or claim for set-off in its statement of defence. However, if there is a justifiable reason for the delay, the respondent may raise the counterclaim or set-off claim at a later stage of the proceedings. The arbitral tribunal has the discretion to decide whether the delay is justified under the given circumstances.
3. **Arbitral Tribunal’s Jurisdiction:** Before the respondent can make a counterclaim or rely on a claim for set-off, the arbitral tribunal must have jurisdiction over it. The arbitral tribunal will determine its jurisdiction over the respondent’s additional claim based on the arbitration agreement, applicable laws, and the facts of the case.
4. **Efficiency and Avoidance of Redundancy:** Allowing the respondent to assert counterclaims or claims for set-off in the same arbitration promotes efficiency and avoids the need for multiple separate proceedings. It enables the arbitral tribunal to resolve all disputes arising from the same underlying transaction or relationship in one consolidated proceeding.
5. **Fairness and Equal Treatment:** By permitting the respondent to make counterclaims or rely on claims for set-off, the rules ensure that both parties have a fair opportunity to present their arguments and defences. This fosters equal treatment and balance in the arbitral process.
6. **Flexibility:** The provision gives flexibility to the arbitral tribunal to consider the circumstances of the case when deciding whether to allow a delayed counterclaim or set-off claim. This ensures that the arbitral tribunal can adapt to unforeseen developments during the proceedings.

In summary, Article 21(3) of the UNCITRAL Arbitration Rules 2021 allows the respondent to assert counterclaims or rely on claims for set-off either in its statement of defence or at a later stage if the arbitral tribunal considers the delay justified. The provision promotes fairness, efficiency, and flexibility

in the arbitral process while ensuring that the arbitral tribunal has jurisdiction over the additional claims.

4. The provisions of article 20, paragraphs 2 to 4, shall apply to a counterclaim, a claim under article 4, paragraph 2 (f), and a claim relied on for the purpose of a set-off.

This provision refers to the application of certain requirements and procedures concerning the statement of claim to specific types of additional claims made by the respondent. Let us analyse this provision:

1. **Applicability of Article 20:** Article 20 of the UNCITRAL Arbitration Rules 2021 deals with the content of the statement of claim. Article 21(4) clarifies that the provisions of Article 20, paragraphs 2 to 4, shall apply to three specific types of additional claims made by the respondent:
 - a. **Counterclaim:** This refers to a claim made by the respondent against the claimant in response to the claimant's original claim.
 - b. **Claim under Article 4, paragraph 2(f):** Article 4, paragraph 2(f) allows the respondent to include a proposal for the designation of an appointing authority, a proposal for the appointment of a sole arbitrator, or notification of the appointment of an arbitrator in its response to the notice of arbitration. If the respondent makes such a claim, the provisions of Article 20, paragraphs 2 to 4, shall also apply to it.
 - c. **Claim for the purpose of a set-off:** This refers to a claim made by the respondent to offset or reduce the amount claimed by the claimant. For example, if the claimant is seeking payment for a specific contract, the respondent may claim an amount owed to them under a different contract as a set-off.
2. **Content Requirements:** The application of Article 20, paragraphs 2 to 4, means that the respondent must comply with the specific requirements set out in those paragraphs when presenting these additional claims. These requirements include providing the names and contact details of the parties, stating the facts supporting the claim, outlining the points at issue, stating the relief or remedy sought, and presenting the legal grounds or arguments supporting the claim.
3. **Documentation and Evidence:** Article 21(4) also implies that the respondent should accompany its counterclaim, claim under Article 4, paragraph 2(f), or claim for set-off with all relevant documents and evidence, or make appropriate references to them, just as required in Article 20, paragraph 4.
4. **Uniformity and Clarity:** By applying the same content requirements to counterclaims, claims under Article 4, paragraph 2(f), and claims for set-off as for the claimant's original claim, the rules ensure uniformity and clarity in the presentation of all claims before the arbitral tribunal.

In summary, Article 21(4) of the UNCITRAL Arbitration Rules 2021 clarifies that the provisions of Article 20, paragraphs 2 to 4, which deal with the content of the statement of claim, also apply to

counterclaims, claims under Article 4, paragraph 2(f), and claims for set-off made by the respondent. This ensures consistency and fairness in the presentation of all claims before the arbitral tribunal.

Amendments to the claim or defence

Article 22

During the course of the arbitral proceedings, a party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to other parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.

Article 22 of the UNCITRAL Arbitration Rules 2021 deals with the amendment or supplementation of claims, defences, counterclaims, and claims for the purpose of a set-off during the course of the arbitral proceedings. Let us analyse this provision:

1. **Amendment or Supplementation of Claims and Defences:** According to Article 22, during the arbitral proceedings, a party has the right to amend or supplement its claim or defence. This means that a party can modify or add to the arguments or facts in its original claim or defence as the proceedings progress.
2. **Scope of Amendment or Supplementation:** The scope of amendment or supplementation is broad and covers various aspects, including the original claim, defence, counterclaim, and claim for the purpose of a set-off.
3. **Discretion of the Arbitral Tribunal:** However, the right to amend or supplement claims and defences is not absolute. The arbitral tribunal has discretion in determining whether to allow such amendments or supplements. The tribunal will consider various factors before making this decision, including:
4. **Appropriateness:** The tribunal will assess whether it is appropriate to allow the amendment or supplement considering the stage of the proceedings and the complexity of the case.
5. **Delay:** If there has been a significant delay in making the proposed amendment or supplement, the tribunal may be less inclined to allow it.
6. **Prejudice:** The tribunal will consider whether the amendment or supplement would prejudice other parties in the arbitration, affecting their ability to present their case or causing unfairness.
7. **Other Circumstances:** Any other relevant circumstances that might impact the fairness and efficiency of the proceedings may also be taken into account.
8. **Jurisdictional Limitation:** While parties have the right to amend or supplement their claims and defences, the article explicitly states that such amendments or supplements

should not take the claim or defence outside the jurisdiction of the arbitral tribunal. In other words, the amendment or supplement must still fall within the scope of the existing arbitration agreement.

In summary, Article 22 of the UNCITRAL Arbitration Rules 2021 allows parties to amend or supplement their claims, defences, counterclaims, and claims for set-off during the arbitral proceedings. However, the tribunal has discretion in determining whether to allow such amendments or supplements, considering factors such as appropriateness, delay, prejudice to other parties, and the preservation of the tribunal's jurisdiction. This provision aims to strike a balance between allowing parties to present their case fully and efficiently and maintaining the integrity and fairness of the arbitration process.

Pleas as to the jurisdiction of the arbitral tribunal

Article 23

1. The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null shall not entail automatically the invalidity of the arbitration clause.

Article 23(1) of the UNCITRAL Arbitration Rules 2021 addresses the arbitral tribunal's power to rule on its own jurisdiction, including objections related to the existence or validity of the arbitration agreement. Let us analyse this provision:

1. **Competence of the Arbitral Tribunal:** The provision confirms that the arbitral tribunal has the authority to decide on matters concerning its own jurisdiction. This means that if a party raises an objection related to the tribunal's jurisdiction, such as questioning the existence or validity of the arbitration agreement, the tribunal has the power to determine whether it has the authority to hear the case.
2. **Autonomy of the Arbitration Clause:** The article emphasises that an arbitration clause, which is a provision in a contract that stipulates the agreement to resolve disputes through arbitration, is to be treated as an agreement independent of the other terms of the contract. This principle is known as the "separability" or "independence" of the arbitration clause. It means that even if the main contract is declared null or void, the arbitration clause remains valid and enforceable.
3. **Separability of the Arbitration Clause:** The "separability" principle is important because it ensures that the arbitration agreement is not automatically invalidated if there are defects or issues with the underlying contract. The tribunal must consider the arbitration agreement's validity separately from the rest of the contract.
4. **Preserving Arbitration Agreement:** The provision explicitly states that a decision by the arbitral tribunal that the contract (in which the arbitration clause is contained) is null and void does not automatically render the arbitration clause invalid. This reinforces the principle of preserving the arbitration agreement and allows the arbitration process to continue even if the main contract is found to be defective or unenforceable.

In summary, Article 23(1) of the UNCITRAL Arbitration Rules 2021 grants the arbitral tribunal the authority to rule on its own jurisdiction, including matters related to the existence or validity of the arbitration agreement. The provision underscores the autonomy of the arbitration clause, treating it as separate from the rest of the contract, and ensures that the validity of the arbitration agreement is maintained even if the underlying contract is declared null or void by the tribunal. This is a crucial element in upholding the enforceability of arbitration clauses and promoting the efficiency of arbitration proceedings.

2. A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than in the statement of defence or, with respect to a counterclaim or a claim for the purpose of a set-off, in the reply to the counterclaim or to the claim for the purpose of a set-off. A party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

Article 23(2) of the UNCITRAL Arbitration Rules 2021 deals with the timing and procedure for raising objections related to the arbitral tribunal's jurisdiction. Let us analyse this provision:

1. **Timing of Jurisdictional Objections:** According to Article 23(2), a party must raise any objection regarding the arbitral tribunal's jurisdiction no later than in its statement of defence. For counterclaims or claims for the purpose of a set-off, the objection must be raised in the reply to the counterclaim or claim. This requirement ensures that jurisdictional objections are raised at an early stage of the arbitration proceedings, promoting efficiency and preventing unnecessary delays.
2. **No Waiver of Jurisdictional Objections:** The provision clarifies that a party is not precluded from raising an objection to the tribunal's jurisdiction simply because it has appointed, or participated in the appointment of, an arbitrator. This means that the act of appointing an arbitrator does not automatically waive a party's right to challenge the tribunal's jurisdiction later in the proceedings.
3. **Objection to Exceeding Jurisdiction:** If a party believes that the arbitral tribunal is exceeding the scope of its authority during the proceedings, it must raise this objection as soon as the matter allegedly beyond the tribunal's authority is raised during the arbitration. This requirement ensures that any objections related to the tribunal's conduct are promptly addressed.
4. **Admission of Later Plea:** While the general rule is to raise jurisdictional objections at the specified times, the arbitral tribunal may, in certain circumstances, admit a later plea if it deems the delay to be justified. The provision grants the tribunal some discretion to allow for later objections if there are valid reasons for the delay.

In summary, Article 23(2) of the UNCITRAL Arbitration Rules 2021 sets out the procedural requirements for raising jurisdictional objections. Parties must raise objections to the arbitral tribunal's jurisdiction in their statement of defence or reply to counterclaims or set-offs. The act of appointing an arbitrator does not waive a party's right to challenge jurisdiction later. Additionally, objections to the tribunal exceeding its authority must be raised promptly when the alleged conduct occurs. The

tribunal may, under certain circumstances, consider later objections if it finds the delay justified. These rules promote the efficient resolution of jurisdictional issues in the arbitration process.

3. The arbitral tribunal may rule on a plea referred to in paragraph 2 either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court.

Article 23(3) of the UNCITRAL Arbitration Rules 2021 addresses the arbitral tribunal's authority to rule on jurisdictional objections raised by a party. Let us analyse this provision:

1. **Timing of Ruling:** Article 23(3) grants the arbitral tribunal the discretion to decide on a jurisdictional objection either as a preliminary question or in an award on the merits. This means that the tribunal can choose to address the jurisdictional issue early on in the proceedings, even before addressing the merits of the case, or it can decide on jurisdiction as part of its final award when considering the substantive claims of the parties.
2. **Preliminary Question Ruling:** If the tribunal decides to rule on the jurisdictional objection as a preliminary question, it means that the objection will be addressed separately from the merits of the case. The tribunal will make a determination on whether it has jurisdiction to hear the dispute before proceeding with the main proceedings. This approach can lead to a faster resolution of jurisdictional issues and allows the parties to have clarity on the tribunal's jurisdiction early in the arbitration process.
3. **Ruling in the Award:** Alternatively, the arbitral tribunal may decide to address the jurisdictional objection as part of its final award on the merits. In this case, the tribunal will render a decision on both the jurisdictional issue and the substantive claims of the parties in a single award. This approach may be preferred when the jurisdictional objection is closely intertwined with the merits of the case.
4. **Continuation of Proceedings:** Importantly, Article 23(3) emphasises that the arbitral tribunal may continue with the arbitral proceedings and render an award on the merits, even if there is a pending challenge to its jurisdiction before a court. This provision reinforces the principle of competence-competence, which grants the arbitral tribunal the authority to decide its own jurisdiction, including ruling on objections to its jurisdiction raised before national courts.

In summary, Article 23(3) of the UNCITRAL Arbitration Rules 2021 gives the arbitral tribunal the flexibility to decide on jurisdictional objections either as a preliminary question or in the final award on the merits. The tribunal's ruling on jurisdiction can proceed independently of any challenge to its jurisdiction before a court, allowing the arbitration to continue while the tribunal determines its own authority to hear the case.

Further written statements

Article 24

The arbitral tribunal shall decide which further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

Article 24 of the UNCITRAL Arbitration Rules 2021 deals with the procedural aspect of written statements in the arbitration process. Let us analyse this provision:

1. **Tribunal's Decision on Further Written Statements:** According to Article 24, it is the responsibility of the arbitral tribunal to determine whether any further written statements, in addition to the initial statement of claim and statement of defence, shall be required from the parties. These further statements may be in the form of additional submissions, replies, or other written documents that the tribunal deems necessary for a thorough consideration of the issues in dispute.
2. **Fixing Time Periods:** The arbitral tribunal is also tasked with fixing the periods of time within which the parties must communicate these further written statements. This ensures that the parties are aware of the timelines and can adequately prepare and submit their written submissions within the specified timeframes.
3. The purpose of Article 24 is to empower the arbitral tribunal to manage the arbitration process efficiently and ensure that all parties have a reasonable opportunity to present their case in writing. By deciding on the need for further written statements and setting time limits for submission, the tribunal can maintain control over the proceedings and avoid unnecessary delays.

It is worth noting that the UNCITRAL Arbitration Rules 2021 provide considerable flexibility to the arbitral tribunal in shaping the procedure, which enables the tribunal to tailor the arbitration process to the specific circumstances of each case. This approach ensures that the proceedings are conducted in a fair, effective, and efficient manner.

Periods of time

Article 25

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defence) should not exceed 45 days. However, the arbitral tribunal may extend the time limits if it concludes that an extension is justified.

Article 25 of the UNCITRAL Arbitration Rules 2021 addresses the time limits for the communication of written statements in the arbitration process. Let us break down this provision:

1. **Maximum Time Limit of 45 Days:** According to Article 25, the periods of time fixed by the arbitral tribunal for the communication of written statements, which includes the statement of claim and statement of defence, should not exceed 45 days. This means that

the tribunal must strive to ensure that the parties have a reasonable timeframe, not exceeding 45 days, to submit their written submissions and present their case.

2. **Tribunal's Discretion to Extend Time Limits:** Despite the general time limit of 45 days, the arbitral tribunal has the authority to extend the time limits if it deems such an extension to be justified. The tribunal may take into consideration factors such as the complexity of the case, the volume of evidence to be presented, or any other circumstances that may warrant an extension of the time limit.
3. The purpose of Article 25 is to strike a balance between efficiency and fairness in the arbitration proceedings. By setting a maximum time limit of 45 days, the rules aim to encourage expeditious resolution of disputes. However, the provision also recognises that some cases may require more time for proper presentation of evidence and arguments, and thus grants the tribunal the discretion to extend the time limits when necessary.

Overall, Article 25 ensures that the arbitration process remains flexible and responsive to the specific needs of each case while maintaining a reasonable timeline for the parties to submit their written statements.

Interim measures

Article 26

1. The arbitral tribunal may, at the request of a party, grant interim measures.

Article 26(1) of the UNCITRAL Arbitration Rules 2021 addresses the power of the arbitral tribunal to grant interim measures. Let us examine this provision:

1. **Power to Grant Interim Measures:** According to Article 26(1), the arbitral tribunal has the authority to grant interim measures. Interim measures are provisional or temporary measures that a tribunal may order to preserve the rights of parties, maintain the status quo, prevent harm, or ensure the effectiveness of the final award. These measures are aimed at safeguarding the parties' interests during the course of the arbitral proceedings until a final decision or award is rendered.
2. The key points to note are:
 - a. **Initiation by a Party:** The provision specifies that interim measures can be granted at the request of a party. This means that a party must formally seek the tribunal's intervention and specify the nature of the interim measures sought.
 - b. **Tribunal's Discretion:** The arbitral tribunal has discretion in determining whether to grant interim measures. It will consider the circumstances of the case, the urgency of the matter, and the need to protect the parties' rights. The tribunal may also consider the likelihood of success on the merits of the case and any potential harm or prejudice that could arise if the measures are not granted.
 - c. It is important to note that the power to grant interim measures is separate from the tribunal's jurisdiction to decide the substantive issues of the dispute. Interim

measures are provisional in nature and are aimed at preserving the parties' rights pending the final resolution of the dispute.

Overall, Article 26(1) of the UNCITRAL Arbitration Rules 2021 empowers the arbitral tribunal to issue interim measures when requested by a party, ensuring that parties have access to effective relief during the course of the arbitration proceedings.

2. An interim measure is any temporary measure by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party, for example and without limitation, to:

- (a) Maintain or restore the status quo pending determination of the dispute;**
- (b) Take action that would prevent, or refrain from taking action that is likely to cause, (i) current or imminent harm or (ii) prejudice to the arbitral process itself;**
- (c) Provide a means of preserving assets out of which a subsequent award may be satisfied; or**
- (d) Preserve evidence that may be relevant and material to the resolution of the dispute.**

Article 26(2) of the UNCITRAL Arbitration Rules 2021 defines the scope and types of interim measures that the arbitral tribunal may grant during the arbitration proceedings. Let us analyse the different aspects of this provision:

1. **Definition of Interim Measure:** Article 26(2) clarifies that an “interim measure” is any temporary measure ordered by the arbitral tribunal at any time before the issuance of the final award that finally decides the dispute. The purpose of these measures is to address specific issues and provide relief to parties while the arbitration is ongoing, ensuring the effectiveness and fairness of the process.
2. **Examples of Interim Measures:** The provision provides illustrative examples of the types of interim measures that the arbitral tribunal may grant. These examples include:
 - a. **Maintaining or Restoring the Status Quo:** The tribunal may order a party to maintain or restore the status quo of the situation at hand pending the final resolution of the dispute. This ensures that parties do not take actions that might prejudice the outcome of the arbitration.
 - b. **Preventing or Refraining from Harm or Prejudice:** The tribunal may require a party to take action that prevents current or imminent harm or refrain from actions that may cause harm or prejudice to the arbitral process itself. This provision aims to preserve the fairness and integrity of the arbitration.
 - c. **Preserving Assets for Enforcement:** The tribunal may order a party to provide a means of preserving assets out of which a subsequent award may be satisfied. This is to ensure that the winning party has adequate resources to enforce the final award.

- d. Preserving Evidence: The tribunal may require a party to preserve evidence that may be relevant and material to the resolution of the dispute. This ensures that crucial evidence is not lost or destroyed during the arbitration process.
3. Flexible Approach: Article 26(2) uses the phrase “for example and without limitation” to indicate that the list of interim measures provided is not exhaustive. The tribunal has discretion to grant other types of interim measures that are deemed appropriate in the specific circumstances of the case.

In conclusion, Article 26(2) of the UNCITRAL Arbitration Rules 2021 clearly defines interim measures and outlines the various types of measures that the arbitral tribunal can order to address specific issues and provide relief to parties during the course of the arbitration proceedings.

3. The party requesting an interim measure under paragraphs 2 (a) to (c) shall satisfy the arbitral tribunal that:

(a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and

(b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

Article 26(3) of the UNCITRAL Arbitration Rules 2021 sets out the requirements that a party must satisfy when requesting an interim measure under paragraphs 2(a) to (c). These requirements are intended to ensure that the arbitral tribunal carefully considers the necessity and appropriateness of granting such measures. Let us analyse the two main elements of this provision:

1. Likelihood of Irreparable Harm and Balance of Harms: The requesting party must demonstrate to the arbitral tribunal that the harm likely to result if the interim measure is not ordered cannot be adequately compensated by an award of damages. Additionally, the harm to the party against whom the measure is directed, if the measure is granted, should be outweighed by the potential harm to the requesting party if the measure is not granted. In other words, the tribunal must assess the risk of irreparable harm to each party and make a balanced determination.
2. Reasonable Possibility of Success on the Merits: The requesting party must show that there is a reasonable possibility of succeeding on the merits of the underlying claim. This means that the party needs to present a plausible case, demonstrating that there are valid arguments and supporting evidence to support its claim. The arbitral tribunal’s determination of this possibility will not affect its discretion to make any subsequent determinations on the merits of the case.

In summary, Article 26(3) of the UNCITRAL Arbitration Rules 2021 outlines the criteria that must be met for the grant of interim measures under specific circumstances. The requesting party must convince the arbitral tribunal that irreparable harm is likely, that the balance of harms favours the granting of the measure, and that there is a reasonable possibility of success on the merits. By setting

these criteria, the provision seeks to strike a balance between providing effective interim relief and safeguarding the parties' interests during the arbitration process.

4. With regard to a request for an interim measure under paragraph 2 (d), the requirements in paragraphs 3 (a) and (b) shall apply only to the extent the arbitral tribunal considers appropriate.

Article 26(4) of the UNCITRAL Arbitration Rules 2021 deals specifically with requests for interim measures under paragraph 2(d). This provision clarifies that the requirements set out in Article 26(3)(a) and (b) shall apply to such requests only to the extent that the arbitral tribunal considers appropriate.

In other words, when a party seeks an interim measure under paragraph 2(d) – which pertains to the preservation of evidence that may be relevant and material to the resolution of the dispute – the arbitral tribunal has the discretion to decide the extent to which it will consider the criteria related to irreparable harm and the reasonable possibility of success on the merits.

Unlike requests for interim measures related to maintaining the status quo, preventing harm, or preserving assets, the request for evidence preservation may not always require the same level of immediate scrutiny regarding the likelihood of harm and the likelihood of success. In some cases, the primary concern may be to preserve crucial evidence that could become unavailable or compromised if not protected promptly.

The arbitral tribunal's discretion in this regard allows it to be flexible and adapt its approach depending on the specific circumstances of each case. It gives the tribunal the freedom to weigh the urgency of preserving evidence against the need for the requesting party to meet the strict criteria applicable to other types of interim measures.

By granting this flexibility, Article 26(4) aims to facilitate the preservation of important evidence and ensure the fairness and effectiveness of the arbitral process. However, it is essential to note that the tribunal must still exercise its discretion judiciously and take into account the parties' interests and the overall objectives of the arbitral proceedings.

5. The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.

Article 26(5) of the UNCITRAL Arbitration Rules 2021 deals with the power of the arbitral tribunal to modify, suspend, or terminate interim measures that it has previously granted. This provision allows for the flexibility to adapt the interim measures based on changing circumstances during the course of the arbitral proceedings.

The article outlines two scenarios under which the arbitral tribunal may take action:

1. **Modification, Suspension, or Termination upon Application of a Party:** If any party believes that the circumstances have changed and the interim measure is no longer necessary, or if they seek adjustments to the scope or terms of the measure, they may make an application to the arbitral tribunal. The tribunal has the authority to consider such

applications and decide whether to modify, suspend, or terminate the interim measure based on the merits of the case and the evidence presented.

2. **Modification, Suspension, or Termination on the Arbitral Tribunal's Own Initiative:** In exceptional circumstances, and after providing prior notice to the parties, the arbitral tribunal may decide to modify, suspend, or terminate an interim measure on its own initiative. This gives the tribunal the power to act proactively when it deems it necessary to protect the fairness and effectiveness of the arbitral proceedings. However, the rule requires that the tribunal must give prior notice to the parties, affording them the opportunity to present their views before any action is taken.

The purpose of Article 26(5) is to strike a balance between maintaining the efficacy of interim measures and ensuring that they are appropriately adjusted or terminated when they are no longer necessary or justified. It allows the arbitral tribunal to respond promptly to changing circumstances, thereby promoting efficiency and effectiveness in the arbitration process.

Overall, this provision empowers the arbitral tribunal to exercise its discretion judiciously, taking into account the interests of all parties involved and the requirements of justice in the specific case. By doing so, it helps maintain the integrity and fairness of the arbitral proceedings.

6. The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

Article 26(6) of the UNCITRAL Arbitration Rules 2021 grants the arbitral tribunal the authority to request the party seeking an interim measure to provide appropriate security in connection with the measure. This provision is aimed at ensuring that the party requesting the interim measure takes responsibility for any potential damages or losses that may arise as a result of the measure.

The requirement for security is a safeguard against potential abuse of interim measures. By demanding security, the arbitral tribunal aims to strike a balance between protecting the requesting party's interests and safeguarding the rights of the other party or parties involved in the arbitration.

The provision does not specify the form or amount of security to be provided, leaving it to the discretion of the arbitral tribunal. The tribunal will consider the specific circumstances of the case and the nature of the interim measure requested when determining the appropriate level of security.

The purpose of requiring security is threefold:

1. **Deterrence:** By requiring security, the tribunal discourages parties from seeking unjustified or frivolous interim measures, as they would need to assume the financial risk associated with the measure.
2. **Fairness:** The provision promotes fairness by ensuring that parties requesting interim measures are accountable for any potential harm caused to the other party as a result of the measure. It helps prevent situations where a party may suffer unjustified losses due to an improperly granted interim measure.
3. **Protection:** Requiring security also offers protection to the responding party by providing a financial guarantee in case the requesting party does not ultimately prevail on the

merits of the claim. If the requesting party is unable to meet its obligations, the security can be used to compensate the responding party for any losses incurred.

Overall, Article 26(6) reinforces the arbitral tribunal's authority to grant interim measures while also imposing appropriate safeguards to ensure that the process remains fair and efficient for all parties involved in the arbitration.

7. The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.

Article 26(7) of the UNCITRAL Arbitration Rules 2021 empowers the arbitral tribunal to request any party to promptly disclose any material change in the circumstances on which the interim measure was initially requested or granted. This provision is designed to ensure that the arbitral tribunal remains informed of any significant developments that may affect the need or appropriateness of the interim measure.

The purpose of requiring prompt disclosure of material changes in circumstances is to enable the tribunal to continuously assess the justification and validity of the interim measure throughout the arbitration proceedings. The provision serves several important functions:

1. **Ensuring Relevance:** As arbitration proceedings can be lengthy, certain conditions or circumstances that existed at the time of the interim measure may change over time. By mandating prompt disclosure, the tribunal can ascertain whether the circumstances that justified the interim measure still remain, or if they have significantly altered.
2. **Assessing Continuity:** The provision allows the arbitral tribunal to review the appropriateness of the interim measure based on the most current information available. If a material change in circumstances renders the interim measure unnecessary or inappropriate, the tribunal may modify, suspend, or terminate the measure accordingly.
3. **Protecting Parties' Interests:** By promptly disclosing material changes, the parties can ensure that the tribunal is aware of any potential impact on their rights and interests. This enables the tribunal to take appropriate actions to safeguard the parties' rights and maintain the integrity of the arbitral process.
4. **Promoting Efficiency:** The provision contributes to the efficiency of the arbitration proceedings by preventing unnecessary or obsolete interim measures from remaining in force. It allows the tribunal to address any changes promptly, thereby avoiding delays and reducing the risk of undue harm to the parties.

In practice, if a party becomes aware of a material change in the circumstances surrounding the interim measure, it must promptly inform the arbitral tribunal and the other parties. The tribunal will then assess the disclosure and decide whether the interim measure remains justified or requires modification, suspension, or termination.

In summary, Article 26(7) emphasises the importance of keeping the arbitral tribunal informed of any material changes in circumstances that may impact the need for an interim measure. This provision contributes to a dynamic and adaptive arbitration process that remains relevant and fair throughout the proceedings.

8. The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

Article 26(8) of the UNCITRAL Arbitration Rules 2021 deals with the liability of the party requesting an interim measure for costs and damages caused by the measure if the arbitral tribunal later determines that the measure should not have been granted.

This provision serves as a safeguard against the potential abuse or misuse of interim measures by parties in arbitration. It encourages parties to exercise caution and prudence when seeking interim relief and ensures that such requests are well-founded and justified. Here are the key points to consider:

1. **Liability for Costs and Damages:** If the arbitral tribunal determines, at any point during the proceedings, that the interim measure should not have been granted based on the prevailing circumstances, the party requesting the measure may be held liable for the costs and damages caused to any other party due to the measure.
2. **Judicial Discretion:** The arbitral tribunal has discretion to decide whether costs and damages should be awarded against the party that requested the interim measure. The decision will be based on the specific circumstances of the case and the merits of the interim measure.
3. **Deterrence of Unjustified Measures:** The provision aims to deter parties from seeking interim measures without proper justification or in cases where the measure is later found to be unnecessary. The possibility of being held liable for costs and damages can act as a deterrent against frivolous or unwarranted interim measure requests.
4. **Balance of Interests:** Article 26(8) seeks to strike a balance between providing parties with access to interim relief when necessary and protecting the interests of other parties from unjustified harm caused by an inappropriate measure.
5. **Fairness and Equity:** The provision promotes fairness and equity in the arbitration process by ensuring that parties exercise their rights responsibly and refrain from abusing the interim relief mechanism.

It is important to note that the liability under Article 26(8) arises only when the arbitral tribunal determines that the interim measure was not warranted based on the circumstances at the time of the measure's request. If the tribunal concludes that the measure was justified and appropriate, no liability for costs and damages would be imposed.

In summary, Article 26(8) reinforces the responsibility of parties in seeking interim measures and acts as a mechanism to prevent abuse of the process. It encourages parties to carefully assess the need for interim relief and ensures that such measures are granted with due consideration of their impact on other parties involved in the arbitration.

9. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Article 26(9) of the UNCITRAL Arbitration Rules 2021 addresses the issue of seeking interim measures from a judicial authority and its compatibility with the agreement to arbitrate. The provision clarifies that a party's request for interim measures from a judicial authority does not undermine the agreement to arbitrate, nor does it constitute a waiver of that agreement. Here is the key analysis:

1. **Compatibility with the Agreement to Arbitrate:** The provision emphasises that seeking interim measures from a judicial authority is not considered incompatible with the parties' agreement to arbitrate their disputes. In other words, parties can approach a court to request interim measures without violating the arbitration agreement.
2. **Preserving Party's Rights:** The provision ensures that parties can resort to judicial authorities to seek interim relief while preserving their rights under the arbitration agreement. This allows parties to take urgent and immediate action to protect their interests pending the constitution of the arbitral tribunal or during the arbitration proceedings.
3. **Flexibility and Pragmatism:** The provision reflects the UNCITRAL Arbitration Rules' flexible and pragmatic approach to dispute resolution. It recognises that parties may need to approach judicial authorities to seek urgent and immediate relief, which can be done without losing their right to arbitrate the main dispute.
4. **Non-Waiver of Arbitration Agreement:** The article clarifies that seeking interim measures from a judicial authority does not constitute a waiver of the arbitration agreement. Parties can still proceed with arbitration to resolve the underlying dispute even after seeking interim relief from a court.
5. **Preserving Arbitral Tribunal's Authority:** Importantly, the arbitral tribunal retains its authority to grant, modify, suspend, or terminate interim measures during the arbitration proceedings. The tribunal's power to rule on interim measures remains unaffected by a party's request for interim relief from a judicial authority.

Overall, Article 26(9) aims to strike a balance between the need for parties to obtain urgent interim relief and the commitment to arbitrate their dispute. It recognises the practical reality that parties may have legitimate reasons to seek urgent relief from a court, even if they have agreed to resolve their disputes through arbitration. The provision ensures that parties can exercise their rights to seek interim measures while preserving the integrity and effectiveness of the arbitration process.

Evidence

Article 27

1. Each party shall have the burden of proving the facts relied on to support its claim or defence.

Article 27(1) of the UNCITRAL Arbitration Rules 2021 addresses the burden of proof in arbitration proceedings. The provision states that each party shall have the burden of proving the facts relied on to support its claim or defence. Here is the key analysis:

1. **Allocation of Burden of Proof:** The provision clarifies that the burden of proof lies with the parties involved in the arbitration. In other words, each party is responsible for presenting evidence and demonstrating the validity of the facts it relies on to support its claim or defence.
2. **General Principle:** The allocation of the burden of proof is a fundamental principle in all legal proceedings, including arbitration. It ensures that parties are responsible for substantiating the claims they make and the defences they assert.
3. **Supporting Claims and Defences:** For a claimant, this means that they must provide evidence to support the allegations and assertions they make in their statement of claim. For a respondent, it means they must provide evidence to counter the claims made against them in the statement of claim and support their defences.
4. **Consequences of Failing to Meet the Burden:** If a party fails to meet its burden of proof, it may weaken its position in the arbitration. The arbitral tribunal may consider the evidence presented and make decisions based on the evidence and arguments put forward by the parties.
5. **Impartiality and Fairness:** The allocation of the burden of proof is essential for ensuring an impartial and fair resolution of the dispute. It places the responsibility on the parties to present their case and provides a level playing field in the arbitration process.
6. **Legal and Factual Burden:** The burden of proof includes both the legal burden (i.e., the obligation to establish the elements of a claim or defence) and the factual burden (i.e., the obligation to present evidence to prove those elements).

Overall, Article 27(1) reflects a core principle of arbitration, ensuring that parties are responsible for proving the factual basis of their claims or defences. It promotes a fair and transparent arbitration process where parties present their evidence and arguments, and the arbitral tribunal makes decisions based on the merits of the case.

2. Witnesses, including expert witnesses, who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party. Unless otherwise directed by the arbitral

tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them.

Article 27(2) of the UNCITRAL Arbitration Rules 2021 deals with the presentation of witnesses, including expert witnesses, in arbitration proceedings. Let us analyse the key points:

1. **Witness Testimony:** The provision allows each party to present witnesses, including expert witnesses, to testify before the arbitral tribunal on any issue of fact or expertise relevant to the case.
2. **Witness Eligibility:** The rule provides flexibility regarding the eligibility of witnesses. It explicitly states that witnesses can be any individual, regardless of whether they are a party to the arbitration or have any affiliation with a party.
3. **Impartiality and Fairness:** Allowing any individual to serve as a witness, even if they are a party or related to a party, ensures that the arbitral tribunal can hear from relevant individuals who may possess crucial information for resolving the dispute.
4. **Written Statements:** The provision allows statements by witnesses, including expert witnesses, to be presented in writing and signed by them. This means that witness testimony may be provided in the form of written witness statements, which can be submitted to the tribunal and the other parties.
5. **Tribunal's Discretion:** While written statements are permitted, the arbitral tribunal has the authority to direct the parties on how witness testimony should be presented, such as whether it should be given orally during a hearing.
6. **Witness Examination:** If witness statements are presented in writing, the tribunal may later decide to examine witnesses orally during the hearing. This gives the tribunal the flexibility to assess whether live witness examination is necessary or if written statements are sufficient for the case.

Overall, Article 27(2) promotes efficiency and flexibility in the presentation of witness testimony in arbitration. It recognises the importance of witness evidence and allows parties to bring forth any individual who can provide relevant information, even if they have a connection to the parties. By permitting written witness statements, the rule also streamlines the process and reduces the need for lengthy and costly hearings, unless the tribunal finds it necessary to examine witnesses in person.

3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the arbitral tribunal shall determine.

Article 27(3) of the UNCITRAL Arbitration Rules 2021 addresses the arbitral tribunal's authority to request the production of documents, exhibits, or other evidence during the arbitral proceedings. Here are the key points:

1. **Tribunal's Discretion:** The provision grants the arbitral tribunal broad discretion to require the parties to produce documents, exhibits, or any other form of evidence that is relevant

to the arbitration. This includes evidence that may support or challenge the parties' claims or defences.

2. **Timing of Request:** The tribunal can make such a request at any stage of the arbitral proceedings. This means that the tribunal is not limited to a specific point in the process and can seek additional evidence whenever it deems necessary to make a fair and informed decision.
3. **Period for Production:** The arbitral tribunal has the authority to set a reasonable period of time within which the parties must produce the requested documents, exhibits, or evidence. The timeframe may vary based on the complexity and scope of the requested evidence.
4. **Promotes Fairness and Efficiency:** Article 27(3) is designed to ensure that the arbitration process is fair and efficient. By enabling the tribunal to request additional evidence, the rule empowers the tribunal to obtain all relevant information needed to decide the case effectively.
5. **Ensuring Complete Record:** The provision helps ensure that the arbitral tribunal has access to all available evidence necessary to render a just and reasoned award. This is particularly important because arbitration does not have the same extensive discovery procedures as court litigation.
6. **Compliance by Parties:** The parties are obligated to comply with the tribunal's request to produce the requested evidence within the specified time frame. Failure to comply may lead to adverse inferences or other consequences as determined by the arbitral tribunal.

Overall, Article 27(3) is an important procedural tool that enables the arbitral tribunal to gather evidence and maintain an effective and fair arbitration process. The rule allows the tribunal to ensure that all relevant evidence is considered, contributing to a well-informed and equitable resolution of the dispute.

4. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

Article 27(4) of the UNCITRAL Arbitration Rules 2021 addresses the authority of the arbitral tribunal in determining the admissibility, relevance, materiality, and weight of the evidence offered during the arbitration proceedings. Here are the key points:

1. **Tribunal's Discretion:** The provision vests the arbitral tribunal with the discretion to evaluate and make decisions on the evidence presented by the parties. This includes determining whether the evidence is admissible, relevant to the issues in dispute, material to the case, and how much weight should be given to each piece of evidence.
2. **Evaluating Evidence:** The arbitral tribunal is responsible for assessing the credibility and probative value of the evidence presented. It can take into account factors such as the reliability of witnesses, the authenticity of documents, and the coherence of testimonies.

3. **Admissibility:** The tribunal must decide whether the evidence offered by the parties complies with the rules of evidence and procedure applicable to the arbitration. This may include considering issues related to the proper method of obtaining evidence, authenticity, hearsay, and other legal considerations.
4. **Relevance and Materiality:** The tribunal must determine whether the evidence is relevant to the issues at hand and whether it has material importance in resolving the dispute. Evidence that is irrelevant or not material to the case may be excluded.
5. **Weighing the Evidence:** After evaluating the admissibility, relevance, and materiality of the evidence, the arbitral tribunal must decide how much weight to give to each piece of evidence. The tribunal's award may be based on its assessment of the evidence and the arguments presented by the parties.
6. **Fair and Impartial Decisions:** Article 27(4) ensures that the arbitral tribunal remains fair and impartial in its evaluation of evidence. The tribunal must consider all relevant evidence submitted by the parties and reach its decisions based on the merits of the case.
7. **Flexibility of Arbitration:** The UNCITRAL Arbitration Rules provide flexibility to the arbitral tribunal in handling evidence, which can be advantageous in resolving disputes more efficiently and effectively compared to rigid court procedures.

Overall, Article 27(4) underscores the significant role of the arbitral tribunal in managing and evaluating the evidence offered during the arbitration process. It enables the tribunal to conduct a thorough and independent assessment of the evidence, leading to a well-reasoned and equitable award.

Hearings

Article 28

1. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.

Article 28(1) of the UNCITRAL Arbitration Rules 2021 deals with the procedure for conducting oral hearings during the arbitration process. Here are the key points of this provision:

1. **Oral Hearings:** The provision refers to “an oral hearing”, which means a face-to-face meeting between the arbitral tribunal and the parties. Oral hearings are not mandatory in all arbitrations, and parties can agree to conduct the proceedings based on documents and written submissions alone.
2. **Adequate Advance Notice:** The arbitral tribunal is required to provide the parties with “adequate advance notice” of the date, time, and place of the oral hearing. This ensures that the parties have sufficient time to prepare for the hearing, make necessary arrangements, and attend the proceedings.

3. Flexibility: The phrase “adequate advance notice” allows for flexibility in scheduling oral hearings. The length of notice may vary depending on the complexity of the case, the parties’ locations, and other relevant factors.
4. Communication with Parties: The arbitral tribunal must communicate the details of the oral hearing directly to the parties. This ensures that all parties are informed and have an opportunity to participate.
5. Fair Hearing: Providing adequate advance notice for oral hearings is consistent with the principle of providing parties with a fair hearing. It allows parties to present their case, cross-examine witnesses, and address any issues that may arise during the hearing.
6. Efficient Process: While oral hearings can be beneficial for certain cases, the UNCITRAL Arbitration Rules emphasise efficiency in the arbitration process. The use of oral hearings should not unnecessarily prolong the proceedings or cause undue delay.

Overall, Article 28(1) ensures that the parties are given proper notice before an oral hearing takes place, enabling them to prepare effectively and participate fully in the arbitration process. It strikes a balance between providing a fair opportunity to present the case and promoting an efficient and effective resolution of the dispute.

2. Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the arbitral tribunal.

Article 28(2) of the UNCITRAL Arbitration Rules 2021 addresses the process of hearing witnesses, including expert witnesses, during an oral hearing in arbitration. Here are the key points of this provision:

1. Witness Hearing: The provision acknowledges that witnesses, both factual and expert, may be heard during the oral hearing. Witness testimonies can play a crucial role in presenting evidence and clarifying facts related to the dispute.
2. Arbitral Tribunal’s Discretion: The article gives the arbitral tribunal the authority to determine the conditions under which witnesses will be heard and examined. This provides the tribunal with flexibility to conduct the hearing in a manner that suits the specific needs and requirements of the case.
3. Examination Process: The arbitral tribunal can establish the rules and procedures for examining witnesses during the hearing. This may include direct examination by the party calling the witness, cross-examination by the opposing party, and possibly redirect examination to clarify any issues arising during cross-examination.
4. Fair and Impartial Hearing: The provision emphasises that the arbitral tribunal must ensure a fair and impartial hearing for all parties involved. This includes giving both parties equal opportunities to present their witnesses and cross-examine the other party’s witnesses.
5. Expert Witnesses: The provision explicitly includes expert witnesses, acknowledging their role in providing specialised knowledge and opinions on technical or complex matters.

6. Evidentiary Weight: The arbitral tribunal is responsible for assessing the weight and credibility of the witness testimonies presented during the hearing. The tribunal will evaluate the evidence and consider its relevance and materiality to the issues in dispute.
7. Efficient Process: While allowing for witness hearings, the UNCITRAL Arbitration Rules emphasise the need for an efficient and expeditious arbitration process. The arbitral tribunal should ensure that the examination of witnesses does not unduly prolong the proceedings.

Overall, Article 28(2) gives the arbitral tribunal the authority to manage the witness hearing process during the oral hearing, ensuring a fair and effective presentation of evidence while maintaining the efficiency of the arbitration proceedings.

3. Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not, in principle, be asked to retire.

Article 28(3) of the UNCITRAL Arbitration Rules 2021 addresses the conduct of hearings in arbitration and contains the following key provisions:

1. In Camera Hearings: The provision states that hearings shall be held in camera, which means that they will be conducted privately, and only the parties involved in the arbitration and the members of the arbitral tribunal will be present during the hearing. This is the default rule, ensuring confidentiality and privacy in the proceedings.
2. Parties' Agreement: The provision allows for parties to agree otherwise and hold the hearings publicly if they choose to do so. This flexibility gives the parties the freedom to decide on the level of transparency and confidentiality they prefer for the arbitration process.
3. Retirement of Witnesses: The arbitral tribunal is granted the authority to order the retirement of any witness, including expert witnesses, during the testimony of other witnesses. This means that while one witness is providing evidence, other witnesses will be asked to leave the hearing room to avoid any potential influence or bias in their testimonies.
4. Exception for Witness-Parties: The provision introduces an exception by stating that a witness, including an expert witness, who is a party to the arbitration, should not be asked to retire during the hearing. In other words, a party who is called as a witness is allowed to remain in the hearing room during the testimony of other witnesses.

Overall, Article 28(3) ensures that hearings in arbitration are generally conducted privately, but parties have the option to agree to a public hearing. The provision also seeks to maintain the integrity and impartiality of witness testimonies by allowing the arbitral tribunal to manage the presence of witnesses during the hearing, except when a witness is also a party to the arbitration. This promotes a fair and efficient hearing process while protecting the confidentiality of the proceedings when needed.

4. The arbitral tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as videoconference).

Article 28(4) of the UNCITRAL Arbitration Rules 2021 addresses the issue of conducting witness examinations, including expert witnesses, through remote means of telecommunication during arbitration proceedings. Let us analyse this provision:

1. **Remote Witness Examinations:** This article grants the arbitral tribunal the authority to direct that witnesses, including expert witnesses, be examined through telecommunication methods that do not require their physical presence at the hearing. This includes methods like videoconferencing.
2. **Flexibility and Efficiency:** Article 28(4) reflects the growing trend in international arbitration to embrace technological advancements and remote communication methods. It offers flexibility to the arbitral tribunal to conduct witness examinations in a manner that promotes efficiency and cost-effectiveness. This is especially valuable when witnesses or experts are located in different geographic regions, making in-person appearances impractical.
3. **Safeguards for Fairness:** While remote witness examinations are permitted, it is essential to ensure the fairness of the process. Arbitral tribunals typically have discretion in implementing this provision. They should consider factors such as the reliability of the technology used, the need to maintain the quality of the evidence, and any potential issues related to witness credibility.
4. **Cross-Examination and Expert Opinions:** This provision applies not only to witnesses but also to expert witnesses. Cross-examination of witnesses is a critical part of arbitration proceedings, and Article 28(4) acknowledges that it can be conducted effectively through telecommunication methods. It also recognizes the value of receiving expert opinions remotely.
5. **Adaptation to Modern Communication Tools:** Article 28(4) reflects the modernization of arbitration practices by acknowledging the use of videoconferencing and other telecommunication technologies. This adaptation enhances the accessibility and efficiency of the arbitration process, particularly in cases involving international parties.
6. **Balancing Convenience and Fairness:** While remote hearings offer convenience, it is important to strike a balance between convenience and fairness. The arbitral tribunal must ensure that all parties have a meaningful opportunity to examine and cross-examine witnesses and that the process is consistent with principles of due process.

In summary, Article 28(4) of the UNCITRAL Arbitration Rules 2021 recognizes the use of telecommunication methods, such as videoconferencing, for the examination of witnesses, including expert witnesses, during arbitration proceedings. This provision reflects the evolving landscape of international arbitration, embracing technological solutions to enhance efficiency while maintaining a commitment to fairness and due process.

Experts appointed by the arbitral tribunal

Article 29

1. After consultation with the parties, the arbitral tribunal may appoint one or more independent experts to report to it, in writing, on specific issues to be determined by the arbitral tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties

Article 29(1) of the UNCITRAL Arbitration Rules 2021 addresses the appointment of independent experts in arbitration and contains the following key provisions:

1. **Appointment of Independent Experts:** The provision grants the arbitral tribunal the authority to appoint one or more independent experts to provide written reports on specific issues that the tribunal needs to determine. These independent experts are individuals who possess specialised knowledge and expertise relevant to the issues in the arbitration.
2. **Consultation with Parties:** Before appointing an independent expert, the arbitral tribunal is required to consult with the parties involved in the arbitration. This ensures that the parties have an opportunity to express their views and raise any concerns regarding the appointment of the expert.
3. **Terms of Reference:** The arbitral tribunal, after consultation with the parties, establishes the terms of reference for the independent expert. These terms outline the specific issues or questions that the expert is expected to address in their report. The terms of reference serve as a guide for the expert's work and ensure that the report focuses on the relevant matters in the arbitration.
4. **Communication to Parties:** The provision further stipulates that a copy of the expert's terms of reference, as established by the arbitral tribunal, shall be communicated to all the parties. This transparency ensures that the parties are aware of the scope of the expert's work and the issues that will be addressed in their report.

The appointment of independent experts under Article 29(1) allows the arbitral tribunal to benefit from specialised knowledge and expertise in complex technical or industry-specific matters. It also contributes to the tribunal's informed decision-making process by providing reliable and objective information on specific issues. However, it is important to note that the expert's role is advisory, and the arbitral tribunal remains the ultimate decision-maker in the arbitration.

2. The expert shall, in principle before accepting appointment, submit to the arbitral tribunal and to the parties a description of his or her qualifications and a statement of his or her impartiality and independence. Within the time ordered by the arbitral tribunal, the parties shall inform the arbitral tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a party may object to the expert's qualifications, impartiality or

independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The arbitral tribunal shall decide promptly what, if any, action to take.

Article 29(2) of the UNCITRAL Arbitration Rules 2021 addresses the qualifications, impartiality, and independence of appointed experts in arbitration and includes the following key provisions:

1. **Pre-appointment Disclosures:** Before accepting an appointment, the expert is required to submit to the arbitral tribunal and the parties a description of their qualifications and a statement confirming their impartiality and independence. This pre-appointment disclosure is essential to ensure transparency and to allow the parties to assess the expert's suitability for the role.
2. **Objections to Qualifications, Impartiality, or Independence:** Upon receiving the expert's qualifications and statement, the parties have a specified period ordered by the arbitral tribunal to raise any objections they may have regarding the expert's qualifications, impartiality, or independence. The tribunal will then promptly consider and decide whether to accept any objections.
3. **Post-Appointment Objections:** Once the expert has been appointed, a party may object to the expert's qualifications, impartiality, or independence only if the objection is based on reasons that the party became aware of after the appointment was made. In such cases, the arbitral tribunal will again promptly decide what action, if any, should be taken regarding the objection.

The purpose of these provisions is to ensure that the appointed expert possesses the necessary qualifications, and that they are impartial and independent. Transparency and fairness are critical in the appointment of experts, as their reports can have a significant impact on the arbitration proceedings and the final outcome. By allowing the parties to raise objections and providing a mechanism to address any concerns, the UNCITRAL Arbitration Rules aim to safeguard the integrity and credibility of the expert's role in the arbitration process.

3. The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.

Article 29(3) of the UNCITRAL Arbitration Rules 2021 deals with the cooperation of the parties with the appointed expert and includes the following key provisions:

1. **Provision of Relevant Information:** The parties are required to provide the expert with any relevant information that the expert may require for the purpose of their report. This information is essential for the expert to carry out their analysis and reach an informed conclusion on the specific issues assigned to them by the arbitral tribunal.
2. **Production of Relevant Documents or Goods:** Additionally, the parties must produce any relevant documents or goods that the expert may need for their examination or inspection. This may include evidence, data, records, or physical items that are pertinent to the issues under consideration.

3. Disputes over Relevance: In case of any disagreement between a party and the expert concerning the relevance of the required information or production of documents or goods, the matter shall be referred to the arbitral tribunal for a decision. The arbitral tribunal will determine whether the information or documents are indeed relevant to the issues before the expert.

The purpose of this article is to ensure that the expert is provided with all the necessary information and materials to conduct their analysis and prepare their report accurately and comprehensively. By mandating the parties to cooperate with the expert and giving the arbitral tribunal the authority to resolve any disputes, the UNCITRAL Arbitration Rules seek to facilitate a smooth and efficient process for obtaining expert opinions and evidence in the arbitration proceedings. This cooperation is crucial in maintaining the integrity and effectiveness of the arbitral process.

4. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his or her report.

Article 29(4) of the UNCITRAL Arbitration Rules 2021 outlines the procedure that the arbitral tribunal must follow upon receiving the expert's report. The key provisions are as follows:

1. Communication of the Expert's Report: Once the expert's report is received by the arbitral tribunal, the tribunal is required to provide a copy of the report to all the parties involved in the arbitration. This allows the parties to be informed of the expert's findings and analysis.
2. Opportunity to Express Opinion: After receiving the expert's report, the parties are given an opportunity to express their opinions on the report in writing. This means that the parties can provide comments, objections, or further insights based on the expert's findings.
3. Right to Examine Documents: The parties have the right to examine any document on which the expert relied while preparing their report. This includes documents and materials that the expert used as a basis for their analysis. By allowing the parties to examine these documents, the arbitral tribunal ensures transparency and gives the parties an opportunity to verify the accuracy and validity of the expert's findings.

The purpose of this article is to ensure fairness and due process in the arbitration proceedings. By allowing the parties to review and respond to the expert's report and to examine the underlying documents, the UNCITRAL Arbitration Rules seek to provide an opportunity for parties to participate actively and present their views on the expert's analysis. This helps in maintaining the transparency and integrity of the arbitration process and promotes the principle of equal treatment of the parties.

5. At the request of any party, the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this

hearing, any party may present expert witnesses in order to testify on the points at issue. The provisions of article 28 shall be applicable to such proceedings.

Article 29(5) of the UNCITRAL Arbitration Rules 2021 deals with the procedure regarding the expert's appearance and testimony after delivering the report. The main points covered in this article are as follows:

1. **Request for Expert Hearing:** Any party has the right to request that the expert who provided the report be heard at a hearing. This hearing provides an opportunity for the parties to question the expert directly and seek clarifications or further explanations on the content of the expert's report.
2. **Presence of Parties:** The parties are entitled to be present at the hearing where the expert is heard. This ensures that the parties can directly engage with the expert and gain a deeper understanding of their analysis and findings.
3. **Interrogation of the Expert:** During the hearing, the parties have the opportunity to interrogate the expert, which means they can ask the expert questions related to the issues at hand, the methodology used, and any other relevant matters. This allows the parties to explore and challenge the expert's opinions and conclusions.
4. **Presentation of Expert Witnesses:** In addition to questioning the appointed expert, the parties also have the right to present their own expert witnesses at the hearing. These expert witnesses may testify on the points at issue and provide their own expert opinions on the matter.
5. **Application of Article 28:** The article states that the provisions of Article 28, which deal with the conduct of oral hearings generally, are applicable to the expert hearing as well. This ensures that the expert hearing is conducted in a fair and efficient manner, with due regard to the rights of the parties and the principles of equal treatment and transparency.

Overall, Article 29(5) aims to provide a robust mechanism for parties to engage with the expert's report and to present their arguments and evidence on the expert's findings. This process allows for a thorough examination of the expert's analysis and enhances the quality and credibility of the expert evidence presented in the arbitration proceedings.

Default

Article 30

1. If, within the period of time fixed by these Rules or the arbitral tribunal, without showing sufficient cause:

- (a) The claimant has failed to communicate its statement of claim, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining**

matters that may need to be decided and the arbitral tribunal considers it appropriate to do so;

(b) The respondent has failed to communicate its response to the notice of arbitration or its statement of defence, the arbitral tribunal shall order that the proceedings continue, without treating such failure in itself as an admission of the claimant’s allegations; the provisions of this subparagraph also apply to a claimant’s failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.

Article 30(1) of the UNCITRAL Arbitration Rules 2021 deals with the consequences of a party’s failure to communicate certain required documents within the specified timeframes. The main points covered in this article are as follows:

1. **Failure to Submit Statement of Claim:** If the claimant fails to communicate its statement of claim within the period of time fixed by the Rules or the arbitral tribunal, the arbitral tribunal has the authority to issue an order for the termination of the arbitral proceedings. However, this termination is subject to an exception. If there are remaining matters that may need to be decided, the arbitral tribunal may still continue the proceedings if it considers it appropriate to do so.
2. **Failure to Submit Response to Notice of Arbitration or Statement of Defence:** If the respondent fails to communicate its response to the notice of arbitration or its statement of defence within the specified time, the arbitral tribunal shall order that the proceedings continue. The failure to submit the response in itself is not considered an admission of the claimant’s allegations. This means that the respondent’s failure to respond within the given timeframe does not imply an acceptance or agreement with the claimant’s claims.
3. **Applicability to Counterclaims or Claims for Set-Off:** The same principles and consequences apply if the claimant fails to submit a defence to a counterclaim or a claim for the purpose of a set-off within the specified time. In such cases, the proceedings will continue, and the failure to submit a defence to the counterclaim or claim for set-off will not be treated as an admission of the counterclaimant’s or the claimant’s allegations, respectively.

The purpose of Article 30(1) is to ensure that the arbitration proceedings progress efficiently and that parties meet their obligations to timely submit their statements and responses. The article strikes a balance between allowing for the termination of proceedings due to non-compliance and continuing the proceedings if there are still relevant issues that need resolution. By doing so, it ensures a fair and expeditious resolution of the parties’ dispute in the arbitration.

2. If a party, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.

Article 30(2) of the UNCITRAL Arbitration Rules 2021 addresses the situation when a party fails to appear at a scheduled hearing without sufficient cause. The key points of this article are as follows:

1. **Failure to Appear at a Hearing:** If a party, who has been duly notified under the Rules about a scheduled hearing, fails to appear at the hearing without providing sufficient cause for their absence, the arbitral tribunal may proceed with the arbitration.

2. **Consequence of Non-Appearance:** The non-appearance of a party at a hearing can have implications for the arbitration process. The arbitral tribunal, in such cases, retains the authority to continue with the proceedings in the absence of the party.
3. **Requirement of Sufficient Cause:** The article implies that parties must have valid and sufficient reasons for not attending the hearing. If a party has a legitimate excuse, such as illness, force majeure, or any other justifiable cause, they should communicate it to the arbitral tribunal in advance. The tribunal will consider the validity of the reasons provided by the party.
4. **Fairness and Due Process:** Article 30(2) is in line with the principles of fairness and due process in arbitration. It ensures that a party's right to participate in the hearing is respected, while also preventing undue delays in the proceedings caused by a party's failure to attend without proper justification.

Overall, Article 30(2) aims to strike a balance between safeguarding the right of a party to be heard and maintaining the efficiency of the arbitration process. It gives the arbitral tribunal the discretion to decide whether to proceed with the arbitration when a party fails to appear, taking into account the circumstances and reasons provided by the absent party.

3. If a party, duly invited by the arbitral tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

Article 30(3) of the UNCITRAL Arbitration Rules 2021 deals with the situation when a party, having been duly invited by the arbitral tribunal to produce documents, exhibits, or other evidence, fails to do so within the established period of time without showing sufficient cause. The key points of this article are as follows:

1. **Duty to Produce Evidence:** When the arbitral tribunal invites a party to produce documents, exhibits, or other evidence as part of the arbitration proceedings, it is the duty of that party to comply with the tribunal's request.
2. **Failure to Comply:** If the party fails to produce the requested evidence within the specified period and does not provide a sufficient reason or justification for the non-compliance, the arbitral tribunal may proceed to make its award based on the evidence that is already before it.
3. **Consequences of Non-Compliance:** The consequences of non-compliance with the tribunal's request to produce evidence are that the party risks losing the opportunity to have that evidence considered in the proceedings. The arbitral tribunal will decide the case based on the evidence available at the time of its decision.
4. **Fairness and Efficiency:** Article 30(3) serves the purpose of maintaining fairness and efficiency in the arbitration process. It ensures that parties are diligent in providing the necessary evidence to support their claims or defences and that delays caused by non-compliance are minimised.

5. Sufficient Cause: Importantly, the provision recognises that there may be valid reasons for not complying with the tribunal’s request within the established time frame. If the party can demonstrate sufficient cause for its failure to produce evidence in a timely manner, the tribunal may take this into account and extend the deadline accordingly.

In summary, Article 30(3) emphasises the importance of timely and diligent compliance with the tribunal’s requests for evidence. Failure to do so without sufficient cause may result in the tribunal making its award based on the available evidence, which could have consequences for the defaulting party’s case.

Closure of hearings

Article 31

1. The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.

Article 31(1) of the UNCITRAL Arbitration Rules 2021 addresses the authority of the arbitral tribunal to inquire about the need for further evidence, witness testimony, or submissions from the parties during the arbitration proceedings. The key points of this article are as follows:

1. Tribunal’s Inquiries: The arbitral tribunal has the discretion to inquire with the parties about whether they have any additional evidence to offer, witnesses to present, or any further submissions to make before closing the hearings.
2. Opportunity for Parties: The provision ensures that the parties are given a fair and reasonable opportunity to present all relevant evidence and arguments to support their positions.
3. Efficiency: By inquiring about the need for further evidence or witnesses, the arbitral tribunal aims to ensure the efficiency of the arbitration proceedings. If the parties do not have any additional evidence or submissions to offer, the tribunal may proceed to close the hearings, avoiding unnecessary delays.
4. Declaration of Hearing Closure: If the parties inform the arbitral tribunal that they have no further proof, witnesses, or submissions to present, the tribunal may formally declare the hearings closed.
5. Post-Hearing Submissions: It is common for the parties to submit post-hearing briefs or written arguments after the hearings have been closed. Article 31(1) does not preclude the parties from submitting such post-hearing submissions if permitted by the tribunal.

In summary, Article 31(1) reflects the tribunal’s role in managing the arbitration process and ensuring that all relevant evidence and arguments are considered while also promoting efficiency. The provision allows the arbitral tribunal to inquire about the need for further evidence or witnesses before making a decision to close the hearings.

2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the hearings at any time before the award is made.

Article 31(2) of the UNCITRAL Arbitration Rules 2021 addresses the authority of the arbitral tribunal to reopen the hearings under exceptional circumstances. The key points of this article are as follows:

1. **Discretion of the Arbitral Tribunal:** The arbitral tribunal has the discretion to decide whether to reopen the hearings. It can do so on its own initiative or in response to an application made by one of the parties.
2. **Exceptional Circumstances:** The provision emphasises that the reopening of the hearings should be considered only in exceptional circumstances. These circumstances could be situations that were unforeseen or could not have been reasonably anticipated earlier in the proceedings.
3. **Timing of Reopening:** The arbitral tribunal has the flexibility to reopen the hearings at any time before the award is made. This means that even if the hearings have been previously closed, the tribunal can still consider reopening them if exceptional circumstances warrant it.
4. **Purpose of Reopening:** The purpose of reopening the hearings is to allow the parties to present additional evidence, witnesses, or submissions related to the exceptional circumstances that have arisen. The tribunal may do so to ensure that it has all the necessary and relevant information to make a fair and just decision.
5. **Fairness and Due Process:** The provision reflects the importance of upholding the principles of fairness and due process in the arbitral proceedings. Reopening the hearings may be necessary to prevent any prejudice to the parties resulting from unforeseen developments.

In summary, Article 31(2) empowers the arbitral tribunal to consider reopening the hearings under exceptional circumstances. This provision ensures that the arbitration process remains flexible enough to accommodate unforeseen situations and allows the parties to present relevant information even after the hearings have been closed. However, the reopening of hearings is not to be taken lightly and should be considered only in truly exceptional situations to maintain the efficiency and effectiveness of the arbitration process.

Waiver of right to object

Article 32

A failure by any party to object promptly to any non-compliance with these Rules or with any requirement of the arbitration agreement shall be deemed to be a waiver of the right of such party

to make such an objection, unless such party can show that, under the circumstances, its failure to object was justified.

Article 32 of the UNCITRAL Arbitration Rules 2021 deals with the consequences of a party's failure to promptly object to non-compliance with the Rules or any requirement of the arbitration agreement. The key points of this article are as follows:

1. **Prompt Objection Required:** The article emphasises the importance of promptness in raising objections. If a party believes that there has been non-compliance with the Rules or the arbitration agreement, it is required to raise the objection promptly.
2. **Deemed Waiver:** If a party fails to promptly object to the non-compliance, Article 32 states that such failure will be deemed as a waiver of the right to make such an objection. In other words, the party will be considered to have relinquished its right to object.
3. **Exceptional Circumstances:** However, Article 32 also provides an exception. If the party can show that its failure to object was justified under the circumstances, the waiver will not apply. This allows for some flexibility in situations where there might be a valid reason for the delay in raising an objection.
4. **Ensuring Compliance:** The purpose of Article 32 is to encourage parties to raise objections to any non-compliance with the Rules or the arbitration agreement promptly. This promotes the efficient conduct of arbitration and ensures that the parties adhere to the agreed-upon procedures.
5. **Preservation of Rights:** By allowing for justified reasons for the failure to object promptly, the article ensures that parties do not lose their right to object if they have a valid explanation for the delay.

In summary, Article 32 emphasises the importance of raising objections to any non-compliance with the Rules or the arbitration agreement promptly. Failure to do so will result in the waiver of the right to make such objections, except in cases where the party can show that the delay was justified. This provision serves to maintain procedural discipline and encourages parties to take necessary actions to ensure compliance with the Rules and the arbitration process.

Section IV. The award

Decisions

Article 33

1. When there is more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.

Article 33(1) of the UNCITRAL Arbitration Rules 2021 pertains to the decision-making process within an arbitral tribunal when there is more than one arbitrator involved. The key point of this article is as follows:

1. Majority Decision: When a dispute is adjudicated by a tribunal comprising multiple arbitrators, any award or decision issued by the arbitral tribunal shall be made by a majority of the arbitrators. This means that at least two out of three arbitrators (in a three-member tribunal) or a higher number of arbitrators in larger tribunals must agree on the award or decision for it to be valid.

The purpose of Article 33(1) is to ensure that there is a clear and efficient mechanism for reaching a decision in cases where multiple arbitrators are involved. By requiring a majority decision, the article promotes consensus among the arbitrators and helps to avoid situations where an equal split in opinions results in a deadlock. This majority rule ensures that decisions can be reached and the arbitral process can proceed in an orderly manner.

It is important to note that unanimity among the arbitrators is not necessary under this provision. The article recognises that differing opinions among the arbitrators are normal and allows for a majority vote to prevail. This approach strikes a balance between the need for diverse perspectives and the necessity to reach a decision within a reasonable timeframe.

In summary, Article 33(1) of the UNCITRAL Arbitration Rules 2021 requires that any award or other decision of an arbitral tribunal with multiple arbitrators must be made by a majority of the arbitrators. This ensures efficient decision-making and allows the arbitral process to proceed smoothly in cases where there are differing viewpoints among the tribunal members.

2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal.

Article 33(2) of the UNCITRAL Arbitration Rules 2021 addresses the decision-making process within an arbitral tribunal specifically concerning questions of procedure. This provision allows for a special arrangement when there is no majority decision on procedural matters or when the arbitral tribunal authorises the presiding arbitrator to decide alone, subject to revision by the full tribunal. The key points of this article are as follows:

1. Questions of Procedure: Article 33(2) applies to questions of procedure, which are matters related to the conduct of the arbitration proceedings rather than substantive issues of the case.

2. **Lack of Majority Decision:** If the arbitrators cannot reach a majority decision on a procedural matter, the presiding arbitrator may be given the authority to decide alone on the procedural issue. This provision prevents procedural matters from causing unnecessary delays due to disagreements among the arbitrators.
3. **Authorisation by the Tribunal:** The presiding arbitrator's authority to decide alone on procedural questions is contingent upon either the absence of a majority decision or the explicit authorisation of the full arbitral tribunal. This ensures that the decision-making power is not unilaterally assumed but is explicitly granted either due to a lack of consensus or with the tribunal's approval.
4. **Revision by the Tribunal:** Any decision made by the presiding arbitrator on procedural questions is subject to revision by the full arbitral tribunal. If any party disagrees with the presiding arbitrator's ruling, they can seek a review and potential revision of the decision by the entire tribunal.

The intention behind Article 33(2) is to provide an efficient mechanism for resolving procedural issues when a majority decision is not possible, thereby avoiding potential stalemates in the arbitral process. The presiding arbitrator's temporary authority to decide on procedural matters ensures that the proceedings can move forward smoothly. However, this authority is balanced by the provision for the full tribunal to review and potentially revise the presiding arbitrator's decision, thereby safeguarding the parties' rights to challenge procedural rulings that they believe to be unfair or incorrect.

In summary, Article 33(2) of the UNCITRAL Arbitration Rules 2021 allows the presiding arbitrator to decide alone on procedural matters when there is no majority decision or when the arbitral tribunal authorises such an arrangement. However, the presiding arbitrator's decision is subject to review and potential revision by the full tribunal, ensuring a balanced and fair approach to resolving procedural issues during the arbitration process.

Form and effect of the award

Article 34

1. The arbitral tribunal may make separate awards on different issues at different times.

Article 34(1) of the UNCITRAL Arbitration Rules 2021 deals with the power of the arbitral tribunal to render separate awards on different issues during the arbitration proceedings. The key points of this article are as follows:

1. **Separate Awards:** Article 34(1) allows the arbitral tribunal to issue separate awards on different issues that arise during the course of the arbitration. Instead of waiting until the end of the proceedings to issue a final award, the tribunal may choose to render multiple awards, each addressing specific issues or aspects of the dispute.
2. **Timing:** The provision does not prescribe a specific time for the tribunal to issue separate awards. As such, the tribunal has the flexibility to determine the appropriate timing for issuing awards on different issues. This may depend on the complexity of the case, the availability of evidence, or other practical considerations.

3. **Efficiency and Flexibility:** The purpose of allowing separate awards is to promote efficiency and flexibility in the arbitration process. By issuing awards on individual issues as they are resolved, the tribunal can address specific aspects of the dispute without having to wait for a final resolution on all issues.
4. **Final Award:** It is important to note that the issuance of separate awards does not prevent the arbitral tribunal from issuing a final award at the conclusion of the proceedings. The final award will encompass all the issues and decisions made in the separate awards, providing a comprehensive resolution to the dispute.
5. **Clarity and Organisation:** Separate awards can also enhance the clarity and organisation of the arbitration proceedings. By addressing one issue at a time, the tribunal can ensure that each decision is well-reasoned and clearly articulated.

The provision in Article 34(1) gives the arbitral tribunal the discretion to use its judgment and expertise in deciding whether to issue separate awards on different issues. This flexibility allows the tribunal to manage the arbitration in a manner that best suits the circumstances of the case and the needs of the parties. The ultimate objective is to achieve a fair, efficient, and effective resolution of the dispute.

2. All awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards without delay.

Article 34(2) of the UNCITRAL Arbitration Rules 2021 sets out the requirements and characteristics of awards rendered by the arbitral tribunal. Here are the key points of this provision:

1. **Written Awards:** According to Article 34(2), all awards issued by the arbitral tribunal must be made in writing. This ensures that the decisions and reasoning of the tribunal are documented and can be properly communicated to the parties.
2. **Final and Binding:** The provision specifies that all awards are final and binding on the parties. This means that once the tribunal has rendered an award, the decision is conclusive, and the parties are legally obligated to abide by its terms.
3. **Enforceability:** Being final and binding, the awards have the force of law and can be enforced in accordance with the applicable laws and treaties on the recognition and enforcement of arbitral awards. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is a widely recognised international treaty that facilitates the enforcement of arbitral awards in multiple jurisdictions.
4. **Compliance Obligation:** The second part of Article 34(2) emphasises the obligation of the parties to carry out all awards without delay. This means that the parties must comply with the terms of the award promptly, implementing any actions or payments required by the tribunal's decision.
5. **Binding Nature:** Arbitral awards issued under the UNCITRAL Arbitration Rules 2021 have the same binding force as a court judgment. The parties voluntarily submit their dispute to arbitration, and by doing so, they agree to be bound by the decision of the arbitral tribunal.

Overall, Article 34(2) underscores the importance of written awards, finality, and enforceability in the arbitration process. The provision aims to provide parties with a clear, efficient, and effective means of resolving their disputes through arbitration, while ensuring that the resulting awards are legally binding and enforceable.

3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.

Article 34(3) of the UNCITRAL Arbitration Rules 2021 deals with the requirement for the arbitral tribunal to provide reasons for its award. Here is an analysis of this provision:

1. **Duty to State Reasons:** According to Article 34(3), the arbitral tribunal is generally obligated to state the reasons upon which its award is based. This means that the tribunal must provide a clear and comprehensive explanation of the legal and factual grounds that led to its decision.
2. **Exceptions:** The provision also acknowledges that there may be situations where the parties have agreed that no reasons need to be given in the award. In such cases, the tribunal is not required to provide a detailed rationale for its decision.
3. **Promoting Transparency and Understanding:** The requirement to state reasons is a fundamental aspect of the arbitral process. Providing well-reasoned awards promotes transparency, enhances the quality of the decision-making process, and helps parties understand the basis for the tribunal's conclusions.
4. **Review and Enforcement:** The availability of well-reasoned awards is essential for review and enforcement proceedings. If an award is challenged in court or in enforcement proceedings, the existence of clear reasoning can support its validity and limit challenges based on procedural fairness.
5. **Preserving Confidentiality:** Although the tribunal is generally required to state reasons, it is also common for parties to include confidentiality provisions in their arbitration agreement. In such cases, the tribunal may need to balance the duty to state reasons with the need to protect confidential information.

Overall, Article 34(3) seeks to strike a balance between the obligation to provide reasons for the award and the possibility of parties agreeing to waive this requirement. By doing so, it ensures that the arbitral process remains flexible and adaptable to the preferences and needs of the parties while upholding principles of transparency and fairness.

4. An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the place of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.

Article 34(4) of the UNCITRAL Arbitration Rules 2021 addresses the form and signing requirements for an arbitral award. Here is an analysis of this provision:

1. **Signature Requirement:** According to Article 34(4), an arbitral award must be signed by the arbitrators. The signature serves as an authentication of the award and indicates the agreement and acceptance of the award by the members of the arbitral tribunal.
2. **Date and Place of the Award:** The award must also include the date on which it was made and indicate the place of arbitration. This information is essential for determining the timeliness of the award and establishing the jurisdiction and procedural law applicable to the arbitration.
3. **Absence of Signature:** In cases where there is more than one arbitrator, and any of them fails to sign the award, the award must state the reason for the absence of the signature. This requirement ensures that any discrepancies or challenges regarding the signing process are addressed and documented within the award.
4. **Formality and Validity:** The inclusion of these formal elements in the award contributes to the validity and enforceability of the award. The signature of the arbitrators and the specified details (date and place) provide assurance that the award is legitimate and accurately reflects the decision of the arbitral tribunal.
5. **Compliance with National Laws:** Adherence to formalities, such as signature requirements, is crucial for the enforceability of arbitral awards in various jurisdictions. Many national laws and international conventions concerning the recognition and enforcement of arbitral awards require compliance with certain formalities, and Article 34(4) helps ensure that awards meet those criteria.

Overall, Article 34(4) seeks to establish the necessary formalities for an arbitral award, including the signature of the arbitrators, to enhance the credibility and enforceability of the award in the international arbitration context.

5. An award may be made public with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority.

Article 34(5) of the UNCITRAL Arbitration Rules 2021 addresses the issue of making arbitral awards public. Here is an analysis of this provision:

1. **Confidentiality:** By default, arbitral proceedings are private and confidential, meaning the contents of the award and other details about the case are not made public. This confidentiality is important to encourage parties to participate in arbitration, as it allows them to keep sensitive business or commercial information confidential.
2. **Public Disclosure with Consent:** The first part of Article 34(5) states that an award may be made public if all parties to the arbitration provide their consent to such disclosure. This means that if all parties agree to release the award to the public, it can be done, and the proceedings will no longer be strictly confidential.
3. **Exceptions to Confidentiality:** The second part of Article 34(5) outlines certain exceptions to the general confidentiality rule. An award may be disclosed if a party is required to do so by a legal duty, to protect or pursue a legal right, or in relation to legal proceedings

before a court or other competent authority. This means that if a party is legally obligated to disclose the award or needs to use it as evidence in another legal proceeding, they may do so even without the consent of the other parties.

4. **Balance Between Confidentiality and Transparency:** Article 34(5) strikes a balance between maintaining the confidentiality of arbitral proceedings and allowing for transparency in certain circumstances. While confidentiality is a cornerstone of arbitration, there are situations where disclosure of the award becomes necessary or appropriate, especially when it serves the interests of justice or is mandated by law.
5. **Protection of Sensitive Information:** The provision ensures that parties' confidential information is not disclosed publicly without their consent. However, if the law requires or if disclosure is necessary to protect legal rights or participate in other legal proceedings, parties may need to share the award or parts of it with other authorities or courts.

In summary, Article 34(5) of the UNCITRAL Arbitration Rules provides guidance on making arbitral awards public, maintaining the confidentiality of proceedings, and accommodating situations where disclosure may be required by law or for pursuing legal rights.

6. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.

Article 34(6) of the UNCITRAL Arbitration Rules 2021 deals with the communication of the arbitral award to the parties involved. Here is an analysis of this provision:

1. **Communication of the Award:** Article 34(6) requires the arbitral tribunal to communicate the award to the parties. After the arbitrators sign the award, they must provide copies of the signed award to all parties involved in the arbitration.
2. **Formal Recognition of the Award:** The communication of the signed award is a formal step in the arbitral process. It serves as evidence that the tribunal has made its final decision, and it marks the completion of the arbitration proceedings.
3. **Providing Legal Certainty:** By communicating the award to the parties, the arbitral tribunal ensures that the parties are aware of the decision and its terms. This helps to provide legal certainty and finality to the dispute resolution process.
4. **Facilitating Compliance:** When the parties receive the signed award, they become obligated to comply with its terms, as it is a final and binding decision. The communication of the award allows the parties to understand their respective rights and obligations based on the tribunal's decision.
5. **Facilitating Enforcement:** In cases where enforcement of the award is required, having a properly communicated and signed award is essential. The communication of the award helps facilitate the enforcement process before relevant courts or competent authorities.
6. **Document of Record:** The communicated award becomes an official document of the arbitration case and is an important part of the record of the proceedings. It serves as

evidence of the tribunal's decision and can be used for various purposes, including enforcement and any potential challenges.

In conclusion, Article 34(6) of the UNCITRAL Arbitration Rules ensures that the arbitral award is formally communicated to the parties, providing them with the final decision of the tribunal and allowing for compliance and enforcement of the award. It helps to bring the arbitration process to a conclusive end and facilitates the parties' understanding and acceptance of the tribunal's decision.

Applicable law, amiable compositeur

Article 35

1. The arbitral tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law which it determines to be appropriate.

Article 35(1) of the UNCITRAL Arbitration Rules 2021 deals with the applicable law to be used by the arbitral tribunal in resolving the substance of the dispute. Here is an analysis of this provision:

1. **Party Autonomy:** The first part of Article 35(1) emphasises party autonomy in choosing the rules of law that will govern the substance of their dispute. This means that the parties involved in the arbitration have the freedom to designate the specific laws or legal rules that they want the arbitral tribunal to apply when deciding their case.
2. **Designation of Applicable Law:** If the parties have expressly designated the rules of law to be applied, the arbitral tribunal is bound to use those designated laws in resolving the dispute. This ensures that the parties' intentions are respected and their chosen legal framework governs the outcome of the arbitration.
3. **Absence of Designation:** In the absence of an explicit designation by the parties, the second part of Article 35(1) grants the arbitral tribunal the authority to determine the applicable law that it deems appropriate. This means that the arbitral tribunal has the discretion to identify and apply the law that it considers most suitable for resolving the dispute.
4. **Principle of Appropriate Law:** When determining the appropriate law, the arbitral tribunal will typically consider various factors, including the nature of the dispute, the parties' places of business or nationality, the applicable contractual terms, and the governing law of the contract, if any. The tribunal may also consider the principles of international trade and commercial law.
5. **Fairness and Equity:** The discretion of the arbitral tribunal in choosing the applicable law allows it to consider fairness and equity in the circumstances of the case. The tribunal's decision must be reasonable and based on sound legal reasoning.
6. **International Character:** UNCITRAL Arbitration Rules are designed for international commercial arbitrations, which often involve parties from different jurisdictions. The

provision allows for flexibility in applying the most suitable law to the dispute, considering its international nature.

In conclusion, Article 35(1) of the UNCITRAL Arbitration Rules promotes party autonomy by giving parties the power to designate the applicable rules of law for their dispute. In the absence of such designation, the arbitral tribunal is empowered to determine the most appropriate law to be applied, taking into account various relevant factors and ensuring fairness in the resolution of the dispute.

2. The arbitral tribunal shall decide as amiable compositeur or ex aequo et bono only if the parties have expressly authorized the arbitral tribunal to do so.

Article 35(2) of the UNCITRAL Arbitration Rules 2021 deals with the specific circumstances under which the arbitral tribunal can decide the case as amiable compositeur or ex aequo et bono. Let us analyse this provision:

1. **Limited Scope:** The provision restricts the arbitral tribunal’s ability to decide the case as amiable compositeur or ex aequo et bono. It states that the tribunal can only do so if the parties have expressly authorised it to do so.
2. **Party Authorisation:** Amiable compositeur and ex aequo et bono are two alternative approaches to decision-making in arbitration. When parties opt for arbitration, they typically choose to have their dispute resolved based on the applicable law (as per Article 35(1)) rather than leaving the decision to the arbitrators’ discretion. However, this provision allows parties to deviate from applying specific legal rules and instead empower the arbitrators to decide the case based on fairness, justice, and good conscience.
3. **Amiable Compositeur:** In amiable compositeur, the arbitral tribunal decides the case based on its own sense of fairness and equity, without being bound by strict legal rules. This approach allows the tribunal to apply principles of equity and good conscience, which might lead to decisions that are not strictly based on the law but are considered just under the circumstances.
4. **Ex Aequo et Bono:** Ex aequo et bono is a Latin term meaning “according to what is just and good”. When the arbitral tribunal decides ex aequo et bono, it disregards the strict application of the law and instead focuses on what it considers to be fair and equitable under the circumstances of the case.
5. **Need for Express Authorisation:** The requirement of express authorisation ensures that parties are aware of and explicitly agree to have their dispute resolved based on amiable compositeur or ex aequo et bono. This ensures transparency and prevents arbitrators from applying this approach without the parties’ clear consent.
6. **Balancing Party Autonomy and Tribunal Discretion:** By allowing parties to expressly authorise the arbitral tribunal to decide based on amiable compositeur or ex aequo et bono, the provision strikes a balance between party autonomy (as expressed in Article 35(1)) and the tribunal’s discretion in resolving the dispute in a just and equitable manner.

In conclusion, Article 35(2) of the UNCITRAL Arbitration Rules gives parties the option to authorise the arbitral tribunal to decide their dispute based on amiable compositeur or ex aequo et bono, thereby

departing from the strict application of the law. This approach provides flexibility and acknowledges the importance of party consent in determining the decision-making framework in arbitration.

3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract, if any, and shall take into account any usage of trade applicable to the transaction.

Article 35(3) of the UNCITRAL Arbitration Rules 2021 sets out the general principles that the arbitral tribunal must follow in deciding the dispute. Let us analyse this provision:

1. **Primacy of Contract Terms:** The provision emphasises the primacy of the terms of the contract between the parties. This means that the arbitral tribunal must first and foremost apply the provisions of the contract when deciding the dispute. The contract serves as the primary source of the parties' obligations and rights, and the tribunal is bound to give effect to its terms.
2. **Compliance with Contractual Obligations:** The arbitral tribunal must ensure that its decision is consistent with the contractual obligations of the parties. This requirement is in line with the principle of party autonomy, where parties are free to determine their contractual rights and obligations.
3. **Taking into Account Usages of Trade:** The provision also requires the arbitral tribunal to take into account any usage of trade applicable to the transaction. Usages of trade refer to well-established practices or customs that are widely recognised and followed in a particular industry or trade. These usages can supplement or interpret the contractual terms if they are relevant to the dispute.
4. **Balancing Contractual Terms and Usages of Trade:** Article 35(3) requires the arbitral tribunal to strike a balance between applying the express terms of the contract and taking into account usages of trade. The tribunal should consider both sources of law and harmonise them to the extent possible to arrive at a fair and just decision.
5. **Flexibility in Decision-Making:** By allowing the tribunal to consider usages of trade, the provision acknowledges that contracts may not cover every aspect of a transaction. Usages of trade can fill gaps in contractual provisions and provide additional guidance in resolving disputes.
6. **Consistency with the Parties' Intentions:** Deciding in accordance with the terms of the contract and considering usages of trade ensures that the arbitral tribunal respects the parties' intentions as reflected in their agreement and incorporates any relevant industry practices that are commonly followed.

In conclusion, Article 35(3) of the UNCITRAL Arbitration Rules highlights the importance of giving effect to the terms of the contract and considering usages of trade in the decision-making process. It underlines the principle of party autonomy and recognises that contracts, together with relevant usages of trade, form the basis for resolving disputes in a manner consistent with the parties' intentions.

Settlement or other grounds for termination

Article 36

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.

Article 36(1) of the UNCITRAL Arbitration Rules 2021 deals with the situation when the parties reach a settlement of their dispute before the arbitral tribunal makes its final award. Let us analyse this provision:

1. **Settlement of the Dispute:** The provision states that if the parties reach an agreement on the settlement of their dispute, they must inform the arbitral tribunal about the settlement.
2. **Termination of Arbitral Proceedings:** Upon receiving notice of the settlement, the arbitral tribunal has the authority to issue an order for the termination of the arbitral proceedings. This means that the arbitration process will come to an end, and the tribunal will no longer proceed to make a final award on the merits of the dispute.
3. **Recording Settlement in an Award:** Alternatively, if the parties so request and the arbitral tribunal accepts, the settlement can be recorded in the form of an arbitral award on agreed terms. This means that the settlement agreement will be formally documented and treated as an arbitral award, which is a legally binding and enforceable document.
4. **No Obligation to Give Reasons:** If the arbitral tribunal records the settlement as an award, it is not obliged to provide reasons for the award. Unlike a typical arbitral award, where the tribunal provides detailed reasoning for its decision, an award based on a settlement does not require such an explanation.
5. **Flexibility and Efficiency:** Article 36(1) promotes flexibility and efficiency in the arbitration process. If the parties are able to reach a settlement, it allows them to conclude the proceedings promptly without the need for a full-fledged final award.
6. **Finality and Enforceability:** Whether the settlement is terminated by an order or recorded as an award, it has the same effect of bringing the arbitration to an end. The parties' agreement, when recorded as an award, is binding and enforceable like any other arbitral award.

In conclusion, Article 36(1) of the UNCITRAL Arbitration Rules encourages the parties to settle their dispute amicably, and it provides a mechanism for recognising and enforcing such settlements either by terminating the proceedings or by recording the settlement as an arbitral award. This approach supports the principles of party autonomy and efficiency in resolving disputes through arbitration.

2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal

shall have the power to issue such an order unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.

Article 36(2) of the UNCITRAL Arbitration Rules 2021 deals with a situation where the continuation of the arbitral proceedings becomes unnecessary or impossible for reasons not related to a settlement between the parties. Let us analyse this provision:

1. **Unnecessary or Impossible Continuation:** This provision applies when, for reasons not mentioned in Article 36(1) (which deals with settlements), the arbitral tribunal determines that the continuation of the arbitral proceedings is unnecessary or impossible.
2. **Informing the Parties:** The arbitral tribunal is required to inform the parties of its intention to issue an order for the termination of the proceedings. This ensures that the parties are aware of the tribunal's decision and the reasons for it.
3. **Power to Terminate Proceedings:** The arbitral tribunal has the power to issue an order for the termination of the proceedings if it determines that the continuation of the arbitration is not required or cannot be carried out due to unforeseen circumstances or other reasons not covered in Article 36(1).
4. **Discretion to Continue Proceedings:** However, even if the tribunal determines that the continuation of the proceedings is unnecessary or impossible, it has the discretion to decide whether there are any remaining matters that may still need to be decided. If such matters exist and the tribunal considers it appropriate, it can continue with the proceedings to resolve those specific issues.
5. **Practical Implications:** Article 36(2) provides flexibility to the arbitral tribunal in managing the arbitration process effectively. It allows the tribunal to take into account unforeseen developments or situations that may arise during the arbitration, leading to the termination of proceedings when continuing the arbitration no longer serves any purpose.
6. **Efficient Resolution:** By empowering the arbitral tribunal to terminate proceedings in certain circumstances, this provision supports efficient dispute resolution and prevents unnecessary use of resources when the continuation of the proceedings may not yield meaningful results.

In conclusion, Article 36(2) of the UNCITRAL Arbitration Rules grants the arbitral tribunal the discretion to terminate arbitral proceedings if it finds that the continuation is unnecessary or impossible due to reasons not related to a settlement. The provision ensures practicality and efficiency in the arbitration process while still allowing the tribunal to address any remaining issues if necessary and appropriate.

3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties.

Where an arbitral award on agreed terms is made, the provisions of article 34, paragraphs 2, 4 and 5, shall apply.

Article 36(3) of the UNCITRAL Arbitration Rules 2021 addresses the communication and procedural aspects related to the termination of arbitral proceedings or the issuance of an arbitral award on agreed terms. Let us analyse this provision:

1. **Termination Order or Award on Agreed Terms:** Article 36(3) covers two scenarios: (a) an order for the termination of the arbitral proceedings, and (b) an arbitral award on agreed terms. Both situations involve a resolution of the dispute either through the termination of the proceedings or the issuance of an award based on an agreement reached by the parties.
2. **Communication of the Order or Award:** The arbitral tribunal is responsible for communicating the order for termination or the arbitral award on agreed terms to the parties. This ensures that the parties are officially informed of the outcome of the arbitration and their rights and obligations arising from it.
3. **Signature Requirement:** The order for termination or the arbitral award on agreed terms must be signed by the arbitrators. The signature confirms the authenticity and authority of the document and emphasises its legal validity.
4. **Communication to Parties:** Once the order or award is signed, the arbitral tribunal shall provide copies of the document to all parties involved in the arbitration. The communication may be in physical or electronic format, as agreed upon by the parties or as required by the arbitral tribunal.
5. **Applicability of Article 34 Provisions:** If an arbitral award on agreed terms is made (i.e., when the parties have settled the dispute and requested the tribunal to record the settlement as an award), the provisions of Article 34, paragraphs 2, 4, and 5, shall apply. These provisions of Article 34 deal with the content, finality, and signature requirements of the award.
6. **Finality and Binding Nature:** Whether it is an order for termination or an award on agreed terms, the decision is final and binding on the parties, and they are obligated to carry out the terms as stated in the order or award.

In summary, Article 36(3) of the UNCITRAL Arbitration Rules outlines the steps and requirements for the communication of the order for termination of arbitral proceedings or the arbitral award on agreed terms. It emphasises the need for the document to be signed by the arbitrators and ensures that the parties receive copies of the decision. The provision further clarifies that, in the case of an award on agreed terms, the relevant provisions of Article 34 regarding the form and content of awards apply.

Interpretation of the award

Article 37

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request that the arbitral tribunal give an interpretation of the award.

Article 37(1) of the UNCITRAL Arbitration Rules 2021 provides a mechanism for a party to seek an interpretation of the arbitral award. Let us analyse this provision:

1. **Time Limit:** The provision specifies a time limit within which a party must make the request for interpretation. The party has 30 days from the receipt of the arbitral award to submit the request to the arbitral tribunal. The clock starts ticking from the moment the party receives the award.
2. **Interpretation of the Award:** The purpose of the request is to seek clarification or further explanation of certain aspects of the arbitral award that the party finds unclear or ambiguous. It is not an avenue to challenge the substance or merits of the award.
3. **Notice to Other Parties:** The requesting party must provide notice of the request for interpretation to all other parties involved in the arbitration. This ensures that all parties are aware of the request and have an opportunity to participate or respond if necessary.
4. It is important to note that Article 37(1) only covers requests for interpretation of the award. If a party wishes to challenge the award on other grounds, such as setting aside the award or seeking its correction or additional award, they would need to follow the procedures prescribed under relevant provisions in the UNCITRAL Arbitration Rules or applicable laws.

In summary, Article 37(1) of the UNCITRAL Arbitration Rules allows a party to seek an interpretation of the arbitral award if they find certain aspects of the award unclear or ambiguous. The party must make the request within 30 days of receiving the award and provide notice to all other parties. This provision aims to facilitate clarity and understanding of the award, rather than re-opening substantive issues that were already decided by the arbitral tribunal.

2. The interpretation shall be given in writing within 45 days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 34, paragraphs 2 to 6, shall apply.

Article 37(2) of the UNCITRAL Arbitration Rules 2021 deals with the procedure for providing an interpretation of the arbitral award. Let us break down its key elements:

1. **Time Limit:** The arbitral tribunal has a specific time limit for providing the interpretation. It must give the interpretation in writing within 45 days after receiving the request from the party seeking clarification. This time limit ensures a prompt response to the request and avoids unnecessary delays in the resolution process.
2. **Incorporation into the Award:** The interpretation provided by the arbitral tribunal becomes part of the original award. In other words, it is treated as an integral and

inseparable part of the initial award. This incorporation helps to maintain the finality and integrity of the award, as the interpretation becomes a permanent addition to the award's contents.

3. Application of Article 34: Article 37(2) makes reference to Article 34, which deals with the form and content of the arbitral award. This means that the provisions of Article 34, paragraphs 2 to 6, apply to the interpretation provided under Article 37(2). These provisions pertain to the requirement that the award must be in writing, signed by the arbitrators, include the date and place of the award, and state the reasons upon which the award is based (unless the parties have agreed otherwise).

In summary, Article 37(2) of the UNCITRAL Arbitration Rules sets out the timeframe for the arbitral tribunal to provide the requested interpretation, specifies that the interpretation will be incorporated into the award, and applies the provisions of Article 34 regarding the form and content of the award to the interpretation as well. This ensures that the interpretation is treated with the same level of formality and procedural requirements as the original award.

Correction of the award

Article 38

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature. If the arbitral tribunal considers that the request is justified, it shall make the correction within 45 days of receipt of the request.

Article 38(1) of the UNCITRAL Arbitration Rules 2021 deals with the correction of errors in the arbitral award. Let us analyse its key points:

1. Types of Errors: The article allows a party to request the arbitral tribunal to correct specific types of errors in the award. These errors include:
 2. Errors in computation: Mistakes in mathematical calculations or numerical figures.
 3. Clerical errors: Errors related to administrative or clerical matters, such as typos or transcription mistakes.
 4. Typographical errors: Mistakes in the way text is printed or presented, such as spelling errors or formatting issues.
 5. Errors or omissions of a similar nature: This category covers any other errors or omissions in the award that are of a similar nature to the ones mentioned above.
 6. Time Limit: The party seeking a correction in the award must do so within 30 days after receiving the award. This time limit ensures that parties have a reasonable period to review the award and identify any potential errors that require correction.

7. Notice to Other Parties: The party making the request must provide notice to the other parties involved in the arbitration. This requirement ensures transparency and allows other parties to participate or respond to the correction process if needed.
8. Correction Procedure: If the arbitral tribunal considers the request for correction justified, it shall make the correction within 45 days of receiving the request. The correction procedure is meant to be relatively swift and straightforward, as it addresses specific, minor errors rather than substantive issues.

In summary, Article 38(1) of the UNCITRAL Arbitration Rules allows a party to request the arbitral tribunal to correct specific types of errors in the award, such as computational, clerical, typographical errors, or errors of a similar nature. The request must be made within 30 days after receiving the award, and if the tribunal finds the request justified, it will make the correction within 45 days. This provision aims to ensure accuracy and clarity in the final award by allowing parties to rectify minor errors that may have occurred during the arbitration process.

2. The arbitral tribunal may within 30 days after the communication of the award make such corrections on its own initiative.

Article 38(2) of the UNCITRAL Arbitration Rules 2021 deals with the arbitral tribunal's authority to make corrections to the award on its own initiative. Let us analyse its key points:

1. Self-Initiated Corrections: This provision grants the arbitral tribunal the authority to make corrections to the award on its own initiative. The tribunal may do so within 30 days after the communication of the award to the parties.
2. Scope of Corrections: The corrections that the tribunal can make under this provision are similar to those mentioned in Article 38(1). They include correcting errors in computation, clerical or typographical errors, or errors or omissions of a similar nature.
3. Time Limit: The provision sets a specific time limit of 30 days within which the arbitral tribunal can exercise its authority to make self-initiated corrections. This time limit ensures that any necessary corrections are addressed promptly after the award is communicated to the parties.
4. Notice to Parties: While Article 38(2) does not explicitly mention notice to the parties, it is generally understood that the arbitral tribunal should inform the parties if it intends to make any self-initiated corrections to the award. This ensures transparency and allows parties to be aware of any modifications to the award.

In summary, Article 38(2) of the UNCITRAL Arbitration Rules grants the arbitral tribunal the authority to make corrections to the award on its own initiative within 30 days after the communication of the award to the parties. The scope of corrections is similar to those allowed under Article 38(1), and the provision aims to address minor errors to ensure the accuracy and clarity of the final award. Although the article does not explicitly mention notice to the parties, it is generally expected that the tribunal would inform the parties of any self-initiated corrections as a matter of procedural fairness and transparency.

3. Such corrections shall be in writing and shall form part of the award. The provisions of article 34, paragraphs 2 to 6, shall apply.

Article 38(3) of the UNCITRAL Arbitration Rules 2021 addresses the process and consequences of corrections made to the award. Let us analyse its key points:

1. **Form and Incorporation:** Any corrections made by the arbitral tribunal, whether initiated by the parties' request or on its own initiative, must be in writing. These corrections are considered part of the award itself.
2. **Scope of Application:** The provisions of Article 34, paragraphs 2 to 6, apply to the corrections made under Article 38(1) and 38(2). Article 34(2) requires that all awards be made in writing, while Article 34(4) states that the award must be signed by the arbitrators, with a statement of the date of the award and the place of arbitration. If there are multiple arbitrators and any of them fail to sign, the award must state the reason for the absence of the signature.
3. **Finality and Binding Nature:** Once the corrections are made and incorporated into the award, the award becomes final and binding on the parties. The corrections ensure that any errors in computation, clerical or typographical errors, or errors or omissions of a similar nature are rectified, and the award accurately reflects the tribunal's decision.

In summary, Article 38(3) of the UNCITRAL Arbitration Rules specifies that any corrections made to the award must be in writing and will be considered part of the award itself. The provisions of Article 34, paragraphs 2 to 6, apply to these corrections, ensuring that the award is properly signed, dated, and presented in writing. The corrections do not alter the finality and binding nature of the award, but rather serve to rectify any minor errors to ensure the accuracy and clarity of the final decision.

Additional award

Article 39

1. Within 30 days after the receipt of the termination order or the award, a party, with notice to the other parties, may request the arbitral tribunal to make an award or an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal.

Article 39(1) of the UNCITRAL Arbitration Rules 2021 deals with the procedure for seeking a final award or an additional award on claims that were presented during the arbitral proceedings but not decided by the arbitral tribunal. Let us analyse its key points:

1. **Time Limit:** A party has 30 days from the receipt of the termination order or the award to make a request to the arbitral tribunal for a final award or an additional award on the claims that were raised but not decided.
2. **Scope of Application:** The request for a final award or an additional award under Article 39(1) pertains only to claims that were presented during the arbitral proceedings. If a party had the opportunity to raise a claim but failed to do so, this provision does not allow them to raise such claims after the proceedings have concluded.

3. Notice to Other Parties: The party making the request must provide notice to all other parties involved in the arbitration about its intention to seek a final award or an additional award on the pending claims.
4. Arbitral Tribunal's Decision: It is within the discretion of the arbitral tribunal to decide whether to grant the request for a final award or an additional award on the pending claims. The tribunal will review the merits of the claims and determine whether they should be decided and included in the final award.

In summary, Article 39(1) of the UNCITRAL Arbitration Rules allows a party to request a final award or an additional award on claims that were presented during the arbitration but not decided by the arbitral tribunal. The request must be made within 30 days from the receipt of the termination order or the award, and the tribunal has the authority to decide whether to grant such a request based on the merits of the pending claims.

2. If the arbitral tribunal considers the request for an award or additional award to be justified, it shall render or complete its award within 60 days after the receipt of the request. The arbitral tribunal may extend, if necessary, the period of time within which it shall make the award.

Article 39(2) of the UNCITRAL Arbitration Rules 2021 addresses the timeline and procedure for rendering a final award or an additional award in response to a party's request under Article 39(1). Let us examine its key points:

1. Timeline for Rendering Award: If the arbitral tribunal finds the request for a final award or an additional award to be justified, it is required to render or complete the award within 60 days after receiving the request. This provision emphasises the importance of timely resolution of the pending claims.
2. Extension of Time: The arbitral tribunal has the discretion to extend the period of time within which it will make the award, but such an extension should only be granted if deemed necessary. The extension allows the tribunal to accommodate complex or unforeseen circumstances that may affect the award's timely delivery.

Overall, Article 39(2) ensures that if the arbitral tribunal determines the request for a final award or an additional award on the pending claims to be valid, it must render or complete the award within a reasonable time frame of 60 days from the receipt of the request. However, the tribunal can extend this period if it is essential to do so in the interest of justice and efficiency in the arbitral proceedings.

3. When such an award or additional award is made, the provisions of article 34, paragraphs 2 to 6, shall apply.

Article 39(3) of the UNCITRAL Arbitration Rules 2021 clarifies the procedural requirements for making a final award or an additional award under Article 39(1) and 39(2). Let us break down its key points:

1. Applicability of Article 34: Article 39(3) states that when the arbitral tribunal renders a final award or an additional award in response to a party's request under Article 39(1) or 39(2), the provisions of Article 34, paragraphs 2 to 6, shall apply.

2. **Procedural Aspects:** Article 34(2) to 34(6) of the UNCITRAL Arbitration Rules deals with the formal requirements of an award. These provisions include the requirement that an award must be made in writing, signed by the arbitrators, and state the reasons upon which it is based. It also mandates that the award should contain the date of issuance and indicate the place of arbitration. If there is more than one arbitrator and any of them fails to sign, the award must state the reason for the absence of the signature.
3. **Form and Content:** By applying the provisions of Article 34, paragraphs 2 to 6, to the final award or additional award made under Article 39, the rules ensure that such awards meet the formalities of a valid award, including the need for a written, reasoned, and duly signed document.

In summary, Article 39(3) clarifies that the procedural requirements outlined in Article 34, paragraphs 2 to 6, shall be adhered to when making a final award or an additional award based on the parties' request in accordance with Article 39(1) or 39(2). This ensures that the awards are properly recorded and meet the necessary standards of validity and enforceability.

Definition of costs

Article 40

1. The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.

Article 40(1) of the UNCITRAL Arbitration Rules 2021 pertains to the issue of costs in arbitration proceedings. Let us analyse its key points:

1. **Costs of Arbitration:** Article 40(1) requires the arbitral tribunal to determine the costs of the arbitration. These costs include various expenses incurred during the arbitration process, such as administrative fees, arbitrators' fees, charges for hearing venues, and any other reasonable expenses associated with conducting the arbitration.
2. **Fixing Costs:** The arbitral tribunal is responsible for fixing the costs of the arbitration in the final award. This means that the tribunal will specify the amount of costs to be paid by one party to another or allocate costs among the parties. The costs can be determined as a lump sum or based on specific items.
3. **Discretion to Decide on Costs:** The wording "if it deems appropriate" in Article 40(1) indicates that the arbitral tribunal has discretion in determining whether to include the costs in the final award or in a separate decision. This means that the tribunal may choose the most appropriate way to address the issue of costs based on the specific circumstances of the case.
4. **Timing of Costs Determination:** The arbitral tribunal must decide on the costs of the arbitration before rendering the final award. This ensures that the parties are aware of the financial implications of the arbitration process and how the costs will be allocated.

In summary, Article 40(1) of the UNCITRAL Arbitration Rules obliges the arbitral tribunal to fix the costs of the arbitration and allows the tribunal the discretion to include the cost determination either in the final award or in a separate decision. The aim is to provide transparency and clarity to the parties regarding the financial aspects of the arbitration and to ensure an equitable allocation of the costs incurred during the proceedings.

2. The term “costs” includes only:

- (a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with article 41;**
- (b) The reasonable travel and other expenses incurred by the arbitrators;**
- (c) The reasonable costs of expert advice and of other assistance required by the arbitral tribunal;**
- (d) The reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;**
- (e) The legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;**
- (f) Any fees and expenses of the appointing authority as well as the fees and expenses of the Secretary-General of the PCA.**

Article 40(2) of the UNCITRAL Arbitration Rules 2021 defines the scope of the term “costs” in arbitration proceedings. This provision specifies the different elements that are considered as part of the costs of the arbitration. Let us analyse each of the components:

1. **Fees of the Arbitral Tribunal:** This refers to the compensation payable to each arbitrator for their services on the arbitral tribunal. The tribunal itself fixes these fees in accordance with Article 41 of the UNCITRAL Arbitration Rules.
2. **Travel and Other Expenses of Arbitrators:** This includes the reasonable travel expenses and any other necessary expenses incurred by the arbitrators in the course of their work on the arbitration.
3. **Costs of Expert Advice and Assistance:** This component covers the reasonable costs incurred by the arbitral tribunal for obtaining expert advice or any other necessary assistance in the proceedings.
4. **Travel and Other Expenses of Witnesses:** The costs of witnesses, such as their reasonable travel expenses, may be included as part of the costs of the arbitration to the extent that the arbitral tribunal approves such expenses.
5. **Legal and Other Costs Incurred by the Parties:** This includes the legal fees and other reasonable costs incurred by the parties in relation to the arbitration. The arbitral tribunal has the authority to determine whether the amount of such costs is reasonable before including them as part of the costs of the arbitration.

6. Fees and Expenses of the Appointing Authority and PCA: This component covers any fees and expenses incurred by the appointing authority and the Secretary-General of the Permanent Court of Arbitration (PCA) in relation to their role in the arbitration process.

It is important to note that these costs are considered under the scope of “costs” in the context of Article 40(2). The arbitral tribunal has the authority to decide on the reasonableness of these costs and include them in the final award or another decision on costs. This provision ensures transparency and clarity regarding the types of expenses that can be claimed as costs and the criteria for determining their reasonableness in arbitration proceedings conducted under the UNCITRAL Arbitration Rules.

3. In relation to interpretation, correction or completion of any award under articles 37 to 39, the arbitral tribunal may charge the costs referred to in paragraphs 2 (b) to (f), but no additional fees.

Article 40(3) of the UNCITRAL Arbitration Rules 2021 deals with the costs associated with the interpretation, correction, or completion of an award under Articles 37 to 39 of the Rules. It addresses the situation when a party requests the arbitral tribunal to provide an interpretation of the award (Article 37), correct errors in the award (Article 38), or make an award or additional award (Article 39).

According to this provision, the arbitral tribunal may charge the costs referred to in paragraphs 2(b) to (f) of Article 40 for these processes. Let us recap the relevant paragraphs from Article 40(2):

1. The reasonable travel and other expenses incurred by the arbitrators;
2. The reasonable costs of expert advice and of other assistance required by the arbitral tribunal;
3. The reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
4. The legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;
5. Any fees and expenses of the appointing authority as well as the fees and expenses of the Secretary-General of the PCA.

The arbitral tribunal is allowed to charge these costs for interpreting, correcting, or completing the award, but the tribunal is not permitted to impose any additional fees beyond these costs. This provision aims to ensure that parties are not burdened with excessive costs when seeking clarification or correction of an award. It maintains a fair and balanced approach to cost recovery in the context of post-award proceedings, while also encouraging parties to seek clarification or correction of awards if necessary without fear of incurring unnecessary expenses.

Fees and expenses of arbitrators

Article 41

1. The fees and expenses of the arbitrators shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case.

Article 41(1) of the UNCITRAL Arbitration Rules 2021 addresses the issue of fees and expenses of the arbitrators involved in the arbitration proceedings. This provision sets out the criteria that should be taken into consideration when determining the reasonableness of the arbitrators' fees and expenses. The goal is to ensure that the fees charged are fair and appropriate given the specific circumstances of the case.

The key factors to be considered in assessing the reasonableness of the arbitrators' fees and expenses are as follows:

1. Amount in dispute: The monetary value of the dispute is a significant factor in determining the fees. Generally, larger disputes involving substantial amounts in controversy may warrant higher fees for the arbitrators.
2. Complexity of the subject matter: The complexity of the issues involved in the case is also a crucial factor. Cases with intricate legal, technical, or factual matters that require extensive analysis and consideration may justify higher fees.
3. Time spent by the arbitrators: The amount of time devoted by the arbitrators to the case is an essential factor. More time-intensive cases may result in higher fees to compensate for the arbitrators' efforts and commitment.
4. Other relevant circumstances: This catch-all provision allows for the consideration of any other relevant factors peculiar to the case. For example, the reputation and expertise of the arbitrators, the geographical location of the proceedings, and the urgency of the matter could also play a role in determining the reasonableness of the fees.

By including these criteria, Article 41(1) seeks to promote transparency and fairness in the determination of arbitrators' fees. It also ensures that parties are not unduly burdened with excessive costs and that arbitrators' compensation is proportionate to the effort and complexity involved in resolving the dispute. Ultimately, the goal is to maintain confidence in the arbitration process and to encourage parties to seek resolution of their disputes through arbitration.

2. If there is an appointing authority and it applies or has stated that it will apply a schedule or particular method for determining the fees for arbitrators in international cases, the arbitral tribunal in fixing its fees shall take that schedule or method into account to the extent that it considers appropriate in the circumstances of the case.

Article 41(2) of the UNCITRAL Arbitration Rules 2021 deals with the situation where there is an "appointing authority" that applies or has established a specific schedule or method for determining arbitrators' fees in international cases. An "appointing authority" is an entity responsible for appointing arbitrators, as designated in the arbitration agreement or agreed upon by the parties.

According to this provision, if such an appointing authority has a schedule or method for fixing arbitrators' fees, the arbitral tribunal must take it into account when determining its own fees. However, the arbitral tribunal has the discretion to decide to what extent it will consider the schedule or method, depending on the particular circumstances of the case.

The purpose of this provision is to promote consistency and transparency in the determination of arbitrators' fees across international cases. By considering the schedule or method set by the appointing authority, the arbitral tribunal ensures that its fee determination aligns with prevailing standards in international arbitration and does not deviate substantially from established practices.

However, the provision also recognises that each arbitration case is unique and may involve different complexities, time requirements, and other relevant circumstances. As a result, the arbitral tribunal retains the authority to modify or adjust its fees based on the specific characteristics of the case.

Overall, Article 41(2) strikes a balance between using a standardised approach to arbitrators' fees, where available, and allowing for flexibility to account for the specific features of individual cases. This ensures fairness and efficiency in the arbitration process while considering the practicalities of each dispute.

3. Promptly after its constitution, the arbitral tribunal shall inform the parties as to how it proposes to determine its fees and expenses, including any rates it intends to apply. Within 15 days of receiving that proposal, any party may refer the proposal to the appointing authority for review. If, within 45 days of receipt of such a referral, the appointing authority finds that the proposal of the arbitral tribunal is inconsistent with paragraph 1, it shall make any necessary adjustments thereto, which shall be binding upon the arbitral tribunal.

Article 41(3) of the UNCITRAL Arbitration Rules 2021 outlines a process for determining the fees and expenses of the arbitral tribunal in a timely and transparent manner. The main purpose of this provision is to ensure that the fees and expenses of the arbitrators are reasonable and appropriate in light of the circumstances of the case. According to this provision:

1. **Prompt Notification by the Arbitral Tribunal:** Once the arbitral tribunal is constituted, it must inform the parties of how it proposes to determine its fees and expenses, including any rates it intends to apply. This notification should occur promptly after the tribunal's constitution to maintain transparency and give the parties sufficient time to review the proposed fee structure.
2. **Referral to the Appointing Authority:** Within 15 days of receiving the arbitral tribunal's fee proposal, any party has the right to refer the proposal to the "appointing authority" for review. The appointing authority is the entity responsible for appointing the arbitrators, as designated in the arbitration agreement or agreed upon by the parties.
3. **Review and Adjustment by the Appointing Authority:** Upon receiving the referral, the appointing authority has 45 days to review the arbitral tribunal's fee proposal. If the appointing authority finds that the proposed fees and expenses are inconsistent with the requirement of reasonableness set forth in Article 41(1), it may make necessary adjustments to the proposed fees. These adjustments, once made, are binding upon the arbitral tribunal.

The goal of this mechanism is to provide an avenue for parties to raise concerns about the arbitral tribunal's proposed fees if they believe them to be unreasonable. The involvement of the appointing authority serves as a safeguard against arbitrators attempting to impose excessive or unjustifiable fees.

By allowing parties to refer the fee proposal to the appointing authority for review, the UNCITRAL Arbitration Rules enhance transparency and promote fair and balanced fee determinations in international arbitration. This process ensures that the arbitral tribunal's fees are commensurate with the complexity and value of the dispute, as well as the time and effort required from the arbitrators to resolve the case.

4. (a) When informing the parties of the arbitrators' fees and expenses that have been fixed pursuant to article 40, paragraphs 2 (a) and (b), the arbitral tribunal shall also explain the manner in which the corresponding amounts have been calculated;

(b) Within 15 days of receiving the arbitral tribunal's determination of fees and expenses, any party may refer for review such determination to the appointing authority. If no appointing authority has been agreed upon or designated, or if the appointing authority fails to act within the time specified in these Rules, then the review shall be made by the Secretary-General of the PCA;

(c) If the appointing authority or the Secretary-General of the PCA finds that the arbitral tribunal's determination is inconsistent with the arbitral tribunal's proposal (and any adjustment thereto) under paragraph 3 or is otherwise manifestly excessive, it shall, within 45 days of receiving such a referral, make any adjustments to the arbitral tribunal's determination that are necessary to satisfy the criteria in paragraph 1. Any such adjustments shall be binding upon the arbitral tribunal;

(d) Any such adjustments shall either be included by the arbitral tribunal in its award or, if the award has already been issued, be implemented in a correction to the award, to which the procedure of article 38, paragraph 3, shall apply.

Article 41(4) of the UNCITRAL Arbitration Rules 2021 outlines a process for reviewing and adjusting the fees and expenses of the arbitral tribunal. This provision aims to ensure transparency and reasonableness in determining arbitrators' fees and expenses and provides a mechanism for parties to seek a review of such determinations when necessary. The key points of Article 41(4) are as follows:

1. **Explanation of Calculation:** When the arbitral tribunal informs the parties of the fixed fees and expenses of the arbitrators, as determined under Article 40, paragraphs 2(a) and (b), the tribunal must also explain the manner in which the corresponding amounts have been calculated. This requirement ensures that the parties are fully informed about the basis of the fee determination.
2. **Right to Seek Review:** Within 15 days of receiving the arbitral tribunal's determination of fees and expenses, any party may request a review of such determination. If no appointing authority has been agreed upon or designated, or if the appointing authority fails to act within the specified time, the review shall be conducted by the Secretary-General of the PCA (Permanent Court of Arbitration).

3. **Review and Adjustment:** The appointing authority or the Secretary-General of the PCA, upon receiving a request for review, shall have 45 days to assess the arbitral tribunal's determination. If it finds that the determination is inconsistent with the tribunal's proposal under Article 41(3) or is manifestly excessive, it may make necessary adjustments to the determination to ensure compliance with the criteria of reasonableness stated in Article 41(1). Any adjustments made by the appointing authority or the Secretary-General shall be binding upon the arbitral tribunal.
4. **Inclusion in the Award:** If adjustments are made to the arbitral tribunal's determination, the tribunal must either include the adjusted fees and expenses in its award if it has not yet been issued, or if the award has already been issued, the adjustments shall be implemented through a correction to the award. The procedure of Article 38, paragraph 3, which deals with corrections to the award, shall apply to this implementation.

Overall, Article 41(4) provides a mechanism for parties to seek a review of arbitrators' fees and expenses to ensure that they are reasonable and in compliance with the applicable criteria. It promotes transparency and accountability in fee determinations, thus enhancing confidence in the arbitral process.

5. Throughout the procedure under paragraphs 3 and 4, the arbitral tribunal shall proceed with the arbitration, in accordance with article 17, paragraph 1.

Article 41(5) of the UNCITRAL Arbitration Rules 2021 emphasises that the arbitral tribunal must continue with the arbitration proceedings while the process of reviewing and adjusting arbitrators' fees and expenses under Articles 41(3) and 41(4) is ongoing. The key points of Article 41(5) are as follows:

1. **Continuation of Arbitration:** Despite the party's request for a review of the arbitral tribunal's determination of fees and expenses, the tribunal is required to proceed with the arbitration. The arbitration must continue without unnecessary delays, in line with the provisions of Article 17, paragraph 1, which deals with the conduct of the arbitration proceedings.
2. **Efficiency and Timeliness:** The purpose of Article 41(5) is to ensure that the arbitration proceedings continue efficiently and in a timely manner. The tribunal is encouraged to proceed with the case and not postpone or suspend the proceedings merely because a review of fees is requested.
3. **Protecting the Arbitral Process:** By mandating the continuation of the arbitration, Article 41(5) aims to protect the integrity and effectiveness of the arbitral process. The ongoing review of arbitrators' fees should not hinder or disrupt the arbitration, allowing the parties to progress towards the resolution of their dispute.
4. **Balance between Fee Review and Arbitration:** The provision strikes a balance between the need to address concerns regarding arbitrators' fees and the need for an uninterrupted arbitration process. While parties are entitled to seek a review of fees, the arbitration should not be unduly affected, and the tribunal should maintain its focus on resolving the substantive dispute.

Overall, Article 41(5) underscores the importance of conducting the arbitration efficiently and without undue interruptions, even when there is a request for the review and adjustment of arbitrators' fees. It aligns with the objective of the UNCITRAL Arbitration Rules to promote a fair and expeditious resolution of disputes through arbitration.

6. A referral under paragraph 4 shall not affect any determination in the award other than the arbitral tribunal's fees and expenses; nor shall it delay the recognition and enforcement of all parts of the award other than those relating to the determination of the arbitral tribunal's fees and expenses.

Article 41(6) of the UNCITRAL Arbitration Rules 2021 addresses the consequences and effects of a referral made under paragraph 4 of Article 41. The key points of Article 41(6) are as follows:

1. **Limited Scope of Referral:** A referral made under paragraph 4 pertains solely to the determination of the arbitral tribunal's fees and expenses. It does not extend to any other aspect of the award, such as the merits of the case, the interpretation of the contract, or the substantive issues decided by the arbitral tribunal. In other words, a party's request for a review of arbitrators' fees will not reopen the entire award for reconsideration.
2. **Finality of Non-Contested Parts:** The article emphasises that the referral does not affect the finality of those parts of the award that are not related to the determination of the arbitral tribunal's fees and expenses. Any other aspects of the award, including decisions on substantive matters and merits, retain their full legal effect and are unaffected by the referral process.
3. **Recognition and Enforcement:** Furthermore, Article 41(6) clarifies that the referral does not delay the recognition and enforcement of the non-contested parts of the award. This means that, even if the parties request a review of arbitrators' fees, the parts of the award that are not subject to the review can still be recognised and enforced according to the applicable laws and conventions.
4. **Preservation of Finality and Efficiency:** The provision is designed to preserve the finality of the award on the issues that are not related to the arbitrators' fees and expenses and to ensure the efficiency of the arbitration process. By limiting the scope of the review and its impact on the award, parties are encouraged to resolve the issue of fees without unduly disrupting the overall arbitration proceedings.

In summary, Article 41(6) clarifies that a referral under paragraph 4 of Article 41 is narrowly focused on the determination of the arbitral tribunal's fees and expenses. It does not affect the finality or enforceability of the non-contested parts of the award, which remain binding and enforceable without delay. This provision aims to strike a balance between addressing concerns about arbitrators' fees and preserving the efficiency and finality of the arbitration process.

Allocation of costs

Article 42

1. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

Article 42(1) of the UNCITRAL Arbitration Rules 2021 deals with the allocation of costs in the arbitral proceedings. The article outlines the general principle that the costs of the arbitration should be borne by the unsuccessful party or parties. However, it also provides the arbitral tribunal with the authority to apportion the costs between the parties if it deems such an allocation to be reasonable, considering the circumstances of the case. Key points of Article 42(1):

1. **Principle of Costs Allocation:** The default rule established in Article 42(1) is that the party or parties that do not prevail in the arbitration (the unsuccessful party or parties) should bear the costs of the proceedings. This principle aligns with the “loser pays” approach, which is commonly used in arbitration to encourage parties to be more judicious in bringing claims and to incentivise the efficient resolution of disputes.
2. **Discretion of the Arbitral Tribunal:** Despite the default rule, the article allows the arbitral tribunal significant discretion to apportion the costs differently if it finds it reasonable to do so based on the specific circumstances of the case. This recognises that each arbitration is unique, and the tribunal may consider various factors in determining whether a different allocation is appropriate.
3. **Factors for Consideration:** The arbitral tribunal has broad latitude to consider different factors when deciding how to allocate the costs, which may include, but are not limited to, the following:
 - a. The conduct of the parties during the proceedings.
 - b. The complexity and value of the dispute.
 - c. The extent to which each party prevailed on its claims or defences.
 - d. Any unreasonable behaviour, including unnecessary delays or refusal to cooperate.
 - e. Any relevant contractual provisions or prior agreements regarding costs allocation.
4. **Reasonableness Standard:** The criterion for apportioning costs is “reasonableness”. This means that the arbitral tribunal must make a fair and just assessment, taking into account all relevant factors, to reach a decision that is balanced and equitable.

In conclusion, Article 42(1) establishes the default principle that the unsuccessful party or parties should bear the costs of the arbitration. However, the arbitral tribunal retains the discretion to apportion the costs differently if it deems such an allocation to be reasonable based on the circumstances of the case. The provision provides the tribunal with flexibility to achieve a fair and just outcome in cost allocation, ensuring that the arbitral process remains equitable and efficient.

2. The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

Article 42(2) of the UNCITRAL Arbitration Rules 2021 addresses the practical implementation of the costs allocation decided by the arbitral tribunal. This provision requires the arbitral tribunal to include in the final award, or in any other award if deemed appropriate, a determination of the specific amount that a party may have to pay to another party as a result of the decision on the allocation of costs. Key points of Article 42(2):

1. **Specific Amount Determination:** Once the arbitral tribunal has decided on the allocation of costs between the parties, it is required to determine the specific amount that one party may have to pay to another party as a result of this allocation. This determination should be precise and quantifiable, specifying the amount of costs to be borne by the unsuccessful party or parties and payable to the successful party or parties.
2. **Inclusion in the Award:** The article emphasises that the determination of the costs payable should be included in the final award. However, it also provides flexibility by allowing the tribunal to include this determination in any other award if it considers it appropriate. For instance, the tribunal may issue a separate award solely addressing the allocation of costs if it deems it necessary or practical.
3. **Ensuring Clarity and Enforcement:** By including the specific amount of costs payable in the award, the UNCITRAL Arbitration Rules aim to ensure clarity and ease of enforcement of the costs award. The determination allows parties to know the exact financial obligations arising from the decision on costs allocation, facilitating prompt payment or recovery of the costs awarded.
4. **Relation to Costs Determination:** The determination of the amount of costs payable is directly related to the decision on costs allocation made by the arbitral tribunal under Article 42(1). If the tribunal decides to apportion the costs differently between the parties or considers other factors, it must reflect this in the specific amount of costs payable determined in the award.

In summary, Article 42(2) of the UNCITRAL Arbitration Rules obligates the arbitral tribunal to include in the final award, or any other award as it deems appropriate, a precise determination of the specific amount that a party may have to pay to another party as a result of the decision on the allocation of costs. This provision ensures that the costs award is clear, enforceable, and directly reflects the costs allocation decided by the tribunal.

Deposit of costs

Article 43

1. The arbitral tribunal, on its establishment, may request the parties to deposit an equal amount as an advance for the costs referred to in article 40, paragraphs 2 (a) to (c).

Article 43(1) of the UNCITRAL Arbitration Rules 2021 addresses the issue of advance payments for the costs of arbitration. This provision empowers the arbitral tribunal, upon its establishment, to request the parties to deposit an equal amount as an advance to cover the costs mentioned in Article 40, paragraphs 2 (a) to (c). Key points of Article 43(1):

1. **Advance Payment Request:** The arbitral tribunal has the authority to request the parties to make an advance payment to cover the costs related to the arbitration proceedings. These costs specifically refer to the fees of the arbitral tribunal (paragraph 2(a)), the reasonable travel and other expenses incurred by the arbitrators (paragraph 2(b)), and the reasonable costs of expert advice and other assistance required by the arbitral tribunal (paragraph 2(c)).
2. **Equal Amount Deposit:** The advance payment requested from the parties should be equal in amount. The arbitral tribunal may require each party to deposit the same sum, ensuring a balanced sharing of the initial financial burden.
3. **Timing of Request:** The arbitral tribunal may make this request for an advance payment at the time of its establishment. In most cases, the tribunal is constituted after the Notice of Arbitration and Response have been exchanged, and the parties have confirmed the appointment of arbitrators.
4. **Ensuring Adequate Funding:** The purpose of requesting an advance payment is to ensure that the tribunal has sufficient funds to commence the arbitration and cover the initial expenses before the final determination of costs in the arbitral award. Adequate funding at the outset helps in the smooth progress of the proceedings without undue delays due to financial considerations.
5. **Cost Management:** By requesting an advance payment, the tribunal can effectively manage the costs of arbitration, thereby ensuring a fair distribution of expenses among the parties and promoting cost efficiency in the proceedings.
6. **Impact on Arbitration Proceedings:** The tribunal may refrain from proceeding with the arbitration until the requested advance payment is made by the parties. This ensures that the arbitration process is adequately funded, preventing potential disruptions due to a lack of financial resources.

In conclusion, Article 43(1) of the UNCITRAL Arbitration Rules allows the arbitral tribunal to request the parties to make an equal advance payment to cover the costs of arbitration, such as the fees of the tribunal and reasonable expenses. This provision ensures that the arbitration process is adequately funded from the outset, promoting efficiency and cost management in the proceedings.

2. During the course of the arbitral proceedings the arbitral tribunal may request supplementary deposits from the parties.

Article 43(2) of the UNCITRAL Arbitration Rules 2021 addresses the issue of supplementary deposits for the costs of arbitration. This provision empowers the arbitral tribunal to request additional deposits from the parties during the course of the arbitral proceedings, in addition to the initial advance payment requested under Article 43(1). Key points of Article 43(2):

1. **Supplementary Deposits:** The arbitral tribunal has the authority to request supplementary deposits from the parties during the ongoing arbitration proceedings. These supplementary deposits are additional payments required to cover any anticipated or unexpected costs that may arise as the case progresses.
2. **Purpose of Supplementary Deposits:** The purpose of requesting supplementary deposits is to ensure that the arbitral tribunal continues to have sufficient funds to cover the ongoing costs of the arbitration. As the case evolves and new issues arise, additional expenses may be incurred, such as fees for further hearings, expert witness testimony, or other expenses related to the conduct of the proceedings.
3. **Time of Request:** The arbitral tribunal can request supplementary deposits at any time during the arbitration proceedings when it deems necessary. This can be in response to the parties' requests for additional evidence, extended hearings, or other factors that may affect the overall costs.
4. **Party Contribution:** The supplementary deposits are typically divided equally between the parties, maintaining the principle of a balanced financial burden between them.
5. **Ensuring Uninterrupted Proceedings:** By requesting supplementary deposits, the tribunal ensures that there are adequate funds available to proceed with the arbitration without interruption due to financial constraints.
6. **Transparency and Communication:** The arbitral tribunal should communicate the need for supplementary deposits to the parties in a transparent manner, explaining the reasons for the request and providing an estimated amount needed. The parties should be given sufficient time to make the supplementary payments.

In conclusion, Article 43(2) of the UNCITRAL Arbitration Rules allows the arbitral tribunal to request supplementary deposits from the parties during the course of the arbitration proceedings. These additional payments are intended to ensure that the tribunal has sufficient funds to cover ongoing and unexpected costs, thereby promoting the smooth progress of the proceedings and maintaining financial fairness between the parties.

3. If an appointing authority has been agreed upon or designated, and when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only after consultation with the appointing authority,

which may make any comments to the arbitral tribunal that it deems appropriate concerning the amount of such deposits and supplementary deposits.

Article 43(3) of the UNCITRAL Arbitration Rules 2021 deals with the role of an appointing authority in fixing the amounts of deposits or supplementary deposits for the costs of arbitration. This provision ensures that there is a collaborative process between the arbitral tribunal and the appointing authority in determining the financial requirements for the arbitration. Key points of Article 43(3):

1. **Involvement of Appointing Authority:** If the parties have agreed upon or designated an appointing authority, and a party requests the appointing authority's involvement, the arbitral tribunal shall consult with the appointing authority when fixing the amounts of deposits or supplementary deposits for covering the costs of arbitration.
2. **Consent of Appointing Authority:** The involvement of the appointing authority in the determination of deposits or supplementary deposits requires its consent. If the appointing authority agrees to perform this function, it will collaborate with the arbitral tribunal in this regard.
3. **Function of Appointing Authority:** The role of the appointing authority is to offer its comments and advice to the arbitral tribunal concerning the amount of deposits or supplementary deposits. This input ensures an additional layer of scrutiny and oversight, helping to promote fairness and reasonableness in determining the financial requirements for the arbitration.
4. **Matters of Financial Concern:** The consultation with the appointing authority is specifically related to matters concerning the financial aspects of the arbitration, such as the amounts to be deposited by the parties or any necessary supplementary deposits. This process does not involve the substance of the dispute but focuses solely on the financial arrangements.
5. **Collaborative Process:** The provision emphasises the collaborative nature of the consultation between the arbitral tribunal and the appointing authority. Both entities work together to ensure that the financial arrangements are appropriate, and the costs of arbitration are fairly distributed between the parties.
6. **Applicability of Request:** The right to request involvement of the appointing authority in the determination of deposits or supplementary deposits remains with the parties. If they choose not to invoke this provision, the arbitral tribunal will proceed with the determination of costs as per Article 43(1) and Article 43(2) without consulting the appointing authority.

In conclusion, Article 43(3) of the UNCITRAL Arbitration Rules establishes a mechanism for collaboration between the arbitral tribunal and the appointing authority in fixing the amounts of deposits or supplementary deposits for covering the costs of arbitration. This process ensures that financial considerations are handled with care and oversight, promoting fairness and transparency in the financial arrangements of the arbitration proceedings.

4. If the required deposits are not paid in full within 30 days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or more of them may make the required

payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

Article 43(4) of the UNCITRAL Arbitration Rules 2021 addresses the consequences of non-payment or partial payment of the required deposits for the costs of arbitration. This provision empowers the arbitral tribunal to take appropriate measures when parties fail to make the necessary deposits within the specified time frame. Key points of Article 43(4):

1. **Requirement for Deposits:** As per Article 43(1), the arbitral tribunal may request the parties to deposit an equal amount as an advance for the costs of arbitration. These deposits are intended to cover the expenses related to the arbitral proceedings, such as the fees of the arbitral tribunal, expenses of arbitrators, expert advice, and other necessary costs.
2. **Non-Payment or Partial Payment:** If a party fails to pay the required deposits in full within 30 days after receiving the request from the arbitral tribunal, the tribunal will inform the parties of the non-payment or partial payment.
3. **Opportunity to Remedy:** The notification by the arbitral tribunal serves as a warning to the parties and provides them with an opportunity to make the required payment. The tribunal aims to ensure that the financial obligations are met to facilitate the smooth progression of the arbitration.
4. **Failure to Remedy:** If, even after the notification, the party or parties do not make the required payment within a reasonable time, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.
5. **Consequences of Suspension or Termination:** Suspension or termination of the arbitral proceedings can have significant implications for the parties. It may lead to delays, additional costs, and hinder the resolution of the dispute. Therefore, parties are encouraged to comply with the payment requirements promptly to avoid such consequences.
6. **Flexibility of the Arbitral Tribunal:** The provision allows the arbitral tribunal to exercise discretion in determining the appropriate course of action based on the specific circumstances of the case. Depending on the gravity of non-payment or partial payment and other relevant factors, the tribunal may decide on a suitable response.

In conclusion, Article 43(4) of the UNCITRAL Arbitration Rules emphasises the importance of timely payment of required deposits for covering the costs of arbitration. Parties are encouraged to comply with these financial obligations to ensure the smooth progress of the proceedings. Failure to make the necessary payments may result in the suspension or termination of the arbitral proceedings, which can have adverse effects on the dispute resolution process. The provision allows the arbitral tribunal to exercise flexibility in taking appropriate measures based on the particular circumstances of each case.

5. After a termination order or final award has been made, the arbitral tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

Article 43(5) of the UNCITRAL Arbitration Rules 2021 deals with the handling of the deposits made by the parties to cover the costs of arbitration once the proceedings have been terminated or a final award has been issued. Key points of Article 43(5):

1. **Termination or Final Award:** The provision becomes relevant after the arbitral tribunal issues a termination order, which typically occurs when the arbitral proceedings are no longer required or possible. Alternatively, it applies when the tribunal renders a final award, which signifies the conclusion of the arbitration and the resolution of the dispute.
2. **Rendering an Accounting:** Following the termination order or final award, the arbitral tribunal is required to provide an accounting of the deposits received from the parties. The accounting includes an itemised record of the costs incurred during the arbitration, such as the fees of the arbitral tribunal, expenses of arbitrators, expert advice, and other costs directly related to the proceedings.
3. **Unexpended Balance:** If there is any unexpended balance in the deposits, i.e., funds that were not utilised to cover the costs of the arbitration, the arbitral tribunal shall return this balance to the parties. The return of the unexpended balance ensures that parties are not required to pay more than the actual costs incurred during the proceedings.
4. **Transparency and Accountability:** The provision promotes transparency and accountability in the handling of the financial aspects of the arbitration. By rendering an accounting, the arbitral tribunal provides a clear picture of the funds received and how they were utilised to conduct the proceedings.
5. **Protection of Parties' Interests:** Article 43(5) safeguards the interests of the parties by ensuring that any excess funds are returned to them. This protects parties from overpaying for the arbitration and ensures a fair allocation of costs.

In summary, Article 43(5) of the UNCITRAL Arbitration Rules ensures that once the arbitral proceedings are terminated or a final award is rendered, the arbitral tribunal provides an accounting of the deposits received and returns any unexpended balance to the parties. This provision enhances transparency and protects the parties' financial interests by ensuring they are only required to pay for the actual costs incurred during the arbitration.

UNCITRAL EXPEDITED ARBITRATION RULES

Scope of application

Article 1

Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the UNCITRAL Expedited Arbitration Rules (“Expedited Rules”), then such disputes shall be settled in accordance with the UNCITRAL Arbitration Rules as modified by these Expedited Rules and subject to such modification as the parties may agree.

1. Article 1 of the UNCITRAL Expedited Arbitration Rules outlines the scope and application of these rules when parties have agreed to resolve their disputes through arbitration using the UNCITRAL Expedited Arbitration Rules. Let us break down the key points of this article:
2. **Applicability of the Rules:** The article applies to disputes between parties in respect of a defined legal relationship, whether it is a contractual relationship or not. This means that the Expedited Rules can be used to resolve a wide range of disputes, not just limited to contractual matters.
3. **Choice of Expedited Arbitration:** The parties have explicitly agreed to refer their disputes to arbitration under the UNCITRAL Expedited Arbitration Rules. By choosing these rules, the parties opt for a faster and more efficient arbitration process compared to traditional arbitration.
4. **Use of Modified UNCITRAL Arbitration Rules:** According to the article, the disputes referred to under the Expedited Rules shall be settled in accordance with the UNCITRAL Arbitration Rules. However, these rules are modified by the Expedited Rules to suit the faster and simplified nature of expedited arbitration.
5. **Parties’ Flexibility to Modify the Rules:** The article also grants the parties the flexibility to further modify the UNCITRAL Arbitration Rules, subject to their agreement. This means that the parties can tailor the arbitration process to better suit their specific needs or requirements.

In summary, Article 1 establishes the framework for the application of the UNCITRAL Expedited Arbitration Rules. It emphasises that parties must have agreed to use these rules for resolving their disputes and that the regular UNCITRAL Arbitration Rules will be modified to accommodate the expedited arbitration process. Additionally, the parties have the freedom to make further modifications to the process based on their mutual agreement.

Article 2

1. At any time during the proceedings, the parties may agree that the Expedited Rules shall no longer apply to the arbitration.

Article 2(1) of the UNCITRAL Expedited Arbitration Rules addresses the parties' ability to opt-out of the expedited arbitration process at any point during the proceedings. Let us analyse the key points of this provision:

1. **Flexibility to Opt-Out:** The provision grants the parties significant flexibility by allowing them to agree that the Expedited Rules shall no longer apply to the arbitration. In other words, the parties can decide to transition from the expedited arbitration process to a regular arbitration process governed by different rules.
2. **No Time Restriction:** The provision does not specify any time limitations or restrictions regarding when the parties can exercise their right to opt-out. This means that the parties can make the decision to discontinue the expedited process at any stage of the arbitration proceedings, whether it is at the beginning, during the hearing, or even close to the conclusion.
3. **Reasons for Opting Out:** The provision does not require the parties to provide specific reasons for choosing to opt-out of the expedited process. The decision is entirely within the parties' discretion, and they may choose to do so for various reasons, such as a change in the complexity of the dispute or a need for more comprehensive procedures.
4. **Implications of Opting Out:** The provision does not outline the consequences or implications of the parties choosing to discontinue the application of the Expedited Rules. It does not specify whether the parties must revert to traditional arbitration rules or whether they can adopt different rules altogether.

In summary, Article 2(1) of the UNCITRAL Expedited Arbitration Rules grants the parties the freedom to opt-out of the expedited arbitration process at any stage of the proceedings. This provision gives the parties the flexibility to adapt their chosen arbitration process to the changing needs of the dispute or their preferences as the case progresses. However, it is important to note that this provision does not provide explicit details regarding the implications of such an opt-out or the rules that will govern the arbitration once the Expedited Rules are no longer applicable.

2. At the request of a party, the arbitral tribunal may, in exceptional circumstances and after inviting the parties to express their views, determine that the Expedited Rules shall no longer apply to the arbitration. The arbitral tribunal shall state the reasons upon which that determination is based.

Article 2(2) of the UNCITRAL Expedited Arbitration Rules addresses the circumstances under which the arbitral tribunal can decide to discontinue the application of the Expedited Rules during the arbitration process. Let us analyse the key points of this provision:

1. **Request for Discontinuation:** The provision states that a party can make a formal request to the arbitral tribunal to stop the application of the Expedited Rules. This request can be made based on exceptional circumstances that warrant the discontinuation of the expedited arbitration process.

2. **Exceptional Circumstances:** The provision requires that the arbitral tribunal’s decision to discontinue the application of the Expedited Rules must be based on “exceptional circumstances”. This indicates that the provision is meant to address situations that go beyond the ordinary course of proceedings, such as unforeseen complexities, changes in the scope of the dispute, or other significant developments that may impact the fairness or efficiency of the expedited process.
3. **Invitation for Views:** Before making a determination to discontinue the application of the Expedited Rules, the arbitral tribunal is required to invite the parties to express their views. This step ensures that both parties have an opportunity to provide input and make arguments regarding whether the circumstances are indeed exceptional enough to warrant a change in the arbitration process.
4. **Statement of Reasons:** The provision mandates that if the arbitral tribunal decides to discontinue the application of the Expedited Rules, it must provide a clear statement of the reasons that led to that decision. This requirement enhances transparency and accountability, ensuring that the parties understand the rationale behind the tribunal’s determination.

In summary, Article 2(2) of the UNCITRAL Expedited Arbitration Rules establishes a process by which the arbitral tribunal can, under exceptional circumstances, decide to discontinue the application of the Expedited Rules. This decision-making process involves inviting the parties’ views and providing a statement of reasons for the determination. This provision aims to strike a balance between the efficiency of expedited arbitration and the need to address unexpected complexities that may arise during the course of the proceedings.

3. When the Expedited Rules no longer apply to the arbitration pursuant to paragraph 1 or 2, the arbitral tribunal shall remain in place and conduct the arbitration in accordance with the UNCITRAL Arbitration Rules.

Article 2(3) of the UNCITRAL Expedited Arbitration Rules addresses the procedural steps that should be taken when the application of the Expedited Rules is discontinued during the arbitration process. Let us analyse the key points of this provision:

1. **Transition to UNCITRAL Arbitration Rules:** This provision specifies that if the application of the Expedited Rules is no longer in effect, whether due to the parties’ agreement (pursuant to Article 2(1)) or due to the arbitral tribunal’s determination based on exceptional circumstances (pursuant to Article 2(2)), the arbitral tribunal will transition to conducting the arbitration according to the UNCITRAL Arbitration Rules.
2. **Continuation of the Arbitral Tribunal:** The provision states that the same arbitral tribunal that was established to handle the expedited arbitration will remain in place even after the transition to the UNCITRAL Arbitration Rules. This is significant because it ensures continuity in the proceedings and the expertise of the arbitrators is retained.
3. **Conducting the Arbitration:** The arbitral tribunal, now operating under the UNCITRAL Arbitration Rules, will continue to oversee the arbitration process, including making decisions, conducting hearings, receiving evidence, and rendering an award.

In summary, Article 2(3) of the UNCITRAL Expedited Arbitration Rules outlines the procedure to follow when the application of the Expedited Rules is discontinued. It mandates that the same arbitral tribunal will continue its role, but the arbitration process will then be governed by the regular UNCITRAL Arbitration Rules rather than the expedited ones. This provision ensures a smooth transition while maintaining consistency in the proceedings and the expertise of the arbitral tribunal.

Conduct of the parties and the arbitral tribunal

Article 3

1. The parties shall act expeditiously throughout the proceedings.

Article 3(1) of the UNCITRAL Expedited Arbitration Rules emphasises the importance of expeditious conduct by the parties throughout the arbitration proceedings. Let us analyse the key points of this provision:

1. **Emphasis on Expediency:** The primary objective of Article 3(1) is to highlight the significance of expeditiousness in the arbitration process. It underscores the parties' responsibility to act promptly and efficiently at every stage of the proceedings.
2. **Proactive Behaviour:** The provision encourages the parties to take proactive steps to move the arbitration forward without unnecessary delays. This can involve promptly submitting required documents, responding to requests, and participating actively in procedural matters.
3. **Efficiency and Time Management:** By requiring the parties to act expeditiously, the provision aims to ensure the overall efficiency of the arbitration process. This is especially relevant in expedited arbitration, where the goal is to resolve disputes quickly.
4. **Balancing Fairness and Speed:** While the provision emphasises speed, it also implies that expeditiousness should be balanced with fairness. Parties are still entitled to due process and a fair opportunity to present their case, but unnecessary delays should be minimised.
5. **Compliance with Timelines:** The parties are expected to adhere to any deadlines or timelines set by the arbitral tribunal for various stages of the arbitration, such as document submission, witness statements, and hearings.

In summary, Article 3(1) of the UNCITRAL Expedited Arbitration Rules underscores the importance of acting expeditiously throughout the arbitration process. This provision aligns with the overarching goal of expedited arbitration, which is to achieve a swift resolution of disputes while ensuring that the parties' rights to due process and a fair hearing are upheld.

2. The arbitral tribunal shall conduct the proceedings expeditiously taking into account the fact that the parties agreed to refer their dispute to expedited arbitration and the time frames in the Expedited Rules.

Article 3(2) of the UNCITRAL Expedited Arbitration Rules addresses the role and responsibilities of the arbitral tribunal in ensuring an expedited arbitration process. Let us analyse the key points of this provision:

1. **Arbitral Tribunal's Obligation:** The provision places an obligation on the arbitral tribunal to conduct the arbitration proceedings expeditiously. This means that the tribunal is responsible for managing the process in a manner that promotes efficiency and timely resolution of the dispute.
2. **Balancing Factors:** The provision recognises that the arbitral tribunal needs to strike a balance between conducting the proceedings efficiently and respecting the parties' agreement to expedited arbitration. This implies that while speed is important, the tribunal should also ensure that the parties' rights to present their case and participate in a fair process are upheld.
3. **Consideration of Time Frames:** The arbitral tribunal is instructed to take into account the time frames specified in the Expedited Rules. These time frames are likely designed to guide the parties and the tribunal in managing the various stages of the arbitration process within the context of expedited arbitration.
4. **Proactive Case Management:** The arbitral tribunal's role goes beyond mere oversight. It involves actively managing the proceedings, setting deadlines, and making decisions that facilitate the efficient progression of the case.
5. **Facilitating Efficient Resolution:** The provision aligns with the overarching goal of expedited arbitration, which is to achieve a swift resolution of disputes. The tribunal's role in conducting the proceedings expeditiously is crucial to meeting this objective.

In summary, Article 3(2) of the UNCITRAL Expedited Arbitration Rules outlines the responsibility of the arbitral tribunal to conduct the proceedings in an expedited manner. The provision emphasises the importance of efficiency while considering the parties' agreement to expedited arbitration and the time frames specified in the Expedited Rules. This ensures that the arbitration process remains swift while maintaining fairness and due process for all parties involved.

3. The arbitral tribunal may, after inviting the parties to express their views and taking into account the circumstances of the case, utilize any technological means as it considers appropriate to conduct the proceedings, including to communicate with the parties and to hold consultations and hearings remotely.

Article 3(3) of the UNCITRAL Expedited Arbitration Rules addresses the use of technology in the arbitration process, particularly in the context of expedited arbitration. Let us analyse the key points of this provision:

1. **Technological Means Allowed:** The provision grants the arbitral tribunal the authority to use technological means for conducting various aspects of the proceedings. This includes

communication with the parties, holding consultations, and conducting hearings remotely.

2. **Inviting Parties' Views:** The provision emphasises the importance of including the parties in decisions related to the use of technology. Before implementing any technological measures, the arbitral tribunal is required to invite the parties to express their views. This ensures that the parties have the opportunity to provide input and potentially raise concerns.
3. **Flexibility and Adaptability:** The provision highlights the flexibility and adaptability of modern arbitration processes. It recognises that technology can play a significant role in maintaining the efficiency of proceedings, especially in expedited arbitration.
4. **Remote Hearings and Consultations:** The use of technology for remote hearings and consultations is explicitly mentioned. This acknowledges the potential benefits of conducting these activities without the need for physical presence, which can be particularly advantageous in expedited cases where time is of the essence.
5. **Balancing Efficiency and Fairness:** The provision underscores the importance of maintaining a balance between efficiency and fairness. While technology can enhance efficiency, the arbitral tribunal is expected to consider the circumstances of the case and ensure that the parties' rights to a fair process are upheld.

In summary, Article 3(3) of the UNCITRAL Expedited Arbitration Rules allows the arbitral tribunal to use technological means for conducting the proceedings. It highlights the need to involve the parties in decisions related to technology use and emphasises the flexibility and adaptability of modern arbitration practices. The provision reflects the ongoing evolution of arbitration processes to incorporate technology in a way that enhances efficiency while maintaining fairness.

Notice of arbitration and statement of claim

Article 4

1. A notice of arbitration shall also include:

(a) A proposal for the designation of an appointing authority, unless the parties have previously agreed thereon; and

(b) A proposal for the appointment of an arbitrator.

Article 4(1) of the UNCITRAL Expedited Arbitration Rules addresses the content requirements for a notice of arbitration in cases governed by these rules. Let us analyse the key points of this provision:

1. **Notice of Arbitration Content:** The provision specifies additional information that must be included in a notice of arbitration when proceedings are conducted under the UNCITRAL Expedited Arbitration Rules.
2. **Designation of Appointing Authority Proposal:** According to sub-point (a), the notice of arbitration should include a proposal for the designation of an appointing authority,

unless the parties have already agreed on an appointing authority beforehand. An appointing authority plays a role in the selection of arbitrators and helps ensure the arbitral tribunal's formation.

3. Appointment of Arbitrator Proposal: Sub-point (b) states that the notice of arbitration should also contain a proposal for the appointment of an arbitrator. This means that one of the parties, initiating the arbitration, is required to suggest a potential arbitrator to be included in the tribunal.
4. Importance of Proposals: The proposals for the appointing authority and the arbitrator are crucial elements in the formation of the arbitral tribunal. They enable the process to proceed efficiently by suggesting individuals or entities that can play a role in selecting the tribunal members.
5. Efficiency and Expedited Process: The inclusion of these proposals aligns with the overall goal of expedited arbitration – to achieve a swift resolution. By providing these proposals early in the process, potential delays in tribunal formation can be minimised.
6. Flexibility and Party Autonomy: While the provision suggests including proposals for the appointing authority and arbitrator, it does not restrict the parties' autonomy in the selection process. The parties are free to reach their own agreement on these matters if they wish.

In summary, Article 4(1) of the UNCITRAL Expedited Arbitration Rules outlines the contents required in a notice of arbitration in cases where these expedited rules apply. The notice should include proposals for the designation of an appointing authority and the appointment of an arbitrator. These proposals contribute to the efficient formation of the arbitral tribunal, which is essential for the timely resolution of disputes under the expedited arbitration process.

2. When communicating its notice of arbitration to the respondent, the claimant shall also communicate its statement of claim.

Article 4(2) of the UNCITRAL Expedited Arbitration Rules addresses the requirement for the claimant to communicate not only the notice of arbitration but also its statement of claim to the respondent. Let us analyse the key points of this provision:

1. Notice and Statement of Claim: The provision emphasises that when the claimant initiates the arbitration process by submitting a notice of arbitration, it must also provide the respondent with its statement of claim simultaneously. The statement of claim is a detailed document that outlines the claimant's case, including the facts, legal arguments, and relief sought.
2. Simultaneous Communication: The provision ensures that both the notice of arbitration and the statement of claim are communicated together to the respondent. This simultaneous communication serves to provide the respondent with a clear understanding of the nature and basis of the claim being brought against them.
3. Efficiency and Transparency: Requiring the claimant to communicate its statement of claim along with the notice of arbitration promotes efficiency and transparency in the

arbitration process. The respondent can promptly assess the claims being made and prepare its response accordingly.

4. Expedited Arbitration Context: This requirement is particularly relevant in the context of expedited arbitration. In expedited proceedings, the goal is to resolve disputes quickly, and ensuring that the respondent receives all necessary information at the outset facilitates a prompt response and the scheduling of subsequent procedural steps.
5. Balancing Fairness: While the provision emphasises the speed of the process, it is important to note that the requirement does not negate the respondent's right to due process. The provision does not mandate an immediate response but ensures that the respondent has access to the claimant's case from the beginning.

In summary, Article 4(2) of the UNCITRAL Expedited Arbitration Rules requires the claimant to provide both the notice of arbitration and its statement of claim to the respondent simultaneously. This requirement promotes efficiency, transparency, and balanced procedural fairness in the expedited arbitration process.

3. The claimant shall communicate the notice of arbitration and the statement of claim to the arbitral tribunal as soon as it is constituted.

Article 4(3) of the UNCITRAL Expedited Arbitration Rules addresses the timing for the claimant to communicate the notice of arbitration and the statement of claim to the arbitral tribunal. Let us analyse the key points of this provision:

1. Timing of Communication: The provision specifies that once the arbitral tribunal is constituted, the claimant is required to communicate both the notice of arbitration and the statement of claim to the tribunal. The tribunal's constitution occurs when all arbitrators are appointed and the arbitration process officially begins.
2. Prompt Communication: The use of "as soon as it is constituted" emphasises the need for prompt communication to the arbitral tribunal. This ensures that the tribunal receives the necessary information in a timely manner to facilitate the organisation of proceedings.
3. Tribunal's Awareness: By providing the tribunal with the notice of arbitration and the statement of claim, the tribunal becomes aware of the nature of the dispute, the claims being made, and the parties involved. This is vital for the tribunal's understanding of the case and its ability to manage the proceedings effectively.
4. Efficiency in Tribunal's Planning: Prompt communication to the tribunal helps the tribunal plan the proceedings efficiently, including scheduling hearings, deadlines, and any procedural steps necessary for the case.
5. Expedited Arbitration Context: In the context of expedited arbitration, where time is of the essence, the requirement for timely communication to the tribunal aligns with the goal of swift dispute resolution.

6. **Equal Access to Information:** Requiring the claimant to communicate the information to the arbitral tribunal ensures that the tribunal and the respondent have access to the same information simultaneously. This helps maintain procedural fairness and transparency.

In summary, Article 4(3) of the UNCITRAL Expedited Arbitration Rules mandates the claimant to communicate the notice of arbitration and the statement of claim to the arbitral tribunal promptly after its constitution. This requirement ensures that the tribunal is well-informed from the outset, allowing for efficient planning and organisation of the arbitration proceedings.

Response to the notice of arbitration and statement of defence

Article 5

1. Within 15 days of the receipt of the notice of arbitration, the respondent shall communicate to the claimant a response to the notice of arbitration, which shall also include responses to the information set forth in the notice of arbitration pursuant to article 4(1)(a) and (b) of the Expedited Rules.

Article 5(1) of the UNCITRAL Expedited Arbitration Rules outlines the timeline and requirements for the respondent to provide a response to the notice of arbitration. Let us analyse the key points of this provision:

1. **Response Requirement:** According to this provision, the respondent is obligated to provide a written response to the claimant within 15 days from the receipt of the notice of arbitration. This response serves as the respondent's formal reply to the claims raised by the claimant in the notice.
2. **Scope of Response:** The response is not only expected to address the claims made by the claimant but also to include responses to the information requested in the notice of arbitration under Article 4(1)(a) and (b). This means that the respondent is required to provide its views on the designation of an appointing authority and the appointment of an arbitrator.
3. **Efficiency and Timeliness:** The provision emphasises the importance of efficiency in the expedited arbitration process. The short 15-day timeline for the respondent to respond reflects the swift pace of expedited proceedings.
4. **Balanced Process:** While the timeline is expedited, the provision does not undermine the respondent's right to due process. The requirement to include responses to the appointing authority and arbitrator proposals ensures that both parties have a say in the selection of tribunal members.
5. **Maintaining Procedural Fairness:** The requirement for the respondent to respond within a specific timeframe and address the specific matters outlined in the notice of arbitration helps maintain procedural fairness and equal opportunity for both parties to present their cases.

6. **Clarity and Information Exchange:** The provision promotes a clear and organised exchange of information between the parties at an early stage of the arbitration. This helps streamline the process and supports the efficient resolution of the dispute.

In summary, Article 5(1) of the UNCITRAL Expedited Arbitration Rules mandates the respondent to provide a response to the notice of arbitration within 15 days of receiving it. The response must not only address the claims but also respond to the information requested in the notice, particularly regarding the appointing authority and arbitrator proposals. This provision emphasises the efficiency and fairness of the expedited arbitration process.

2. The respondent shall communicate its statement of defence to the claimant and the arbitral tribunal within 15 days of the constitution of the arbitral tribunal.

Article 5(2) of the UNCITRAL Expedited Arbitration Rules addresses the timeline for the respondent to provide its statement of defence in expedited arbitration proceedings. Let us analyse the key points of this provision:

1. **Statement of Defence Requirement:** The provision states that the respondent must provide its statement of defence within 15 days from the constitution of the arbitral tribunal. The statement of defence is the respondent's formal response to the statement of claim submitted by the claimant.
2. **Timing and Efficiency:** The 15-day timeline reflects the expedited nature of the arbitration process. It emphasises the need for swift responses to ensure that the arbitration proceedings progress efficiently.
3. **Constitution of Arbitral Tribunal:** The timeline is triggered by the constitution of the arbitral tribunal, which occurs when all arbitrators are appointed and the tribunal is officially formed.
4. **Balance Between Speed and Fairness:** The provision balances the need for efficiency with the parties' right to due process. The relatively short timeframe ensures that the proceedings remain swift while still allowing the respondent a reasonable period to prepare its defence.
5. **Equal Opportunity for Presentation:** By requiring the respondent to provide its statement of defence to both the claimant and the arbitral tribunal, the provision ensures that all parties are informed and have an opportunity to respond to the arguments and claims made.
6. **Procedural Clarity:** The provision establishes a clear timeline for the respondent's statement of defence, promoting procedural predictability and maintaining the overall organisation of the arbitration process.

In summary, Article 5(2) of the UNCITRAL Expedited Arbitration Rules mandates the respondent to provide its statement of defence within 15 days from the constitution of the arbitral tribunal. This provision reflects the need for expedited proceedings while still upholding procedural fairness and the parties' right to present their cases.

Designating and appointing authorities

Article 6

1. If all parties have not agreed on the choice of an appointing authority 15 days after a proposal for the designation of an appointing authority has been received by all other parties, any party may request the Secretary-General of the Permanent Court of Arbitration (hereinafter called the “PCA”) to designate the appointing authority or to serve as appointing authority.

Article 6(1) of the UNCITRAL Expedited Arbitration Rules deals with the process of appointing an appointing authority when the parties have not reached an agreement within a specific timeframe. Let us analyse the key points of this provision:

1. **Agreement on Appointing Authority:** The provision begins by setting the context that the parties should ideally agree on the choice of an appointing authority to assist in the selection of arbitrators.
2. **15-Day Deadline:** It specifies that if the parties have not reached an agreement on the appointing authority within 15 days after a proposal for the designation of an appointing authority has been received by all other parties, certain actions come into play.
3. **Request to the Secretary-General of PCA:** If the agreement is not reached within the stipulated timeframe, any party involved in the arbitration may request the Secretary-General of the Permanent Court of Arbitration (PCA) to either designate the appointing authority or to serve as the appointing authority.
4. **Role of the PCA:** The PCA is an intergovernmental organisation that facilitates arbitration proceedings and helps in the selection of arbitrators, mediators, and experts. In the context of this provision, the PCA serves as an external entity that can step in and assist with the appointing authority process.
5. **Ensuring Impartiality:** The involvement of the PCA can contribute to maintaining the impartiality and neutrality of the appointment process, especially in cases where the parties cannot agree on an appointing authority themselves.
6. **Expedited Process:** This provision aligns with the expedited nature of the arbitration proceedings. The strict 15-day timeframe encourages the parties to reach an agreement promptly and, if needed, brings in an external body to facilitate the process swiftly.

In summary, Article 6(1) of the UNCITRAL Expedited Arbitration Rules addresses the situation when parties cannot agree on the choice of an appointing authority. If such an agreement is not reached within 15 days, any party can request the Secretary-General of the PCA to designate the appointing authority or serve as it. This provision contributes to the efficiency and impartiality of the arbitration process by providing a mechanism to resolve deadlocks in the selection of an appointing authority.

2. When making the request under article 6(4) of the UNCITRAL Arbitration Rules, a party may request the Secretary-General of the PCA to serve as appointing authority.

Article 6(2) of the UNCITRAL Arbitration Rules 2021 deals with the appointment of an appointing authority under Article 6(4) of the Rules. Let us analyse this provision:

1. Article 6(2) of the UNCITRAL Expedited Arbitration Rules stipulates the circumstances under which a party can request the Secretary-General of the Permanent Court of Arbitration (PCA) to serve as the appointing authority. Let us break down the key points of this provision:
2. Context from Article 6(1): This provision likely refers to a previous article, potentially Article 6(1), which addresses the appointment of an appointing authority in cases where the parties have not agreed on one within a specified timeframe.
3. Role of the PCA: The provision states that when making a request under the relevant article (such as Article 6(1)), a party has the option to specifically request the Secretary-General of the PCA to serve as the appointing authority.
4. External Appointing Authority: By requesting the PCA to serve as the appointing authority, the party is essentially entrusting the PCA with the responsibility of selecting the arbitrator or arbitrators who will preside over the dispute.
5. Impartial and Neutral: The PCA's role as an external entity can contribute to ensuring impartiality and neutrality in the appointment process, especially in cases where the parties may have disagreements or concerns about appointing authorities.
6. Efficient Resolution: This provision aligns with the goal of expedited arbitration, as it provides a streamlined mechanism for designating an appointing authority when the parties cannot agree within the specified timeframe.

In summary, Article 6(2) of the UNCITRAL Expedited Arbitration Rules allows a party, when making a request under a relevant article, to specifically request the Secretary-General of the PCA to serve as the appointing authority. This provision offers parties an option to involve an external body in the appointment process and contributes to the efficiency and fairness of expedited arbitration proceedings.

3. If requested to serve as appointing authority in accordance with paragraph 1 or 2, the Secretary-General of the PCA will serve as appointing authority unless it determines that in view of the circumstances of the case, it is more appropriate to designate an appointing authority.

Article 6(3) of the UNCITRAL Expedited Arbitration Rules addresses the role of the Secretary-General of the Permanent Court of Arbitration (PCA) when requested to serve as an appointing authority. Let us analyse the key points of this provision:

1. Request for PCA's Role as Appointing Authority: This provision builds upon the context of earlier articles (potentially Article 6(1) and 6(2)) which discuss the potential involvement of the Secretary-General of the PCA in the appointment of an appointing authority.

2. Secretary-General as Appointing Authority: When requested in accordance with paragraphs 1 or 2, the Secretary-General of the PCA is to serve as the appointing authority. This means that the PCA's Secretary-General assumes the role of selecting arbitrators when the parties cannot agree on an appointing authority themselves.
3. Discretionary Power: However, the provision also grants the Secretary-General discretionary power. The Secretary-General may decide not to serve as appointing authority if, in view of the circumstances of the case, it is deemed more appropriate to designate another appointing authority.
4. Circumstances of the Case: The decision to serve as appointing authority or to designate someone else is to be based on the circumstances of the case. This acknowledges that each arbitration may have unique elements that impact the choice of appointing authority.
5. Efficiency and Neutrality: The provision emphasises the efficiency and impartiality of the arbitration process. The Secretary-General's discretion to decide the role based on circumstances allows for the most suitable and efficient appointment mechanism to be employed.
6. Expedited Process: This provision aligns with the expedited nature of arbitration proceedings. It ensures that the process of appointing an arbitrator remains swift and effective, while still taking into consideration the case's specific needs.

In summary, Article 6(3) of the UNCITRAL Expedited Arbitration Rules outlines the role of the Secretary-General of the PCA when requested to serve as appointing authority. While the default is for the Secretary-General to serve in this capacity, the provision allows for discretion based on the circumstances of the case. This discretionary power ensures that the most appropriate and efficient appointment mechanism is applied in expedited arbitration proceedings.

Number of arbitrators

Article 7

Unless otherwise agreed by the parties, there shall be one arbitrator.

Article 7 of the UNCITRAL Expedited Arbitration Rules establishes a default rule regarding the number of arbitrators in expedited arbitration proceedings. Let us analyse the key point of this provision:

1. Single Arbitrator Default Rule: Article 7 states that, unless the parties have agreed otherwise, there shall be only one arbitrator in expedited arbitration cases. This means that the default configuration for the arbitral tribunal in expedited arbitration is a sole arbitrator.
2. Efficiency and Streamlining: The provision reflects the aim of expedited arbitration to streamline the process and make it more efficient. Having a single arbitrator generally simplifies the decision-making process, reduces potential conflicts, and minimises the time taken for the tribunal to reach decisions.

3. **Flexibility for Party Agreement:** The provision allows for flexibility by recognising that the parties can agree on a different number of arbitrators if they so wish. This may be relevant in cases where the dispute is complex or involves significant legal or technical issues.
4. **Balance Between Speed and Fairness:** While the default of one arbitrator speeds up the process, it still maintains a balance between the parties' right to present their case and the expedited nature of proceedings.
5. **Expedited Nature of the Process:** This provision aligns with the overall objective of expedited arbitration, which is to achieve a swift resolution of disputes. A single arbitrator can contribute to meeting this objective by reducing the time required for tribunal deliberations and hearings.
6. **Cost Efficiency:** In many cases, having a single arbitrator can also contribute to cost efficiency as it reduces the fees associated with multiple arbitrators.

In summary, Article 7 of the UNCITRAL Expedited Arbitration Rules establishes that, by default, there shall be one arbitrator in expedited arbitration proceedings unless the parties have agreed otherwise. This default rule reflects the efficient and streamlined approach of expedited arbitration, while still allowing parties the flexibility to agree on a different number of arbitrators if necessary.

Appointment of a sole arbitrator

Article 8

1. A sole arbitrator shall be appointed jointly by the parties.

Article 8(1) of the UNCITRAL Expedited Arbitration Rules addresses the appointment process for a sole arbitrator in expedited arbitration proceedings. Let us analyse the key points of this provision:

1. **Joint Appointment of Sole Arbitrator:** The provision states that in cases where a sole arbitrator is to be appointed (as determined by Article 7, for instance), the parties are required to jointly appoint that sole arbitrator.
2. **Consensual Agreement:** The requirement for joint appointment implies that both parties must agree on the selection of the sole arbitrator. This ensures that the arbitrator's appointment is based on mutual consent.
3. **Promotion of Cooperation:** Requiring joint appointment encourages the parties to cooperate and collaborate even in the early stages of the arbitration process. It reflects the parties' involvement in shaping the proceedings.
4. **Efficiency and Expedited Process:** Joint appointment of a sole arbitrator is consistent with the expedited nature of the arbitration process. It avoids potential delays that might arise from disagreements over arbitrator selection.
5. **Party Autonomy:** While the provision mandates joint appointment, it also respects the parties' autonomy. If they cannot agree on a sole arbitrator, alternative mechanisms

might come into play (depending on the arbitration agreement or applicable rules), including recourse to an appointing authority.

6. **Balanced Decision-Making:** The provision acknowledges that arbitration is a consensual process, and joint appointment ensures that both parties have a role in choosing the individual who will make decisions affecting their dispute.

In summary, Article 8(1) of the UNCITRAL Expedited Arbitration Rules mandates that in cases where a sole arbitrator is to be appointed, the parties must jointly agree on the selection of that sole arbitrator. This provision fosters cooperation, efficiency, and fairness in the appointment process, while still respecting the parties' autonomy in choosing the arbitrator.

2. If the parties have not reached agreement on the appointment of a sole arbitrator 15 days after a proposal has been received by all other parties, a sole arbitrator shall, at the request of a party, be appointed by the appointing authority in accordance with article 8(2) of the UNCITRAL Arbitration Rules.

Article 8(2) of the UNCITRAL Expedited Arbitration Rules addresses the situation when the parties are unable to agree on the appointment of a sole arbitrator within a specific timeframe. Let us analyse the key points of this provision:

1. **Agreement on Sole Arbitrator Appointment:** This provision builds upon the context provided in Article 8(1) and discusses the scenario where the parties cannot come to an agreement on the appointment of a sole arbitrator.
2. **15-Day Deadline:** The provision sets a 15-day deadline for the parties to reach an agreement on the appointment of a sole arbitrator after a proposal has been received by all other parties. If the parties are unable to reach an agreement within this timeframe, certain actions come into play.
3. **Request for Appointing Authority:** If an agreement is not reached within the specified 15-day period, any party may request the appointing authority (as defined by the UNCITRAL Arbitration Rules) to appoint a sole arbitrator on their behalf.
4. **Consistency with UNCITRAL Arbitration Rules:** Article 8(2) explicitly references Article 8(2) of the UNCITRAL Arbitration Rules. This cross-reference clarifies that the process to be followed for appointing a sole arbitrator in this situation is consistent with the general UNCITRAL Arbitration Rules.
5. **Efficiency and Resolution:** The provision aligns with the expedited nature of arbitration proceedings by setting a relatively short timeframe for reaching an agreement. If an agreement is not reached, the involvement of the appointing authority ensures that the process moves forward swiftly.
6. **Balanced Process:** While the expedited process is prioritised, the provision still respects procedural fairness by allowing the parties a reasonable timeframe to agree on an arbitrator.

In summary, Article 8(2) of the UNCITRAL Expedited Arbitration Rules addresses the situation where the parties fail to agree on the appointment of a sole arbitrator within a specific timeframe. If this occurs, a party can request the appointing authority to appoint a sole arbitrator on their behalf, in line with the provisions of the UNCITRAL Arbitration Rules. This provision aims to ensure an efficient resolution of disputes while maintaining fairness and procedural integrity.

Consultation with the parties

Article 9

Promptly after and within 15 days of its constitution, the arbitral tribunal shall consult the parties, through a case management conference or otherwise, on the manner in which it will conduct the arbitration.

Article 9 of the UNCITRAL Expedited Arbitration Rules pertains to the initial steps the arbitral tribunal must take after its constitution in an expedited arbitration proceeding. Let us analyse the key points of this provision:

1. **Consultation with the Parties:** The provision establishes a requirement for the arbitral tribunal to promptly consult with the parties after its constitution. This consultation is intended to take place within 15 days of the tribunal's formation.
2. **Case Management Conference or Other Means:** The consultation with the parties can be conducted through a case management conference, which is a structured meeting to discuss procedural matters and establish a roadmap for the arbitration. Alternatively, the consultation could occur through other means, as long as the parties are informed and their views are considered.
3. **Determining Arbitration Procedure:** During this consultation, the arbitral tribunal will discuss with the parties the manner in which the arbitration will be conducted. This involves making decisions on procedural matters, such as the timeline for submissions, document disclosure, evidentiary procedures, and the potential need for hearings.
4. **Efficiency and Expedited Process:** The provision reflects the expedited nature of the arbitration proceedings. By consulting the parties shortly after its constitution, the tribunal aims to establish an efficient and tailored procedure that aligns with the expedited timeline.
5. **Parties' Participation:** The requirement for consultation underscores the importance of involving the parties in shaping the arbitration process. Their input is considered in determining how the proceedings will unfold.
6. **Balancing Efficiency and Fairness:** While the expedited process is a priority, the consultation also ensures that the parties' rights to present their case and participate in the process are upheld.
7. **Customised Approach:** The provision recognises that each dispute may have unique aspects that warrant a customised approach to the arbitration procedure.

In summary, Article 9 of the UNCITRAL Expedited Arbitration Rules mandates the arbitral tribunal to consult with the parties shortly after its constitution to determine the manner in which the arbitration will be conducted. This provision reflects the expedited nature of the process while ensuring that the parties' input is considered and that the arbitration procedure is tailored to the specific dispute.

Discretion of the arbitral tribunal with regard to periods of time

Article 10

Subject to article 16 of the Expedited Rules, the arbitral tribunal may at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under the UNCITRAL Arbitration Rules and the Expedited Rules or agreed by the parties.

Article 10 of the UNCITRAL Expedited Arbitration Rules addresses the arbitral tribunal's authority to adjust the prescribed time periods within the arbitration process. Let us analyse the key points of this provision:

1. **Extension or Abridgment of Time Periods:** The provision grants the arbitral tribunal the power to modify the time periods that are established under both the UNCITRAL Arbitration Rules and the specific Expedited Rules.
2. **Inviting Parties' Views:** Before making any adjustments, the arbitral tribunal is required to invite the parties to express their views on the proposed changes. This ensures that the parties have an opportunity to provide input on whether an extension or abridgment of a time period is appropriate.
3. **Flexibility in Time Management:** The provision recognises that in the course of the arbitration, circumstances may arise that necessitate changes to time periods. These could be due to factors such as the complexity of the case, availability of evidence, or unforeseen events.
4. **Article 16 Exception:** The provision mentions that the tribunal's authority to adjust time periods is subject to Article 16 of the Expedited Rules. Article 16 likely deals with the procedure for challenging arbitrators, which might have specific rules for time periods.
5. **Efficiency and Adaptability:** The provision aligns with the broader objectives of expedited arbitration, including efficiency and adaptability. The tribunal's ability to adjust time periods supports the swift resolution of disputes without being unduly constrained by rigid timelines.
6. **Party Participation:** By inviting the parties to express their views, the provision encourages transparency and fairness in the process. It ensures that any modifications to time periods are made with the parties' input and consent.
7. **Balancing Speed and Due Process:** While the expedited process is a priority, the provision ensures that any adjustments to time periods are balanced with the parties' right to present their case and access due process.

In summary, Article 10 of the UNCITRAL Expedited Arbitration Rules grants the arbitral tribunal the authority to extend or abridge time periods prescribed under both the UNCITRAL Arbitration Rules and the Expedited Rules. This authority is exercised after inviting the parties to express their views and is subject to specific exceptions. The provision aims to strike a balance between procedural efficiency and the parties' rights to participation and due process.

Hearings

Article 11

The arbitral tribunal may, after inviting the parties to express their views and in the absence of a request to hold hearings, decide that hearings shall not be held.

Article 11 of the UNCITRAL Expedited Arbitration Rules pertains to the arbitral tribunal's authority to decide whether hearings should be held in the arbitration process. Let us analyse the key points of this provision:

1. **Hearing Decision:** The provision grants the arbitral tribunal the power to decide whether hearings should be held in the arbitration proceedings.
2. **Inviting Parties' Views:** Before making a decision on whether to hold hearings, the arbitral tribunal is required to invite the parties to express their views on the matter. This ensures that the parties have the opportunity to provide input on whether hearings are necessary or not.
3. **Absence of Hearing Request:** The provision specifies that the tribunal's decision not to hold hearings can be made in the absence of a request from the parties to hold such hearings. This means that if neither party requests hearings, the tribunal has the authority to proceed without them.
4. **Expedited Nature:** The provision aligns with the expedited nature of the arbitration process. In expedited proceedings, minimising or eliminating hearings can contribute to swifter resolution of disputes.
5. **Efficiency Considerations:** The decision on whether to hold hearings is likely to be influenced by efficiency considerations, including the complexity of the case, the availability of evidence, and the willingness of the parties to proceed without oral hearings.
6. **Balancing Parties' Input and Efficiency:** While the decision rests with the arbitral tribunal, inviting the parties to express their views ensures that the decision is informed by their preferences and needs.
7. **Fairness and Due Process:** While the provision allows for the omission of hearings, it is important to note that parties' rights to present their case and access due process are upheld. If a party believes that hearings are necessary for their case, they can request them.

In summary, Article 11 of the UNCITRAL Expedited Arbitration Rules grants the arbitral tribunal the authority to decide whether hearings should be held in the arbitration process. This decision is made after inviting the parties to express their views and can be made in the absence of a request for hearings. The provision reflects the expedited nature of proceedings, the tribunal's discretion, and the balance between procedural efficiency and the parties' right to participate.

Counterclaims or claims for the purpose of set-off

Article 12

1. A counterclaim or a claim for the purpose of a set-off shall be made no later than in the statement of defence provided that the arbitral tribunal has jurisdiction over it.

Article 12(1) of the UNCITRAL Expedited Arbitration Rules addresses the timing and procedure for making a counterclaim or a claim for the purpose of a set-off in expedited arbitration proceedings. Let us analyse the key points of this provision:

1. **Counterclaim and Set-Off Timing:** The provision sets a clear rule that a counterclaim or a claim for the purpose of a set-off must be made no later than in the statement of defence. This means that if a party wishes to assert a counterclaim against the opposing party or to raise a claim for the purpose of set-off, they must do so in their written response to the original claim (the statement of defence).
2. **Jurisdiction Requirement:** The provision also includes a condition that the arbitral tribunal must have jurisdiction over the counterclaim or the claim for set-off. This emphasises that any claim asserted must fall within the scope of the arbitration agreement or be within the tribunal's jurisdiction under applicable rules.
3. **Efficiency and Organisation:** Requiring the assertion of counterclaims or claims for set-off in the statement of defence contributes to the organisation and efficiency of the proceedings. It ensures that both parties are aware of the claims and counterclaims at an early stage of the arbitration.
4. **Procedural Fairness:** This provision ensures that both parties have a fair opportunity to present their claims and counterclaims, and that the proceedings are organised in a structured manner.
5. **Expedited Context:** The provision aligns with the expedited nature of arbitration proceedings by setting clear rules for when claims and counterclaims can be introduced. This avoids potential delays in the arbitration process.
6. **Balancing Party Rights:** While promoting efficiency, the provision still respects the parties' rights to present their cases. It provides a specific timeframe for introducing counterclaims and set-off claims but does not unduly restrict the parties' ability to assert valid claims.

In summary, Article 12(1) of the UNCITRAL Expedited Arbitration Rules specifies that counterclaims or claims for the purpose of a set-off must be made no later than in the statement of defence, provided

that the arbitral tribunal has jurisdiction over them. This provision supports procedural efficiency, ensures procedural fairness, and aligns with the expedited nature of arbitration proceedings.

2. The respondent may not make a counterclaim or rely on a claim for the purpose of a set-off at a later stage in the arbitral proceedings, unless the arbitral tribunal considers it appropriate to allow such claim having regard to the delay in making it or prejudice to other parties or any other circumstances.

Article 12(2) of the UNCITRAL Expedited Arbitration Rules addresses the circumstances under which a respondent can assert a counterclaim or rely on a claim for the purpose of a set-off at a later stage of the arbitral proceedings. Let us analyse the key points of this provision:

1. **Limitation on Late Counterclaims or Set-Off Claims:** The provision establishes a general rule that a respondent is not allowed to introduce a counterclaim or rely on a claim for set-off at a stage beyond the statement of defence. This means that counterclaims or set-off claims must typically be raised within the timeframe established by the statement of defence.
2. **Exceptional Circumstances:** However, the provision acknowledges that there can be exceptional circumstances. It allows the arbitral tribunal to consider allowing a late counterclaim or set-off claim if certain conditions are met.
3. **Arbitral Tribunal's Discretion:** The decision to allow a late counterclaim or set-off claim is left to the discretion of the arbitral tribunal. The tribunal will consider factors such as the delay in making the claim, any prejudice caused to other parties, and any other relevant circumstances.
4. **Delay and Prejudice Factors:** The provision explicitly highlights two key factors that the arbitral tribunal should consider: the delay in making the claim and the potential prejudice caused to other parties. This indicates that the tribunal's decision should be guided by considerations of fairness and due process.
5. **Case-by-Case Assessment:** The provision promotes a case-by-case assessment, allowing the arbitral tribunal to evaluate the unique circumstances of each case when determining whether a late counterclaim or set-off claim should be permitted.
6. **Balancing Efficiency and Fairness:** While the provision acknowledges the expedited nature of the arbitration process, it also recognises the importance of procedural fairness. Allowing late claims should strike a balance between the need for efficiency and the parties' right to present their cases.

In summary, Article 12(2) of the UNCITRAL Expedited Arbitration Rules outlines the conditions under which a respondent can introduce a counterclaim or rely on a claim for the purpose of a set-off at a stage beyond the statement of defence. While the general rule is that such claims must be made within the statement of defence, the provision allows for exceptional circumstances, giving the arbitral tribunal discretion to permit late claims if delay or prejudice factors warrant such allowance. This provision emphasises a balance between procedural efficiency and fairness in the arbitration process.

Amendments and supplements to a claim or defence

Article 13

During the course of the arbitral proceedings, a party may not amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it appropriate to allow such amendment or supplement having regard to when it is requested or prejudice to other parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.

Article 13 of the UNCITRAL Expedited Arbitration Rules pertains to the ability of parties to amend or supplement their claims, defences, counterclaims, or claims for the purpose of set-off during the course of arbitral proceedings. Let us analyse the key points of this provision:

1. **Amendment and Supplement Limitations:** The provision sets a general rule that during the arbitral proceedings, parties are not permitted to amend or supplement their claims, defences, counterclaims, or claims for set-off.
2. **Tribunal's Discretion for Amendment:** However, the arbitral tribunal has the authority to allow such amendments or supplements if it deems it appropriate. The decision rests with the tribunal and takes into consideration various factors.
3. **Factors for Consideration:** The provision outlines factors the tribunal should consider when deciding whether to permit an amendment or supplement. These factors include the timing of the request, potential prejudice to other parties, and any other relevant circumstances.
4. **Jurisdictional Limitation:** The provision explicitly states that a claim or defence, including counterclaims or claims for set-off, cannot be amended or supplemented in a way that takes the claim or defence outside the jurisdiction of the arbitral tribunal. This ensures that the tribunal's authority and jurisdiction remain intact.
5. **Balancing Fairness and Efficiency:** While the provision promotes procedural efficiency by limiting amendments and supplements, it also considers the parties' right to present their case fully and fairly. The tribunal's discretion allows for a balanced approach.
6. **Preserving Due Process:** The provision protects the due process rights of all parties by ensuring that amendments or supplements do not cause undue prejudice or unfair advantage.
7. **Consistency with Expedited Process:** The provision aligns with the expedited nature of arbitration proceedings. Allowing amendments or supplements only under specific circumstances contributes to maintaining an efficient timeline.

In summary, Article 13 of the UNCITRAL Expedited Arbitration Rules outlines the conditions under which parties can amend or supplement their claims, defences, counterclaims, or claims for set-off during the course of arbitral proceedings. While amendments or supplements are generally restricted, the arbitral tribunal has discretion to allow them based on considerations of timing, prejudice, and

other relevant circumstances. This provision emphasises a balance between efficiency and fairness in the arbitration process while also ensuring that the tribunal's jurisdiction remains intact.

Further written statements

Article 14

The arbitral tribunal may, after inviting the parties to express their views, decide whether any further written statement shall be required from the parties or may be presented by them.

Article 14 of the UNCITRAL Expedited Arbitration Rules addresses the arbitral tribunal's authority to determine whether further written statements from the parties are necessary in the course of the arbitration proceedings. Let us analyse the key points of this provision:

1. **Tribunal's Authority to Require Further Statements:** The provision grants the arbitral tribunal the power to decide whether additional written statements from the parties are necessary or permissible during the arbitration proceedings.
2. **Inviting Parties' Views:** Before making a decision, the arbitral tribunal is required to invite the parties to express their views on whether further written statements are needed. This ensures that the parties have an opportunity to provide input on whether additional submissions are appropriate.
3. **Flexibility in Written Submissions:** The provision recognises that, based on the nature and progress of the arbitration, the arbitral tribunal might determine that further written statements would aid in clarifying or advancing the case.
4. **Efficiency and Control:** Allowing the tribunal to decide on the necessity of further written statements aligns with the expedited nature of arbitration proceedings. It ensures that the tribunal retains control over the proceedings and can prevent unnecessary delays.
5. **Procedural Fairness:** While ensuring efficiency, the provision also respects the parties' right to present their case. By inviting the parties' views, it encourages procedural fairness and transparency in decision-making.
6. **Balancing Parties' Participation:** The provision takes into account the parties' participation and input, as well as the tribunal's discretion in managing the proceedings effectively.

In summary, Article 14 of the UNCITRAL Expedited Arbitration Rules grants the arbitral tribunal the authority to determine whether further written statements from the parties are necessary in the arbitration process. This decision is made after inviting the parties to express their views, ensuring transparency and fairness. The provision aligns with the expedited nature of proceedings, efficiency, and procedural fairness in managing the arbitration process.

Evidence

Article 15

1. The arbitral tribunal may decide which documents, exhibits or other evidence the parties should produce. The arbitral tribunal may reject any request, unless made by all parties, to establish a procedure whereby each party can request another party to produce documents.

Article 15(1) of the UNCITRAL Expedited Arbitration Rules deals with the arbitral tribunal's authority to manage the production of documents, exhibits, and other evidence in the arbitration proceedings. Let us analyse the key points of this provision:

1. **Tribunal's Control Over Evidence:** The provision grants the arbitral tribunal the power to decide which documents, exhibits, or other evidence the parties are required to produce during the course of the arbitration proceedings.
2. **Document Production Authority:** The tribunal's authority covers not only documents but also exhibits or any other form of evidence that may be relevant to the case.
3. **Efficient Management:** The provision aligns with the expedited nature of the arbitration process. By allowing the tribunal to determine the scope and relevance of evidence, it contributes to the efficient and focused management of the proceedings.
4. **Balancing Party Control and Tribunal Oversight:** The tribunal's discretion respects the parties' input while also ensuring that the proceedings are conducted efficiently. This balance is crucial for achieving a fair and expeditious resolution.
5. **Rejection of Document Production Procedure:** The provision states that the tribunal may reject any request to establish a procedure where each party can request another party to produce documents. This means that the tribunal has the authority to decline a process where parties can directly request evidence from one another.
6. **Exceptions to Rejection:** The provision notes that a request to establish such a procedure can only be accepted if it is made by all parties. This implies that parties must unanimously agree to the procedure for direct document requests.
7. **Enhanced Efficiency:** By allowing the tribunal to decide on document production, the provision aims to avoid unnecessary procedural steps, potential delays, and disputes over the production of evidence.

In summary, Article 15(1) of the UNCITRAL Expedited Arbitration Rules empowers the arbitral tribunal to decide which documents, exhibits, or other evidence should be produced by the parties. It reflects the expedited nature of the proceedings, promoting efficient case management while balancing party control and tribunal oversight. Additionally, the provision establishes the tribunal's authority to reject a direct document production procedure unless all parties unanimously agree to it. This provision helps maintain procedural efficiency and fairness in the arbitration process.

2. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, shall be presented in writing and signed by them.

Article 15(2) of the UNCITRAL Expedited Arbitration Rules pertains to the manner in which statements by witnesses, including expert witnesses, are presented in the arbitration proceedings. Let us analyse the key points of this provision:

1. **Written Statements by Witnesses:** The provision establishes a default rule that statements by witnesses, whether they are regular witnesses or expert witnesses, should be presented in writing. This means that witness testimony is expected to be provided in a written format rather than through oral testimony.
2. **Signed Statements:** The written statements by witnesses must be signed by the witnesses themselves. This requirement adds an element of authenticity to the statements.
3. **Default Approach:** The provision reflects a default approach of presenting witness evidence in writing. This is consistent with the expedited nature of the arbitration process, as it avoids the need for lengthy and potentially time-consuming oral testimony.
4. **Efficiency and Streamlining:** The written statement requirement contributes to the efficiency and streamlined management of the proceedings. It eliminates the need for witnesses to appear in person or remotely for oral testimony, saving time and resources.
5. **Preserving Witness Evidence:** Written statements, being documented and signed, ensure that the witness evidence is accurately captured and preserved for reference and cross-examination.
6. **Expert Witness Statements:** The provision includes expert witnesses within the scope of its requirements. Expert witness statements, like regular witness statements, are expected to be presented in writing and signed.
7. **Tribunal's Discretion:** The provision acknowledges that the arbitral tribunal can direct otherwise if it deems it necessary. This means that, in exceptional circumstances, the tribunal may permit or require oral testimony by witnesses.

In summary, Article 15(2) of the UNCITRAL Expedited Arbitration Rules establishes that, by default, statements by witnesses, including expert witnesses, should be presented in writing and signed by the witnesses. This approach aligns with the expedited nature of the proceedings, promotes efficiency, and preserves witness evidence in a documented format. However, the tribunal retains the authority to direct otherwise if needed in specific circumstances.

3. The arbitral tribunal may decide which witnesses, including expert witnesses, shall testify to the arbitral tribunal if hearings are held.

Article 15(3) of the UNCITRAL Expedited Arbitration Rules addresses the arbitral tribunal's authority to determine which witnesses, including expert witnesses, will provide testimony to the tribunal if hearings are conducted in the arbitration proceedings. Let us analyse the key points of this provision:

1. **Witness Selection Authority:** The provision grants the arbitral tribunal the power to decide which witnesses, including expert witnesses, will provide testimony before the tribunal during hearings, if such hearings are held.
2. **Hearing Testimony Determination:** If oral hearings are scheduled as part of the proceedings, the tribunal has the authority to determine which witnesses' testimonies are relevant and necessary for those hearings.
3. **Efficiency and Relevance:** This authority aligns with the expedited nature of the arbitration process. The tribunal can select witnesses whose testimonies are most relevant to the issues in dispute, thereby contributing to the efficiency of the hearings.
4. **Tribunal's Discretion:** The provision underscores the discretion of the tribunal in managing the arbitration proceedings. The tribunal can assess the importance of different witnesses and prioritise their testimonies based on the case's specifics.
5. **Focused Hearings:** By allowing the tribunal to decide which witnesses will testify during hearings, the provision supports the conduct of focused and efficient hearings, which is crucial in expedited arbitration.
6. **Expert Witnesses Included:** The provision explicitly includes expert witnesses within its scope. The tribunal's authority extends to determining which expert witnesses, if any, will provide oral testimony during hearings.
7. **Balancing Testimonies and Efficiency:** The provision ensures that the tribunal maintains control over the hearing process while also ensuring that the hearings are conducted in a manner that respects the expedited timeline.

In summary, Article 15(3) of the UNCITRAL Expedited Arbitration Rules empowers the arbitral tribunal to decide which witnesses, including expert witnesses, will testify before the tribunal during hearings if hearings are held as part of the arbitration process. This provision reflects the tribunal's discretion to manage the arbitration proceedings efficiently, ensuring that the testimonies presented are relevant to the issues in dispute. It supports the expedited nature of the proceedings while preserving the fairness and due process rights of the parties.

Period of time for making the award

Article 16

1. The award shall be made within six months from the date of the constitution of the arbitral tribunal unless otherwise agreed by the parties.

Article 16(1) of the UNCITRAL Expedited Arbitration Rules specifies the timeframe within which the arbitral tribunal is required to render its award in expedited arbitration proceedings. Let us analyse the key points of this provision:

1. **Timeframe for Award:** The provision mandates that the arbitral tribunal must render its award within six months from the date of the tribunal's constitution. In other words, the tribunal has a maximum of six months to finalise and issue its decision in the case.

2. **Mandatory Nature:** The six-month timeframe is not a flexible or discretionary guideline; it is a mandatory requirement that the tribunal is obligated to adhere to.
3. **Expedited Nature of Proceedings:** This provision is consistent with the expedited nature of arbitration proceedings under the UNCITRAL Expedited Arbitration Rules. It ensures that the arbitration process is conducted swiftly and efficiently.
4. **Exceptions via Party Agreement:** The provision acknowledges that parties can agree to extend this six-month deadline if they deem it necessary or practical for their specific case. This allows parties to adapt the process to their circumstances.
5. **Efficiency and Timeliness:** The provision is designed to promote the efficient resolution of disputes. Parties seeking expedited arbitration often prioritise quick outcomes, and this provision helps achieve that goal.
6. **Balancing Speed and Quality:** While emphasising speed, the provision does not compromise the quality of the arbitral award. It is presumed that the tribunal will still conduct a thorough analysis of the case to ensure a fair and reasoned decision.
7. **Preservation of Party Rights:** Despite the expedited timeline, parties' rights to present their case and access due process should still be upheld.

In summary, Article 16(1) of the UNCITRAL Expedited Arbitration Rules establishes a six-month timeframe within which the arbitral tribunal must render its award in expedited arbitration proceedings. This provision ensures a balance between efficiency and the quality of the award, aligning with the expedited nature of the arbitration process. Parties have the flexibility to agree to extend this deadline if necessary, while still adhering to the general principle of timely dispute resolution.

2. The arbitral tribunal may, in exceptional circumstances and after inviting the parties to express their views, extend the period of time established in accordance with paragraph 1. The extended period of time shall not exceed a total of nine months from the date of the constitution of the arbitral tribunal.

Article 16(2) of the UNCITRAL Expedited Arbitration Rules addresses the circumstances under which the arbitral tribunal can extend the timeframe for rendering an award in expedited arbitration proceedings. Let us analyse the key points of this provision:

1. **Extension in Exceptional Circumstances:** The provision grants the arbitral tribunal the authority to extend the period for rendering an award in cases where exceptional circumstances exist. These circumstances might hinder the tribunal's ability to meet the initial six-month deadline.
2. **Inviting Parties' Views:** Before making a decision to extend the timeframe, the arbitral tribunal is required to invite the parties to express their views. This ensures transparency and fairness in the decision-making process.
3. **Maximum Extension Period:** The provision sets a limit on the extension period. The total extended period, including the initial six months, cannot exceed nine months from the date of the tribunal's constitution.

4. **Balancing Efficiency and Circumstances:** While emphasising efficiency, the provision recognises that some cases may involve complexities or unexpected developments that require more time for a fair and well-reasoned award.
5. **Case-by-Case Consideration:** The provision promotes a case-by-case assessment of whether an extension is warranted. This allows the tribunal to tailor its decision to the unique circumstances of each case.
6. **Efficiency and Due Process:** Although providing an option for an extension, the provision still maintains a focus on achieving timely outcomes while ensuring parties' due process rights are upheld.
7. **Transparency and Fairness:** Inviting the parties to express their views before deciding on an extension contributes to a transparent and fair process. It also respects the parties' participation in key decisions.

In summary, Article 16(2) of the UNCITRAL Expedited Arbitration Rules allows the arbitral tribunal to extend the timeframe for rendering an award beyond the initial six months in exceptional circumstances. This extension is subject to the total period not exceeding nine months from the date of the tribunal's constitution. This provision strikes a balance between procedural efficiency and the tribunal's ability to address complexities that might arise in certain cases, ensuring fairness and due process for the parties.

3. If the arbitral tribunal concludes that it is at risk of not rendering an award within nine months from the date of the constitution of the arbitral tribunal, it shall propose a final extended time limit, state the reasons for the proposal, and invite the parties to express their views within a fixed period of time. The extension shall be adopted only if all parties express their agreement to the proposal within the fixed period of time.

Article 16(3) of the UNCITRAL Expedited Arbitration Rules addresses a specific scenario where the arbitral tribunal might be at risk of exceeding the maximum timeframe for rendering an award. Let us analyse the key points of this provision:

1. **Proposing a Final Extended Time Limit:** If the arbitral tribunal determines that it might not be able to render an award within the nine-month timeframe from the tribunal's constitution, it has the authority to propose a final extended time limit. This proposed extension is intended to allow the tribunal adequate time to finalise the award.
2. **Reasons and Parties' Views:** The tribunal is required to provide reasons for the proposed extension. This promotes transparency and allows the parties to understand the basis for the proposed extension. The parties are then invited to express their views on the proposed extension.
3. **Fixed Period for Parties' Views:** The tribunal sets a fixed period of time within which the parties can express their agreement or disagreement with the proposed extension. This ensures that the process is timely and well-organised.
4. **Unanimous Agreement Required:** The provision mandates that the proposed extension can only be adopted if all parties express their agreement to the proposal within the fixed

period of time. This requirement reflects the significance of parties' consent to such an extension.

5. **Balancing Efficiency and Parties' Consent:** The provision balances the need for procedural efficiency with the parties' right to participate in key decisions. It prevents the tribunal from imposing an extension without unanimous agreement.
6. **Finality of the Extension:** If all parties agree to the proposed extension within the fixed period of time, the extended time limit becomes final, allowing the tribunal the necessary time to render the award.
7. **Preserving Due Process:** Even in situations where an extension is proposed, the provision ensures that due process rights are upheld, as parties have the opportunity to provide their input on the proposal.

In summary, Article 16(3) of the UNCITRAL Expedited Arbitration Rules outlines a process for the arbitral tribunal to propose a final extended time limit if it anticipates exceeding the nine-month timeframe for rendering an award. The provision ensures transparency, parties' input, and unanimous agreement before any extension is adopted. This approach maintains a balance between procedural efficiency and parties' participation in key decisions.

4. If there is no agreement to the extension in paragraph 3, any party may make a request that the Expedited Rules no longer apply to the arbitration. After inviting the parties to express their views, the arbitral tribunal may determine to continue to conduct the arbitration in accordance with the UNCITRAL Arbitration Rules

Article 16(4) of the UNCITRAL Expedited Arbitration Rules addresses the situation where there is no unanimous agreement among the parties to the proposed extension of the time limit for rendering an award. Let us analyse the key points of this provision:

1. **Request to Terminate Expedited Rules:** If the parties do not agree to the extension proposed in Article 16(3), any party has the option to make a request to the arbitral tribunal that the Expedited Rules no longer apply to the arbitration. This implies a shift from expedited arbitration to a more standard arbitration process.
2. **Inviting Parties' Views:** The tribunal is required to invite the parties to express their views on the request to terminate the application of the Expedited Rules. This ensures transparency and allows the parties to provide input on this critical decision.
3. **Tribunal's Decision to Continue with UNCITRAL Arbitration Rules:** After considering the parties' views, the arbitral tribunal may determine whether to continue the arbitration proceedings in accordance with the UNCITRAL Arbitration Rules. This essentially means that the proceedings will follow a more comprehensive arbitration process as outlined in the UNCITRAL Arbitration Rules.
4. **Transition from Expedited to Standard Arbitration:** If the tribunal decides to continue with the UNCITRAL Arbitration Rules, the proceedings will transition from an expedited process to a more traditional arbitration process, which might involve longer timeframes and potentially more extensive procedures.

5. **Balancing Efficiency and Parties' Choices:** This provision reflects the importance of parties' consent and choices in shaping the arbitration process. It ensures that parties have the ability to shift away from the expedited process if they believe it is necessary due to the circumstances of the case.
6. **Due Process Consideration:** The provision safeguards due process by allowing the parties to participate in the decision-making process regarding the continuation of the arbitration under different rules.

In summary, Article 16(4) of the UNCITRAL Expedited Arbitration Rules provides a mechanism for handling situations where there is no unanimous agreement on an extension of the time limit for rendering an award. In such cases, a party can request that the Expedited Rules no longer apply, potentially leading to a transition from expedited arbitration to a standard arbitration process under the UNCITRAL Arbitration Rules. The provision emphasises party choice, transparency, and the tribunal's discretion in deciding the appropriate course of action based on the circumstances.

UNCITRAL RULES ON TRANSPARENCY IN TREATY-BASED INVESTOR-STATE ARBITRATION

Article 1. Scope of application

Applicability of the Rules

1. The UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (“Rules on Transparency”) shall apply to investor-State arbitration initiated under the UNCITRAL Arbitration Rules pursuant to a treaty providing for the protection of investments or investors (“treaty”)* concluded on or after 1 April 2014 unless the Parties to the treaty have agreed otherwise.**

Article 1(1) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration outlines the scope of application of these rules. Let us break down the key points and analyse their significance:

1. **Applicability of the Rules:** This section establishes that the article pertains to the application of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (referred to as “Rules on Transparency”).
2. **Investor-State Arbitration Under UNCITRAL Arbitration Rules:** The article specifies that the rules apply to investor-State arbitration initiated under the UNCITRAL Arbitration Rules. This indicates that the rules are designed to govern a specific type of arbitration, namely those involving disputes between investors and states. UNCITRAL is a body that aims to harmonise and modernise international trade law.
3. **Treaty Protection of Investments or Investors:** The rules are applicable when the arbitration is initiated pursuant to a treaty that provides for the protection of investments or investors. This implies that the rules are primarily concerned with disputes arising from treaties that have been established to safeguard foreign investments or the rights of investors.
4. **Cut-off Date for Treaty Conclusions:** The rules apply to treaties concluded on or after 1 April 2014. This means that the rules are intended to apply to relatively recent treaties that have been signed from this date onward. Treaties concluded before this date are not automatically subject to these rules.
5. **Possibility of Agreement to Depart from the Rules:** The application of the rules is subject to the discretion of the parties involved in the treaty. The article states that the rules shall apply unless the Parties to the treaty have agreed otherwise. In other words, the parties have the option to opt out of the application of these rules if they mutually agree to do so.

In summary, Article 1(1) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration defines the scope of application of these rules. They apply to investor-State arbitration cases initiated under the UNCITRAL Arbitration Rules that arise from treaties protecting investments or investors, concluded on or after 1 April 2014. However, parties to the treaty have the flexibility to decide whether these rules will be applicable to their specific case by mutual agreement. This article establishes a framework for transparency and arbitration procedures in cases involving disputes between investors and states arising from specific types of treaties.

2. In investor-State arbitrations initiated under the UNCITRAL Arbitration Rules pursuant to a treaty concluded before 1 April 2014, these Rules shall apply only when:

(a) The parties to an arbitration (the “disputing parties”) agree to their application in respect of that arbitration; or

(b) The Parties to the treaty or, in the case of a multilateral treaty, the State of the claimant and the respondent State, have agreed after 1 April 2014 to their application.

Article 1(2) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration outlines the conditions under which these rules apply to investor-State arbitrations initiated under the UNCITRAL Arbitration Rules, but in cases where the underlying treaty was concluded before 1 April 2014. Let us analyse the key points of this article:

1. **Application to Pre-2014 Treaties:** This section addresses the applicability of the UNCITRAL Rules on Transparency to investor-State arbitrations that arise from treaties concluded prior to 1 April 2014. Unlike in cases of treaties concluded on or after that date, the application of these rules to older treaties requires meeting specific conditions.
2. **Conditions for Application:**
 - a. **Disputing Parties’ Agreement:** The first condition for the application of these rules to pre-2014 treaties is when the parties directly involved in the arbitration (referred to as the “disputing parties”) agree to their application for that specific arbitration. This means that if both the investor and the state agree to use these transparency rules for their dispute resolution process, then the rules will apply.
 - b. **Agreement by Treaty Parties:** The second condition involves the treaty parties. If the Parties to the treaty, or in the case of a multilateral treaty, the State of the claimant (investor) and the respondent State (the state being sued), agree after 1 April 2014 to apply these rules to disputes arising from a treaty concluded before that date, then the rules will come into effect. This means that the states involved can decide at a later point, through mutual agreement, to bring the transparency rules into play for arbitrations related to older treaties.

In essence, Article 1(2) outlines how the UNCITRAL Rules on Transparency can be applied to investor-State arbitrations stemming from treaties concluded before 1 April 2014. The rules can be brought into effect if the disputing parties agree to their application, or if the treaty parties, including both the claimant State (investor’s home country) and the respondent State (host country), agree to apply these rules after the specified date. This article provides a framework for implementing transparency measures in cases involving older treaties, making it possible to adopt these rules retroactively based on the consent of the involved parties.

Application of the Rules

3. In any arbitration in which the Rules on Transparency apply pursuant to a treaty or to an agreement by the Parties to that treaty:

(a) The disputing parties may not derogate from these Rules, by agreement or otherwise, unless permitted to do so by the treaty;

(b) The arbitral tribunal shall have the power, besides its discretionary authority under certain provisions of these Rules, to adapt the requirements of any specific provision of these Rules to the particular circumstances of the case, after consultation with the disputing parties, if such adaptation is necessary to conduct the arbitration in a practical manner and is consistent with the transparency objective of these Rules.

Article 1(3) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration pertains to the application of the rules in arbitrations where transparency measures are to be enforced based on a treaty or an agreement by the parties. Let us analyse the key points of this article:

1. **Scope of Application:** This section establishes that Article 1(3) applies to arbitrations in which the UNCITRAL Rules on Transparency are to be implemented either through a treaty provision or by agreement between the parties.
2. **Limitations on Derogation: No Derogation from Rules:** The article specifies that the disputing parties involved in the arbitration cannot deviate from the provisions of the Rules on Transparency, whether through mutual agreement or by other means, unless the underlying treaty explicitly permits such deviation. This means that parties cannot opt out of or modify the transparency requirements laid out in these rules unless the treaty itself allows for such flexibility.
3. **Tribunal's Authority to Adapt: Adaptive Authority of the Tribunal:** The article grants the arbitral tribunal the authority to adapt the requirements of specific provisions of the Rules on Transparency to suit the unique circumstances of the case. This adaptation should be done in consultation with the disputing parties.
4. **Objective and Practicality:** The tribunal can make such adaptations if they are necessary for conducting the arbitration in a practical manner and if they are consistent with the overarching transparency objective of the rules. This indicates that while the tribunal can make adjustments for practicality, the transparency aspect of the rules should still be maintained.

In summary, Article 1(3) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration establishes the rules governing the application of transparency measures in arbitrations governed by a treaty or an agreement. The article ensures that the disputing parties cannot deviate from the transparency rules unless the treaty permits it. Additionally, it grants the arbitral tribunal the authority to adapt specific provisions of the transparency rules to suit the practical requirements of the case, while still maintaining the transparency objectives of the rules. This article strikes a balance between adhering to transparency goals and accommodating the unique circumstances of individual cases.

Discretion and authority of the arbitral tribunal

4. Where the Rules on Transparency provide for the arbitral tribunal to exercise discretion, the arbitral tribunal in exercising such discretion shall take into account:

- (a) The public interest in transparency in treaty-based investor-State arbitration and in the particular arbitral proceedings; and**
- (b) The disputing parties' interest in a fair and efficient resolution of their dispute.**

Article 1(4) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration addresses the discretion and authority of the arbitral tribunal in cases where the rules grant the tribunal the power to exercise discretion. Let us analyse the key points of this article:

1. **Exercise of Discretion:** This section establishes that when the UNCITRAL Rules on Transparency provide the arbitral tribunal with the authority to make discretionary decisions, the tribunal is expected to consider certain factors while exercising that discretion.
2. **Public Interest in Transparency:** The first factor the arbitral tribunal must take into account is the public interest in transparency in treaty-based investor-State arbitration. This reflects the broader notion that international arbitration proceedings involving states and investors should be conducted transparently, promoting openness and accountability in the process.
3. **Fair and Efficient Dispute Resolution: Parties' Interest in Fair Resolution:** The second factor to be considered by the tribunal is the interest of the disputing parties in achieving a fair and efficient resolution of their dispute. This emphasises the importance of balancing transparency objectives with the parties' legitimate expectations for a just and efficient resolution of their case.

In summary, Article 1(4) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration guides the arbitral tribunal's exercise of discretion when provided for by the rules. The tribunal is required to consider two main factors: the public interest in transparency and the disputing parties' interest in a fair and efficient resolution. This article highlights the need to strike a balance between transparency and the effective resolution of disputes, recognising the importance of both elements in the context of investor-State arbitration. It encourages the arbitral tribunal to make informed decisions that align with these dual objectives.

5. These Rules shall not affect any authority that the arbitral tribunal may otherwise have under the UNCITRAL Arbitration Rules to conduct the arbitration in such a manner as to promote transparency, for example by accepting submissions from third persons.

Article 1(5) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration addresses the relationship between the transparency rules and the arbitral tribunal's existing authority under the UNCITRAL Arbitration Rules. Let us analyse the key points of this article:

1. **Non-Interference with Arbitral Tribunal's Authority:** This section states that the UNCITRAL Rules on Transparency will not interfere with or impede any authority that the arbitral

tribunal already possesses under the UNCITRAL Arbitration Rules. In other words, the transparency rules do not replace or supersede the tribunal's existing powers and discretion.

2. **Promoting Transparency Through Other Means:** The article provides an example to illustrate its point. It mentions that the arbitral tribunal, under the authority of the UNCITRAL Arbitration Rules, can conduct the arbitration in a way that promotes transparency. This could include actions like allowing submissions from third persons who are not directly involved in the dispute.

In summary, Article 1(5) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration clarifies that the introduction of transparency rules does not take away or limit any authority that the arbitral tribunal may already possess under the UNCITRAL Arbitration Rules. Instead, it underscores the fact that the two sets of rules can work in tandem. The article also points out that the tribunal can, under its pre-existing authority, encourage transparency in various ways, such as considering input from third parties. This provision emphasises the importance of flexibility and cooperation between the transparency rules and the tribunal's broader powers to ensure a fair and transparent arbitration process.

6. In the presence of any conduct, measure or other action having the effect of wholly undermining the transparency objectives of these Rules, the arbitral tribunal shall ensure that those objectives prevail.

Article 1(6) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration addresses situations where certain actions or behaviours threaten to undermine the transparency objectives of the rules. Let us analyse the key points of this article:

1. **Preservation of Transparency Objectives:** This section outlines a principle that in situations where there is conduct, measure, or any other action that significantly undermines the transparency objectives outlined in the UNCITRAL Rules on Transparency, the arbitral tribunal has a duty to ensure that these transparency objectives are upheld and maintained.
2. **Addressing Undermining Actions:** If any actions, measures, or conduct occur that substantially compromise the transparency goals of the rules, the arbitral tribunal is tasked with taking steps to counteract the negative impact and to uphold the transparency principles.

In summary, Article 1(6) of the UNCITRAL Rules on Transparency emphasises the importance of maintaining the transparency objectives of the rules in the face of actions or behaviours that might jeopardise them. The article places a responsibility on the arbitral tribunal to address situations where the core transparency principles are at risk, ensuring that transparency remains a central tenet of the investor-State arbitration process. This provision underscores the commitment to transparency and the accountability of all parties involved in the arbitration process.

Applicable instrument in case of conflict

7. Where the Rules on Transparency apply, they shall supplement any applicable arbitration rules. Where there is a conflict between the Rules on Transparency and the applicable arbitration rules, the Rules on Transparency shall prevail. Notwithstanding any provision in these Rules, where there is a conflict between the Rules on Transparency and the treaty, the provisions of the treaty shall prevail.

Article 1(7) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration addresses the interplay between the transparency rules and other relevant instruments in cases of conflicts. Let us analyse the key points of this article:

1. **Supplementary Nature of the Transparency Rules:** This section establishes that the UNCITRAL Rules on Transparency, when applicable, serve as supplementary rules that work in conjunction with any other arbitration rules that are relevant to the case.
2. **Priority in Case of Conflict:** In the event of a conflict between the Rules on Transparency and the applicable arbitration rules, the article asserts that the Rules on Transparency shall take precedence. This means that if there is a contradiction or inconsistency between the two sets of rules, the transparency objectives outlined in the UNCITRAL Rules will prevail.
3. **Treaty Supremacy over Transparency Rules:** However, the article also clarifies that if there is a conflict between the Rules on Transparency and the underlying treaty, the provisions of the treaty will hold greater weight. This acknowledges the primacy of the treaty as the foundational legal instrument guiding the arbitration process.

In summary, Article 1(7) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration provides guidance on how conflicts between different sets of rules should be resolved. The transparency rules are designed to supplement existing arbitration rules and take precedence over those rules in the event of a conflict. However, the overarching treaty provisions hold ultimate authority and should be followed even if they conflict with the transparency rules. This article ensures clarity and consistency in the hierarchy of rules governing investor-State arbitration cases, allowing for effective conflict resolution and adherence to the relevant legal framework.

8. Where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the disputing parties cannot derogate, that provision shall prevail.

Article 1(8) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration addresses conflicts between the transparency rules and provisions of applicable law. Let us analyse the key points of this article:

1. **Supremacy of Mandatory Applicable Law:** This section establishes that if any provision within the UNCITRAL Rules on Transparency conflicts with a provision of the law that applies to the arbitration and that the disputing parties cannot waive or deviate from, the provision of the applicable law will take precedence.
2. **Non-Derogable Provisions:** The article specifies that this principle applies to provisions of the law from which the disputing parties cannot derogate. In other words, if the law

includes certain provisions that are legally binding and cannot be altered by the parties' agreement, those provisions will hold greater weight than the transparency rules.

In summary, Article 1(8) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration emphasises the supremacy of non-derogable provisions of applicable law over the transparency rules. If there is a conflict between a provision of the transparency rules and a provision of the law that the parties must follow and cannot waive, the legal provision prevails. This ensures that fundamental legal principles and mandatory laws are upheld even in the context of investor-State arbitrations governed by the transparency rules.

Application in non-UNCITRAL arbitrations

9. These Rules are available for use in investor-State arbitrations initiated under rules other than the UNCITRAL Arbitration Rules or in ad hoc proceedings.

Article 1(9) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration addresses the applicability of these rules in scenarios involving investor-State arbitrations initiated under different rules or in ad hoc proceedings. Let us analyse the key points of this article:

1. **Extended Applicability:** This section specifies that the UNCITRAL Rules on Transparency, which are originally designed for arbitrations initiated under the UNCITRAL Arbitration Rules, can also be utilised in different contexts.
2. **Non-UNCITRAL Arbitrations:** The article states that these rules can be used in investor-State arbitrations that are initiated under arbitration rules other than the UNCITRAL Arbitration Rules. This allows parties involved in non-UNCITRAL arbitration procedures to voluntarily opt for the application of the transparency rules if they see fit.
3. **Ad Hoc Proceedings:** The article also includes ad hoc proceedings within its scope. Ad hoc proceedings are arbitration cases that are conducted without utilising any specific institutional arbitration rules. The transparency rules can be employed in such cases as well.

In summary, Article 1(9) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration extends the availability of these rules beyond their original context. They can be applied in investor-State arbitrations initiated under different arbitration rules or even in ad hoc proceedings. This provision offers flexibility to parties who wish to incorporate transparency measures into their arbitration proceedings, regardless of the specific arbitration framework they are operating under.

Article 2. Publication of information at the commencement of arbitral proceedings

Once the notice of arbitration has been received by the respondent, each of the disputing parties shall promptly communicate a copy of the notice of arbitration to the repository referred to under article 8. Upon receipt of the notice of arbitration from the respondent, or upon receipt of the notice of arbitration and a record of its transmission to the respondent, the repository shall promptly make

available to the public information regarding the name of the disputing parties, the economic sector involved and the treaty under which the claim is being made.

Article 2 of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration addresses the publication of information at the beginning of arbitral proceedings. Let us analyse the key points of this article:

1. **Commencement of Arbitral Proceedings:** This section specifies that once the notice of arbitration is received by the respondent (the party against whom the claim is brought), certain actions are required to be taken by both disputing parties.
2. **Communication to the Repository:** Each of the disputing parties is obligated to promptly send a copy of the notice of arbitration to a repository, as referred to in Article 8 of the rules. The repository is an entity designated to handle and manage the information related to the arbitration.
3. **Public Availability of Information:** Upon receiving the notice of arbitration from the respondent, or upon receiving both the notice of arbitration and evidence of its transmission to the respondent, the repository is required to promptly make specific information publicly available.
4. **Information to be Made Public:**
 - a. The information to be made public includes:
 - b. The names of the disputing parties involved in the arbitration.
 - c. The economic sector that the dispute relates to.
 - d. The treaty under which the investor is making their claim.

In summary, Article 2 of the UNCITRAL Rules on Transparency outlines the process of publishing certain information at the commencement of investor-State arbitral proceedings. This article focuses on the transparency aspect of the arbitration process by ensuring that basic details of the dispute, the parties involved, and the applicable treaty are made publicly available. This transparency helps promote openness and accountability in investor-State arbitration cases from the very beginning of the proceedings.

Article 3. Publication of documents

1. Subject to article 7, the following documents shall be made available to the public: the notice of arbitration, the response to the notice of arbitration, the statement of claim, the statement of defence and any further written statements or written submissions by any disputing party; a table listing all exhibits to the aforesaid documents and to expert reports and witness statements, if such table has been prepared for the proceedings, but not the exhibits themselves; any written

submissions by the non-disputing Party (or Parties) to the treaty and by third persons, transcripts of hearings, where available; and orders, decisions and awards of the arbitral tribunal.

Article 3(1) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration addresses the publication of documents related to the arbitration process. Let us analyse the key points of this article:

1. **Publication of Specific Documents:** This section outlines which documents related to the arbitration process are subject to being made available to the public.
2. **Documents to be Published:** The following documents shall be made available to the public:
 - a. **Notice of arbitration:** The initial formal communication by the claimant to initiate the arbitration.
 - b. **Response to the notice of arbitration:** The respondent's reply to the claimant's notice.
 - c. **Statement of claim:** The claimant's written statement outlining the basis of their claim.
 - d. **Statement of defence:** The respondent's written statement responding to the claim.
 - e. **Further written statements or submissions:** Any additional documents submitted by any party during the proceedings.
 - f. **Table listing exhibits:** A list of exhibits attached to the aforementioned documents, expert reports, and witness statements. However, not the exhibits themselves.
 - g. **Written submissions by non-disputing parties:** Submissions made by parties that are not directly involved in the dispute but are parties to the relevant treaty.
 - h. **Written submissions by third persons:** Submissions made by individuals or entities not directly involved in the dispute.
 - i. **Transcripts of hearings:** If available, transcripts of the proceedings.
 - j. **Orders, decisions, and awards:** Official rulings and decisions issued by the arbitral tribunal.
3. **Exclusions:** The article specifies that while a table listing exhibits is made available, the actual exhibits themselves are not published.
4. **Exception in Article 7:** The publication of these documents is subject to Article 7, which might contain specific provisions concerning the treatment of certain information.

In summary, Article 3(1) of the UNCITRAL Rules on Transparency outlines the documents that are to be made publicly available in treaty-based investor-State arbitration proceedings. This provision contributes to the transparency and accountability of the arbitration process by ensuring that certain

key documents are accessible to the public. The article strikes a balance between transparency and protecting sensitive information by excluding the publication of actual exhibits while providing access to related information through a table listing.

2. Subject to article 7, expert reports and witness statements, exclusive of the exhibits thereto, shall be made available to the public, upon request by any person to the arbitral tribunal.

Article 3(2) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration deals with the disclosure of expert reports and witness statements in the context of public access to information in investor-state arbitration proceedings. Let us break down and analyse the key components of this provision:

1. **Subject to Article 7:** This phrase indicates that the transparency requirements outlined in Article 3(2) are subject to the limitations or exceptions set out in Article 7 of the UNCITRAL Rules. Article 7 lists certain types of information that may be withheld from public disclosure for various reasons, such as protecting confidential information, proprietary business interests, and national security concerns.
2. **Expert Reports and Witness Statements:** The provision pertains to two types of documents: expert reports and witness statements. Expert reports are documents prepared by qualified experts hired by parties in the arbitration to provide specialised opinions or analyses on technical, economic, scientific, or other matters relevant to the dispute. Witness statements are written testimonies submitted by witnesses who provide information about facts, events, or circumstances related to the dispute.
3. **Exclusive of the Exhibits Thereto:** This phrase indicates that while the expert reports and witness statements are made available to the public, any accompanying exhibits or attachments that are part of these reports or statements might not be subject to the same level of public disclosure. The exhibits may contain sensitive or confidential information that parties wish to protect from public scrutiny.
4. **Made Available to the Public, Upon Request:** This part of the provision emphasises that the disclosure of expert reports and witness statements is not automatic. Instead, these documents become accessible to the public only if a request for access is made to the arbitral tribunal by any person interested in obtaining the information. This requirement aims to balance transparency with the need to protect certain sensitive information.
5. **By Any Person to the Arbitral Tribunal:** The provision allows any person, not just the parties involved in the arbitration, to request access to the expert reports and witness statements. This inclusivity aligns with the broader goal of transparency by enabling public scrutiny of the proceedings and outcomes.

Overall, Article 3(2) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration strikes a balance between the principles of transparency and the protection of sensitive information. It allows for public access to expert reports and witness statements, which are crucial for understanding the arguments and evidence presented in arbitration proceedings. However, the provision acknowledges the potential need to withhold certain exhibits and attachments to these documents and provides for a mechanism where interested individuals can request access to the

information while considering legitimate exceptions outlined in Article 7. This approach promotes accountability, fairness, and public awareness in investor-state arbitration.

3. Subject to article 7, the arbitral tribunal may decide, on its own initiative or upon request from any person, and after consultation with the disputing parties, whether and how to make available exhibits and any other documents provided to, or issued by, the arbitral tribunal not falling within paragraphs 1 or 2 above. This may include, for example, making such documents available at a specified site.

Article 3(3) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration addresses the disclosure of exhibits and other documents provided to or issued by the arbitral tribunal, which do not fall within the scope of the transparency provisions outlined in Article 3(1) and Article 3(2). Let us analyse the key elements of this provision:

1. **Subject to Article 7:** Similar to the previous subsection, Article 3(3) is subject to the exceptions and limitations outlined in Article 7 of the UNCITRAL Rules. Article 7 provides criteria for withholding certain types of information from public access in order to protect sensitive or confidential information, business interests, and national security.
2. **Discretion of the Arbitral Tribunal:** This provision grants the arbitral tribunal the authority to make decisions regarding the disclosure of exhibits and other documents not covered by the preceding subsections. The tribunal can exercise this discretion either on its own initiative or upon the request of any person.
3. **Consultation with the Disputing Parties:** The arbitral tribunal is required to consult with the parties involved in the dispute before making a decision on whether and how to disclose the exhibits and other documents. This consultation process ensures that the parties' views and concerns are taken into consideration when deciding on the extent of disclosure.
4. **Nature of Documents:** Article 3(3) applies to documents that are not covered by the provisions of Article 3(1) (regarding the publication of the notice of arbitration and the final award) and Article 3(2) (regarding expert reports and witness statements). This could include documents such as procedural orders, correspondence between the parties and the tribunal, submissions on procedural matters, and other materials related to the arbitration process.
5. **Examples of Disclosure:** The provision suggests that the arbitral tribunal has the flexibility to determine how these documents may be made available to the public. It mentions that one possible approach could be to make these documents available at a specified location, which could be a designated website or repository. This indicates that the disclosure methods can vary, allowing the tribunal to adapt to the specifics of the case.

Article 3(3) recognises the importance of transparency while acknowledging that not all documents submitted to or issued by the arbitral tribunal may fall within the scope of the more explicit disclosure provisions in Article 3(1) and Article 3(2). It gives the tribunal the discretion to determine whether and how such documents should be made available to the public, taking into account the parties' input and considering the principles outlined in Article 7. This provision reflects the effort to strike a balance

between transparency and the protection of sensitive information in investor-state arbitration proceedings.

4. The documents to be made available to the public pursuant to paragraphs 1 and 2 shall be communicated by the arbitral tribunal to the repository referred to under article 8 as soon as possible, subject to any relevant arrangements or time limits for the protection of confidential or protected information prescribed under article 7. The documents to be made available pursuant to paragraph 3 may be communicated by the arbitral tribunal to the repository referred to under article 8 as they become available and, if applicable, in a redacted form in accordance with article 7. The repository shall make all documents available in a timely manner, in the form and in the language in which it receives them.

Article 3(4) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration addresses the communication and disclosure of documents to the public repository established under Article 8 of the rules. This provision outlines the procedures and timing for making various types of documents available to the public. Let us break down and analyse the key elements of this provision:

1. **Communication to the Public Repository:** Article 3(4) establishes that the documents to be made available to the public under the provisions of Article 3(1) and Article 3(2) must be communicated by the arbitral tribunal to the public repository referred to in Article 8. This repository serves as the central platform for storing and providing access to documents related to the arbitration.
2. **Timing of Communication:** The provision emphasises the importance of timely communication of documents to the repository. For documents falling within the scope of Article 3(1) and Article 3(2), they should be communicated to the repository “as soon as possible”. This highlights the commitment to providing prompt access to relevant information.
3. **Relevance to Confidential or Protected Information:** The timely communication of documents to the repository is subject to any arrangements or time limits necessary to protect confidential or protected information, as prescribed under Article 7. Article 7 sets forth exceptions and criteria for withholding certain information from public disclosure due to its sensitive or confidential nature.
4. **Documents Pursuant to Paragraph 3:** Documents falling under the scope of Article 3(3) (exhibits and other documents not covered by Article 3(1) or Article 3(2)) may be communicated to the repository as they become available. This approach allows for flexibility in disclosing documents that are not part of the core proceedings or are not covered by the more specific transparency provisions.
5. **Redacted Form:** If applicable and in accordance with Article 7, documents communicated to the repository pursuant to paragraph 3 may be presented in a redacted form. Redaction involves the removal or masking of specific sensitive or confidential information from documents to protect such information from public view.
6. **Repository’s Responsibilities:** The provision assigns the responsibility of making all disclosed documents available to the public repository. The repository is obligated to

provide documents in a timely manner, ensuring that they are presented in the form and language in which they were received.

Article 3(4) focuses on the logistics of communicating and disclosing documents related to investor-state arbitration proceedings. It highlights the importance of balancing transparency with the protection of confidential information. The provision's guidance on timing, redaction, and the repository's responsibilities ensures that relevant documents are accessible to the public while safeguarding sensitive details as required by Article 7. This article contributes to the overall objective of promoting openness and accountability in treaty-based investor-state arbitration.

5. A person granted access to documents under paragraph 3 shall bear any administrative costs of making those documents available to that person, such as the costs of photocopying or shipping documents to that person, but not the costs of making those documents available to the public through the repository.

Article 3(5) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration addresses the costs associated with granting access to documents under Article 3(3). This provision specifies the financial responsibilities of individuals who are given access to certain documents related to the arbitration proceedings. Let us analyse the key components of this provision:

1. **Access to Documents Under Paragraph 3:** Article 3(3) concerns the arbitral tribunal's discretion to decide on the disclosure of exhibits and other documents that do not fall within the scope of Article 3(1) or Article 3(2). This provision allows for flexibility in determining the availability of these documents to interested individuals.
2. **Administrative Costs:** Article 3(5) stipulates that individuals who are granted access to documents under Article 3(3) are responsible for bearing the administrative costs associated with making those documents available to them. Administrative costs could include expenses related to tasks such as photocopying or shipping the requested documents.
3. **Exclusion of Public Repository Costs:** Importantly, the provision clarifies that the individuals granted access are not responsible for covering the costs associated with making those same documents available to the public through the repository referred to in Article 8. This distinction ensures that access to public information, as facilitated by the repository, remains accessible to all without imposing additional costs on those seeking the documents.

Article 3(5) reflects a fair and practical approach to cost-sharing in the context of providing access to documents related to treaty-based investor-state arbitration proceedings. By requiring individuals to bear only the administrative costs of receiving the requested documents while exempting them from covering the costs of public disclosure through the repository, the provision encourages transparency while minimising financial barriers for accessing relevant information.

Article 4. Submission by a third person

1. After consultation with the disputing parties, the arbitral tribunal may allow a person that is not a disputing party, and not a non-disputing Party to the treaty (“third person(s)”), to file a written submission with the arbitral tribunal regarding a matter within the scope of the dispute.

Article 4(1) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration addresses the issue of allowing third persons, who are neither disputing parties nor non-disputing Parties to the treaty in question, to submit written statements to the arbitral tribunal regarding matters within the scope of the dispute. Here is an analysis of the key components of this article:

1. **Authorisation by Arbitral Tribunal:** Article 4(1) provides the arbitral tribunal with the discretion to permit third persons to file written submissions. This discretion implies that the arbitral tribunal has the authority to determine whether allowing such submissions would be beneficial to the arbitration process.
2. **Scope of Submission:** The submission by a third person must pertain to a matter that falls within the scope of the dispute. This ensures that the submissions are relevant and contribute to the resolution of the actual issues being debated in the arbitration.
3. **Consultation with Disputing Parties:** Before granting permission to a third person to submit written statements, the arbitral tribunal is required to consult with the disputing parties. This consultation serves as a safeguard, enabling the disputing parties to express their views on whether third-party submissions should be allowed and whether any limitations should be imposed on the scope or content of such submissions.
4. **Definition of Third Person:** The article defines “third person(s)” as individuals or entities that are not directly involved as disputing parties in the arbitration and are also not non-disputing Parties to the treaty under which the dispute arises. This definition establishes the category of entities that may seek permission to submit written statements.
5. **Balance of Interests:** The provision seems to be designed to balance various interests. On one hand, it allows for a broader range of perspectives and information to be brought to the attention of the arbitral tribunal, potentially enriching the decision-making process. On the other hand, the arbitral tribunal’s discretion ensures that third-person submissions do not unduly prolong or complicate the arbitration proceedings.
6. **Promotion of Transparency:** The inclusion of this provision aligns with the overall objective of promoting transparency in investor-state arbitration. Allowing third persons to make submissions can provide insights from different perspectives and contribute to a more transparent and well-informed decision-making process.
7. **Potential Concerns:** While the provision can enhance transparency and inclusivity, there might be concerns related to abuse of this process. Parties could attempt to use third-person submissions to delay proceedings, introduce irrelevant information, or otherwise undermine the arbitration process. The discretion given to the arbitral tribunal to permit such submissions helps mitigate these concerns.

In summary, Article 4(1) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration introduces a mechanism for allowing third persons to submit written statements on matters within the scope of the dispute. This provision strikes a balance between promoting

transparency and maintaining the efficiency and integrity of the arbitration process through the arbitral tribunal's discretionary powers and the requirement of consultation with the disputing parties.

2. A third person wishing to make a submission shall apply to the arbitral tribunal, and shall, in a concise written statement, which is in a language of the arbitration and complies with any page limits set by the arbitral tribunal:

(a) Describe the third person, including, where relevant, its membership and legal status (e.g., trade association or other non-governmental organization), its general objectives, the nature of its activities and any parent organization (including any organization that directly or indirectly controls the third person);

(b) Disclose any connection, direct or indirect, which the third person has with any disputing party;

(c) Provide information on any government, person or organization that has provided to the third person (i) any financial or other assistance in preparing the submission; or (ii) substantial assistance in either of the two years preceding the application by the third person under this article (e.g. funding around 20 per cent of its overall operations annually);

(d) Describe the nature of the interest that the third person has in the arbitration; and

(e) Identify the specific issues of fact or law in the arbitration that the third person wishes to address in its written submission.

Article 4(2) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration outlines the procedural requirements that a third person must adhere to when applying to the arbitral tribunal for permission to make a written submission in the arbitration. This article establishes a structured framework for third persons seeking to provide input in the arbitration process. Let us break down the key components of this provision:

1. **Application Process:** The article requires a third person who intends to submit written statements to apply to the arbitral tribunal. This application is a formal step that indicates the third person's interest and intention to contribute to the arbitration.
2. **Concise Written Statement:** The application must be in the form of a concise written statement. This requirement aims to ensure that the submission is clear, focused, and relevant, avoiding unnecessary complexity or length.
3. **Language and Page Limits:** The submission must be in the language of the arbitration, which is typically specified in the arbitration agreement. Additionally, the submission must comply with any page limits set by the arbitral tribunal. These provisions help maintain consistency and manage the proceedings effectively.
4. **Description of the Third Person:** The third person's application must provide a description of itself, including its membership and legal status (e.g., trade association or NGO), general objectives, nature of activities, and any relevant parent organisations. This information is important for contextualising the third person's involvement and potential interests in the dispute.

5. Disclosure of Connections: The third person must disclose any direct or indirect connections it has with any of the disputing parties. This disclosure is crucial to maintaining transparency and avoiding conflicts of interest that might affect the credibility of the third person's submission.
6. Financial or Other Assistance: The third person is required to provide information about any financial or other assistance it has received from governments, individuals, or organisations in preparing the submission or within the two years preceding the application. This disclosure prevents hidden influence and ensures transparency about the support received.
7. Description of Interest: The third person's application should describe the nature of its interest in the arbitration. This requirement clarifies the motivation behind the third person's desire to submit and helps the tribunal assess the relevance of the submission.
8. Identification of Issues: The application must identify the specific factual or legal issues within the arbitration that the third person intends to address in its written submission. This ensures that the submission is focused on pertinent matters and contributes to the resolution of the dispute.

Overall, Article 4(2) is designed to ensure that third-person submissions are made in a structured and transparent manner. By setting out these requirements, the provision aims to strike a balance between allowing valuable contributions from third persons and preventing misuse or undue influence in the arbitration process. It reinforces the overarching goal of transparency and fairness in treaty-based investor-state arbitration.

3. In determining whether to allow such a submission, the arbitral tribunal shall take into consideration, among other factors it determines to be relevant:

- (a) Whether the third person has a significant interest in the arbitral proceedings; and**
- (b) The extent to which the submission would assist the arbitral tribunal in the determination of a factual or legal issue related to the arbitral proceedings by bringing a perspective, particular knowledge or insight that is different from that of the disputing parties.**

Article 4(3) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration outlines the factors that the arbitral tribunal should consider when deciding whether to allow a third person's submission in the arbitration process. This article provides guidance to the arbitral tribunal on the criteria to assess the relevance and value of third-person submissions. Let us analyse the key elements of this provision:

1. Significant Interest of Third Person: The first factor the arbitral tribunal should consider is whether the third person has a "significant interest" in the arbitral proceedings. This suggests that the third person's involvement should be motivated by more than a general or tangential interest; there should be a clear and substantial connection between the third person's interests and the subject matter of the dispute. This criterion ensures that third persons who genuinely have a stake in the outcome of the arbitration are the ones whose submissions are more likely to be considered.

2. Assistance to the Tribunal: The second factor pertains to how the submission could assist the arbitral tribunal. The article highlights that the tribunal should evaluate the extent to which the submission would contribute to the tribunal's understanding and determination of factual or legal issues related to the dispute. The submission should bring a different perspective, specialised knowledge, or unique insights that are distinct from what the disputing parties have presented. This emphasises the tribunal's interest in diverse viewpoints and relevant expertise.
3. Balancing Interests: Article 4(3) underscores the importance of striking a balance between the interests of the third person, the disputing parties, and the overall integrity of the arbitration process. It recognises that third persons' contributions can potentially enrich the decision-making process, but it also implies that these contributions should genuinely enhance the proceedings rather than disrupt or delay them.
4. Discretion of the Arbitral Tribunal: The provision does not prescribe a rigid formula for assessing third-person submissions. Instead, it grants the arbitral tribunal the discretion to determine the relevance of various factors beyond those explicitly mentioned in the article. This acknowledges the complexity of each case and allows the tribunal to adapt its evaluation to the specific circumstances.
5. Transparency and Impartiality: By setting out these factors, the article promotes transparency and impartiality in the decision-making process regarding third-person submissions. It provides a framework that helps the arbitral tribunal communicate its considerations and justifications for either accepting or rejecting such submissions, thus ensuring a fair and well-reasoned decision.

In summary, Article 4(3) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration outlines the factors the arbitral tribunal should consider when deciding whether to allow a third person's submission. This provision highlights the need for a significant interest on the part of the third person and underscores the potential value of distinct perspectives and specialised insights that could assist the tribunal. The discretion granted to the tribunal allows it to weigh these factors based on the unique circumstances of each case.

4. The submission filed by the third person shall:

- (a) Be dated and signed by the person filing the submission on behalf of the third person;**
- (b) Be concise, and in no case longer than as authorized by the arbitral tribunal;**
- (c) Set out a precise statement of the third person's position on issues; and**
- (d) Address only matters within the scope of the dispute.**

Article 4(4) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration lays out the requirements for the content and format of the submission filed by a third person. This article ensures that the submissions are well-structured, focused, and aligned with the objectives of transparency and fairness in the arbitration process. Let us analyse the key components of this provision:

1. **Date and Signature:** The submission filed by the third person should be dated and signed by the individual who is submitting it on behalf of the third person. This requirement adds a formal element to the submission process, ensuring accountability and authenticity.
2. **Conciseness:** The submission is expected to be concise. The provision emphasises the importance of brevity and clarity in third-person submissions. This requirement helps prevent overly lengthy or convoluted statements that might complicate the proceedings or dilute the relevance of the submission.
3. **Length Limitation:** The submission's length is constrained by the authorisation of the arbitral tribunal. This means that the tribunal has the authority to set limits on the maximum length of the submission. Imposing length limits helps maintain the efficiency of the arbitration process and prevents the potential submission of excessive or extraneous information.
4. **Precise Statement of Position:** The third-person submission must provide a precise statement of the third person's position on the issues relevant to the dispute. This requirement ensures that the submission is focused and directly addresses the key matters under consideration. It also assists the tribunal in understanding the third person's perspective clearly.
5. **Scope of the Dispute:** The submission is expected to address only matters that fall within the scope of the dispute. This provision prevents third persons from introducing unrelated issues or attempting to broaden the scope of the arbitration beyond what was initially agreed upon.

Overall, Article 4(4) establishes guidelines to ensure that third-person submissions are organised, pertinent, and effective in contributing to the arbitration process. By requiring concise, focused, and signed submissions that adhere to the scope of the dispute, this article maintains the integrity of the arbitration proceedings while accommodating the input of third persons. It serves as an essential component of the overall transparency and fairness objectives of the UNCITRAL Rules.

5. The arbitral tribunal shall ensure that any submission does not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party.

Article 4(5) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration addresses the arbitral tribunal's responsibility to manage and control the impact of third-person submissions on the arbitration process. This article aims to strike a balance between the interests of third persons seeking to contribute and the need to maintain the efficiency, fairness, and integrity of the proceedings. Let us analyse the key elements of this provision:

1. **Procedural Management:** The article emphasises the role of the arbitral tribunal in managing the arbitration proceedings. It underscores the tribunal's authority to ensure that the arbitration process remains smooth, organised, and free from disruptions.
2. **Preventing Disruption:** The provision directs the arbitral tribunal to prevent any submission from disrupting the proceedings. This is crucial to avoid situations where third-person submissions might lead to unnecessary delays, additional complexities, or confusion in the arbitration process.

3. **Avoiding Undue Burden:** The article also highlights the tribunal’s responsibility to prevent third-person submissions from unduly burdening the arbitration proceedings. This could refer to situations where the volume or complexity of the submissions overwhelms the tribunal’s resources, causing inefficiencies or delays.
4. **Protection of Disputing Parties:** Another significant consideration is the requirement that the arbitral tribunal should not unfairly prejudice any of the disputing parties. This means that the tribunal should ensure that third-person submissions do not give an advantage to one party over the others or result in a bias that undermines the parties’ right to a fair and impartial process.
5. **Balancing Interests:** Article 4(5) reflects the broader theme of balancing interests within the arbitration process. While allowing third-person submissions can enhance transparency and the diversity of perspectives, the provision acknowledges that these benefits must be weighed against the potential drawbacks of disruption or bias.
6. **Discretion of the Arbitral Tribunal:** The provision gives the arbitral tribunal the discretion to make decisions regarding the acceptance, management, and impact of third-person submissions. This discretion allows the tribunal to assess each situation on a case-by-case basis, taking into account the specific circumstances of the arbitration.

In summary, Article 4(5) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration highlights the role of the arbitral tribunal in managing third-person submissions. It reinforces the tribunal’s authority to prevent disruptions, undue burdens, and unfair prejudice, while maintaining a balanced approach that respects the interests of all parties involved. This provision contributes to the overall objectives of transparency, fairness, and efficiency in investor-state arbitration proceedings.

6. The arbitral tribunal shall ensure that the disputing parties are given a reasonable opportunity to present their observations on any submission by the third person.

Article 4(6) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration focuses on the procedural rights of the disputing parties when it comes to third-person submissions. This article underscores the importance of maintaining a fair and balanced process by ensuring that the disputing parties have the opportunity to respond to any submissions made by third persons. Let us analyse the key elements of this provision:

1. **Opportunity to Present Observations:** The core principle of this article is to guarantee that the disputing parties are provided with a “reasonable opportunity” to present their observations on any submission submitted by a third person. This opportunity allows the parties to comment, react, or respond to the content of the third-person submission.
2. **Maintaining Fairness:** By allowing disputing parties to respond to third-person submissions, the article aims to uphold fairness in the arbitration process. It ensures that the parties have the chance to address any arguments, evidence, or perspectives introduced by third persons that may impact the outcome of the dispute.
3. **Balance of Information:** This provision contributes to maintaining a balance of information and perspectives. Since third-person submissions can bring additional insights or

arguments to the tribunal’s attention, allowing disputing parties to respond ensures that their viewpoints are considered and that the arbitral tribunal has a complete picture of the relevant issues.

4. **Reasonable Opportunity:** The requirement for a “reasonable opportunity” underscores the need for timely and adequate notice to the disputing parties. The intent is to avoid surprises and ensure that the parties have sufficient time and information to prepare their responses effectively.
5. **Effective Communication:** Article 4(6) aligns with the broader objectives of transparent and effective communication in the arbitration process. Allowing disputing parties to comment on third-person submissions enhances the quality of the discussions and decision-making.
6. **Preservation of Procedural Rights:** The provision reinforces the disputing parties’ procedural rights within the arbitration process. It ensures that they are not disadvantaged by third-person submissions and that their interests are safeguarded.
7. **Arbitral Tribunal’s Role:** The arbitral tribunal plays a role in facilitating this process. It is responsible for ensuring that the disputing parties are provided the opportunity to present their observations on third-person submissions, which involves managing the timeline, communication, and coordination of such responses.

In summary, Article 4(6) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration highlights the importance of ensuring a balanced and fair arbitration process. By granting the disputing parties a reasonable opportunity to respond to third-person submissions, this provision promotes transparency, thorough consideration of relevant perspectives, and the overall integrity of the arbitration proceedings.

Article 5. Submission by a non-disputing Party to the treaty

1. The arbitral tribunal shall, subject to paragraph 4, allow, or, after consultation with the disputing parties, may invite, submissions on issues of treaty interpretation from a non-disputing Party to the treaty.

Article 5(1) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration deals with the participation of non-disputing Parties to the treaty in the arbitration process. This article outlines the conditions under which a non-disputing Party can make submissions on issues related to treaty interpretation. Here is an analysis of this provision:

1. **Allowance by Arbitral Tribunal:** The primary directive of Article 5(1) is that the arbitral tribunal is required to allow submissions from non-disputing Parties on issues of treaty interpretation. This means that non-disputing Parties have a recognised avenue to provide input in the arbitration process when it concerns matters of interpreting the relevant treaty.
2. **Subject to Paragraph 4:** The article notes that the allowance of submissions from non-disputing Parties is subject to the provisions outlined in paragraph 4 of the same article. This indicates that there are conditions and limitations that apply to such submissions,

which need to be considered in conjunction with the provisions mentioned in that paragraph.

3. **Invitation after Consultation:** The arbitral tribunal also has the option, after consultation with the disputing parties, to invite submissions from non-disputing Parties. This highlights the tribunal's discretion in managing the participation of non-disputing Parties. Consultation with the disputing parties ensures that their views on the inclusion of non-disputing Parties are considered.
4. **Focus on Treaty Interpretation:** The scope of non-disputing Party submissions under Article 5(1) is limited to issues of treaty interpretation. This means that the involvement of non-disputing Parties is related specifically to clarifying or providing perspectives on how the treaty's provisions should be understood and applied.
5. **Balancing Interests:** The provision reflects an attempt to balance different interests. On one hand, it recognises the potential benefits of including non-disputing Parties, which may provide insights into the intent or understanding of the treaty. On the other hand, it emphasises the need to ensure that non-disputing Parties' involvement does not unduly complicate or disrupt the arbitration process.
6. **Transparency and Public Interest:** Allowing non-disputing Parties to submit on issues of treaty interpretation aligns with the goal of transparency and inclusivity in investor-state arbitration. This may also be seen as a mechanism for ensuring that the public interest and broader perspectives are taken into account.

In summary, Article 5(1) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration provides a framework for the participation of non-disputing Parties in the arbitration process, specifically regarding issues of treaty interpretation. The article emphasises the tribunal's responsibility to allow such submissions and highlights the option to invite them after consultation with the disputing parties. It represents an effort to ensure a comprehensive and balanced approach to treaty interpretation within the context of investor-state arbitration.

2. The arbitral tribunal, after consultation with the disputing parties, may allow submissions on further matters within the scope of the dispute from a non-disputing Party to the treaty. In determining whether to allow such submissions, the arbitral tribunal shall take into consideration, among other factors it determines to be relevant, the factors referred to in article 4, paragraph 3, and, for greater certainty, the need to avoid submissions which would support the claim of the investor in a manner tantamount to diplomatic protection.

Article 5(2) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration addresses the participation of non-disputing Parties in the arbitration process, specifically regarding submissions on matters within the scope of the dispute. This provision outlines the circumstances under which non-disputing Parties can submit on additional issues related to the dispute and provides guidance on the factors that the arbitral tribunal should consider when allowing such submissions. Let us analyse the key elements of this provision:

1. **Allowance of Submissions on Further Matters:** Article 5(2) grants the arbitral tribunal the authority to permit submissions from non-disputing Parties on additional matters within the scope of the dispute. This means that non-disputing Parties may have the opportunity

to address specific issues beyond treaty interpretation if the tribunal deems it appropriate.

2. **Consultation with Disputing Parties:** Before allowing such submissions, the arbitral tribunal is required to consult with the disputing parties. This consultation process ensures that the views and concerns of the parties directly involved in the dispute are considered before making a decision.
3. **Relevance of Article 4(3) Factors:** The provision references the factors mentioned in Article 4(3) of the same rules. This includes considering whether the non-disputing Party has a significant interest in the proceedings and whether the submission would assist the tribunal in addressing factual or legal issues related to the dispute. These factors provide a framework for evaluating the potential value and relevance of non-disputing Party submissions.
4. **Avoidance of Diplomatic Protection:** The provision explicitly emphasises the need to prevent non-disputing Party submissions from supporting the investor’s claim in a manner tantamount to diplomatic protection. This clause prevents non-disputing Parties from intervening in a way that undermines the investor-state arbitration process and potentially interferes with diplomatic relations.
5. **Balancing Interests:** Article 5(2) highlights the tribunal’s role in striking a balance between allowing non-disputing Parties to contribute and ensuring that such contributions do not disrupt the proceedings or compromise the integrity of the arbitration process.
6. **Transparency and Fairness:** Allowing non-disputing Parties to submit on further matters can contribute to transparency and inclusivity. It enables a broader range of perspectives to be considered while maintaining the overall fairness of the proceedings.

In summary, Article 5(2) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration provides a mechanism for non-disputing Parties to submit on additional matters within the scope of the dispute. The provision outlines the consultation process, references relevant factors from Article 4(3), and stresses the need to avoid submissions that resemble diplomatic protection. This article contributes to the overall objectives of transparency, fairness, and effectiveness in investor-state arbitration.

3. The arbitral tribunal shall not draw any inference from the absence of any submission or response to any invitation pursuant to paragraphs 1 or 2.

Article 5(3) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration addresses the arbitral tribunal’s approach to the absence of submissions or responses from non-disputing Parties in relation to their participation in the arbitration process. This article establishes a principle that ensures fairness and avoids drawing any unwarranted conclusions based on the absence of non-disputing Party submissions. Here is an analysis of this provision:

1. **Neutral Approach:** Article 5(3) emphasises that the arbitral tribunal should maintain a neutral stance when it comes to the absence of any submission or response from non-disputing Parties in relation to their involvement in the arbitration process. The tribunal

is discouraged from interpreting the absence of such submissions as indicative of any particular position or lack thereof.

2. **Inference Avoidance:** The main purpose of this provision is to prevent the tribunal from drawing any inferences based on the lack of participation from non-disputing Parties. Inferences could include assumptions about the merits of the case, the intentions of the non-disputing Parties, or the impact of their absence on the proceedings.
3. **Preservation of Fairness:** The provision underscores the importance of maintaining fairness and avoiding any prejudice that might arise from making assumptions about the reasons for non-participation. This approach ensures that the arbitration process remains unbiased and that parties are not disadvantaged due to the absence of non-disputing Party submissions.
4. **Balanced Evaluation:** By not drawing any inferences from non-participation, the tribunal remains open to various possibilities. It avoids speculation and allows for a balanced and evidence-based evaluation of the arguments presented by the disputing parties and any participating non-disputing Parties.
5. **Equal Treatment:** The provision contributes to the principle of equal treatment of the parties. By not attributing any particular significance to the absence of non-disputing Party submissions, the tribunal avoids creating an uneven playing field where parties' rights and positions might be prejudiced.
6. **Transparency and Objectivity:** Article 5(3) aligns with the broader objectives of transparency and objectivity in the arbitration process. It ensures that the tribunal's decisions and considerations are based solely on the evidence and arguments presented rather than on any speculative conclusions drawn from non-participation.

In summary, Article 5(3) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration establishes a principle that discourages the arbitral tribunal from drawing any inferences from the absence of submissions or responses from non-disputing Parties. This approach promotes fairness, equality, transparency, and the overall integrity of the arbitration proceedings.

4. The arbitral tribunal shall ensure that any submission does not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party.

Article 5(4) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration mirrors the language found in Article 4(5) of the same rules. This article emphasises the arbitral tribunal's responsibility to manage the impact of any submissions, including those from non-disputing Parties, on the arbitration process. It underlines the importance of maintaining efficiency, fairness, and integrity throughout the proceedings. Here is an analysis of this provision:

1. **Procedural Management:** Similar to Article 4(5), Article 5(4) underscores the role of the arbitral tribunal in managing the arbitration proceedings effectively. It highlights the tribunal's authority to control the impact of submissions, whether from disputing or non-disputing Parties, to ensure that the process remains smooth and organised.

2. **Preventing Disruption:** The article reiterates the tribunal’s duty to prevent any submission, including those from non-disputing Parties, from causing disruptions in the proceedings. This is crucial for maintaining the timely progress of the arbitration process without unnecessary delays.
3. **Avoiding Undue Burden:** Similar to the previous provision, Article 5(4) also stresses the tribunal’s role in preventing undue burdens caused by submissions. The aim is to ensure that the tribunal’s resources are used efficiently and that the proceedings do not become overly complex or prolonged due to additional submissions.
4. **Protection of Disputing Parties:** The provision reiterates the need to avoid unfairly prejudicing any of the disputing parties. Just as in Article 4(5), this clause emphasises the importance of preserving the rights and interests of the parties directly involved in the dispute.
5. **Balancing Interests:** Like Article 4(5), Article 5(4) reflects the overarching theme of balancing the interests of various parties and factors within the arbitration process. It recognises the potential benefits of submissions from non-disputing Parties while ensuring that these benefits are not outweighed by potential disruptions or prejudices.
6. **Transparency and Fairness:** By managing the impact of submissions, the arbitral tribunal contributes to transparency and fairness in the arbitration process. It ensures that parties are not disadvantaged by the introduction of new information that may affect the proceedings.
7. **Arbitral Tribunal’s Role:** The article emphasises the role of the arbitral tribunal in effectively and fairly managing the impact of non-disputing Party submissions. The tribunal is responsible for assessing the potential implications and making informed decisions based on the specific circumstances of the case.

In summary, Article 5(4) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration reiterates the arbitral tribunal’s role in managing the impact of submissions on the arbitration process. It reinforces the tribunal’s authority to prevent disruptions, undue burdens, and unfair prejudices, while maintaining a balanced approach that respects the interests of all parties involved. This provision contributes to the overall objectives of transparency, fairness, and efficiency in investor-state arbitration proceedings.

5. The arbitral tribunal shall ensure that the disputing parties are given a reasonable opportunity to present their observations on any submission by a non-disputing Party to the treaty.

Article 5(5) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration addresses the procedural rights of the disputing parties when it comes to submissions made by non-disputing Parties in the arbitration process. This article underscores the importance of ensuring fairness and balance by granting the disputing parties the opportunity to respond to any submissions from non-disputing Parties. Let us analyse the key elements of this provision:

1. **Opportunity to Present Observations:** The primary intent of Article 5(5) is to ensure that the disputing parties are afforded a “reasonable opportunity” to present their observations on any submissions made by non-disputing Parties. This opportunity allows

the disputing parties to react, comment, or respond to the content of the non-disputing Party submission.

2. **Maintaining Fairness:** By allowing disputing parties to provide their observations on non-disputing Party submissions, the article aims to uphold fairness in the arbitration process. It ensures that the disputing parties have the chance to address any arguments, evidence, or perspectives introduced by non-disputing Parties that may impact the outcome of the dispute.
3. **Reasonable Opportunity:** The requirement for a “reasonable opportunity” emphasises that disputing parties should be given sufficient time and information to prepare their responses effectively. This ensures that the opportunity is meaningful and not rushed.
4. **Effective Communication:** Article 5(5) aligns with the broader objectives of transparent and effective communication in the arbitration process. Allowing disputing parties to provide their observations on non-disputing Party submissions enhances the quality of the discussions and decision-making.
5. **Balanced Process:** By allowing disputing parties to respond to non-disputing Party submissions, the article contributes to a balanced evaluation of the arguments presented by various parties. It helps ensure that all perspectives are considered and that the process remains equitable.
6. **Arbitral Tribunal’s Role:** The arbitral tribunal has a role in facilitating this process. It should ensure that the disputing parties are provided with the opportunity to present their observations on non-disputing Party submissions. This involves coordinating and managing the timeline for such responses.

In summary, Article 5(5) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration provides a mechanism to maintain fairness and balance in the arbitration process. It does so by granting the disputing parties the opportunity to respond to any submissions made by non-disputing Parties. This provision aligns with the overall objectives of transparency, fairness, and inclusivity in investor-state arbitration proceedings.

Article 6. Hearings

1. Subject to article 6, paragraphs 2 and 3, hearings for the presentation of evidence or for oral argument (“hearings”) shall be public.

Article 6(1) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration pertains to the public nature of hearings in the arbitration process. This provision establishes the general principle that hearings for the presentation of evidence or oral arguments shall be public, subject to certain conditions outlined in subsequent paragraphs. Here is an analysis of this provision:

1. **Public Hearings:** The core principle of Article 6(1) is that hearings in the arbitration process, which involve the presentation of evidence or oral arguments, should be public. This means that they are accessible to the public, observers, and potentially even media, depending on the rules and procedures of the specific arbitration.

2. **Transparency and Accountability:** The provision aligns with the broader objectives of transparency and accountability in investor-state arbitration. By making hearings public, the arbitration process becomes more transparent, allowing interested parties to witness the proceedings and understand the arguments presented.
3. **Public Interest:** The principle of public hearings acknowledges the public interest and the significance of investor-state arbitration cases. These cases can involve matters of public concern, such as environmental, social, or economic impacts, and the public may have a legitimate interest in being informed about the proceedings.
4. **Access to Justice:** Public hearings contribute to access to justice by making the arbitration process more visible and understandable to a broader audience. This can foster confidence in the fairness and integrity of the process.
5. **Limitation in Paragraphs 2 and 3:** The provision is subject to the limitations and conditions specified in Article 6, paragraphs 2 and 3. These subsequent paragraphs may outline exceptions to the public nature of hearings in specific circumstances.
6. **Balance of Interests:** While public hearings promote transparency, there is often a need to balance this with other interests, such as protecting sensitive information, ensuring the privacy of parties, and maintaining the integrity of the proceedings. The subsequent paragraphs may address such concerns.
7. **Arbitral Tribunal's Role:** The arbitral tribunal is responsible for implementing the provisions related to the public nature of hearings. The tribunal must ensure that hearings are conducted in accordance with the rules and procedures specified in the UNCITRAL Rules on Transparency.

In summary, Article 6(1) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration establishes the general principle that hearings for the presentation of evidence or oral arguments should be public. This reflects a commitment to transparency, accountability, and access to justice. However, this principle is subject to limitations and conditions outlined in subsequent paragraphs to balance transparency with other interests and considerations.

2. Where there is a need to protect confidential information or the integrity of the arbitral process pursuant to article 7, the arbitral tribunal shall make arrangements to hold in private that part of the hearing requiring such protection.

Article 6(2) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration addresses situations where the public nature of hearings, as stipulated in Article 6(1), needs to be restricted to protect confidential information or the integrity of the arbitral process. This provision outlines the tribunal's responsibility to arrange private hearings when necessary. Here is an analysis of this provision:

1. **Confidentiality and Integrity Concerns:** Article 6(2) recognises that there are instances where it is necessary to protect either confidential information or the overall integrity of the arbitral process. This could be due to sensitive business information, classified data, or other considerations that could compromise the parties' interests or the effectiveness of the proceedings.

2. **Balancing Transparency and Protection:** The provision demonstrates a balanced approach to transparency and protection. While public hearings promote transparency, they must not come at the cost of jeopardising confidential information or the integrity of the arbitration process. Article 6(2) reflects a nuanced understanding of this balance.
3. **Private Hearings:** When the need arises to protect confidential information or the arbitral process, the arbitral tribunal is required to make arrangements for that specific part of the hearing to be held in private. This means that the proceedings will be closed to the public during that segment to prevent sensitive information from becoming publicly accessible.
4. **Integration with Article 7:** Article 6(2) references Article 7, which likely contains provisions outlining the measures and procedures for protecting confidential information and the integrity of the arbitral process. The reference underscores the interplay between these articles and the broader framework of transparency and protection.
5. **Customised Solutions:** The provision acknowledges that the need for private hearings may vary depending on the case. The arbitral tribunal's role is to assess the specific circumstances and implement appropriate arrangements for maintaining confidentiality and process integrity while adhering to the principles of transparency.
6. **Arbitral Tribunal's Role:** As with other provisions, the arbitral tribunal plays a pivotal role in implementing the provisions of Article 6(2). The tribunal is responsible for identifying when private hearings are necessary, arranging for their execution, and ensuring that the necessary protections are in place.

In summary, Article 6(2) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration addresses situations where the public nature of hearings needs to be restricted to protect confidential information or the integrity of the arbitration process. This provision reflects a balanced approach between transparency and protection, allowing for customised solutions based on the specific circumstances of each case.

3. The arbitral tribunal shall make logistical arrangements to facilitate the public access to hearings (including where appropriate by organizing attendance through video links or such other means as it deems appropriate). However, the arbitral tribunal may, after consultation with the disputing parties, decide to hold all or part of the hearings in private where this becomes necessary for logistical reasons, such as when the circumstances render any original arrangement for public access to a hearing infeasible.

Article 6(3) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration focuses on the practical aspects of facilitating public access to hearings in arbitration proceedings. The provision highlights the importance of transparency while recognising that there may be circumstances requiring adjustments to public access arrangements. Here is an analysis of this provision:

1. **Logistical Arrangements for Public Access:** Article 6(3) emphasises the importance of facilitating public access to hearings in the arbitration process. The arbitral tribunal is responsible for making logistical arrangements to ensure that the public can observe the proceedings. This includes the use of technologies like video links to provide remote access when necessary.

2. **Transparency and Accessibility:** The provision aligns with the overarching goal of transparency in investor-state arbitration. It recognises the public’s interest in observing proceedings and ensures that the arbitration process remains open to scrutiny and public understanding.
3. **Flexibility in Means:** The article acknowledges that there are various means to achieve public access, and the tribunal is empowered to choose the most appropriate method based on the circumstances. This flexibility allows the tribunal to adapt to technological advancements or other practical considerations.
4. **Consultation with Disputing Parties:** The provision highlights the importance of consultation with the disputing parties before making decisions related to public access arrangements. This ensures that the interests and concerns of the parties involved are taken into account when determining the logistics of public access.
5. **Balancing Logistical Challenges:** The provision recognises that there might be logistical challenges that could render original arrangements for public access infeasible. These challenges could arise from technical issues, security concerns, or other practical reasons.
6. **Private Hearings for Logistical Reasons:** In exceptional cases, the tribunal may decide, after consulting with the disputing parties, to hold all or part of the hearings in private due to logistical reasons. This recognises that there might be circumstances where the initial intention for public access cannot be fulfilled due to unforeseen logistical challenges.
7. **Arbitral Tribunal’s Discretion:** Article 6(3) underscores the arbitral tribunal’s discretion in making decisions related to public access arrangements and potential adjustments. This discretion allows the tribunal to consider the unique circumstances of each case.

In summary, Article 6(3) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration focuses on the practical aspects of public access to hearings. It highlights the importance of transparency, outlines methods for facilitating public access, and recognises the tribunal’s discretion to address logistical challenges that may arise during the course of the proceedings. This provision aims to strike a balance between transparency and practicality in investor-state arbitration.

Article 7. Exceptions to transparency

Confidential or protected information

1. Confidential or protected information, as defined in paragraph 2 and as identified pursuant to the arrangements referred to in paragraphs 3 and 4, shall not be made available to the public pursuant to articles 2 to 6.

Article 7(1) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration addresses exceptions to the principle of transparency outlined in articles 2 to 6 of the rules. This provision focuses on protecting confidential or protected information from being made available to the public in the context of investor-state arbitration. Here is an analysis of this provision:

1. **Exception to Transparency:** Article 7 establishes a framework for exceptions to the general principle of transparency in investor-state arbitration proceedings. It recognises that there are circumstances in which confidential or protected information should not be disclosed to the public, even though transparency is a key objective of the rules.
2. **Confidential or Protected Information:** The provision refers to “confidential or protected information”, which is defined in paragraph 2 of Article 7. This likely encompasses sensitive information that parties, including disputing and non-disputing Parties, may wish to keep confidential due to business or other legitimate reasons.
3. **Protection of Sensitive Data:** Article 7(1) acknowledges the need to protect sensitive information from public disclosure. This could include proprietary business data, trade secrets, personal information, and other forms of confidential information that parties may want to safeguard.
4. **Arrangements for Identification:** The provision refers to the identification of confidential or protected information pursuant to arrangements outlined in paragraphs 3 and 4 of Article 7. These arrangements likely provide the procedures for parties to identify and designate information as confidential, helping the arbitral tribunal manage this aspect effectively.
5. **Limitation on Public Availability:** The primary outcome of Article 7(1) is that confidential or protected information, as identified and defined, should not be made available to the public through the transparency measures laid out in articles 2 to 6. This ensures that sensitive information remains confidential and is not disclosed in violation of parties’ interests.
6. **Balance of Interests:** The provision reflects a balance between transparency and the protection of sensitive information. It acknowledges that while transparency is important, there are situations where maintaining the confidentiality of certain information is equally important.
7. **Clarity in Procedure:** The provision sets the groundwork for the subsequent paragraphs in Article 7, which likely detail the procedures for identifying and managing confidential or protected information, as well as the tribunal’s role in ensuring that these procedures are followed.

In summary, Article 7(1) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration establishes an exception to the general principle of transparency for confidential or protected information. It recognises the importance of safeguarding sensitive data while maintaining transparency in the broader arbitration process. This provision lays the foundation for the procedures and mechanisms that follow in the subsequent paragraphs of Article 7.

2. Confidential or protected information consists of:

- (a) Confidential business information;**
- (b) Information that is protected against being made available to the public under the treaty;**
- (c) Information that is protected against being made available to the public, in the case of the information of the respondent State, under the law of the respondent State, and in the case of other information, under any law or rules determined by the arbitral tribunal to be applicable to the disclosure of such information; or**
- (d) Information the disclosure of which would impede law enforcement.**

Article 7(2) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration defines the categories of information that constitute “confidential or protected information”, as mentioned in Article 7(1). This provision outlines the types of information that parties may consider confidential and that should not be made publicly available under the transparency provisions of the rules. Here is an analysis of this provision:

1. **Scope of Confidential or Protected Information:** Article 7(2) delineates the scope of what qualifies as “confidential or protected information”. It specifies various categories of information that parties might want to keep confidential due to their sensitive nature.
2. **Confidential Business Information (a):** This category likely encompasses proprietary business information, trade secrets, financial data, market strategies, customer lists, and other commercially sensitive data. Parties may want to shield this information from public scrutiny to maintain their competitive advantage.
3. **Treaty-Protected Information (b):** Information that is protected against public disclosure under the treaty falls under this category. It acknowledges that some treaty provisions might explicitly limit or prohibit the public disclosure of certain information, and parties should be able to uphold these limitations.
4. **Domestic Legal Protections (c):** Information that is protected against public disclosure under the law of the respondent State (where the respondent State is a party) or any other relevant law or rules is included in this category. This acknowledges that domestic laws might restrict the dissemination of specific types of information, which parties would like to maintain.
5. **Law Enforcement Impediments (d):** This category covers information the disclosure of which would impede law enforcement efforts. It recognises that there might be cases where disclosing certain information could hinder ongoing investigations, legal proceedings, or other law enforcement activities.
6. **Arbitral Tribunal’s Determination:** The provision allows for flexibility by stating that the arbitral tribunal can determine the applicable laws or rules for the protection of certain information. This acknowledges that legal contexts and regulations may vary, and the tribunal’s assessment should be based on the specific circumstances of the case.
7. **Balancing Interests:** Article 7(2) reflects a careful balance between the need for transparency in arbitration proceedings and the legitimate concerns of parties to protect

certain information. It recognises that certain types of information deserve special consideration in the interest of fairness, justice, and the functioning of the legal process.

In summary, Article 7(2) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration defines the types of information that qualify as “confidential or protected information”. It covers a range of categories, from business secrets to treaty-protected data and legal protections under domestic laws. This provision aims to ensure that parties’ legitimate concerns about confidentiality are addressed while still maintaining an overall transparent arbitration process.

3. The arbitral tribunal, after consultation with the disputing parties, shall make arrangements to prevent any confidential or protected information from being made available to the public, including by putting in place, as appropriate:

- (a) Time limits in which a disputing party, non-disputing Party to the treaty or third person shall give notice that it seeks protection for such information in documents;**
- (b) Procedures for the prompt designation and redaction of the particular confidential or protected information in such documents; and**
- (c) Procedures for holding hearings in private to the extent required by article 6, paragraph 2.**

Any determination as to whether information is confidential or protected shall be made by the arbitral tribunal after consultation with the disputing parties.

Article 7(3) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration addresses the practical measures that the arbitral tribunal should take to protect confidential or protected information from public disclosure. This provision outlines the procedures and arrangements that the tribunal should establish to prevent sensitive information from being made available to the public. Here is an analysis of this provision:

1. **Protecting Confidential or Protected Information:** Article 7(3) focuses on ensuring that confidential or protected information is shielded from public availability. This is crucial for upholding the parties’ interests in maintaining the confidentiality of sensitive data.
2. **Consultation with Disputing Parties:** The provision highlights the importance of consultation with the disputing parties. This collaborative approach ensures that the parties’ concerns and perspectives regarding the confidentiality of specific information are taken into account when establishing protective measures.
3. **Procedures for Confidential Information:** The article outlines specific procedures that the arbitral tribunal should put in place to prevent confidential information from becoming public. These procedures include:
4. **Time Limits (a):** The tribunal may set time limits within which parties must notify their intent to seek protection for confidential or protected information in documents. This ensures timely communication and allows the tribunal to manage the protection process effectively.

5. Redaction Procedures (b): The provision recommends establishing procedures for promptly designating and redacting specific confidential or protected information within documents. This involves removing sensitive content while preserving the overall document's relevance.
6. Private Hearings (c): Article 7(3) refers to Article 6, paragraph 2, which allows for private hearings if necessary to protect confidential information. This underscores the interplay between the provisions on public access and the protection of sensitive data.
7. Arbitral Tribunal's Role: The arbitral tribunal plays a central role in implementing the protection of confidential or protected information. The tribunal is responsible for designing and overseeing the procedures, considering the input of the disputing parties and making determinations on whether certain information qualifies for protection.
8. Determination of Confidentiality: The article specifies that any determination regarding whether information is confidential or protected shall be made by the arbitral tribunal. This determination is made after consultation with the disputing parties, ensuring a fair and informed assessment of the information's sensitivity.
9. Balancing Interests: Article 7(3) emphasises the importance of balancing the parties' need to protect confidential information with the broader objectives of transparency and fairness in the arbitration process. The procedures established should strike this balance effectively.

In summary, Article 7(3) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration outlines the procedures that the arbitral tribunal should establish to protect confidential or protected information from public disclosure. These procedures include time limits for notice, redaction processes, and the possibility of private hearings. The provision underlines the significance of consultation with disputing parties and the tribunal's role in determining whether specific information qualifies for protection.

4. Where the arbitral tribunal determines that information should not be redacted from a document, or that a document should not be prevented from being made available to the public, any disputing party, non-disputing Party to the treaty or third person that voluntarily introduced the document into the record shall be permitted to withdraw all or part of the document from the record of the arbitral proceedings.

Article 7(4) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration addresses the situation where the arbitral tribunal decides that certain information should not be redacted from a document, or that the entire document should not be prevented from public availability. In such cases, the provision grants parties the option to voluntarily withdraw all or part of the document from the record of the arbitral proceedings. Here is an analysis of this provision:

1. Response to Tribunal's Decision: Article 7(4) responds to scenarios in which the arbitral tribunal determines that specific information in a document should not be redacted (kept confidential) or that the entire document should not be withheld from public access. This can occur when the tribunal finds that the document or certain information is not, in fact, confidential or protected.

2. **Voluntary Withdrawal:** The provision empowers parties, including disputing parties, non-disputing Parties to the treaty, or third parties who introduced the document, to voluntarily withdraw the entire document or specific parts of it from the record of the arbitral proceedings. This gives the parties control over the visibility of the document in question.
3. **Maintaining Confidentiality:** By allowing voluntary withdrawal, Article 7(4) provides parties with a mechanism to ensure that sensitive information does not remain part of the public record even if the tribunal decides it is not confidential. This allows parties to maintain the confidentiality of certain information based on their own assessment.
4. **Respect for Party Autonomy:** The provision respects the autonomy of the parties to manage the content of the record. Parties can make decisions based on their individual interests and the context of the case.
5. **Balancing Transparency and Confidentiality:** Article 7(4) reflects the ongoing balance between transparency and the protection of confidential or protected information. It acknowledges that while transparency is important, parties should have the ability to manage the confidentiality of their information, especially when the tribunal rules against redaction.
6. **Operational Flexibility:** The provision ensures that parties have a practical avenue to address the situation if the tribunal's decision clashes with their assessment of confidentiality. This flexibility is essential for the effectiveness of the arbitration process.
7. **Arbitral Tribunal's Decision:** The tribunal's decision on whether information should be redacted or documents should be withheld from public availability precedes any voluntary withdrawal. The tribunal's determination serves as a trigger for parties to consider the withdrawal option.

In summary, Article 7(4) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration provides a mechanism for parties to address situations where the tribunal decides that specific information should not be redacted or that a document should not be prevented from public availability. It allows parties to voluntarily withdraw the document or parts of it from the record to maintain confidentiality even when the tribunal's decision differs. This provision reflects the broader objectives of balancing transparency with the protection of confidential or protected information.

5. Nothing in these Rules requires a respondent State to make available to the public information the disclosure of which it considers to be contrary to its essential security interests.

Article 7(5) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration addresses the protection of information related to a respondent State's essential security interests. This provision acknowledges that certain information may be withheld from public disclosure if the respondent State determines that such disclosure is contrary to its essential security interests. Here is an analysis of this provision:

1. **Essential Security Interests:** Article 7(5) recognises that respondent States have essential security interests that may require them to withhold certain information from public

disclosure. This category of information typically pertains to matters that concern national security, defence, intelligence, and related sensitive areas.

2. **Limitation on Transparency Obligations:** The provision asserts that nothing in the UNCITRAL Rules on Transparency requires a respondent State to disclose information that it deems contrary to its essential security interests. This exception reflects a recognition that national security considerations can outweigh the general transparency obligations outlined in the rules.
3. **Balancing Security and Transparency:** Article 7(5) reflects a delicate balance between the principles of transparency in investor-state arbitration and the necessity of safeguarding a respondent State's national security interests. It acknowledges that there are circumstances where disclosure could potentially compromise a State's security or interests.
4. **State Determination:** The provision places the decision-making power regarding what information is contrary to essential security interests in the hands of the respondent State. This recognition of a State's sovereign authority over security matters aligns with established principles of international law.
5. **Respect for State Sovereignty:** Article 7(5) underscores the respect for state sovereignty and acknowledges that states have the right to protect their essential security interests in accordance with their own judgment and national laws.
6. **Potential Scope of Exception:** The provision does not elaborate on the specifics of what constitutes "essential security interests", leaving room for each respondent State to interpret and apply this concept in a manner consistent with its own national security considerations.
7. **Balance of Interests:** The exception in Article 7(5) reflects the ongoing balance between the legitimate interests of the respondent State in protecting essential security information and the overarching goals of transparency and openness in the arbitration process.

In summary, Article 7(5) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration acknowledges that a respondent State has the authority to withhold information from public disclosure if it considers such disclosure to be contrary to its essential security interests. This provision recognises the importance of balancing transparency with national security concerns and respects the sovereignty of respondent States in matters related to their security.

Integrity of the arbitral process

6. Information shall not be made available to the public pursuant to articles 2 to 6 where the information, if made available to the public, would jeopardise the integrity of the arbitral process as determined pursuant to paragraph 7.

Article 7(6) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration addresses a scenario where certain information should not be made available to the public due to the potential risk of jeopardising the integrity of the arbitral process. This provision outlines the

circumstances under which information, even if it would typically fall within the scope of transparency provisions (articles 2 to 6), should be withheld to maintain the integrity of the arbitration process. Here is an analysis of this provision:

1. **Preserving Arbitral Process Integrity:** Article 7(6) places a strong emphasis on maintaining the integrity of the arbitral process. The provision recognises that there are instances where transparency might need to be limited in order to ensure that the arbitration proceedings are conducted fairly, without undue influence or interference.
2. **Exception to Transparency Obligations:** This provision introduces an exception to the general transparency obligations outlined in articles 2 to 6. It specifies that information should not be made available to the public if doing so would jeopardise the integrity of the arbitration process.
3. **Integrity Determined in Paragraph 7:** The determination of whether certain information would jeopardise the integrity of the arbitral process is made pursuant to paragraph 7, which likely outlines the criteria or factors that the tribunal should consider when assessing this risk.
4. **Balancing Interests:** Article 7(6) reflects a delicate balance between transparency and the protection of the arbitral process. It acknowledges that transparency is important, but not at the expense of the fundamental integrity of the proceedings.
5. **Arbitral Tribunal's Role:** The determination of whether public access to certain information would jeopardise the arbitral process's integrity is likely within the purview of the arbitral tribunal. The tribunal's assessment would likely be based on the specific circumstances of the case.
6. **Unspecified Criteria:** The provision does not explicitly outline what criteria should be considered in determining whether the integrity of the arbitral process would be jeopardised. The subsequent paragraph (paragraph 7) likely clarifies this aspect.
7. **Holistic Protection:** By safeguarding the integrity of the arbitral process, Article 7(6) contributes to ensuring that the parties' arguments, evidence, and presentations are made in an environment free from undue influence or external pressures.

In summary, Article 7(6) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration introduces an exception to the general transparency obligations in situations where making certain information public could jeopardise the integrity of the arbitral process. This provision demonstrates the importance of balancing transparency with maintaining the fairness, independence, and credibility of the arbitration proceedings. The criteria for assessing this risk is likely outlined in the subsequent paragraph (paragraph 7).

7. The arbitral tribunal may, on its own initiative or upon the application of a disputing party, after consultation with the disputing parties where practicable, take appropriate measures to restrain or delay the publication of information where such publication would jeopardize the integrity of the arbitral process because it could hamper the collection or production of evidence, lead to the

intimidation of witnesses, lawyers acting for disputing parties or members of the arbitral tribunal, or in comparably exceptional circumstances.

Article 7(7) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration outlines the authority of the arbitral tribunal to take measures to restrain or delay the publication of information that could jeopardise the integrity of the arbitral process. The provision provides the tribunal with the power to ensure the fairness and effectiveness of the arbitration proceedings by preventing the publication of information that could hinder evidence collection, intimidate witnesses or participants, or disrupt the proceedings. Here is an analysis of this provision:

1. **Tribunal's Discretion:** Article 7(7) grants the arbitral tribunal the discretionary authority to take appropriate measures to prevent the publication of information if such publication could jeopardise the integrity of the arbitration process. This provision acknowledges that the tribunal is best positioned to assess the potential risks to the fairness and effectiveness of the proceedings.
2. **Initiative or Application:** The tribunal's authority can be triggered either on its own initiative or upon the application of a disputing party. This highlights the tribunal's proactive role in safeguarding the integrity of the process while also responding to parties' concerns.
3. **Consultation with Disputing Parties:** The provision emphasises consultation with the disputing parties where practicable. This underscores the importance of involving the parties in decisions that impact the transparency and conduct of the proceedings.
4. **Jeopardising the Integrity of the Process:** The core objective of Article 7(7) is to protect the integrity of the arbitral process. This includes situations where the publication of information could adversely affect evidence collection, intimidate witnesses, threaten the safety of lawyers or tribunal members, or disrupt the proceedings.
5. **Evidence Collection and Witnesses:** The provision recognises that evidence collection can be hampered if information is prematurely published, potentially leading to the loss or contamination of evidence. Likewise, witnesses could be intimidated or influenced if sensitive information is made public.
6. **Protection Against Intimidation:** By allowing the tribunal to restrain or delay publication, the provision contributes to creating an environment where witnesses, legal representatives, and tribunal members can participate without fear of intimidation or harassment.
7. **Comparably Exceptional Circumstances:** The provision allows for measures in "comparably exceptional circumstances". This provides flexibility for the tribunal to address unique situations not explicitly covered by the other criteria, allowing for a dynamic and context-sensitive approach.
8. **Balancing Transparency and Process Integrity:** Article 7(7) reflects the ongoing balance between transparency and the need to protect the proper functioning of the arbitral process. It acknowledges that in some cases, the interests of process integrity must take precedence.

In summary, Article 7(7) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration grants the arbitral tribunal discretionary authority to restrain or delay the publication of information that could jeopardise the integrity of the arbitration process. This provision ensures that the tribunal can take proactive measures to protect evidence collection, prevent intimidation, and address exceptional circumstances that could disrupt the proceedings. It underscores the tribunal's role in balancing transparency with the effective conduct of the arbitration process.

Article 8. Repository of published information

The repository of published information under the Rules on Transparency shall be the Secretary-General of the United Nations or an institution named by UNCITRAL.

Article 8 of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration establishes the repository of published information related to transparency proceedings. This provision specifies that the repository for such information shall be the Secretary-General of the United Nations or an institution designated by UNCITRAL. Here is an analysis of this provision:

1. **Centralised Repository:** Article 8 creates a centralised repository for published information concerning investor-state arbitration proceedings conducted under the UNCITRAL Rules on Transparency. This repository is designated to hold information that has been made available to the public through the transparency provisions in the rules.
2. **Role of the Secretary-General or Designated Institution:** The provision identifies two possible entities responsible for maintaining the repository: the Secretary-General of the United Nations or an institution named by UNCITRAL. These entities serve as the custodians of the published information and are tasked with organising and providing access to the relevant materials.
3. **Promotion of Transparency:** The establishment of a repository ensures transparency and accessibility to the public by centralising all relevant information. This contributes to the accountability and openness of the investor-state arbitration process.
4. **Consistency and Standardisation:** Having a designated repository helps ensure consistency in the availability and presentation of published information across different transparency proceedings. It also provides a standardised approach for accessing this information.
5. **United Nations and UNCITRAL Involvement:** By designating the Secretary-General of the United Nations or a UNCITRAL-named institution as the repository holder, Article 8 reinforces the role of international organisations in fostering transparency and facilitating access to relevant legal materials.
6. **Trustworthiness and Accessibility:** The repository's custodian, whether the United Nations Secretary-General or a designated institution, is expected to manage the information in a trustworthy and organised manner, making it accessible to relevant stakeholders, researchers, and the general public.

7. Global Reach: The reference to the United Nations as a potential repository holder reflects the international character of investor-state arbitration proceedings and the desire to make information available to a global audience.
8. Implementation Mechanism: While the provision establishes the repository's principle and its potential custodians, practical details regarding the repository's organisation, access mechanisms, and management may be outlined in other administrative documents or UNCITRAL guidelines.

In summary, Article 8 of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration designates a repository for published information related to transparency proceedings. This provision ensures centralised access to information and reinforces transparency and accountability within the investor-state arbitration process. Whether managed by the Secretary-General of the United Nations or a designated institution, the repository enhances the availability and accessibility of information for interested parties and the public.



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