



# AI COMMENTARY: ADGM ARBITRATION REGULATIONS 2015

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](mailto:s.dilevka@galadarilaw.com).

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## ARBITRATION REGULATIONS 2015<sup>1</sup>

Regulations to make provision for the conduct of arbitral proceedings, and the recognition and enforcement of arbitral awards, within the Abu Dhabi Global Market, and for connected purposes.

Date of Enactment: 17 December 2015

The Board of Directors of the Abu Dhabi Global Market, in exercise of its powers under Article 6(1) of Law No. 4 of 2013 concerning the Abu Dhabi Global Market issued by His Highness the Ruler of the Emirate of Abu Dhabi, hereby enacts the following Regulations:

### PART 1: GENERAL

#### 1. Title

**These Regulations may be cited as the “Arbitration Regulations 2015”.**

Section 1 of the ADGM Arbitration Regulations 2015 specifies the official title by which the regulations can be referred to or cited in legal and official documents. Here is an analysis of its content:

1. Standard Reference: By providing a clear title, the regulations offer a standard reference name, ensuring consistency in its mention across different platforms, legal documents, judgments, and discussions.
2. Year of Enactment: Including “2015” in the title also helps differentiate these regulations from any other similar regulations that might be enacted in the future or were enacted in the past. It offers a clear timestamp, signalling to readers the particular version or iteration of the regulations they are referring to.
3. Focus of the Regulations: The word “Arbitration” in the title underscores the focus and applicability of the regulations – they pertain to matters of arbitration within the context of ADGM.

In summary, Section 1 provides the official name for the regulations, ensuring that there is clarity and uniformity in how these regulations are cited and referenced. This title is what legal professionals, parties, and the court would use when discussing or referring to the regulations.

#### 2. Legislative authority

**These Regulations are made by the Board.**

Section 2 of the ADGM Arbitration Regulations 2015 establishes who has the authority to make (or enact) these regulations. Here is an analysis of its content:

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<sup>1</sup> Source:

[https://en.adgm.thomsonreuters.com/sites/default/files/net\\_file\\_store/ADGM1547\\_19075\\_VER231220.pdf](https://en.adgm.thomsonreuters.com/sites/default/files/net_file_store/ADGM1547_19075_VER231220.pdf)

1. **Source of Authority:** The section clarifies that the ADGM Arbitration Regulations 2015 derive their power and legitimacy from the Board of the Abu Dhabi Global Market (ADGM). This means that the Board is the governing body responsible for the creation and endorsement of these regulations.
2. **Accountability:** By specifying the body responsible for the creation of these regulations, the section ensures that there is a clear point of accountability. If questions arise concerning the regulations' intent, interpretation, or if amendments are required in the future, the Board would be the entity to address those concerns.
3. **Jurisdictional Clarity:** This assertion of legislative authority by the Board underscores its jurisdiction over arbitration matters within the ADGM. It can also serve as a reference point for those seeking to understand the structural hierarchy and governance of the ADGM in relation to arbitration regulations.

In summary, Section 2 offers clarity on the origin and authority behind the ADGM Arbitration Regulations 2015, emphasising that they are backed and endorsed by the ADGM's Board. This clear attribution reinforces the regulations' legitimacy and offers a point of reference and accountability.

### **3. Application of the Regulations**

#### **(1) These Regulations apply in the whole of the Abu Dhabi Global Market.**

Section 3(1) of the ADGM Arbitration Regulations 2015 states the geographical jurisdiction of the Arbitration Regulations 2015. Here is an analysis of its content:

1. **Territorial Jurisdiction:** The provision makes it clear that the regulations apply throughout the entirety of the Abu Dhabi Global Market (ADGM). This means that any arbitral proceedings, recognition, and enforcement of arbitral awards within the boundaries of the ADGM will be governed by these regulations.
2. **Clarity for Stakeholders:** By defining the territorial scope of the regulations, the provision provides clarity to parties who might be considering arbitration in the ADGM. They can be certain that the regulations apply uniformly throughout the entire ADGM area.
3. **Avoidance of Jurisdictional Disputes:** By explicitly stating the geographical application of the regulations, the provision seeks to minimise potential disputes or ambiguities about whether the regulations apply in a specific part of the ADGM.
4. **Consistent Application:** This provision ensures that the regulations are applied consistently and uniformly across the ADGM, thereby ensuring predictability and uniformity in the application of the regulations.

In summary, Section 3(1) sets the territorial jurisdiction for the ADGM Arbitration Regulations 2015, ensuring that they are applicable throughout the entire Abu Dhabi Global Market. This clarity serves to guide stakeholders and ensure consistent application of the regulations within the defined territory.

**(2) The provisions of Federal Law No.(6) of 2018 on Arbitration, or any other Federal Law in respect of arbitration, shall not apply in respect of arbitrations or arbitral awards that are subject to these Regulations.**

Section 3(2) of the ADGM Arbitration Regulations 2015 explicitly states that the provisions of Federal Law No.(6) of 2018 on Arbitration, or any other Federal Law concerning arbitration, will not apply to arbitrations or arbitral awards governed by the ADGM Arbitration Regulations 2015. Here is an analysis:

1. **Exclusivity of ADGM Regulations:** This provision establishes the autonomy and exclusivity of the ADGM Arbitration Regulations 2015 within the Abu Dhabi Global Market. When an arbitration is seated in the ADGM or when the regulations are chosen by the parties as governing their arbitration, these regulations will apply to the exclusion of other federal arbitration laws.
2. **Clarity and Certainty:** This provision offers clear guidance to parties considering or undergoing arbitration within the ADGM. They can be certain that only the ADGM Arbitration Regulations 2015 will govern their proceedings, without interference from other federal arbitration laws.
3. **Minimisation of Conflicts:** By explicitly stating the non-applicability of the Federal Law No.(6) of 2018 and other federal arbitration laws, the provision reduces potential conflicts or overlaps between different sets of regulations and laws. This aims to streamline the arbitration process and minimise legal disputes regarding which rules apply.
4. **Consistency with ADGM's Autonomous Legal Framework:** The ADGM has its distinct legal framework, inspired by English Common Law, that operates alongside, but separate from, the wider UAE legal system. This provision is in line with that principle, emphasising the independence of the ADGM's legal and regulatory system.
5. **Impact on Enforceability:** Parties to an arbitration must be aware that while the ADGM regulations apply within the ADGM, the enforceability of arbitral awards outside the ADGM could potentially be governed by other applicable laws, including the Federal Law on Arbitration or international conventions to which the UAE is a party.

In summary, Section 3(2) of the ADGM Arbitration Regulations 2015 affirms the independent and exclusive applicability of these regulations within the Abu Dhabi Global Market, ensuring that the specified federal laws on arbitration do not apply to arbitrations and awards governed by the ADGM regulations. This serves to provide clarity to parties and to maintain the distinctiveness and consistency of the ADGM's arbitration framework.

#### 4. Date of enactment

**These Regulations are enacted on the date specified by the Board in the resolution approving the adoption of these Regulations.**

Section 4 of the ADGM Arbitration Regulations 2015 clarifies that the date of enactment of the “Arbitration Regulations 2015” will be the date that the Board of Directors of the Abu Dhabi Global Market (ADGM) specifies in the resolution that approves these regulations’ adoption. Let us delve into its content and Implications:

1. **Confirmation of Authority:** The Section emphasises the authority of the Board of Directors of the ADGM in enacting the regulations. This underlines the Board’s governance role within the ADGM and its power to formalise and put into effect regulatory frameworks.
2. **Clarity on Effective Date:** By delegating the determination of the enactment date to the Board’s resolution, there is clarity for all stakeholders as to when the regulations come into force. Stakeholders can refer to the specific resolution to confirm the exact date.
3. **Flexibility:** This mechanism allows for some flexibility. Instead of pre-determining a fixed enactment date, the Board can choose an appropriate date based on its considerations at the time of approving the regulations. This flexibility can be beneficial in aligning the enactment with other related regulatory or administrative decisions or developments.
4. **Legal Certainty:** Knowing the exact date of enactment is essential for legal clarity. Parties involved in arbitrations or considering arbitration in the ADGM will need to know whether these regulations apply to their arbitration. The enactment date will help determine if an arbitration falls under these regulations or prior rules (if any existed).

In summary, Section 4 of the ADGM Arbitration Regulations 2015 outlines the mechanism for determining the date when these regulations come into effect, emphasising the authority and discretion of the ADGM’s Board of Directors in this matter. This section ensures clarity, flexibility, and legal certainty regarding the applicability of the regulations.

#### 5. Date of commencement

**These Regulations come into force on the date of their publication. The Board may by rules make any transitional, transitory, consequential, saving, incidental or supplementary provision in relation to the commencement of these Regulations as the Board thinks fit.**

Section 5 of the ADGM Arbitration Regulations 2015 deals with the date of commencement of these regulations. Let us analyse its content and the implications it carries:

1. **Immediate Effectiveness:** By setting the commencement date as the date of publication, the regulations are designed to be effective immediately upon making them public. This provides clarity to stakeholders and ensures immediate application of the rules.
2. **Authority and Flexibility of the Board:** The Section re-emphasises the central role of the Board in managing the regulations. The power to make transitional or other related

rules as they “think fit” allows the Board flexibility in ensuring a smooth transition from any previous regulatory environment to the one established by these regulations. This is especially important in a dynamic field like arbitration, where ongoing cases might require special provisions.

3. **Legal Predictability:** The certainty about the commencement date provides legal predictability for parties considering or involved in arbitrations in the ADGM. They can be sure of the set of rules applicable to their case based on the date of commencement.
4. **Ensuring Smooth Transition:** The Board’s authority to make transitional or other related provisions indicates a foresight to address any complexities or issues that might arise during the transition to these regulations. It could cover scenarios where ongoing arbitrations under previous rules might intersect with the new regulations.
5. **Comprehensive Governance:** By addressing not just the core content of arbitration but also the logistical and transitional aspects, the Section underscores a comprehensive approach to governance. It recognises that introducing new regulations might have a ripple effect, requiring adjustments in related areas.

In summary, Section 5 of the ADGM Arbitration Regulations 2015 clarifies when the regulations become effective and grants the Board the authority to manage the transition. This design provides clarity, legal predictability, and ensures a smooth adaptation to the new regulations while highlighting the comprehensive governance approach of the ADGM.

## 6. Language

**The English text of these Regulations shall be the official original text. Any translation thereof into another language shall not be authoritative and in the event of any discrepancy between the English text of these Regulations and any other version, the English text shall prevail.**

Section 6 of the ADGM Arbitration Regulations 2015 deals with the language of the regulations and its implications. Here is a breakdown and analysis:

1. **Priority of English Version:** By establishing the English version as the official and original text, the regulations provide a clear reference point for any disputes or ambiguities about interpretation. This minimises confusion and uncertainty.
2. **Consistency in Interpretation:** By emphasising that translations are not authoritative, the regulations ensure that the same version (English) is referred to and relied upon, promoting consistent interpretation and application across different cases.
3. **International Appeal:** The ADGM, as an international financial centre, deals with a variety of international entities and stakeholders. By choosing English (an internationally widely used language) as the authoritative language, the regulations cater to a broad audience and can potentially attract international arbitrations.
4. **Caution for Non-English Users:** This provision indirectly informs parties that if they rely on a translated version, they should do so with caution. For official matters and

particularly in case of doubts or disputes, reference should always be made to the English version.

5. **Reduced Ambiguities:** By having a single definitive version, it reduces the chances of discrepancies and contradictions that might arise from multiple translated versions. This is especially crucial in legal contexts where the exact wording can have significant implications.

In summary, Section 6 of the ADGM Arbitration Regulations 2015 establishes the primacy of the English version of the regulations over any translations, ensuring consistency in interpretation, international appeal, and reduced ambiguities. It serves as a clear guidance for parties involved in arbitrations under these regulations to rely on the English text for authoritative interpretation.

## 7. Interpretation

**Schedule 1 contains:**

- (a) interpretative provisions which apply to these Regulations; and**
- (b) a list of defined terms used in these Regulations.**

Section 7 of the ADGM Arbitration Regulations 2015 discusses the content and function of Schedule 1 attached to these regulations. Here is a breakdown and analysis:

1. **Reference Guide:** By placing interpretative provisions and a list of defined terms in Schedule 1, the regulations effectively provide a reference guide for users. This ensures that any person referring to the regulations has clarity on how terms are defined and interpreted, ensuring consistency in application and understanding.
2. **Avoiding Ambiguities:** Providing clear interpretations and definitions minimises potential ambiguities or disputes about what specific terms or provisions mean. This can be crucial in legal contexts, where a slight variance in interpretation can have substantial implications.
3. **Efficiency:** Instead of repeating definitions or interpretations throughout the regulations, placing them in one centralised location (Schedule 1) makes the regulations more concise. Readers can quickly refer to Schedule 1 whenever they come across a term or provision they are unsure about.
4. **Uniform Interpretation:** By having a centralised set of interpretations and definitions, it ensures that all parties are on the same page. Whether it's arbitrators, parties to an arbitration, legal practitioners, or any other stakeholders, everyone has a shared reference point, leading to a more uniform application of the regulations.
5. **Ease of Amendments:** Should there be a need in the future to amend or update the definitions or interpretations, having them in a separate schedule makes it easier to make such amendments without altering the main body of the regulations.

In summary, Section 7 of the ADGM Arbitration Regulations 2015 points readers to Schedule 1 for interpretative provisions and definitions, ensuring clarity, consistency, and ease of reference. This structure aids in efficient use and understanding of the regulations, ensuring that all stakeholders have a clear and shared understanding of the terms used.



**PART 2: SCOPE OF APPLICATION****8. Scope of application of Regulations**

**Unless stated otherwise, Part 3 of these Regulations shall apply to arbitrations where the seat of the arbitration is the Abu Dhabi Global Market, or where an arbitration agreement applies these Regulations. Part 4 of these Regulations shall apply to the recognition and enforcement of arbitral awards in the Abu Dhabi Global Market, irrespective of the state or jurisdiction in which they are made.**

Section 8 of the ADGM Arbitration Regulations 2015 delineates the scope of application of the regulations based on the different parts of the document. Here is a detailed analysis:

**Key Provisions:**

1. **Part 3 Application:** Part 3 of the regulations is applicable in two specific scenarios: a. When the seat (or location) of the arbitration is within the Abu Dhabi Global Market (ADGM). b. When an arbitration agreement, irrespective of where the arbitration is seated, chooses to apply the ADGM Arbitration Regulations 2015.
2. **Part 4 Application:**
  - a. Part 4 is focused on the recognition and enforcement of arbitral awards within ADGM.
  - b. Crucially, it applies irrespective of where the award was made—meaning that awards from any state or jurisdiction can be recognised and enforced in the ADGM as long as they conform to these regulations.

**Implications:**

1. **Jurisdictional Clarity:** The section makes it clear under what circumstances the ADGM Arbitration Regulations will apply. This clarity is essential for parties who are deciding on a forum for arbitration or for those who are considering enforcing an award within ADGM.
2. **Inclusivity of Foreign Awards:** The explicit mention that Part 4 applies to awards from any jurisdiction emphasises the inclusive stance of ADGM towards foreign arbitral awards. This is consistent with many arbitration-friendly jurisdictions and treaties like the New York Convention, which prioritise the enforceability of foreign arbitration awards.
3. **Flexibility:** By allowing parties outside ADGM to opt into the ADGM Arbitration Regulations via their arbitration agreement, the regulations offer flexibility. Parties can choose the regulations as their governing framework even if their arbitration is not seated within ADGM.
4. **Efficiency in Enforcement:** For those seeking to enforce an arbitral award in ADGM, the clarity provided by Part 4 helps streamline the enforcement process by setting out a clear framework.

5. Promotion of ADGM as an Arbitral Venue: By providing clear rules on when its regulations apply and ensuring a framework for the recognition and enforcement of foreign awards, ADGM promotes itself as an attractive venue for international arbitration.

In summary, Section 8 of the ADGM Arbitration Regulations 2015 clearly demarcates the scenarios in which different parts of the regulations are applicable. It ensures that the ADGM is arbitration-friendly, both for disputes seated within its jurisdiction and for the recognition and enforcement of foreign arbitral awards.

**PART 3: ARBITRATION****Chapter 1 – General Provisions****9. Mandatory and non-mandatory provisions**

**(1) The mandatory provisions of this Part 3 and Part 4 are listed in Schedule 2 and have effect notwithstanding any agreement to the contrary.**

Section 9(1) of the ADGM Arbitration Regulations 2015 addresses the supremacy of certain regulations over any agreements the parties might have, specifically referring to mandatory provisions found in Part 3 and Part 4 of these regulations.

**Key Provisions:**

1. **Mandatory Provisions:**
  - a. Certain provisions within Part 3 and Part 4 are labelled as “mandatory”.
  - b. These mandatory provisions are listed in Schedule 2.
2. **Supremacy Over Contrary Agreements:** No matter what the parties may have agreed upon in their arbitration agreement or any other contractual arrangement, the mandatory provisions will override and take precedence. Essentially, the parties cannot contract out of these provisions.

**Implications:**

1. **Protection of Fundamental Rights and Public Policy:** Mandatory provisions often serve to protect the fundamental rights of the parties and ensure the fairness and integrity of the arbitration process. They can also be in place to uphold important aspects of public policy.
2. **Ensuring Consistency:** By having certain non-derogable provisions, the regulations ensure that there is a consistent and standard process applied across different arbitrations that fall under its jurisdiction, regardless of individual party agreements.
3. **Clarity for Parties:** This section makes it clear for parties that certain regulations within the ADGM Arbitration Regulations cannot be overridden, which assists in providing clarity and predictability.
4. **Potential Limits on Party Autonomy:** While arbitration is typically characterised by its emphasis on party autonomy, there are boundaries to this autonomy. This section makes it clear that while parties have significant freedom to design their arbitration process, there are certain limits they cannot cross.

In summary, Section 9(1) of the ADGM Arbitration Regulations 2015 underlines the importance and supremacy of certain core provisions in Parts 3 and 4. These provisions are so integral to the spirit and effective function of the regulations that parties cannot contract out of them, ensuring a consistent and standardised application of key principles across different arbitrations under the ADGM’s purview.

**(2) The other provisions of this Part 3 (the “non-mandatory” provisions) allow the parties to make their own arrangements by agreement but shall apply in the absence of such agreement. For the avoidance of doubt, Part 4 does not contain any non-mandatory provisions.**

Section 9(2) of the ADGM Arbitration Regulations 2015 distinguishes between mandatory provisions and non-mandatory provisions within the context of Part 3 of the regulations. It also provides clarification about the nature of the provisions in Part 4.

#### Key Provisions:

1. **Non-Mandatory Provisions:** Part 3 of the regulations contains provisions that are “non-mandatory”, meaning that they are default provisions which apply unless the parties agree otherwise.
2. **Parties’ Freedom:** Parties are allowed to make their own arrangements by agreement for issues covered by non-mandatory provisions.
3. **Default Application:** If the parties do not reach an agreement on the issues covered by the non-mandatory provisions, then these default rules in Part 3 will apply.
4. **Nature of Part 4:** The regulations clarify that Part 4 exclusively contains mandatory provisions and does not have any non-mandatory provisions.

#### Implications:

1. **Emphasis on Party Autonomy:** The non-mandatory provisions emphasise the principle of party autonomy, a cornerstone of arbitration, where parties have the freedom to structure their arbitration process.
2. **Guidance in Absence of Agreement:** The non-mandatory provisions act as a safety net. In cases where parties have not made explicit provisions on certain issues, these default rules will govern the process, ensuring that there are no gaps in the procedural framework.
3. **Clarity and Avoidance of Ambiguity:** The clear distinction between mandatory and non-mandatory provisions, and the explicit mention that Part 4 only contains mandatory provisions, helps to avoid potential confusion and provides clarity for parties, practitioners, and arbitrators.
4. **Enforcement and Recognition Concerns:** The fact that Part 4 exclusively contains mandatory provisions underlines the importance of recognition and enforcement in the arbitration process. Parties cannot modify these provisions, ensuring that awards are more likely to be consistently recognised and enforced within the jurisdiction.

In summary, Section 9(2) of the ADGM Arbitration Regulations 2015 clarifies the nature of provisions in Parts 3 and 4, distinguishing between the flexibility offered to parties in Part 3 and the strict, unchangeable rules of Part 4. This provides a balanced approach between upholding party autonomy and ensuring consistent recognition and enforcement of arbitral awards.

**(3) The parties may make such arrangements by agreeing to the application of arbitration rules, including those of any institution, or providing any other means by which a matter may be decided.**

Section 9(3) of the ADGM Arbitration Regulations 2015 emphasises the principle of party autonomy in the arbitration process. This section offers insights into how parties can structure their arbitration procedures and processes.

Key Provisions:

1. **Party Autonomy:** The section gives parties the liberty to determine their arbitration process. This autonomy allows parties to customise the arbitration procedures according to their preferences and needs.
2. **Arbitration Rules:** Parties have the option to adopt specific arbitration rules. These rules could be general arbitration rules or those set by a specific arbitral institution.
3. **Institutional Arbitration:** The section recognises the possibility of institutional arbitration. This is where parties choose to have their disputes resolved under the aegis of an established arbitration institution, which typically has its set of arbitration rules.
4. **Alternative Arrangements:** Beyond institutional rules, parties can also agree on any other means or mechanism to decide a matter. This offers flexibility to parties who might have unique or specific considerations for their arbitration process.

Implications:

1. **Flexibility and Customisation:** The provision promotes flexibility in the arbitration process. Parties can design their arbitration processes to suit the nature of their relationship, the type of dispute, or any other considerations they might have.
2. **Acknowledgment of Institutional Arbitration:** By allowing parties to adopt the rules of any institution, the regulations acknowledge the legitimacy and role of arbitral institutions in the arbitration process.
3. **Efficiency and Expertise:** By agreeing to institutional rules or other predetermined mechanisms, parties can potentially streamline the arbitration process and benefit from established practices and expertise.
4. **Enhanced Predictability:** Adopting established arbitration rules can bring predictability to the arbitration process. Both parties would have clarity on procedural aspects, reducing potential disputes over procedural matters.
5. **Ensuring Fairness:** By opting for established rules or institutions, parties can ensure that the arbitration process is fair and neutral, especially if there is a significant power disparity between the parties.

In summary, Section 9(3) of the ADGM Arbitration Regulations 2015 embodies the principle of party autonomy, emphasising the freedom parties have in determining the rules and procedures of their

arbitration. Whether through established institutional rules or other agreed-upon means, this section ensures that arbitration remains a flexible and party-centric dispute resolution mechanism.

**(4) The choice of law other than the law of the Abu Dhabi Global Market as the applicable law in respect of a matter provided for by a non-mandatory provision of this Part 3 is equivalent to an agreement making provision about that matter. For this purpose, an applicable law determined in accordance with the parties' agreement, or which is objectively determined in the absence of any express or implied choice, shall be treated as chosen by the parties.**

Section 9(4) of the ADGM Arbitration Regulations 2015 provides insight into how the law governing certain matters in the arbitration process is determined, particularly when non-mandatory provisions of Part 3 are involved.

Key Provisions:

1. **Choice of Law:** The section highlights that if the parties choose a law other than the law of the Abu Dhabi Global Market (ADGM) concerning a matter provided for by a non-mandatory provision of Part 3, such choice is considered an express agreement about that matter.
2. **Equivalence of Chosen Law to Agreement:** Making a choice of law is deemed equivalent to parties making an express agreement on the matter governed by the non-mandatory provision.
3. **Determination of Applicable Law:** The applicable law can be determined either by the explicit or implicit agreement of the parties. If no such agreement exists (whether express or implied), then an objectively determined law is considered as the one chosen by the parties.

Implications:

1. **Party Autonomy Emphasised:** The provision reinforces the idea of party autonomy in arbitration. It allows parties to have control over the laws that will govern their arbitration procedures and any matters related to it.
2. **Flexibility:** Parties have the liberty to choose laws from jurisdictions other than ADGM. This can be useful in scenarios where the matter is closely connected to another jurisdiction or the chosen law is better suited for the nature of the dispute.
3. **Objective Determination:** In cases where there is no clear indication of the parties' choice, the applicable law would be determined based on objective criteria. This ensures that even in the absence of a clear choice, the arbitration can proceed with a determinable set of rules.
4. **Certainty and Predictability:** By equating the choice of law to an express agreement, the provision provides clarity. Parties are aware that their choice of law will be upheld and treated as an agreement, ensuring predictability in the arbitration process.

5. Recognition of Implicit Choices: The provision recognises that sometimes, parties might make an implied choice of law, even if they do not expressly state it. This is important because it acknowledges that actions, behaviours, or other indicators might suggest a particular choice of law.

In summary, Section 9(4) of the ADGM Arbitration Regulations 2015 emphasises the principle of party autonomy in determining the applicable law for matters governed by non-mandatory provisions of Part 3. It provides that an explicit or even implicit choice of law by the parties will be respected and treated as an express agreement. This provision ensures clarity, flexibility, and predictability in the arbitration proceedings.

## 10. Receipt of written communications

**Unless otherwise agreed by the parties to a dispute:**

**(a) any written communication, notification, or proposal is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence, mailing or electronic address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee’s last known place of business, habitual residence, mailing or electronic address by any means which provides a record of the attempt to deliver it;**

**(b) the communication is deemed to have been received on the day it is so delivered; and**

**(c) time periods specified in these Regulations, or to be agreed by the parties or determined by the arbitral tribunal in accordance with these Regulations, shall start to run on the day following the day when a notice or communication is received. If the last day of any such period is an official holiday or a non-business day at the place where the notice or communication is received, the period shall be extended until the first business day which follows. Official holidays and non-business days occurring during the running of the period of time shall otherwise be included for the purposes of calculating the period.**

Section 10 of the ADGM Arbitration Regulations 2015 establishes guidelines regarding written communications in the context of arbitration procedures. The guidelines are applicable unless the parties involved in the dispute have mutually agreed upon an alternative arrangement.

Key Provisions:

1. Deemed Receipt of Communication:
  - a. Personal delivery or sending it to a known addresses (business, residence, mailing, or electronic) ensures the communication is considered “received”.
  - b. If these known addresses are unreachable even after a reasonable inquiry, the communication is considered received if it’s sent to the last known address using a delivery method that records the delivery attempt.
2. Date of Receipt: The communication is considered received on the day of its actual delivery.

3. Commencement of Time Periods:
  - a. Timeframes mentioned in the Regulations, or those agreed upon by the parties or set by the arbitral tribunal, commence the day after the communication or notice is received.
  - b. If the final day of this period is an official holiday or non-working day where the notice was received, then the deadline extends to the following working day.
  - c. Despite this extension, any official holidays or non-working days that fall within the period still count towards the total duration.

Implications:

1. **Certainty and Clarity:** The provisions ensure that there is clarity on when a communication is deemed “received”, which helps avoid disputes about when a party was notified.
2. **Flexibility and Practicality:** The regulation provides flexibility in ensuring communication is delivered, even if standard addresses for the party are unreachable. This minimises delays that might occur due to unforeseen challenges in communication.
3. **Time Period Calculation:** Clarity about the start and end of any specified or agreed upon time periods ensures smooth proceedings without disputes about timing.
4. **Accommodation of Non-working Days:** The provisions ensure that parties are not disadvantaged by the ending of a time period on a non-working day, ensuring fairness.
5. **Respect for Party Autonomy:** The beginning of the section emphasises that these provisions apply unless there is a different agreement between the parties. This means that parties can mutually decide on a different method or guideline for communications if they believe it suits their needs better.

In summary, Section 10 of the ADGM Arbitration Regulations 2015 offers clear guidelines on how communications are deemed received in the arbitration process, ensuring clarity and fairness. It also outlines how time periods are calculated, ensuring that the process runs smoothly without disagreements regarding communication or timing. The emphasis on parties’ autonomy means they can adjust these guidelines if they mutually agree on alternative methods.

## 11. Waiver and loss of right to object

**(1) A party which, knowingly and without a legitimate reason, fails to object to an irregularity before the arbitral tribunal in a timely manner, or if a time limit is provided in any applicable arbitration rules, within such period of time, shall be deemed to have waived its right to object to such irregularity.**

Section 11(1) of the ADGM Arbitration Regulations 2015 addresses the scenario where a party in an arbitration fails to raise an objection about an irregularity in the arbitration process.



## Key Provisions:

1. **Knowledge of the Irregularity:** The party must be aware of the irregularity to be held to this standard. If they were not aware of it, they cannot be accused of failing to raise an objection knowingly.
2. **No Legitimate Reason:** If a party fails to raise an objection and does not have a valid reason for this oversight, they are considered to have waived their right.
3. **Timeliness:** The objection must be raised promptly. The exact timeframe is not specified here, but the implication is that delays without justification can result in a waiver.
4. **Arbitration Rules Time Limit:** If there are specific arbitration rules that the parties have agreed upon, and these rules provide a specific time limit for raising objections, then that time limit prevails. If a party fails to object within this timeframe, they waive their right to object.

## Implications:

1. **Accountability:** Parties involved in the arbitration are held accountable for keeping track of the process and ensuring they raise any concerns promptly. They cannot later claim ignorance or oversight if they were aware of an irregularity and did not act.
2. **Fairness:** This provision ensures that parties cannot strategically wait and raise objections later in the process, perhaps when it becomes clear that the arbitration might not be going in their favour.
3. **Streamlined Process:** Arbitration aims to be a more efficient alternative to court litigation. By ensuring objections are raised promptly, the process remains streamlined and avoids unnecessary delays.
4. **Respect for Agreed-Upon Rules:** If the parties have chosen specific arbitration rules, those rules are given priority. This respects the parties' autonomy in deciding the rules of their arbitration process.
5. **Certainty and Clarity:** The provision gives clarity to all parties involved. If an irregularity arises and a party does not object promptly, the other party can be assured that the issue will not be raised later.

In summary, Section 11(1) of the ADGM Arbitration Regulations 2015 emphasises the importance of promptness and diligence in the arbitration process. Parties are required to raise objections about any irregularities they are aware of in a timely manner. Failure to do so, especially without a valid reason, results in a waiver of the right to object, ensuring the arbitration process remains efficient and free from strategic delays.

**(2) An objection to an irregularity under subsection (1) shall include any objection (a) that the tribunal lacks substantive jurisdiction; (b) that the proceedings have been improperly conducted; (c) that there has been a failure to comply with the arbitration agreement or with any provision of**

**this Part 3; or (d) that there has been any other irregularity affecting the tribunal or the proceedings.**

Section 11(2) of the ADGM Arbitration Regulations 2015 further elaborates on what constitutes an “irregularity” for the purposes of the previous subsection. It provides specific examples of irregularities that a party might object to in the context of an arbitration.

Key Provisions:

1. **Scope of Irregularities:** The subsection sets out a non-exhaustive list of potential irregularities a party might raise objections to.
2. **Lack of Substantive Jurisdiction:** This refers to objections related to the arbitral tribunal’s authority or competence to decide on the subject matter of the dispute. Essentially, if a party believes the tribunal does not have the jurisdiction to hear the case, they can raise this as an irregularity.
3. **Improper Conduct of Proceedings:** If a party feels the way the arbitration is being conducted is inappropriate, this can be raised as an irregularity. This might include concerns about bias, not following agreed-upon procedures, or other procedural matters that affect the fairness or integrity of the process.
4. **Non-compliance with the Arbitration Agreement or Part 3:** If there is a breach of the arbitration agreement itself or any provision of Part 3 of the Regulations, it can be flagged as an irregularity. This ensures that both the specific agreement between the parties and the broader regulations are being adhered to.
5. **Other Irregularities Affecting the Tribunal or Proceedings:** This is a catch-all provision that covers other potential irregularities not specifically mentioned. It ensures that even if an issue does not fall neatly into the previous categories, it can still be raised as an irregularity if it affects the arbitral tribunal or the conduct of the proceedings.

Implications:

1. **Broad Scope:** The provision covers a wide range of potential issues, from fundamental questions of jurisdiction to more procedural matters, ensuring parties have a comprehensive way to address concerns.
2. **Protection for Parties:** By setting out specific scenarios where objections can be raised, it offers parties a clearer understanding of their rights and the types of issues they can bring forward.
3. **Ensuring Adherence to Rules:** Emphasising the importance of compliance with both the specific arbitration agreement and the broader regulations reinforces the importance of due process and ensures a standard of conduct throughout the arbitration.
4. **Flexibility:** The inclusion of “any other irregularity” provides flexibility for unforeseen or unique issues that might arise, ensuring the regulation is adaptable.

In summary, Section 11(2) of the ADGM Arbitration Regulations 2015 provides clarity on the types of objections a party can raise in the context of irregularities during arbitration. This provision ensures

that the process is conducted fairly, in accordance with both the specific agreement of the parties and the broader regulations, and provides a framework for parties to voice concerns about the process.

**(3) Where the arbitral tribunal rules that it has substantive jurisdiction and a party to arbitral proceedings who could have questioned that ruling by challenging the award (or pursuant to any other process that may be agreed by the parties), does not do so, or does not do so within the time allowed by the arbitration agreement or any provision of this Part 3, he may not object later to the tribunal's substantive jurisdiction on any ground which was the subject of that ruling.**

Section 11(3) of the ADGM Arbitration Regulations 2015 addresses the implications for a party in arbitral proceedings that fails to timely challenge a ruling by the arbitral tribunal regarding its own substantive jurisdiction.

#### Key Provisions:

1. **Ruling on Substantive Jurisdiction:** The provision begins by considering a situation where the arbitral tribunal has ruled that it indeed possesses the necessary authority or competence to decide on the subject matter of the dispute (i.e., it has substantive jurisdiction).
2. **Failure to Challenge:** If a party had the opportunity to question or challenge the tribunal's ruling on its substantive jurisdiction but chooses not to, or fails to do so within the prescribed time, there are consequences for that party.
3. **Consequence:** The party that failed to timely challenge the tribunal's ruling on substantive jurisdiction cannot later object to the tribunal's jurisdiction based on any ground that was the subject of the initial ruling. In other words, the party loses the right to object in the future on that basis.

#### Implications:

1. **Ensuring Expediency:** The regulation promotes efficiency in arbitration proceedings. It encourages parties to raise objections promptly rather than dragging out the process by raising objections at a later stage.
2. **Certainty and Stability:** By ensuring that parties cannot revisit the issue of the tribunal's jurisdiction after the fact, the regulation offers more predictability for all involved. Once the tribunal has ruled on its own jurisdiction and the time to challenge that ruling has passed, the matter is considered settled.
3. **Protection of Parties' Rights:** While this provision aims to streamline the arbitration process, it also respects parties' rights. Parties are given the opportunity to challenge the tribunal's jurisdiction, but they must act within the prescribed timeframe.
4. **Encourages Diligence:** Parties must be diligent and act promptly if they wish to challenge the tribunal's jurisdiction. It emphasises the importance of being active participants in the arbitration process and keeping abreast of all developments.

In summary, Section 11(3) of the ADGM Arbitration Regulations 2015 ensures that once the arbitral tribunal has made a ruling on its substantive jurisdiction, parties must promptly challenge such a ruling if they disagree. If they fail to do so within the prescribed time, they cannot raise objections on that ground at a later stage. This provision promotes efficiency, certainty, and the timely resolution of disputes in the arbitration process.

## 12. Extent of court intervention

**In matters governed by these Regulations, no court shall intervene except to the extent so provided in these Regulations.**

Section 12 of the ADGM Arbitration Regulations 2015 pertains to the role of courts in relation to arbitration proceedings governed by these Regulations.

Key Provision:

1. **Limitation on Court Intervention:** This section clearly establishes that courts should not intervene in arbitration proceedings that are governed by the ADGM Arbitration Regulations 2015. The only exception to this non-intervention principle is if the Regulations themselves specifically allow for such court involvement.

Implications:

1. **Promotion of Arbitration Autonomy:** The essence of arbitration is to provide a private, alternative means of dispute resolution that operates separately from the traditional court system. By limiting court intervention, the regulation ensures that the autonomy of the arbitration process is preserved.
2. **Efficiency and Expediency:** One of the major benefits of arbitration over litigation is the speed and efficiency of the process. Minimising court intervention ensures that arbitration proceedings are not delayed by court applications and proceedings, thus leading to faster resolution of disputes.
3. **Consistency and Predictability:** By providing a clear directive against court intervention except as explicitly provided in the Regulations, the provision promotes consistency and predictability in how arbitrations are conducted within the jurisdiction of the ADGM.
4. **Protects Parties' Agreements:** Often, parties opt for arbitration because they wish to avoid the public nature, formality, and potential delays of court proceedings. By restricting court intervention, the regulation respects and upholds the intention and agreements of parties who choose arbitration as their preferred mode of dispute resolution.
5. **Scope for Necessary Court Intervention:** While the provision generally restricts court involvement, the exception that courts can intervene "to the extent so provided in these Regulations" ensures that there is room for necessary judicial oversight or assistance where the Regulations allow for it. This could include matters such as enforcing or setting aside an arbitration award, appointing arbitrators in certain circumstances, or ensuring the arbitral process is fair and just.

In summary, Section 12 of the ADGM Arbitration Regulations 2015 safeguards the autonomy and efficacy of the arbitration process by generally limiting court intervention, while allowing for judicial involvement in specific instances as stipulated by the Regulations. It underscores the principle that arbitration is a distinct and self-contained mode of dispute resolution, separate from the traditional court system.

### 13. Authority of the Court to perform functions of arbitration assistance and supervision

**The functions referred to in sections 16, 27, 30, 31, 32, 48, 58, 61 and 62 of these Regulations shall be performed by the Court, while the functions referred to in sections 19(3), 19(4), 19(5), 19(6), 21(2), 22(1), 23(2), 39(2) and 56(5) shall be performed by the Court subject to any process agreed between the parties in the arbitration agreement or by a subsequent written agreement.**

Section 13(1) of the ADGM Arbitration Regulations 2015 deals with the Court's authority in relation to arbitration assistance and supervision.

#### Key Provisions:

1. **Specific Court Functions:** The Section identifies specific sections (16, 27, 30, 31, 32, 48, 58, 61, and 62) of the Regulations where the Court has a role to play in performing arbitration-related functions. These roles are direct and unequivocal.
2. **Conditional Court Functions:** The Section further enumerates certain sections (19(3), 19(4), 19(5), 19(6), 21(2), 22(1), 23(2), 39(2), and 56(5)) where the Court's role is subject to any process that the parties might have agreed upon in their arbitration agreement or through a later written agreement. This means that while the Court has the authority to intervene or assist in these specific instances, parties can agree to a different procedure or mechanism, limiting the Court's role.

#### Implications:

1. **Clear Demarcation:** This provision provides clarity and certainty by precisely listing out the specific roles the Court can play in the arbitration proceedings. By doing so, it also helps in avoiding any potential overlap or confusion regarding the jurisdiction and powers of the Court vis-a-vis the arbitral tribunal.
2. **Party Autonomy:** By allowing the parties to agree on a process in certain instances (the sections listed in the latter part of the provision), the Regulations respect and uphold the principle of party autonomy, which is a cornerstone of arbitration.
3. **Facilitating Role of the Court:** This Section ensures that the Court acts as a facilitating entity, providing necessary assistance and supervision in arbitration processes. This is in line with the modern approach to arbitration where courts are seen more as supporters rather than intervenors.
4. **Flexibility:** The bifurcation of the Court's role — direct functions versus those that are subject to party agreement — provides flexibility in the arbitration proceedings. Parties can either rely on the established framework provided by the Regulations or customise certain processes based on their preferences and the specifics of their dispute.

5. Ensuring Fairness and Due Process: The Court’s involvement in specific stages of the arbitration process ensures that there is a layer of oversight and that the principles of fairness and due process are upheld.

In summary, Section 13(1) of the ADGM Arbitration Regulations 2015 delineates the specific roles and functions that the Court will perform in arbitration proceedings. By providing a clear framework and allowing for party customisation in certain areas, the provision balances the principles of party autonomy, judicial oversight, and the efficient resolution of disputes.

## Chapter 2 – Arbitration Agreement

### 14. Arbitration agreement

**(1) An arbitration agreement is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.**

Section 14(1) of the ADGM Arbitration Regulations 2015 addresses the concept of an “arbitration agreement”.

Key Provisions:

1. Definition of an Arbitration Agreement: This Section defines an arbitration agreement as an accord between the parties to submit either all or certain disputes to arbitration. These disputes can either be existing ones or potential future disputes.
2. Scope of Disputes: The provision is broad in its scope by allowing parties to arbitrate over disputes arising from a “defined legal relationship”. This means the relationship does not necessarily need to be contractual; it can encompass other legal relationships, which makes the provision versatile.
3. Form of the Arbitration Agreement: The Section clarifies that the arbitration agreement can either be integrated into a contract as an “arbitration clause” or can stand alone as a separate agreement.

Implications:

1. Broad Scope: By allowing disputes from both contractual and non-contractual relationships to be arbitrated, the provision makes arbitration accessible and applicable for a wide range of disputes.
2. Flexibility in Formation: By acknowledging that arbitration agreements can be either part of a contract or a standalone agreement, this provision provides parties with flexibility in how they wish to structure their agreement to arbitrate.
3. Recognition of Party Autonomy: At its core, arbitration is based on the principle of party autonomy. This provision respects that by allowing parties to choose which disputes (all or specific ones) they wish to submit to arbitration.

4. **Certainty and Clarity:** By defining what constitutes an arbitration agreement, the provision gives parties clarity on the nature and scope of their commitment when they choose to arbitrate. This can help prevent potential disputes over whether a valid arbitration agreement exists.
5. **Foundation of Arbitral Proceedings:** An arbitration agreement is the foundation for any arbitral proceedings. Recognising and defining it clearly ensures that there is a solid basis for the initiation of arbitration, which is crucial for the entire arbitral process's validity.

In summary, Section 14(1) of the ADGM Arbitration Regulations 2015 provides a clear and comprehensive definition of what constitutes an arbitration agreement. It acknowledges the flexibility and breadth of arbitration as a dispute resolution mechanism, ensuring that parties have a clear understanding of their commitments and the scope of disputes that can be arbitrated. This provision lays the groundwork for the subsequent rules and procedures in the Regulations by ensuring a solid foundation for arbitral proceedings.

**(2) An arbitration agreement shall be in writing. This requirement shall be regarded as satisfied if the content of the arbitration agreement is recorded in any written form by one or more of the parties to it or by a third party with the authority of the parties to the agreement. An arbitration agreement which is in writing but has not been signed (whether in hardcopy or electronically) may be made binding orally or by conduct.**

Section 14(2) of the ADGM Arbitration Regulations 2015 details the form an arbitration agreement must take and its binding nature.

#### Key Provisions:

1. **Requirement of a Written Form:** An arbitration agreement must be in written form.
2. **Interpretation of "In Writing":** The provision is flexible about what constitutes a written form. It's deemed satisfied if the content is recorded in any written manner by a party or parties. This recording can also be done by a third party, provided they have the requisite authority from the parties.
3. **Binding Nature Without Signatures:** Even if the written agreement is not signed (either physically or electronically), it can still be made binding. The provision accepts other methods of confirmation, such as oral agreements or conduct, to deem the agreement binding.

#### Implications:

1. **Flexibility in Formulation:** The provision is quite adaptable in its approach. Recognising that an agreement can be recorded by a third party or even if not signed can be made binding offers various options for parties to confirm their intent to arbitrate.
2. **Acknowledgment of Modern Practices:** The mention of electronic signatures shows an acknowledgment of modern business practices and technological advancements.

3. **Oral or Conduct-based Validation:** The provision that an unsigned agreement can be made binding orally or by conduct emphasises the principle of party autonomy in arbitration. It showcases the idea that the intent of the parties, rather than the formality of the process, is paramount.
4. **Protection Against Evasions:** This provision ensures that a party cannot easily evade an arbitration agreement by merely pointing to the lack of a signature. As long as there is evidence of a written record and intent (either orally or through actions), the agreement can be binding.
5. **Clarity and Certainty:** By detailing what qualifies as “in writing” and how an unsigned agreement can still be binding, the provision provides clarity to parties, ensuring they understand the bounds of their obligations.

In summary, Section 14(2) of the ADGM Arbitration Regulations 2015 emphasises the need for arbitration agreements to be in written form but also offers flexibility in how that requirement can be met. It acknowledges both modern business practices and the principle of party autonomy by allowing various means to establish the binding nature of an arbitration agreement. This provision ensures that the essence of the agreement and the intent of the parties are prioritised over rigid formalities.

**(3) For the purposes of subsection (2), the requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference; an electronic communication is any communication that the parties make by means of data messages; a data message is information generated, sent, received or stored by electronic, digital, magnetic, wireless, optical, electromagnetic or similar means.**

Section 14(3) of the ADGM Arbitration Regulations 2015 elaborates on what qualifies as a written arbitration agreement in the context of electronic communications.

Key Provisions:

1. **Electronic Communication as Written Agreement:** The section clarifies that an electronic communication can satisfy the requirement for an arbitration agreement to be “in writing”.
2. **Usability and Accessibility:** For an electronic communication to qualify, the information it contains must be easily accessible and usable for future reference. This ensures the agreement’s permanence and availability for subsequent scrutiny or examination.
3. **Definition of Electronic Communication:** The section defines electronic communication as any communication made by parties using data messages.
4. **Definition of Data Message:** The section further clarifies that a data message is information generated, sent, received, or stored by a wide range of technological means, including electronic, digital, magnetic, wireless, optical, electromagnetic, and others.



Implications:

1. **Modernisation and Flexibility:** The provision reflects a modern and forward-looking approach, acknowledging the rise of electronic communications in contractual relationships and ensuring the Arbitration Regulations are equipped to handle contemporary modes of communication.
2. **Broader Scope:** By providing a broad definition of what constitutes a data message, the section captures a wide range of technological means, ensuring that the regulations remain relevant regardless of technological advancements.
3. **Emphasis on Permanence:** The stipulation that electronic information should be accessible for future reference highlights the importance of the permanence and stability of the agreement. Parties must ensure that electronic records of their arbitration agreement are stored in a manner that allows future access.
4. **Encouragement of Electronic Agreements:** By validating electronic communications as a means to form arbitration agreements, the regulations encourage parties to take advantage of electronic platforms, facilitating easier, quicker, and more efficient agreement formations.
5. **Protection of Parties:** The section ensures that parties using modern communication methods are afforded the same protections and recognitions as those using traditional methods.

In summary, Section 14(3) of the ADGM Arbitration Regulations 2015 recognises and adapts to the modern reality of electronic communications in contractual settings. By detailing how electronic communications can be considered “in writing” and emphasising the importance of future accessibility, the provision ensures clarity, relevancy, and adaptability in the realm of arbitration agreements. It facilitates the broader adoption of electronic modes of agreement while safeguarding the principles of permanence and accessibility.

**(4) Furthermore, an arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an arbitration agreement is alleged by one party and not denied by the other.**

Section 14(4) of the ADGM Arbitration Regulations 2015 touches upon an alternative way in which an arbitration agreement can be considered to be “in writing” through specific procedural actions between parties.

Key Provisions:

1. **Exchange of Statements:** The provision stipulates that the writing requirement for an arbitration agreement can be fulfilled through the exchange of procedural documents — specifically, statements of claim and defence.
2. **Assertion and Non-denial:** For the arbitration agreement to be considered “in writing” in this context, one party must allege (or claim) the existence of the arbitration

agreement in their statement, and the other party must not deny this claim in their defence.

Implications:

1. **Implicit Acceptance:** This provision recognises a scenario where the existence of an arbitration agreement is implicitly accepted by parties through their actions (or inactions) during the dispute process. If one party claims there is an arbitration agreement and the other party does not deny it, it is seen as an acknowledgment of the agreement's existence.
2. **Flexibility:** This provision provides flexibility in recognising the existence of arbitration agreements. Instead of requiring a formal document or contract clause, the regulations recognise that certain actions, like the lack of denial in procedural exchanges, can validate the existence of an agreement.
3. **Burden of Action:** The onus is placed on the responding party to dispute the existence of an arbitration agreement. If they fail to deny its existence, the arbitration agreement is deemed valid "in writing".
4. **Protection Against Procedural Oversights:** Parties cannot later argue against the existence of an arbitration agreement if they failed to deny it during the initial exchange of statements. This protects the process from potential derailments based on procedural oversights.
5. **Encouragement of Procedural Rigour:** It's a reminder for parties to be meticulous in reviewing and responding to claims. If one overlooks or chooses not to contest the allegation of an arbitration agreement, they are implicitly accepting its terms.

In summary, Section 14(4) of the ADGM Arbitration Regulations 2015 introduces a procedural mechanism by which an arbitration agreement can be considered "in writing". By emphasising the acknowledgment through lack of denial during the exchange of statements, the regulation showcases a pragmatic approach that recognises the realities of legal exchanges while ensuring the validity and enforceability of arbitration agreements. This provision promotes procedural diligence and provides a safeguard against potential disputes over the existence of an arbitration agreement during the arbitration process.

**(5) The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.**

Section 14(5) of the ADGM Arbitration Regulations 2015 pertains to how an arbitration agreement can be formed through a reference within a primary contract to another document containing an arbitration clause.

Key Provisions:

1. Reference to Another Document: An arbitration agreement can be considered to be “in writing” even if it is not directly included in the main body of a contract, as long as the contract references another document that contains an arbitration clause.
2. Incorporation by Reference: For the arbitration clause in the referenced document to be valid and binding, the reference within the main contract must be made in such a manner that it effectively makes the arbitration clause a part of that contract.

Implications:

1. Contractual Flexibility: The provision allows for flexibility in drafting contracts. Instead of embedding the arbitration clause directly into a contract, parties can incorporate it by referencing a separate document that contains the desired arbitration terms.
2. Efficiency: This mechanism can be particularly useful for standard contracts or contracts with routine terms. If a company or entity routinely uses a standard set of arbitration rules or terms across multiple contracts, it can streamline its contracts by simply referencing the document containing those standard arbitration terms.
3. Clarity is Crucial: The provision emphasises the importance of clear and unambiguous referencing. A mere casual mention of another document will not suffice; the reference must clearly indicate the intention to make the arbitration clause from the referenced document a part of the main contract.
4. Protection Against Ambiguity: This provision reduces the possibility of disputes over the existence of an arbitration agreement. If there is a clear reference in the main contract to a document with an arbitration clause, it’s difficult for parties to later argue that they were not aware or did not agree to the arbitration terms.
5. Diligence in Contract Review: Given the potential for incorporation by reference, parties should be diligent in reviewing all documents referenced within a contract to ensure they fully understand all terms they are agreeing to, including those related to arbitration.

In summary, Section 14(5) of the ADGM Arbitration Regulations 2015 recognises the validity of arbitration agreements that are incorporated by reference from another document into a primary contract. This offers flexibility in contractual drafting but also underscores the importance of clear referencing and the need for parties to be diligent in understanding all elements of their agreements.

**(6) An arbitration agreement giving any party a unilateral or asymmetrical right to refer a dispute either to an arbitral tribunal or a court does not contravene these Regulations and shall not be rendered invalid for that reason.**

Section 14(6) of the ADGM Arbitration Regulations 2015 addresses the validity of arbitration agreements that provide one party with a unique, or asymmetrical, right to choose the forum for resolving disputes, either through arbitration or court proceedings.

## Key Provisions:

1. **Unilateral or Asymmetrical Right:** The section acknowledges the validity of arbitration agreements that grant only one of the involved parties the exclusive choice to decide if a dispute should be referred to an arbitral tribunal or a court. Such a right is asymmetrical because it does not provide the same choice to all parties involved.
2. **No Contravention of Regulations:** Such arbitration agreements that contain unilateral or asymmetrical rights do not violate the ADGM Arbitration Regulations.
3. **Validity:** The sole reason of having such a unilateral or asymmetrical right in the arbitration agreement does not make the agreement invalid.

## Implications:

1. **Flexibility in Agreement Design:** Parties have the liberty to craft arbitration agreements in a manner that might best suit their needs or perceived advantages, including granting one party an exclusive choice of forum.
2. **Potential Power Imbalance:** This provision permits arrangements that may put one party in a more advantageous position than the other, potentially creating a power imbalance. This might be seen in agreements where one party has significantly more bargaining power.
3. **Care in Contract Drafting and Negotiation:** Because such clauses can have significant implications on how disputes are resolved, parties should approach them with caution, understanding their rights and the strategic implications.
4. **Not Rendered Invalid:** While some jurisdictions might view unilateral or asymmetrical rights with scepticism because they could be perceived as unfair, the ADGM makes it clear that, by itself, such a design does not invalidate the agreement.
5. **Potential for Criticism:** Despite the validation by ADGM Regulations, such clauses might be criticised for favouring a party, especially if used in situations where there is a clear imbalance of power or information.

In summary, Section 14(6) of the ADGM Arbitration Regulations 2015 confirms the legitimacy of arbitration agreements that provide a unilateral or asymmetrical right for one party to decide on the forum (court or arbitration) for dispute resolution. While it offers flexibility in contractual design, it's essential to approach such clauses with caution, given the potential implications on dispute resolution dynamics.

## 15. Separability of arbitration agreement

**Unless otherwise agreed by the parties, an arbitration agreement which forms or was intended to form part of another agreement (whether or not in writing) shall not be regarded as invalid, non-existent or ineffective because that other agreement is invalid, or did not come into existence or has become ineffective, and the arbitration agreement shall for that purpose be treated as a distinct agreement.**

Section 15 of the ADGM Arbitration Regulations 2015 discusses the concept of “separability” or “autonomy” of arbitration agreements. This principle is a foundational tenet in the modern law of arbitration.

Key Provisions:

1. **Distinct Nature of Arbitration Agreement:** This section establishes the distinct and separate nature of an arbitration agreement from the main contract in which it is embedded. Even if the primary contract is rendered invalid, non-existent, or ineffective for any reason, the arbitration agreement remains valid and effective.
2. **Default Rule Unless Otherwise Agreed:** The separability principle applies by default unless the parties have explicitly agreed otherwise. Parties can, by agreement, opt-out of this default position.

Implications:

1. **Protects the Arbitration Process:** This provision ensures that the dispute resolution mechanism agreed upon by the parties (i.e., arbitration) remains effective even if there are challenges to the validity or existence of the main contract. This protection maintains the parties’ intent to have their disputes resolved by arbitration.
2. **Challenges to Main Contract Do not Affect Arbitration Agreement:** For instance, if a contract is declared void due to misrepresentation or fraud, the arbitration clause within it still stands. Parties cannot avoid arbitration by claiming that the overall contract is invalid.
3. **Clarity in Dispute Resolution:** It provides clarity to parties that, despite any issues with the main contract, they are still bound to resolve their disputes through arbitration (unless they’ve agreed otherwise).
4. **Parties’ Autonomy Respected:** The provision allows parties to opt-out, reflecting the principle of party autonomy in arbitration. They can decide that they do not want the arbitration agreement to be separable from the main contract.
5. **Consistent with International Practice:** The doctrine of separability is widely recognised and upheld in many jurisdictions worldwide. It aligns the ADGM Arbitration Regulations with international best practices in arbitration.

In summary, Section 15 of the ADGM Arbitration Regulations 2015 encapsulates the principle of separability of arbitration agreements. By default, an arbitration agreement is treated as distinct from the main contract in which it is situated. As a result, even if the main contract becomes invalid, non-existent, or ineffective, the arbitration agreement remains intact and binding, unless the parties

have expressly agreed otherwise. This provision upholds the efficacy of the arbitration process and aligns with international standards.

## 16. Stay of legal proceedings

**(1) A party to an arbitration agreement against whom legal proceedings in the Court are brought (whether by way of claim or counterclaim) in respect of a matter which is the subject of the arbitration agreement may (upon notice to the other parties to the proceedings) apply to the Court to stay the proceedings so far as they concern that matter.**

Section 16(1) of the ADGM Arbitration Regulations 2015 addresses the situation when legal proceedings are initiated in the Court concerning a matter that is already the subject of an arbitration agreement. This provision seeks to uphold and reinforce the parties' choice to arbitrate and to prevent parallel or conflicting proceedings on the same dispute.

### Key Provisions:

1. **Initiation of Legal Proceedings:** The Section begins by stating that a party who is a part of an arbitration agreement may face legal proceedings in the court. These legal proceedings can take the form of either a claim (a lawsuit) or a counterclaim (a claim made in response to an existing claim).
2. **Stay Application:** The opposing party (or the party that wishes to enforce the arbitration agreement) may apply to the Court for a stay (or halt) of those court proceedings concerning the subject of the arbitration agreement.
3. **Notice Requirement:** The party applying for the stay must give notice to all other parties involved in the court proceedings.

### Implications:

1. **Upholding Arbitration Agreement:** This provision ensures that when parties have agreed to resolve disputes through arbitration, this agreement is respected and upheld. A party cannot bypass the arbitration agreement by initiating court proceedings on the same matter.
2. **Avoiding Parallel Proceedings:** The rule helps prevent parallel proceedings in court and arbitration on the same issue, which could lead to conflicting decisions, increased costs, and delays.
3. **Empowering the Court:** It gives the Court the authority to pause or stay its own proceedings when an arbitration agreement is in place. This reinforces the Court's commitment to respect and enforce arbitration agreements.
4. **Encouraging Compliance with Arbitration Agreements:** By providing the mechanism for a stay, the regulation encourages parties to adhere to their agreement to arbitrate, knowing that an attempt to circumvent the arbitration process by resorting to court can be halted.

5. Certainty for Parties: Parties can be assured that if they have an arbitration agreement in place, the Court will respect this agreement, provided the necessary conditions for a stay are met.

In summary, Section 16(1) of the ADGM Arbitration Regulations 2015 ensures the enforcement and respect of arbitration agreements when one party initiates court proceedings on a matter covered by such an agreement. It allows the opposing party to apply for a stay of those court proceedings, reinforcing the primacy of the arbitration process. The provision seeks to uphold parties' agreement to arbitrate, prevent parallel court and arbitration proceedings, and ensure that the Court respects and enforces arbitration agreements.

**(2) On an application being made under subsection (1), the Court shall grant a stay unless satisfied that the arbitration agreement is null and void, inoperative, or incapable of being performed.**

Section 16(2) of the ADGM Arbitration Regulations 2015 elaborates on the consequences of an application made under subsection (1), which allows a party to seek a stay of court proceedings when those proceedings concern a matter that is the subject of an arbitration agreement.

Key Provisions:

1. Mandatory Stay: When an application for a stay of proceedings is made pursuant to subsection (1), the Court is required to grant the stay. This underscores the strong pro-arbitration stance of the ADGM, as it directs the Court to respect and uphold the arbitration agreement between parties.
2. Exceptions: The Court will not grant a stay if it is convinced that the arbitration agreement: a. is "null and void", b. is "inoperative", or c. is "incapable of being performed".

Implications:

1. Presumption in Favour of Arbitration: The provision establishes a clear presumption in favour of arbitration. The default position is that the Court will grant the stay of its proceedings in deference to the arbitration agreement unless it finds one of the exceptions to apply.
2. Burden of Proof: The onus is on the party opposing the stay to prove that one of the exceptions exists. This means a party challenging the stay would need to demonstrate that the arbitration agreement is null and void, inoperative, or incapable of being performed.
3. Limited Judicial Intervention: The Court's role is limited here. It will not delve into the merits of the dispute but will only examine the validity and operability of the arbitration agreement.
4. Protection against Frivolous Challenges: By only allowing challenges to the stay on limited grounds, the provision aims to prevent parties from making frivolous challenges to the arbitration agreement in an attempt to delay proceedings or avoid arbitration.

5. **Clarity and Predictability:** By specifying the narrow grounds on which a stay can be opposed, the provision provides clarity and predictability to parties. They can be relatively assured that if they have a valid arbitration agreement, court proceedings concerning the same matter are likely to be stayed.

In summary, Section 16(2) of the ADGM Arbitration Regulations 2015 reinforces the pro-arbitration stance of the ADGM by mandating that the Court grants a stay of its proceedings when there exists an arbitration agreement, unless specific exceptions concerning the validity or operability of the arbitration agreement are met. The provision ensures that arbitration agreements are respected and upheld, minimises judicial intervention in matters agreed to be arbitrated, and provides clarity to parties on the expected course of action when faced with overlapping court and arbitration proceedings.

**(3) An application may:**

- (a) be made notwithstanding that the matter is to be referred to arbitration only after the exhaustion of other dispute resolution procedures; and**
- (b) not be made by a person before taking the appropriate procedural step (if any) to acknowledge the legal proceedings against him or after he has taken any step in those proceedings to answer the substantive claim.**

Section 16(3) of the ADGM Arbitration Regulations 2015 specifies the conditions under which a party can make an application to the Court to stay legal proceedings in favour of arbitration, given that there is an existing arbitration agreement pertaining to the matter in dispute.

**Key Provisions:**

1. **Pre-Arbitration Dispute Resolution Procedures:** Under subsection (a), even if the arbitration is set to occur only after other dispute resolution methods are exhausted (like negotiation, mediation, or conciliation), a party can still apply for a stay of the court proceedings.
2. **Timing of the Application:** Subsection (b) provides two significant points about the timing: a. An application for a stay cannot be made before the party makes the appropriate procedural move to acknowledge the legal proceedings initiated against them. b. Once a party has made any substantive response in the legal proceedings (i.e., addressing the actual issues or claims), they lose the right to apply for a stay of those proceedings in favour of arbitration.

**Implications:**

1. **Flexibility in Dispute Resolution:** By allowing applications for a stay even if arbitration is not the immediate next step, the regulations provide flexibility to parties that have complex dispute resolution mechanisms in place, where arbitration might only be one of the latter stages.



2. **Protection Against Ambiguity:** The stipulation in subsection (b) that the application for a stay cannot be made before acknowledging the legal proceedings ensures that a party cannot ignore or sidestep legal proceedings under the guise of preferring arbitration.
3. **Commitment to Chosen Procedure:** The latter part of subsection (b) ensures that if a party begins to engage with the substance of the legal proceedings, they are committed to that process and cannot subsequently opt for arbitration. This creates clarity in proceedings and ensures parties are committed to their chosen method of dispute resolution.
4. **Strategic Considerations:** Parties must be strategic and aware of their actions post the commencement of legal proceedings. Engaging substantively with the legal claim effectively waives their right to push for arbitration.
5. **Ensuring Genuine Intent:** The regulations seem designed to ensure that parties are genuine in their intent to arbitrate. They cannot use the arbitration agreement merely as a tactic to delay or complicate court proceedings.

In summary, Section 16(3) of the ADGM Arbitration Regulations 2015 provides clarity on the conditions and timing under which a party can apply for a stay of court proceedings due to the presence of an arbitration agreement. It aims to strike a balance by respecting parties' right to arbitrate while ensuring that this right is exercised genuinely and not merely as a dilatory tactic. The Section makes sure that parties are committed to their chosen method of dispute resolution, whether that's litigation or arbitration.

**(4) Where an application referred to in subsection (1) has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the Court.**

Section 16(4) of the ADGM Arbitration Regulations 2015 specifies the conditions under which a party can make an application to the Court to stay legal proceedings in favour of arbitration, given that there is an existing arbitration agreement pertaining to the matter in dispute.

**Key Provisions:**

1. **Pre-Arbitration Dispute Resolution Procedures:** Under subsection (a), even if the arbitration is set to occur only after other dispute resolution methods are exhausted (like negotiation, mediation, or conciliation), a party can still apply for a stay of the court proceedings.
2. **Timing of the Application:** Subsection (b) provides two significant points about the timing: a. An application for a stay cannot be made before the party makes the appropriate procedural move to acknowledge the legal proceedings initiated against them. b. Once a party has made any substantive response in the legal proceedings (i.e., addressing the actual issues or claims), they lose the right to apply for a stay of those proceedings in favour of arbitration.

Implications:

1. **Flexibility in Dispute Resolution:** By allowing applications for a stay even if arbitration is not the immediate next step, the regulations provide flexibility to parties that have complex dispute resolution mechanisms in place, where arbitration might only be one of the latter stages.
2. **Protection Against Ambiguity:** The stipulation in subsection (b) that the application for a stay cannot be made before acknowledging the legal proceedings ensures that a party cannot ignore or sidestep legal proceedings under the guise of preferring arbitration.
3. **Commitment to Chosen Procedure:** The latter part of subsection (b) ensures that if a party begins to engage with the substance of the legal proceedings, they are committed to that process and cannot subsequently opt for arbitration. This creates clarity in proceedings and ensures parties are committed to their chosen method of dispute resolution.
4. **Strategic Considerations:** Parties must be strategic and aware of their actions post the commencement of legal proceedings. Engaging substantively with the legal claim effectively waives their right to push for arbitration.
5. **Ensuring Genuine Intent:** The regulations seem designed to ensure that parties are genuine in their intent to arbitrate. They cannot use the arbitration agreement merely as a tactic to delay or complicate court proceedings.

In summary, Section 16(4) of the ADGM Arbitration Regulations 2015 provides clarity on the conditions and timing under which a party can apply for a stay of court proceedings due to the presence of an arbitration agreement. It aims to strike a balance by respecting parties' right to arbitrate while ensuring that this right is exercised genuinely and not merely as a dilatory tactic. The Section makes sure that parties are committed to their chosen method of dispute resolution, whether that's litigation or arbitration.

**(5) If the Court refuses to stay the legal proceedings, any provision that the award is a condition precedent to the bringing of legal proceedings in respect of any matter is of no effect in relation to those proceedings.**

Section 16(5) of the ADGM Arbitration Regulations 2015 addresses the scenario where the Court declines a party's application to stay (or halt) legal proceedings in favour of arbitration, given the existence of an arbitration agreement related to the matter in dispute.

Key Provisions:

1. **Court's Refusal:** If the Court declines a party's application to stay the legal proceedings in favor of arbitration, it concurrently nullifies any provision in the arbitration agreement, which deems an arbitral award or the conclusion of arbitration as a precondition, or "condition precedent", to initiate legal proceedings. This means that the Court, in such circumstances, not only refuses the stay but also sets aside the requirement for an arbitral award to precede litigation.

2. Condition Precedent Nullified: Any stipulation in the arbitration agreement, which mandates that an arbitral award (or the conclusion of arbitration) is a precondition (or “condition precedent”) to initiate legal proceedings, will be rendered ineffective with respect to those ongoing legal proceedings.

Implications:

1. Judicial Override of Contractual Terms: The clause underscores the principle that, in certain circumstances, the Court can override specific terms agreed upon by the parties in their arbitration agreement.
2. Protection Against Stalemate: If a party is trying to leverage the “condition precedent” clause to indefinitely delay or block legal proceedings, the Court’s refusal to stay the proceedings and the nullification of the “condition precedent” clause prevents such a stalemate.
3. Clear Path Forward: Should the Court refuse the stay, there is a clear path for the legal proceedings to move forward without being hindered by the condition precedent clause of waiting for an arbitral award. This ensures that disputes can be resolved in a timely manner.
4. Incentive to Respect Arbitration: Given that the arbitration condition can be overridden, parties might be more inclined to respect and participate in the arbitration process rather than trying to bypass it or delay it, as doing so could risk them losing the protective conditions they might have in their arbitration agreement.
5. Strategic Considerations for Parties: When drafting arbitration agreements, parties should be aware of this potential override. They might consider whether and how to craft condition precedent clauses, knowing they might not always be enforceable.

In summary, Section 16(5) of the ADGM Arbitration Regulations 2015 ensures that legal proceedings can progress without obstruction, even if there is an arbitration agreement in place that requires an arbitration award before the initiation of such proceedings. If the Court deems it appropriate to continue with legal proceedings rather than arbitration, it has the power to nullify certain restrictive clauses in the arbitration agreement, ensuring that justice is not delayed or denied.

**(6) This section 16 shall also apply where the arbitration is not seated in the Abu Dhabi Global Market, and where no seat has been designated or determined.**

Section 16(6) of the ADGM Arbitration Regulations 2015 provides clarity regarding the applicability of Section 16 to arbitrations outside the Abu Dhabi Global Market (ADGM) and arbitrations where no seat has been specifically determined.

Key Provisions:

1. Applicability Beyond ADGM: The principles laid out in Section 16, particularly those related to a party’s right to apply for a stay in legal proceedings in favour of arbitration, and the circumstances under which such a stay may or may not be granted, apply even if the arbitration is not seated within the ADGM.

2. **Undefined Arbitral Seat:** If the arbitration agreement does not designate a specific arbitral seat or if the seat has not been determined otherwise, the provisions of Section 16 still hold.

Implications:

1. **Extended Jurisdiction:** This provision highlights the reach of the ADGM Arbitration Regulations beyond arbitrations specifically seated within ADGM. Even if the arbitration is conducted elsewhere, or the seat is not specified, the regulations provide a framework for how parties may interact with the Court in the context of seeking a stay of legal proceedings.
2. **Protection for Parties:** It offers protection for parties who may want to rely on their arbitration agreement to stay legal proceedings, even if the arbitration is happening outside of ADGM or the seat is undefined.
3. **Consistency:** It ensures a level of consistency in approach. Parties to an arbitration agreement with connections to ADGM will know that the approach of the Court in relation to stays of proceedings will be consistent, irrespective of where the arbitration is seated or if the seat has not been determined.
4. **Strategic Considerations:** For parties choosing arbitration and considering connection to ADGM, knowing that Section 16 applies broadly can influence their strategic choices. They might be assured that their arbitration agreements will be respected and that they can apply to the Court for a stay, regardless of where the arbitration takes place or if its seat is not decided.
5. **Potential for Forum Shopping:** Parties might choose to bring their matters to ADGM due to its arbitration-friendly regulations. This can be particularly appealing for parties who have arbitration agreements but where the seat of arbitration is not determined or is outside of ADGM.

In summary, Section 16(6) of the ADGM Arbitration Regulations 2015 ensures that the provisions of Section 16, regarding the application for a stay of legal proceedings in favour of arbitration, apply consistently whether the arbitration is seated within ADGM, outside of it, or if no seat is determined. This provides clarity, protection, and consistency for parties involved in arbitration-related matters with any connection to ADGM.

## 17. Death of a party

**(1) Unless otherwise agreed by the parties, an arbitration agreement is not discharged by the death of a party and may be enforced by or against the personal representatives of that party.**

Section 17(1) of the ADGM Arbitration Regulations 2015 addresses the continuity of an arbitration agreement in the event of the death of a party to that agreement.

## Key Provisions:

1. **Continuity of Arbitration Agreement:** The central point of this subsection is the persistence of the arbitration agreement even after the death of one of the parties involved.
2. **Enforceability:** The subsection also clarifies that the agreement's terms remain enforceable. The enforcement can be initiated either by the deceased party's personal representatives or against them.
3. **Party Autonomy:** The phrase "Unless otherwise agreed by the parties" at the beginning of the subsection preserves the principle of party autonomy, which is a foundational aspect of arbitration. It means that parties have the liberty to decide and agree upon a different approach in their arbitration agreement concerning the effect of a party's death.

## Implications:

1. **Protection of Agreement's Integrity:** The provision safeguards the integrity of the arbitration agreement, ensuring that unforeseen circumstances such as the death of a party do not automatically void the agreement. This is essential for the preservation of the agreed dispute resolution mechanism.
2. **Estate Planning Considerations:** This provision has implications for estate planning. Individuals entering into contracts with arbitration clauses should be aware that these clauses might bind their heirs or personal representatives.
3. **Legal Succession and Continuity:** By allowing personal representatives to enforce or be subjected to the terms of the arbitration agreement, the provision ensures legal continuity. It emphasises the principle that legal obligations do not merely dissolve upon death but can be passed on to successors or representatives.
4. **Party Autonomy:** Parties retain the freedom to determine the fate of the arbitration agreement upon the death of one party. They can incorporate specific provisions within the agreement to either align with this regulation or to chart a different course.

In summary, Section 17(1) of the ADGM Arbitration Regulations 2015 ensures the continuity and enforceability of an arbitration agreement, even in the event of the death of a party. While the regulation ensures that death does not automatically discharge the agreement, it also upholds the principle of party autonomy, allowing parties to decide differently if they wish. This ensures both stability in legal obligations and flexibility in contractual design.

**(2) Subsection (1) does not affect the operation of any enactment or rule of law by virtue of which a substantive right or obligation is extinguished by death.**

Section 17(2) of the ADGM Arbitration Regulations 2015 provides a clarification to the preceding subsection, Section 17(1), which addressed the continuity of an arbitration agreement in the event of a party's death.

Key Provisions:

1. **Scope Limitation of Subsection (1):** While subsection (1) ensured that an arbitration agreement remains in force despite the death of a party, subsection (2) clarifies that this continuity does not override or affect other legal principles or statutes that deal with the termination of substantive rights or obligations upon death.
2. **Distinction between Procedural and Substantive Rights:** This section makes a clear distinction between the procedural aspect of dispute resolution (i.e., arbitration as a chosen mechanism) and the substantive rights or obligations that might be the subject of the dispute. While the arbitration agreement (a procedural aspect) persists post death, the actual rights or obligations (the substantive aspects) might be affected by other laws if those laws dictate that they are extinguished upon death.

Implications:

1. **Clarity and Balance:** The provision offers clarity, ensuring that while the mechanism for dispute resolution (arbitration) remains unaffected by death, the actual rights or obligations that form the subject of the dispute might be impacted by other legal rules or statutes. This maintains a balance between honouring the chosen dispute resolution process and recognising existing legal principles related to the extinguishment of rights or obligations upon death.
2. **Potential Legal Complexities:** This distinction could lead to situations where an arbitration can technically proceed (given the persistence of the arbitration agreement) even if the substantive right at the core of the dispute is terminated by another law due to the death of a party. Parties and their legal representatives will need to be mindful of this interplay and the potential complexities it introduces.
3. **Importance of Legal Advice:** It emphasises the importance of parties seeking legal advice when dealing with disputes, especially posthumously, to understand not only the implications of the arbitration agreement but also how other legal rules might impact the substantive rights or obligations in question.

In summary, Section 17(2) of the ADGM Arbitration Regulations 2015 provides a nuanced approach to the issue of death in the context of arbitration. It ensures that while the mechanism of arbitration remains intact posthumously, the underlying rights or obligations that form the dispute's subject might still be affected by other legal rules that dictate their termination upon death. This provision underscores the importance of considering both the procedural and substantive aspects of a dispute and highlights the potential legal intricacies that might arise in such situations.

### Chapter 3 – Composition of arbitral tribunal

#### 18. Number of arbitrators

**(1) The parties are free to determine the number of arbitrators provided that it is an odd number.**

Section 18(1) of the ADGM Arbitration Regulations 2015 deals with the composition of the arbitral tribunal in terms of the number of arbitrators.

## Key Provisions:

1. **Party Autonomy:** The provision begins by emphasising party autonomy, a foundational principle of arbitration. The parties involved in the arbitration agreement have the freedom to determine the number of arbitrators they wish to have.
2. **Odd Number Requirement:** While the parties have the freedom to choose the number of arbitrators, this freedom is not absolute. The number must be odd. This is a common provision in many arbitration rules to ensure that there is always a majority decision and to avoid deadlock situations that an even number might pose.

## Implications:

1. **Avoiding Deadlocks:** The necessity for an odd number is practical. In scenarios where the tribunal has to make a decision and the arbitrators are divided, an odd number ensures that a majority can be reached. This facilitates smoother proceedings and timely resolutions.
2. **Flexibility with Structure:** While many arbitration proceedings involve a three-arbitrator tribunal (one arbitrator appointed by each party and a third, neutral arbitrator, usually the chair, chosen jointly by the two party-appointed arbitrators or by an appointing authority), this provision does not confine the parties to this model. As long as the number is odd, the parties could theoretically have a single arbitrator, five arbitrators, seven, and so on.
3. **Considerations for Parties:** When determining the number of arbitrators, parties need to weigh several factors:
4. **Cost:** More arbitrators typically mean higher costs.
5. **Complexity of the Case:** Complex cases might benefit from multiple perspectives that a three (or more) member panel offers.
6. **Efficiency:** A single arbitrator might be able to render a decision more quickly than a larger panel where deliberations among the arbitrators are necessary.
7. **Enforcement:** If parties, for some reason, choose an even number of arbitrators, such an arrangement would be non-compliant with this provision, and the validity or enforceability of the resultant award could be challenged.

In summary, Section 18(1) of the ADGM Arbitration Regulations 2015 acknowledges the parties' freedom to determine the composition of their arbitral tribunal in terms of the number of arbitrators, but with a caveat: the number must be odd. This ensures a balance between party autonomy and the practical need to avoid deadlocks in decision-making during the arbitration process.

**(2) If there is no such determination, the number of arbitrators shall be one (1).**

Section 18(2) of the ADGM Arbitration Regulations 2015 provides a default rule regarding the number of arbitrators in case the parties to the arbitration do not specify their preference.

Key Provisions:

1. **Default Number of Arbitrators:** In the absence of an agreement by the parties regarding the number of arbitrators, the default position is that there will be one arbitrator.

Implications:

1. **Simplicity and Efficiency:** Having a single arbitrator can simplify proceedings. There are no deliberations between arbitrators, which may make the process more efficient.
2. **Cost-effective:** A single arbitrator is typically less expensive than a panel of three or more arbitrators. This could be a desirable default for many parties, especially in cases where the amounts in dispute are not particularly high or where the complexities of the issues do not necessitate multiple perspectives.
3. **Reduced Logistical Concerns:** Coordinating schedules, administrative requirements, and deliberations can be more straightforward with a single arbitrator compared to multiple arbitrators.
4. **Impartiality and Independence:** While all arbitrators are expected to be impartial and independent, the emphasis on these qualities can be even more profound when there is only one arbitrator. There is no panel to balance out potential biases, so the selected individual must be scrupulously neutral.
5. **Parties Must Act Proactively:** If parties have a preference for more than one arbitrator, they must specify this in their arbitration agreement. Otherwise, they will default to having a sole arbitrator.
6. **Connection to Section 18(1):** This subsection complements the previous one (Section 18(1)) by providing a default rule. While 18(1) emphasises party autonomy with the stipulation of an odd number of arbitrators, 18(2) steps in when parties have not exercised that autonomy.

In summary, Section 18(2) of the ADGM Arbitration Regulations 2015 ensures that if the parties do not specify the number of arbitrators they desire, a default mechanism kicks in, and a sole arbitrator will be appointed. This provision streamlines the arbitration process in the absence of party specifications and ensures that proceedings can continue without delay due to the lack of determination on the number of arbitrators.



## 19. Appointment of arbitrators

**(1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.**

Section 19(1) of the ADGM Arbitration Regulations 2015 deals with the eligibility of persons to act as arbitrators based on nationality.

Key Provisions:

1. **Non-Discrimination on Nationality:** The primary tenet of this provision is the idea that nationality should not be a barrier to a person's ability to serve as an arbitrator.
2. **Party Autonomy:** The provision leaves room for parties to decide otherwise. This recognises the parties' autonomy in arbitration to set their own terms and conditions.

Implications:

1. **Promotion of Impartiality and Diversity:** By default, parties cannot exclude potential arbitrators on the basis of nationality. This promotes diversity in the selection of arbitrators and ensures that expertise, rather than nationality, is the primary criterion.
2. **Flexibility and Party Autonomy:** Parties still retain the right to agree on specific criteria for arbitrators, which might include nationality. For instance, in certain sensitive cases, parties might prefer an arbitrator of a neutral nationality.
3. **Global Nature of Arbitration:** The provision reflects the international character of arbitration, especially in a global business hub like ADGM. It ensures that arbitrators from around the world can be chosen based on their expertise, irrespective of their nationality.
4. **Potential Bias and Conflict of Interest:** It's worth noting that even if nationality is not a barrier, parties and appointed arbitrators should remain vigilant about other potential biases or conflicts of interest.
5. **Comparison to Other Jurisdictions:** This provision is in line with the international approach towards arbitration, where the focus is on the independence and impartiality of the arbitrator rather than nationality. It mirrors the ethos seen in many leading arbitration jurisdictions and international arbitration rules.

In summary, Section 19(1) of the ADGM Arbitration Regulations 2015 underscores the principle that expertise and capability should be the leading factors in selecting an arbitrator, not nationality. However, recognising the principle of party autonomy inherent in arbitration, the regulation does allow parties to agree otherwise if they see fit.

**(2) The parties are free to agree on a procedure for appointing the arbitrator or arbitrators.**

Section 19(2) of the ADGM Arbitration Regulations 2015 addresses the procedure for appointing arbitrators.

## Key Provisions:

1. **Party Autonomy in Procedure:** This provision emphasises the freedom of the parties to set their own process or method for selecting an arbitrator or multiple arbitrators.

## Implications:

1. **Flexibility:** This regulation gives parties significant leeway in how they choose to appoint their arbitrator(s). They could, for instance, specify certain qualifications, expertise, or other criteria that they deem essential. They could also decide on a neutral third party or institution to make the selection.
2. **Emphasis on Mutual Agreement:** The freedom to set a procedure for appointing arbitrators underlines the consensual nature of arbitration. Both parties, by default, have a say in who their arbitrator(s) will be, ensuring both sides feel represented and the process is equitable.
3. **Avoidance of Default Rules:** If parties do not agree on a procedure, they would typically have to follow a default method set out in the arbitration rules or laws of the jurisdiction. By encouraging parties to agree on a method upfront, this provision helps pre-empt potential disputes about the appointment process.
4. **Comparison to Other Jurisdictions:** The principle of party autonomy in arbitrator appointments is consistent with the ethos of many leading arbitration jurisdictions and international arbitration rules. It aligns with the broader global perspective of tailoring the arbitration process according to the specific needs and agreements of the disputing parties.
5. **Potential Challenges:** While the flexibility is advantageous, it also means parties need to be clear in their agreement to avoid misunderstandings. Ambiguities in the agreed-upon procedure could lead to disputes and delay the arbitration process.

In summary, Section 19(2) of the ADGM Arbitration Regulations 2015 reinforces the principle of party autonomy, allowing parties to define the procedure for appointing their arbitrator(s). This provision acknowledges the unique and varied needs of disputing parties, ensuring they have control over key aspects of the arbitration process while also promoting mutual consensus and equity.

### **(3) If, and to the extent that, there is no such agreement:**

**(a) in an arbitration with a sole arbitrator, if the parties do not agree on the arbitrator within 30 days of one party requesting the other to do so, he shall be appointed by the arbitral institution administering the arbitration or, where there is no such institution, the Court, on the request of either party; or**

**(b) in an arbitration with three (3) arbitrators, each party shall appoint one (1) arbitrator, and the two (2) arbitrators thus appointed shall appoint the third arbitrator, who shall be the presiding arbitrator (or chairman). If a party fails to appoint an arbitrator within 30 days of receipt of a request to do so from the other party, or if the two (2) arbitrators fail to agree on the third arbitrator within 30 days of their appointment, the appointment shall be made,**

**upon request of a party, by the arbitral institution administering the arbitration or, where there is no such institution, the Court.**

Section 19(3) of the ADGM Arbitration Regulations 2015 stipulates the default procedure for the appointment of arbitrators in the event that parties have not agreed on a specific appointment procedure.

**Key Provisions:**

1. **Default Procedure for Sole Arbitrator:** If there is no agreement on the appointment process and the parties do not agree on a single arbitrator within 30 days of a request, the institution overseeing the arbitration (or the Court if there is no institution) will make the appointment.
2. **Default Procedure for Three Arbitrators:**
  - a. Each party will appoint one arbitrator.
  - b. The two arbitrators appointed by the parties will then jointly select a third, who will act as the presiding arbitrator or chairman.
  - c. If either party fails to appoint their arbitrator within 30 days, or if the two initial arbitrators cannot agree on the third within 30 days, the overseeing institution (or the Court in absence of an institution) will make the necessary appointment.

**Implications:**

1. **Certainty in the Absence of Agreement:** This provision ensures that even in the absence of a prior agreement on the appointment procedure, there is a clear default mechanism that will keep the arbitration process moving forward.
2. **Promptness:** The 30-day timeline for agreement or appointment emphasises the importance of moving the arbitration process along without undue delays.
3. **Role of Institutions and the Court:** The inclusion of both the arbitral institution and the Court as appointing entities underscores their complementary roles in the arbitration framework. Where parties choose not to use an arbitral institution, or where none is specified, the Court serves as a backstop to ensure the integrity and continuity of the arbitration process.
4. **Preservation of Party Autonomy:** While this subsection lays out a default procedure, it only comes into play when the parties have not already agreed on a method. This approach respects and preserves the principle of party autonomy, a cornerstone of arbitration.
5. **Balance in Tripartite Arbitration:** In cases with three arbitrators, this mechanism ensures that both parties have equal say in the makeup of the tribunal (by each appointing one arbitrator) while also ensuring neutrality in the tribunal's final composition through the appointment of a third, presiding arbitrator.

In summary, Section 19(3) of the ADGM Arbitration Regulations 2015 provides a clear, default roadmap for appointing arbitrators when parties have not predetermined a method. This ensures timely progression of the arbitration process, involves both institutional and judicial mechanisms as needed, and maintains the principle of party autonomy while ensuring fair representation and neutrality in the arbitral tribunal's composition.

**(4) Where there are multiple claimants and/or multiple respondents, and where the dispute is to be referred to three (3) arbitrators, the multiple claimants, jointly, and the multiple respondents, jointly, shall each appoint one (1) arbitrator in accordance with the appointment procedure agreed upon by the parties or, where there is no such agreement, in accordance with subsection (3)(b). The presiding arbitrator shall also be appointed in accordance with subsection (3)(b).**

Section 19(4) of the ADGM Arbitration Regulations 2015 focuses on the scenario where there are multiple claimants and/or multiple respondents in an arbitration, and the dispute is to be settled by a panel of three arbitrators.

Key Provisions:

1. Multiple Parties: This provision specifically addresses situations with more than one claimant and/or respondent in the arbitration process.
2. Appointment by Multiple Parties:
  - a. The multiple claimants, as a collective group, shall appoint one arbitrator.
  - b. Similarly, the multiple respondents, as a collective group, shall also appoint one arbitrator.
3. Reference to Prior Subsections:
  - a. In the absence of an agreement on the procedure for appointing the arbitrators, the default procedure from subsection (3)(b) will apply. This means that if the multiple claimants or multiple respondents cannot jointly agree on their chosen arbitrator within the specified period, the arbitral institution or the Court (if no such institution exists) will intervene to make the appointment.
  - b. The third, presiding arbitrator will be chosen by the two initially appointed arbitrators, as per subsection (3)(b). If they fail to agree within the allotted time, the overseeing institution (or the Court) will make the appointment.

Implications:

1. Uniform Representation for Multiple Parties: By asking multiple claimants (or respondents) to jointly appoint a single arbitrator, the regulation aims to ensure that parties on the same side of a dispute are represented uniformly.
2. Preservation of Tripartite Structure: Even when there are multiple parties on one or both sides, the total number of arbitrators remains three, preserving the tripartite structure of the arbitral tribunal.

3. **Certainty and Fairness:** By referencing the default rules in subsection (3)(b), the regulation ensures there is a clear mechanism for appointment, promoting certainty and preventing undue delays. It ensures that even in complex arbitrations with multiple parties on one or both sides, the arbitration can proceed smoothly.
4. **Emphasis on Joint Decisions:** The need for multiple claimants or respondents to jointly decide on their representative arbitrator emphasises collaboration and consensus among parties on the same side of a dispute. It also avoids the potential for each individual claimant or respondent to appoint their own arbitrator, which could complicate the arbitration process.

In summary, Section 19(4) of the ADGM Arbitration Regulations 2015 provides a structured approach for appointing arbitrators in cases with multiple claimants and/or respondents. It emphasises collective decision-making for parties on the same side, ensures the tripartite structure of the arbitral panel is maintained, and integrates the default rules for situations where parties cannot agree, ensuring clarity, fairness, and efficiency in the arbitration process.

**(5) In the absence of a joint nomination pursuant to subsection (4), and where all parties are unable to agree to a method for the constitution of the arbitral tribunal, the arbitral institution administering the arbitration, or where there is no such institution, the Court, may appoint each member of the arbitral tribunal and shall designate one of them to act as president.**

Section 19(5) of the ADGM Arbitration Regulations 2015 provides guidance on the steps to be taken if the parties in an arbitration, involving multiple claimants and/or respondents, cannot agree upon the appointment of arbitrators, specifically when a joint nomination as mentioned in subsection (4) does not take place.

Key Provisions:

1. **Absence of Joint Nomination:** The provision comes into play when the multiple claimants or respondents (as per subsection (4)) fail to jointly nominate or appoint their representative arbitrator.
2. **Failure to Agree on Arbitral Tribunal Constitution:** Beyond just the absence of a joint nomination, this provision also addresses situations where all parties involved (both claimants and respondents) cannot come to an agreement on how the entire arbitral tribunal (comprising more than one arbitrator) should be constituted.
3. **Appointment by Arbitral Institution or Court:**
  - a. If parties fail to make a joint nomination or agree on the constitution of the tribunal, the responsibility to appoint the arbitrators falls to the arbitral institution overseeing the arbitration.
  - b. If no such institution exists, this responsibility is assumed by the Court.
  - c. Notably, whichever entity (arbitral institution or Court) assumes this responsibility will appoint all members of the arbitral tribunal, not just the one(s) that the parties failed to appoint.

- d. One of these appointed arbitrators will be designated by this entity to act as the president (or presiding arbitrator) of the tribunal.

Implications:

1. **Ultimate Oversight:** This provision ensures there is always a mechanism to move the arbitration process forward, even if the parties are in deadlock or unable to collaborate.
2. **Uniformity & Fairness:** By allowing a neutral third party (the arbitral institution or Court) to appoint all members of the tribunal in such situations, the provision guarantees that the constitution of the tribunal is impartial and not skewed towards any particular party.
3. **Certainty & Efficiency:** The regulation provides clarity on how the arbitral tribunal will be formed when parties cannot agree, ensuring that arbitrations are not stalled indefinitely due to disagreements over arbitrator appointments.
4. **Presidential Role:** The explicit mention of designating one arbitrator as the president underscores the importance of having a presiding figure in the tribunal, facilitating order, and direction in the arbitration proceedings.

In summary, Section 19(5) of the ADGM Arbitration Regulations 2015 is a contingency provision, ensuring that the arbitration process can proceed even in scenarios where parties, for various reasons, are unable to decide on the composition of the arbitral tribunal. By delegating the appointment responsibility to a neutral third party, it ensures that the process remains fair, transparent, and efficient.

**(6) A decision on a matter entrusted by subsection (3), (4) or (5) to any arbitral institution administering the arbitration or, where there is no such institution, the Court, shall not be subject to appeal. The arbitral institution administering the arbitration or, where there is no such institution, the Court, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall also take into account the advisability of appointing an arbitrator of a nationality other than that of any party.**

Section 19(6) of the ADGM Arbitration Regulations 2015 deals with the appointment of arbitrators by an arbitral institution or, if there is not one, by the Court. It establishes the finality of such decisions and emphasises the need for an independent and impartial arbitrator.

Key Provisions:

1. **Finality of Decision:** Decisions on the appointment of arbitrators, as entrusted by subsections (3), (4), or (5) to the arbitral institution or the Court, are final and cannot be appealed. This promotes efficiency and certainty in the arbitration process.
2. **Considerations for Appointment:**
  - a. The entity making the appointment (either the arbitral institution or the Court) has to consider specific criteria:

- i. They should respect any qualifications the parties have specified for the arbitrator in their agreement.
- ii. They should aim to secure an independent and impartial arbitrator. This ensures that the arbitrator does not have any bias or prejudice and can decide the case purely on its merits.
- iii. When appointing a sole arbitrator or a third arbitrator in a tribunal, the institution or Court should ideally choose someone of a nationality different from the parties. This is to ensure neutrality and prevent perceptions of national bias.

Implications:

1. **Streamlined Process:** By ensuring that the decision on arbitrator appointment is not subject to appeal, the regulation intends to expedite the arbitration process. It avoids potential delays that might arise from parties contesting the appointment.
2. **Maintaining Neutrality:** The emphasis on the appointment of an independent and impartial arbitrator ensures the credibility and fairness of the arbitration process. The explicit consideration for appointing an arbitrator of a different nationality further reinforces this.
3. **Upholding Parties' Preferences:** The institution or Court must regard the qualifications that the parties might have set for the arbitrator. This ensures that the arbitration process remains in alignment with the parties' expectations and agreements.
4. **Broad Application:** The subsection applies to all situations covered in subsections (3), (4), or (5), making it comprehensive in dealing with arbitrator appointments when parties cannot agree.

In summary, Section 19(6) aims to streamline the process of arbitrator appointment by eliminating appeals against decisions made by the arbitral institution or the Court. At the same time, it ensures that the appointed arbitrator(s) will uphold the core principles of independence, impartiality, and respect for the parties' agreed qualifications. The emphasis on neutrality, especially concerning the nationality of the arbitrator, further bolsters the legitimacy and fairness of the arbitration process.

## 20. Grounds for challenge

**(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties and any arbitral institution administering the arbitration.**

Section 20(1) of the ADGM Arbitration Regulations 2015 addresses the obligations of potential arbitrators regarding disclosure of circumstances that could cast doubts on their impartiality or independence.

## Key Provisions:

1. **Duty of Disclosure at Initial Approach:** A person, when first approached regarding the possibility of serving as an arbitrator, has a duty to disclose any circumstances that may raise reasonable doubts about their impartiality or independence. This provision ensures that potential biases or conflicts of interest are identified and addressed at the earliest stage, even before the appointment is finalised.
2. **Ongoing Duty of Disclosure:** Once appointed, the arbitrator's duty of disclosure continues throughout the arbitral proceedings. If any circumstances arise or are discovered post-appointment that could raise doubts about their impartiality or independence, the arbitrator must promptly disclose them to all parties involved and to the arbitral institution overseeing the arbitration (if there is one).

## Implications:

1. **Enhanced Trust in Arbitration:** By obliging potential arbitrators to disclose any possible biases or conflicts at the outset and maintain this transparency throughout the proceedings, the regulation seeks to bolster confidence in the arbitration process. Parties can trust that the arbitrator overseeing their dispute is neutral and unbiased.
2. **Reduction in Potential Disputes Over Arbitrator Impartiality:** Early and ongoing disclosure can help to reduce potential challenges to the arbitrator's authority or the final award based on claims of bias or lack of independence. If there are concerns, they can be addressed upfront, rather than disrupting proceedings at a later stage.
3. **Protection for Arbitrators:** By adhering to this disclosure requirement, arbitrators can protect themselves from allegations of bias or partiality. By being transparent about any potential conflicts or biases, they can either obtain consent from the parties to continue in their role or step down if there is a risk of perceived partiality.
4. **Clarity for Arbitral Institutions:** Arbitral institutions, when administering an arbitration, receive disclosures from the arbitrators. This allows them to make informed decisions about the arbitrator's suitability and take necessary steps if there are concerns about impartiality or independence.

In summary, Section 20(1) places a strong emphasis on the transparency, impartiality, and independence of arbitrators in the ADGM arbitration process. It mandates potential and appointed arbitrators to be proactive in disclosing any possible conflicts of interest or biases, ensuring the credibility of the arbitration process and safeguarding the interests of all parties involved.

**(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.**

Section 20(2) of the ADGM Arbitration Regulations 2015 lays out the conditions under which an arbitrator can be challenged. It delineates the grounds for such a challenge and places restrictions on when a party can challenge an arbitrator they have appointed or played a role in appointing.



Key Provisions:

1. Grounds for Challenge: An arbitrator can be challenged in two main scenarios: a. Doubts about Impartiality or Independence: If there are circumstances that justifiably create doubts regarding the arbitrator's impartiality or independence. b. Lack of Agreed Qualifications: If the arbitrator lacks qualifications that the parties had previously agreed upon.
2. Limitation on Challenge of Self-appointed Arbitrator: If a party has appointed an arbitrator or has taken part in the appointment process, they can only challenge that arbitrator for reasons they became aware of after the appointment was finalised. This provision prevents parties from acting in bad faith by challenging an arbitrator they themselves had a role in appointing unless new information surfaces post-appointment.

Implications:

1. Integrity of the Arbitration Process: The provision ensures that the arbitration process is transparent and fair. Challenges to an arbitrator are not taken lightly and must be based on substantive reasons.
2. Avoiding Tactical Challenges: By limiting the conditions under which a party can challenge an arbitrator they've appointed, the regulation seeks to prevent parties from making tactical or bad-faith challenges to delay proceedings or seek a more favourable arbitrator.
3. Emphasis on Impartiality: The inclusion of doubts about an arbitrator's impartiality or independence as a primary ground for challenge underlines the importance of these attributes in the arbitration process. This ensures the parties' confidence in the arbitrator's neutrality.
4. Recognition of Party Agreements: The provision recognises and upholds any qualifications for arbitrators that the parties have mutually agreed upon. This ensures that the arbitration process respects the preferences and requirements set by the parties themselves.

In summary, Section 20(2) of the ADGM Arbitration Regulations 2015 enforces the principles of transparency, impartiality, and respect for party agreements in the arbitration process. It provides clear criteria for when arbitrators can be challenged while also setting boundaries to prevent potential misuse of the challenge mechanism. The provision thereby helps maintain the integrity and fairness of the arbitration proceedings.

## 21. Challenge procedure

### (1) The parties are free to agree on a procedure for challenging an arbitrator.

Section 21(1) of the ADGM Arbitration Regulations 2015 pertains to the process by which parties in an arbitration can challenge an arbitrator. This is a brief and straightforward provision, but it carries implications for the conduct of arbitration under the ADGM framework.

Key Provisions:

1. **Party Autonomy in Procedure Creation:** The section establishes that the parties involved in the arbitration have the autonomy to decide on a specific procedure for challenging an arbitrator.

Implications:

1. **Flexibility:** This provision offers flexibility to the parties. Instead of being bound by a fixed procedure stipulated by the Regulations, parties have the discretion to tailor the procedure based on their mutual understanding and the specificities of their case.
2. **Promotion of Party Autonomy:** One of the foundational principles of arbitration is party autonomy. By allowing parties to decide on a procedure for challenging an arbitrator, the Regulations reinforce this principle.
3. **Potential for Varied Practices:** Given that parties can decide on their procedures, there might be varied practices in how challenges are conducted, based on the agreement of the parties.
4. **Potential for Efficiency or Complexity:** On one hand, this freedom can lead to more efficient procedures tailored to the specifics of the case. On the other hand, if parties fail to agree or set overly complex procedures, it could potentially cause delays.

In summary, Section 21(1) of the ADGM Arbitration Regulations 2015 emphasises the principle of party autonomy by allowing the parties involved to set their own procedure for challenging an arbitrator. While this provision offers flexibility and can cater to the unique requirements of each case, the success of such procedures will largely depend on the clarity and mutual agreement of the parties involved.

**(2) In the absence of such agreement, a party who intends to challenge an arbitrator shall, within 30 days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in section 20(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral institution administering the arbitration or, where there is no such institution, the Court shall decide on the challenge. While such a request to the arbitral institution administering the arbitration or, where there is no such institution, to the Court, is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.**

Section 21(2) of the ADGM Arbitration Regulations 2015 addresses the procedure for challenging an arbitrator when there is not a previously agreed-upon procedure by the parties. The Section provides a default mechanism for such challenges and the implications arising from it.

Key Provisions:

1. **Time Frame for Challenge:** A party that wishes to challenge an arbitrator must do so within 30 days. This period begins either after becoming aware of the constitution of the arbitral tribunal or upon learning of any circumstance that would give rise to a challenge as mentioned in section 20(2).

2. **Written Statement:** The challenging party must provide a written statement detailing the reasons for the challenge.
3. **Resolution:** If the arbitrator does not voluntarily step down and the other party does not consent to the challenge, the matter gets referred to the arbitral institution overseeing the arbitration. If no such institution exists, the matter goes to the Court.
4. **Continuation of Proceedings:** Even if a challenge is pending, the arbitral tribunal is not automatically halted. It can continue the proceedings and may even render an award.

**Implications:**

1. **Ensures Timeliness:** By setting a 30-day time frame, the regulation ensures that challenges are raised promptly, reducing the potential for disruptive delays later in the process.
2. **Clarity & Transparency:** Demanding a written statement for the challenge ensures clarity and provides a clear record of the reasons behind the challenge.
3. **Efficiency in Proceedings:** The fact that the arbitral tribunal can continue its proceedings during a challenge ensures that the arbitration does not get stalled unnecessarily. This can be particularly important in scenarios where the challenge might be viewed as strategic or dilatory.
4. **Neutral Decision Making:** In case of disagreements, involving a neutral third party (the arbitral institution or the Court) ensures that the decision on the challenge is unbiased.
5. **Potential Risk:** There is a risk involved in allowing the tribunal to continue its work while a challenge is pending. If the challenge is later upheld, decisions made in the interim might be questioned.

In summary, Section 21(2) provides a structured and timely mechanism to challenge an arbitrator in the absence of a pre-agreed procedure. It strikes a balance between ensuring the integrity of the process and maintaining efficiency in the arbitration proceedings. However, the allowance for the tribunal to proceed during a challenge can introduce complexity, especially if the challenge is subsequently accepted.

## **22. Failure or impossibility to act**

**(1) If an arbitrator becomes as a matter of fact or law unable to perform his functions or for other reasons fails to act without undue delay, his mandate shall terminate if he withdraws from his office or if the parties agree on the termination. In the absence of such agreement or if a controversy remains concerning any of these grounds, any party may request the arbitral institution administering the arbitration or, where there is no such institution, the Court, to decide on the termination of the mandate, which decision shall not be subject to appeal.**

Section 22(1) of the ADGM Arbitration Regulations 2015 deals with the circumstances under which the mandate of an arbitrator might terminate due to their inability to perform their role or their

failure to act without undue delay. This provision provides clarity on how to address these situations and ensures the smooth progression of the arbitration process.

Key Provisions:

1. Grounds for Termination: The mandate of an arbitrator can be terminated if: a. He becomes unable, either factually or legally, to perform his duties. b. He fails to act without undue delay.
2. Methods of Termination: The arbitrator's mandate can terminate in two primary ways: a. Voluntary withdrawal by the arbitrator from their office. b. Mutual agreement by all parties involved in the arbitration to terminate the mandate.
3. In Case of Disagreement: If the parties cannot come to a consensus about the termination or if there is a dispute about the grounds for termination: a. The decision is left to the arbitral institution overseeing the arbitration. b. If no such institution exists, the matter is brought before the Court.
4. No Appeal: Any decision made by the arbitral institution or the Court regarding the termination of the arbitrator's mandate is final and cannot be appealed.

Implications:

1. Flexibility & Autonomy: The provision starts by allowing the parties and the arbitrator themselves to determine the course of action, thereby granting autonomy to the stakeholders involved.
2. Clarity in Controversies: The regulation provides a clear mechanism in case of disagreements or controversies, thus ensuring that there is no undue delay or disruption in the arbitration process.
3. Finality: The prohibition against appeals ensures that decisions are final, and the arbitration can proceed without getting mired in procedural delays.
4. Protection against Inaction: By allowing for the termination of an arbitrator's mandate if they fail to act without undue delay, the regulation ensures that arbitration proceedings are not hindered by prolonged inaction.

In summary, Section 22(1) provides a comprehensive mechanism to address situations where an arbitrator is unable to perform their duties or acts with undue delay. By prioritising mutual agreement but providing a clear path in case of disagreements, the regulation ensures the efficient continuation of the arbitration process while preserving the rights and expectations of the parties involved.

**(2) If, under this section or section 21(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this section or section 20(2).**

Section 22(2) of the ADGM Arbitration Regulations 2015 provides clarity regarding the implications of an arbitrator's withdrawal or the agreement by a party to terminate the arbitrator's mandate.

Key Provisions:

1. **Withdrawal or Agreement to Terminate:** The Section addresses two primary scenarios:
  - a. The withdrawal of an arbitrator from his office.
  - b. Agreement by a party to terminate the arbitrator's mandate.
2. **No Implicit Acceptance:** Importantly, if an arbitrator withdraws or if a party agrees to the termination of the arbitrator's mandate, it does not automatically mean that there is an acceptance of the validity of any grounds stated in either this section (Section 22) or section 20(2).

Implications:

1. **Preservation of Rights:** This provision preserves the rights of the parties and the arbitrator by clarifying that withdrawal or agreement to termination does not, in itself, equate to an acknowledgment or acceptance of the grounds for the challenge or reasons for termination.
2. **Avoidance of Assumptions:** The provision ensures that stakeholders do not make assumptions about the legitimacy or truthfulness of concerns regarding an arbitrator's impartiality, independence, or ability to function based on actions like withdrawal or agreement to terminate.
3. **Flexibility & Pragmatism:** Parties and arbitrators can make decisions in the best interest of the arbitration process without fearing that such decisions might be seen as admissions or concessions regarding allegations or challenges made.
4. **Legal Clarity:** By specifying that there is no implied acceptance of the validity of any ground, the regulation ensures clarity in situations where, for instance, legal actions might arise out of the termination or where the reasons for challenges might be referenced in future legal or professional proceedings.

In summary, Section 22(2) serves as a protective measure to ensure that the actions of withdrawal by an arbitrator or the agreement to terminate an arbitrator's mandate by a party are not misconstrued as admissions regarding the validity of grounds for challenges or concerns. This provision allows for the flexibility required in arbitration while ensuring the preservation of legal rights and positions.

### 23. Appointment of substitute arbitrator

**(1) Where the mandate of an arbitrator terminates under section 21 or section 22 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate:**

**(a) subject to any process agreed between the parties in the arbitration agreement, or thereafter, the parties may agree with the arbitrator as to his liabilities and entitlement (if any) to fees and expenses; and**

**(b) a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced, unless otherwise agreed by the parties.**

Section 23(1) of the ADGM Arbitration Regulations 2015 outlines the procedures and consequences that follow the termination of an arbitrator’s mandate in various scenarios.

Key Provisions:

1. **Termination of Arbitrator’s Mandate:** The Section addresses different situations leading to the termination of an arbitrator’s mandate, including circumstances detailed in sections 21 and 22, as well as withdrawal for any other reason, revocation by agreement of parties, or other cases of mandate termination.
2. **Liabilities and Entitlements:**
  - a. After the termination of an arbitrator’s mandate, parties are given the freedom to negotiate and agree upon the arbitrator’s liabilities and entitlements, such as fees and expenses.
  - b. This is subject to any process agreed upon between the parties either in the original arbitration agreement or subsequently.
3. **Substitute Arbitrator:**
  - a. In cases where the original arbitrator’s mandate is terminated, a substitute arbitrator needs to be appointed.
  - b. The method for appointing the substitute arbitrator should generally follow the same rules that were applicable to the appointment of the arbitrator being replaced unless the parties agree otherwise.

Implications:

1. **Parties’ Autonomy:** The provision reaffirms the autonomy of parties in arbitration. They are allowed to determine how to handle the financial aspects of the terminated arbitrator’s service, as well as who will replace the arbitrator.
2. **Flexibility in Replacement:** The Section allows parties to apply the same rules that governed the initial arbitrator’s appointment to the process of appointing a substitute arbitrator. This provides continuity and predictability in the arbitration process.

3. **Liability and Compensation:** The Section recognises the importance of addressing the financial aspects associated with the arbitrator’s termination, offering a framework for determining fees, expenses, and other liabilities. This can help avoid disputes and ensure transparency.
4. **Efficient Continuation of Proceedings:** The provision ensures that the arbitration proceedings can continue with minimal disruption. By defining the process for appointing a substitute arbitrator, the Section contributes to the timely resolution of disputes.

In summary, Section 23(1) facilitates the efficient management of arbitration proceedings following the termination of an arbitrator’s mandate. It grants parties the autonomy to agree on liabilities and entitlements related to the terminated arbitrator and outlines the process for appointing a substitute arbitrator, promoting the continuation of the arbitration process while respecting the parties’ choices.

**(2) If, or to the extent that, there is no agreement in accordance with subsection (1)(a) as to the consequences of resignation, an arbitrator who resigns in the circumstances set out in subsection (1) may, upon written notice to the parties, request the arbitral institution administering the arbitration or, where there is no such institution, the Court to make an order relieving him of any liability incurred by reason of his resignation, together with such order as the arbitral institution administering the arbitration or, where there is no such institution, the Court thinks appropriate with respect to his entitlement (if any) to fees and expenses, which orders shall not be subject to appeal.**

Section 23(2) of the ADGM Arbitration Regulations 2015 addresses the situation when an arbitrator resigns and the parties have not reached an agreement on the consequences of that resignation.

**Key Provisions:**

1. **Arbitrator’s Resignation:** The Section covers cases where an arbitrator resigns under the circumstances outlined in subsection (1), which refers to termination of an arbitrator’s mandate as detailed in sections 21 and 22, withdrawal for any other reason, or other scenarios resulting in the end of the arbitrator’s mandate.
2. **Lack of Agreement on Consequences:** In situations where the parties have not agreed on the consequences of the arbitrator’s resignation in accordance with subsection (1)(a), this Section comes into play.
3. **Arbitrator’s Request for Relief:** An arbitrator who resigns may, through written notice to the parties, request the arbitral institution administering the arbitration or the Court (if no institution exists) to issue an order that relieves the arbitrator of any liability arising due to the resignation.
4. **Entitlement to Fees and Expenses:** The arbitrator can also request an order that outlines their entitlement (if any) to fees and expenses related to the arbitration proceedings.
5. **Non-Applicability of Appeal:** The orders issued by the arbitral institution or the Court as per this Section are explicitly stated to be not subject to appeal.

Implications:

1. **Arbitrator Protection:** This provision ensures that an arbitrator who resigns under certain circumstances can seek protection from any potential liabilities that might arise from their resignation.
2. **Fairness and Transparency:** The Section seeks to provide fairness and transparency by allowing an arbitrator to formally request relief from any liabilities or obligations related to their resignation, with the option for the institution administering the arbitration or the Court to make appropriate orders.
3. **Preservation of Independence:** By offering relief from liabilities, the Section aims to prevent any disincentive for an arbitrator to resign when their independence or impartiality is at risk. This is crucial for maintaining the integrity of the arbitration process.
4. **Efficient Resignation Process:** By defining the process for an arbitrator's resignation and the potential consequences thereof, the Section contributes to the efficient management of the arbitration proceedings in the event of an arbitrator's departure.

In summary, Section 23(2) ensures that arbitrators who resign under certain circumstances are able to seek relief from liabilities and obligations arising from their resignation. This helps protect the arbitrator's interests and independence while maintaining transparency and fairness in the arbitration process. The provision adds another layer of procedural clarity in the event of an arbitrator's resignation.

#### **24. Liability of arbitral tribunal and others**

**No arbitrator, arbitral institution or appointing authority, or any employee, agent or officer of the foregoing shall be liable to any person for any act or omission in connection with an arbitration, unless they are shown to have caused damage by conscious and deliberate wrongdoing.**

Section 24 of the ADGM Arbitration Regulations 2015 pertains to the liability of various entities involved in an arbitration process and sets a standard for holding them accountable for their actions or omissions.

Key Provisions:

1. **Scope of Liability:** The Section addresses arbitrators, arbitral institutions, appointing authorities, and their employees, agents, and officers. It delineates the scope of potential liability for these entities.
2. **Standard of Liability:** The Section establishes a high standard for imposing liability. It requires a showing that the entity in question has caused damage through "conscious and deliberate wrongdoing".



Implications:

1. **Limitation of Liability:** This provision aims to limit the liability of arbitrators, arbitral institutions, appointing authorities, and their personnel involved in arbitration proceedings. It protects them from frivolous or baseless claims of liability arising from their actions or decisions in the course of the arbitration process.
2. **Balancing Protection and Accountability:** The standard of “conscious and deliberate wrongdoing” places a significant burden on the claimant to prove that the alleged actions or omissions were not merely mistakes or errors, but were undertaken with malicious intent or a clear intention to cause harm.
3. **Encouraging Participation in Arbitration:** By providing a level of immunity from liability, this provision encourages individuals to participate as arbitrators, employees, agents, and officers in arbitration proceedings. This is important for fostering a robust and qualified pool of professionals in the arbitration field.
4. **Promoting Effective Dispute Resolution:** This Section contributes to the overall effectiveness of the arbitration process by safeguarding the decisions and actions taken by arbitrators and related entities. It helps maintain the integrity and finality of arbitration awards.
5. **Protection Against Retaliation:** The provision offers protection against potential legal actions or claims that could be filed by disgruntled parties seeking to challenge unfavourable arbitration outcomes.

In summary, Section 24 of the ADGM Arbitration Regulations 2015 establishes a high threshold for imposing liability on arbitrators, arbitral institutions, appointing authorities, and their employees, agents, or officers. It requires that liability can only arise if there is clear evidence of “conscious and deliberate wrongdoing” leading to damage. This provision aims to protect the participants in the arbitration process while still allowing for accountability in cases of genuine misconduct.

## Chapter 4 – Jurisdiction of arbitral tribunal

### 25. Competence of arbitral tribunal to rule on its jurisdiction

**(1) Unless otherwise agreed by the parties, the arbitral tribunal may rule on its own substantive jurisdiction, that is, as to (a) whether there is a valid arbitration agreement, (b) whether the tribunal is properly constituted, and (c) what matters have been submitted to arbitration in accordance with the arbitration agreement.**

Section 25(1) of the ADGM Arbitration Regulations 2015 addresses the authority of the arbitral tribunal to rule on matters related to its own substantive jurisdiction in an arbitration proceeding.

Key Provisions:

1. **Scope of Jurisdiction:** This provision empowers the arbitral tribunal to make determinations about its own substantive jurisdiction. The scope of this jurisdiction includes three specific aspects:

- a. Validity of the arbitration agreement.
  - b. Proper constitution of the arbitral tribunal.
  - c. Matters that fall within the scope of the arbitration agreement and have been properly submitted to arbitration.
2. Default Rule: The default rule is that the arbitral tribunal has the authority to decide these jurisdictional matters unless the parties have agreed otherwise.

Implications:

1. **Autonomy of the Arbitral Tribunal:** Section 25(1) emphasises the principle of autonomy of the arbitral tribunal. It grants the tribunal the authority to make decisions on its own jurisdiction, ensuring that it can determine whether it has the legal basis to proceed with the arbitration.
2. **Efficiency and Finality:** Granting the arbitral tribunal the power to rule on its own jurisdiction promotes efficiency in the arbitration process. The tribunal can address jurisdictional challenges promptly, thereby avoiding unnecessary delays and ensuring the proceedings move forward smoothly.
3. **Challenges to Jurisdiction:** This provision anticipates that challenges to the arbitral tribunal's jurisdiction may arise. By allowing the tribunal to make decisions on these challenges, it avoids the need to involve national courts for preliminary jurisdictional determinations, which could lead to procedural complexities and delays.
4. **Party Agreement:** The provision recognises that parties can agree to modify the tribunal's authority to rule on jurisdictional matters. Parties can include specific clauses in their arbitration agreement that either limit or expand the tribunal's power in this regard.

In summary, Section 25(1) of the ADGM Arbitration Regulations 2015 empowers the arbitral tribunal to decide matters related to its own substantive jurisdiction, including the validity of the arbitration agreement, the constitution of the tribunal, and the scope of the matters submitted to arbitration. This provision upholds the principle of tribunal autonomy, streamlines the arbitration process, and reduces the need for court intervention in preliminary jurisdictional disputes.

**(2) Any such ruling may be challenged by any available arbitral process of appeal or review that the parties may have agreed, or in accordance with the provisions of this Part.**

Section 25(2) of the ADGM Arbitration Regulations 2015 addresses the mechanism for challenging a ruling made by the arbitral tribunal on its own substantive jurisdiction.

Key Provisions:

1. **Challenging Ruling on Jurisdiction:** This provision outlines the process through which a party can challenge a ruling made by the arbitral tribunal regarding its own substantive jurisdiction.

2. Available Arbitral Process of Appeal or Review: The provision states that a party can challenge the tribunal's jurisdictional ruling through any available arbitral process of appeal or review that the parties may have agreed upon.
3. Provisions of This Part: The alternative way to challenge the tribunal's jurisdictional ruling is by following the procedures outlined within the provisions of the same Part of the regulations.

Implications:

1. Preservation of Party Rights: Section 25(2) ensures that parties have a mechanism to challenge a ruling on jurisdiction if they believe the tribunal has made an incorrect decision. This mechanism allows parties to safeguard their interests and ensure that jurisdictional determinations are accurate and fair.
2. Party Autonomy and Agreement: The provision respects party autonomy by allowing parties to choose how they wish to challenge a jurisdictional ruling. Parties may have agreed upon specific mechanisms for appeal or review in their arbitration agreement, and this provision accommodates such agreements.
3. Clarity in Challenge Procedures: By specifying that challenges should be made according to the provisions of the same Part of the regulations, the provision adds clarity to the process for challenging jurisdictional rulings. This helps maintain transparency and predictability in the arbitration proceedings.
4. Balancing Autonomy and Accountability: Section 25(2) strikes a balance between the autonomy of the arbitral tribunal and the accountability of its decisions. It ensures that parties have the means to challenge jurisdictional rulings, while also respecting the finality and authority of those rulings.

In summary, Section 25(2) of the ADGM Arbitration Regulations 2015 provides parties with avenues to challenge a ruling made by the arbitral tribunal on its own substantive jurisdiction. Parties can use any available arbitral process of appeal or review that they have agreed upon or follow the procedures outlined within the same Part of the regulations. This provision aims to uphold fairness, transparency, and accountability in the arbitration process.

## 26. Objection to substantive jurisdiction of tribunal

**(1) An objection that the arbitral tribunal lacks substantive jurisdiction at the outset of proceedings must be raised by a party not later than the time he takes the first step in the proceedings to contest the merits of any matter in relation to which he challenges the tribunal's jurisdiction. A party is not precluded from raising such an objection by the fact that he has appointed or participated in the appointment of an arbitrator.**

Section 26(1) of the ADGM Arbitration Regulations 2015 addresses the timing and procedure for raising objections concerning the arbitral tribunal's lack of substantive jurisdiction.

Key Provisions:

1. **Objection to Lack of Substantive Jurisdiction:** This provision governs the process by which a party can object to the arbitral tribunal's lack of substantive jurisdiction, essentially challenging whether the tribunal has the authority to hear and decide the dispute.
2. **Timing of Objection:** The provision sets a specific timeframe within which such an objection must be raised. It states that the objection must be raised at the outset of the proceedings, specifically when the party takes the first step to contest the merits of any matter related to the dispute.
3. **Effect of Appointment of Arbitrator:** The provision clarifies that a party's ability to raise an objection to the tribunal's lack of jurisdiction is not precluded by the fact that the party has already appointed or participated in the appointment of an arbitrator.

Implications:

1. **Timely and Procedural Nature:** Section 26(1) underscores the importance of raising objections to the tribunal's lack of jurisdiction in a timely manner. This ensures that parties do not delay the arbitration process with jurisdictional disputes and that such objections are dealt with at the appropriate stage of the proceedings.
2. **Balancing Jurisdictional Challenges and Procedural Efficiency:** By requiring parties to raise jurisdictional objections when they start contesting the merits of the matter, the provision encourages parties to address jurisdictional issues early in the proceedings. This promotes procedural efficiency and prevents parties from using jurisdictional objections as a tactical delay tactic.
3. **Protecting Parties' Rights:** The provision safeguards parties' rights to challenge the jurisdiction of the arbitral tribunal even if they have previously appointed or participated in the appointment of an arbitrator. This prevents parties from inadvertently waiving their right to challenge jurisdiction by engaging in the arbitration process.
4. **Promoting Transparency and Certainty:** By setting clear rules for raising jurisdictional objections, Section 26(1) enhances transparency and predictability in the arbitration process. Parties are aware of when and how to address jurisdictional issues, ensuring a fair and orderly resolution of disputes.

In summary, Section 26(1) of the ADGM Arbitration Regulations 2015 outlines the procedure for raising objections to the arbitral tribunal's lack of substantive jurisdiction. It requires parties to raise such objections at the outset of proceedings, specifically when they take the first step to contest the merits of the matter. The provision aims to strike a balance between addressing jurisdictional challenges in a timely manner and maintaining procedural efficiency in the arbitration process.

**(2) Any objection during the course of the arbitral proceedings that the arbitral tribunal is exceeding its substantive jurisdiction must be made as soon as possible after the matter alleged to**

**be beyond its jurisdiction is raised. The arbitral tribunal may admit a later objection in either case specified in subsections (1) or (2) if it considers the delay justified.**

Section 26(2) of the ADGM Arbitration Regulations 2015 addresses objections raised during the course of arbitral proceedings regarding the arbitral tribunal's alleged exceeding of its substantive jurisdiction.

**Key Provisions:**

1. **Objection Regarding Exceeding Jurisdiction:** This provision focuses on objections that arise during the arbitral proceedings and relate to the arbitral tribunal allegedly exceeding its substantive jurisdiction. In other words, it deals with situations where a party believes that the tribunal is making decisions or addressing matters beyond its authorised scope.
2. **Timing of Objection:** The provision sets out that if a party believes the tribunal is exceeding its jurisdiction, it should raise an objection "as soon as possible after the matter alleged to be beyond its jurisdiction is raised". This emphasises the importance of promptly addressing any potential jurisdictional issues during the proceedings.
3. **Late Objection Possibility:** While the provision encourages parties to raise objections promptly, it also provides flexibility. It states that the arbitral tribunal may still consider a later objection, even if the objection is raised after the initial matter alleged to be beyond jurisdiction has been raised. The tribunal has the authority to assess whether the delay in raising the objection is justified.

**Implications:**

1. **Prompt Addressing of Jurisdictional Issues:** Section 26(2) underscores the importance of addressing any concerns about the arbitral tribunal exceeding its jurisdiction as soon as those concerns arise during the proceedings. This ensures that parties do not wait until later stages of the arbitration to challenge the tribunal's actions.
2. **Balancing Promptness and Justification for Delay:** While the provision encourages prompt objections, it also recognises that there might be valid reasons for a slight delay. The tribunal has the discretion to consider a late objection if it determines that the delay is justified. This acknowledges that unforeseen circumstances may arise, which can temporarily delay the objection process.
3. **Ensuring a Fair Process:** By allowing for late objections with justification, the provision seeks to ensure that parties are not unfairly prejudiced due to unforeseen circumstances that might temporarily hinder them from raising objections promptly.
4. **Arbitral Tribunal's Authority:** Section 26(2) reinforces the authority of the arbitral tribunal to assess the validity of objections and the justification for any delay. This grants the tribunal the discretion to manage proceedings fairly and effectively.

In summary, Section 26(2) of the ADGM Arbitration Regulations 2015 addresses objections raised during an ongoing arbitration regarding the arbitral tribunal's alleged exceeding of its jurisdiction. The provision emphasises the importance of raising objections promptly, while also allowing for consideration of late objections if the tribunal finds the delay justified. This provision aims to balance

the need for promptness with the recognition of unforeseen circumstances that may temporarily delay objections.

**(3) The arbitral tribunal may rule on an objection referred to in subsections (1) or (2) either as a preliminary question or in an award on the merits. If the parties agree which of these courses the tribunal should take, the tribunal shall proceed accordingly.**

Section 26(3) of the ADGM Arbitration Regulations 2015 addresses how objections related to the arbitral tribunal's jurisdiction, as outlined in subsections (1) and (2), are to be addressed within the arbitration process.

Key Provisions:

1. Two Possible Ways to Address Objections: The provision introduces two options for how the arbitral tribunal can handle objections regarding its jurisdiction:
  - a. Preliminary Question: The tribunal can treat the objection as a preliminary question, separate from the main merits of the case. This means the tribunal addresses the jurisdictional issue before moving on to the substantive issues of the dispute.
  - b. In Award on the Merits: Alternatively, the tribunal can address the jurisdictional objection within its final award on the merits of the case. In this scenario, the tribunal would consider the jurisdictional issue along with the substantive issues and provide its decision in the final award.
2. Party Agreement's Role: The provision emphasises the significance of party agreement. If the parties agree on whether the tribunal should address the jurisdictional objection as a preliminary question or within the award on the merits, the tribunal must proceed according to that agreement.

Implications:

1. Flexible Approach to Jurisdictional Objections: Section 26(3) acknowledges the flexibility in how jurisdictional objections can be addressed. The tribunal can choose to address the objection early on or as part of the final award, allowing for different procedural approaches based on the circumstances of the case.
2. Party Autonomy in Decision-Making: The provision reflects the principle of party autonomy. If the parties reach an agreement on the procedural course for addressing jurisdictional objections, the tribunal must respect that agreement. This empowers parties to have a say in how such objections are handled.
3. Efficiency and Procedural Streamlining: By allowing jurisdictional objections to be treated as preliminary questions, the provision promotes efficiency. Separating jurisdictional issues from the merits can streamline the arbitration process by potentially resolving threshold matters early on.

4. **Case-Specific Considerations:** The choice between addressing jurisdictional objections preliminarily or within the final award depends on the circumstances of each case. Some cases might benefit from a focused preliminary determination of jurisdiction, while others might require a comprehensive decision as part of the final award.

In summary, Section 26(3) of the ADGM Arbitration Regulations 2015 provides flexibility in how objections related to the arbitral tribunal's jurisdiction are addressed. The tribunal can treat such objections as preliminary questions or address them within the award on the merits. The provision emphasises party agreement, respecting the parties' autonomy in deciding the procedural course for handling jurisdictional objections. This approach enhances efficiency, procedural fairness, and customisation based on the specifics of each arbitration case.

## 27. Determination of preliminary point of jurisdiction

**(1) If the arbitral tribunal rules on an objection referred to in subsection 26(1) or 25(2) as a preliminary question, the Court may, on the application of a party to the arbitral proceedings (upon notice to the other parties), determine any question as to the substantive jurisdiction of the tribunal. A party may lose the right to object pursuant to section 11.**

Section 27(1) of the ADGM Arbitration Regulations 2015 deals with the circumstances under which the Court may intervene to determine substantive jurisdiction-related questions during arbitral proceedings.

### Key Provisions:

1. **Court Intervention for Substantive Jurisdiction:** The provision outlines a scenario where the arbitral tribunal rules on a jurisdictional objection as a preliminary question. If this happens, a party involved in the arbitral proceedings can apply to the Court to determine questions related to the substantive jurisdiction of the tribunal.
2. **Notice and Application:** To initiate Court intervention, a party must make an application to the Court. This application should be made with notice to the other parties involved in the arbitral proceedings.
3. **Scope of Determination:** The Court's jurisdiction under this provision is to determine questions pertaining to the substantive jurisdiction of the arbitral tribunal. This could include matters related to the validity of the arbitration agreement, the proper constitution of the tribunal, or the scope of matters submitted to arbitration under the agreement.
4. **Preservation of Right to Object:** The provision highlights that while parties can seek Court determination of substantive jurisdiction questions, they could lose the right to object if they fail to do so in accordance with Section 11 of the Regulations. Section 11 deals with objections not timely raised before the tribunal.

### Implications:

1. **Balancing Tribunal and Court Authority:** Section 27(1) reflects a balance between the authority of the arbitral tribunal and the Court. It allows the Court to intervene when

jurisdictional objections are ruled upon by the tribunal as preliminary questions, ensuring that substantive jurisdiction-related disputes can be resolved by a judicial authority.

2. **Ensuring Jurisdictional Clarity:** By providing parties with the option to seek Court determination on substantive jurisdictional questions, the provision contributes to ensuring the clarity and validity of the arbitral process. If there are disputes about the tribunal's jurisdiction, they can be resolved by a judicial body.
3. **Timely Exercise of Rights:** The provision underscores the importance of timely action. Parties must be diligent in raising jurisdictional objections before the tribunal and, if necessary, applying to the Court in a timely manner. Failure to do so might result in losing the right to object.
4. **Court's Role in Complex Jurisdictional Issues:** This provision acknowledges that certain jurisdictional issues may be complex and require judicial intervention. The Court's expertise can be particularly valuable when dealing with intricate questions of substantive jurisdiction.

In summary, Section 27(1) of the ADGM Arbitration Regulations 2015 allows a party to apply to the Court for determination of substantive jurisdictional questions when the arbitral tribunal rules on a jurisdictional objection as a preliminary question. This provision maintains a balance between tribunal and Court authority, ensures the clarity of jurisdictional matters, and emphasises the importance of timely exercise of rights. It empowers parties to seek Court intervention when dealing with complex jurisdictional disputes.

**(2) An application under this section shall not be considered unless (a) it is made with the agreement in writing of all the other parties to the proceedings, or (b) it is made with the permission of the tribunal and the court is satisfied that: (i) the determination of the question is likely to produce substantial savings in costs, (ii) the application was made without delay, and (iii) there is good reason why the matter should be decided by the Court.**

Section 27(2) of the ADGM Arbitration Regulations 2015 outlines the procedural requirements for making an application to the Court to determine questions of substantive jurisdiction during arbitral proceedings.

Key Provisions:

1. **Conditions for Considering Application:** This provision lays out the prerequisites that must be fulfilled for an application to be considered by the Court to determine substantive jurisdiction-related questions. The application must meet certain conditions to be eligible for consideration.
2. **Agreement or Permission Requirement:** There are two alternative paths for making an application:
  - a. The application can be made with the written agreement of all the other parties involved in the arbitral proceedings.



- b. If all parties' agreement is not attainable, the application can be made with the permission of the arbitral tribunal, and the Court must be satisfied that specific criteria are met.
3. Permission Criteria: If the application is made without the agreement of all parties, it requires the tribunal's permission. The Court, in granting permission, must ascertain that:
  - a. Determining the jurisdictional question is likely to result in substantial cost savings.
  - b. The application was made promptly and without delay.
  - c. There are valid reasons justifying why the matter should be decided by the Court rather than solely by the arbitral tribunal.

#### Implications:

1. **Balancing Efficiency and Consent:** This provision balances the parties' autonomy and the efficiency of the arbitration process. Parties can either collectively agree to have the Court determine jurisdictional questions or, if unanimous agreement is not achievable, seek tribunal and Court permission.
2. **Cost-Saving and Efficiency Emphasis:** The criteria set out in (ii) and (iii) of the permission requirement highlight the emphasis on cost-saving and efficient resolution of jurisdictional matters. The application should be made without delay, and the Court's intervention should be justified by valid reasons.
3. **Judicial Discretion:** The provision grants the Court discretion to consider whether the specified conditions are met before allowing the application. The Court must evaluate the potential benefits of its intervention against the circumstances of the case.
4. **Importance of Consent and Collaboration:** Requiring the agreement of all parties or the tribunal's permission underscores the importance of collaboration and consent within the arbitration process. It reflects the principle that parties should collectively determine the course of arbitration, including seeking external jurisdictional determinations.

In summary, Section 27(2) of the ADGM Arbitration Regulations 2015 establishes the procedural framework for applying to the Court to determine questions of substantive jurisdiction during arbitral proceedings. Parties can either collectively agree or seek tribunal and Court permission to involve the Court in such determinations. The provision emphasises efficiency, cost-saving, and the importance of consent and collaboration among the parties.

**(3) An application under this section, unless made with the agreement of all the other parties to the proceedings, shall state the grounds on which it is said that the matter should be decided by the Court.**

Section 27(3) of the ADGM Arbitration Regulations 2015 outlines the requirement for stating the grounds when making an application to the Court under Section 27(2) to determine questions of substantive jurisdiction during arbitral proceedings.

Key Points:

1. **Grounds for Application:** When an application is made to the Court to determine a question of substantive jurisdiction, the application must provide the reasons or grounds why it is being asserted that the Court should decide the matter. This requirement ensures transparency and clarity in the application process.
2. **Requirement for Non-Unanimous Agreement Cases:** This provision applies when an application is made without the agreement of all parties involved in the arbitral proceedings. In such cases, where not all parties consent to the Court's jurisdictional determination, the applicant must articulate why they believe the matter should be decided by the Court rather than solely by the arbitral tribunal.

Implications:

1. **Clarity and Transparency:** Requiring the grounds for the application ensures that the reasons for involving the Court in the determination of substantive jurisdiction are clearly stated. This promotes transparency and helps the Court and other parties understand the basis of the application.
2. **Encouraging Well-Founded Applications:** By mandating the articulation of grounds, this provision aims to ensure that applications are well-founded and supported by valid reasons. It discourages frivolous or baseless applications to involve the Court in jurisdictional questions.
3. **Facilitating Court's Evaluation:** Stating the grounds allows the Court to assess whether the criteria outlined in Section 27(2) are met. The Court can evaluate whether the case justifies its involvement and whether the criteria related to cost-saving, promptness, and valid reasons are fulfilled.
4. **Preserving Party Autonomy:** The requirement for stating grounds respects party autonomy while providing a mechanism for parties to involve the Court when unanimous agreement is not possible. This preserves the balance between party autonomy and the need for external intervention.

In summary, Section 27(3) of the ADGM Arbitration Regulations 2015 mandates that an application made to the Court to determine questions of substantive jurisdiction should include the grounds or reasons for seeking the Court's involvement. This requirement promotes clarity, transparency, and well-founded applications, while enabling the Court to assess whether the conditions for involving itself in jurisdictional matters are met.

**(4) Subject to any agreement by the parties, while such a request is pending, the arbitral tribunal may stay the arbitral proceedings or continue the arbitral proceedings and make an award.**

Section 27(4) of the ADGM Arbitration Regulations 2015 addresses the actions that an arbitral tribunal can take while a request for the determination of substantive jurisdiction is pending before the Court.

Key Points:

1. **Pending Request for Jurisdictional Determination:** This provision comes into play when a party has made an application to the Court under Section 27(2) for the determination of substantive jurisdiction. It provides guidance on the actions the arbitral tribunal may take while this request is still pending.
2. **Options for the Arbitral Tribunal:** The arbitral tribunal has two options:
  - a. **Stay Proceedings:** The tribunal may choose to stay (temporarily halt) the arbitral proceedings until the Court decides on the jurisdictional matter.
  - b. **Continue Proceedings and Make an Award:** Alternatively, the tribunal may proceed with the arbitral proceedings and even make an award while the Court's determination request is pending.
3. **Subject to Party Agreement:** The actions of the arbitral tribunal under this provision are subject to any agreement by the parties. If the parties have agreed on a specific course of action for the tribunal to take while the jurisdictional determination is pending, that agreement would prevail.

Implications:

1. **Balancing Progress and Jurisdictional Dispute:** Section 27(4) acknowledges the importance of maintaining the progress of the arbitral proceedings. It balances the need to resolve the jurisdictional dispute with the desire to proceed with the substantive matters of the dispute.
2. **Flexibility and Party Agreement:** The provision allows flexibility in the approach taken by the arbitral tribunal based on the parties' agreement. Parties may have differing preferences regarding the continuity of the proceedings during the jurisdictional determination process.
3. **Avoiding Delays and Efficiency:** Allowing the arbitral tribunal to continue the proceedings and even render an award while the Court's jurisdictional determination is pending can help prevent unnecessary delays. This is particularly important in cases where the substantive merits of the dispute can be separated from the jurisdictional issue.

In summary, Section 27(4) of the ADGM Arbitration Regulations 2015 gives the arbitral tribunal discretion to either stay the arbitral proceedings or continue them and make an award while a request for the determination of substantive jurisdiction is pending before the Court. This provision takes into account the parties' preferences and balances the need for a timely resolution of jurisdictional issues with the desire to make progress in the arbitration process.

**(5) The decision of the Court on the question of jurisdiction shall be treated as a judgment of the Court. The decision of the Court shall not be subject to appeal.**

Section 27(5) of the ADGM Arbitration Regulations 2015 addresses the status and finality of the Court's decision regarding the question of jurisdiction in an arbitration proceeding.

**Key Points:**

1. **Nature of the Court Decision:** This provision refers to the decision of the Court regarding the question of jurisdiction. It underscores that the Court's decision on this matter is considered as a "judgment" of the Court.
2. **Finality and No Appeal:** The provision explicitly states that the Court's decision on jurisdiction is not subject to appeal. This means that parties are not allowed to challenge or contest the Court's decision on jurisdiction through an appellate process.
3. **Emphasis on the Decision's Conclusiveness:** By treating the Court's decision as a "judgment" and making it non-appealable, the provision emphasises the conclusive nature of the Court's determination on jurisdiction. Once the Court has ruled on the issue, it is intended to provide a definitive and binding resolution.

**Implications:**

1. **Legal Certainty:** Section 27(5) aims to enhance legal certainty by confirming that the Court's decision on jurisdiction is final and conclusive. This contributes to the overall efficiency and effectiveness of arbitration proceedings.
2. **Avoiding Multiple Proceedings:** The provision's non-appealable nature helps avoid the possibility of parallel or successive proceedings on jurisdictional issues, reducing the risk of delaying the arbitration process.
3. **Enforcement of the Decision:** Treating the Court's jurisdictional decision as a "judgment" enhances its enforceability. It establishes a clear legal basis for enforcing the decision both within the arbitration context and beyond, such as in the enforcement of arbitral awards.

In summary, Section 27(5) of the ADGM Arbitration Regulations 2015 underscores the finality and conclusive nature of the Court's decision on the question of jurisdiction. By treating the decision as a "judgment" of the Court and making it non-appealable, the provision contributes to legal certainty and efficient arbitration proceedings.

## Chapter 5 – Interim measures

### 28. Power of arbitral tribunal to order interim measures

**(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures provided that any such request by a party is made upon notice to the other parties in the proceedings.**

Section 28(1) of the ADGM Arbitration Regulations 2015 pertains to the arbitral tribunal’s authority to grant interim measures upon the request of a party in an arbitration proceeding.

#### Key Points:

1. **Interim Measures:** The provision focuses on “interim measures”, which are temporary measures that the arbitral tribunal can order to preserve or protect a party’s rights during the course of the arbitration process. These measures are designed to maintain the status quo until a final award is rendered.
2. **Party Request:** The provision emphasises that the arbitral tribunal can grant interim measures upon the request of a party. This means that a party involved in the arbitration can seek such measures from the tribunal to address urgent issues that may arise during the arbitration proceedings.
3. **Notice to Other Parties:** The provision states that any request for interim measures made by a party must be accompanied by a notice to the other parties involved in the arbitration proceedings. This notice ensures that all parties are informed about the request and have an opportunity to respond or present their views on the matter.
4. **Default Rule:** The default rule stated in this provision is that the arbitral tribunal can grant interim measures unless the parties have agreed otherwise. This underscores the tribunal’s authority to provide necessary measures to protect the interests of the parties, unless the parties’ agreement limits or alters this authority.

#### Implications:

1. **Balancing Interests:** Section 28(1) strikes a balance between providing parties with a means to seek interim relief and ensuring that other parties are aware of such requests. This helps maintain transparency and fairness in the arbitration process.
2. **Emergency Situations:** The provision is particularly useful in situations where immediate action is required to prevent irreparable harm or to maintain the status quo until a final award is rendered. It allows parties to request the tribunal’s intervention to address urgent issues.
3. **Party Autonomy:** By allowing parties to agree otherwise, the provision respects party autonomy. Parties can modify the tribunal’s authority to grant interim measures based on their preferences and needs.

In summary, Section 28(1) of the ADGM Arbitration Regulations 2015 empowers the arbitral tribunal to grant interim measures at the request of a party, subject to notice to the other parties. This

provision provides a framework for seeking temporary relief during the arbitration process, while also considering the need for transparency and party autonomy.

**(2) An interim measure is any temporary measure, whether in the form of an award or in another form, 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 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, current or imminent harm or prejudice to any party or 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.**

Section 28(2) of the ADGM Arbitration Regulations 2015 elaborates on the concept of “interim measures” in the context of arbitration proceedings.

Key Points:

1. **Definition of Interim Measures:** The provision defines “interim measure” as any temporary measure ordered by the arbitral tribunal before the issuance of the final award that aims to address specific issues during the arbitration process.
2. **Scope of Interim Measures:** The section outlines four categories of interim measures that the arbitral tribunal can order:
  - a. **Maintaining or Restoring Status Quo:** The tribunal can order a party to maintain or restore the status quo pending the final determination of the dispute. This prevents any party from taking actions that could prejudice the outcome of the arbitration.
  - b. **Preventing Harm or Prejudice:** The tribunal can order a party to take actions that prevent current or imminent harm or prejudice to any party or to the arbitral process itself. This allows the tribunal to prevent further damage during the arbitration proceedings.
  - c. **Preserving Assets:** The tribunal can order a party to provide a means of preserving assets that could be used to satisfy a subsequent award. This is particularly relevant if there is a risk that a party’s assets might be dissipated before the final award is rendered.
  - d. **Preserving Evidence:** The tribunal can order a party to preserve evidence that is relevant and material to the resolution of the dispute. This ensures that evidence crucial to the arbitration process is not lost or destroyed.

3. **Temporal Scope:** The provision clarifies that these interim measures can be ordered “at any time prior to the issuance of the award by which the dispute is finally decided”. This means that the tribunal’s authority to order interim measures extends throughout the arbitration process until a final award is rendered.

Implications:

1. **Protection of Rights and Interests:** Section 28(2) underscores the tribunal’s authority to issue various types of interim measures to protect parties’ rights and interests during the arbitration process. These measures can address a wide range of potential issues and ensure a fair and effective arbitration.
2. **Flexible Approach:** The provision’s inclusive list of categories for interim measures allows the tribunal to tailor its orders to the specific circumstances of each case. This flexibility is crucial in addressing the diverse needs and concerns that may arise during arbitration.
3. **Preservation of Assets and Evidence:** The provision’s recognition of the need to preserve assets and evidence contributes to maintaining the integrity of the arbitration process and the enforceability of potential future awards.

In summary, Section 28(2) of the ADGM Arbitration Regulations 2015 provides a comprehensive definition of “interim measures” in arbitration proceedings and outlines the categories of measures that the arbitral tribunal can order. These measures are designed to address various issues that may arise during arbitration, ensuring the protection of parties’ rights, preventing harm, preserving assets, and maintaining evidence. The temporal scope of the provision makes it clear that the tribunal’s authority to issue interim measures extends until the issuance of the final award.

**(3) The party requesting an interim measure under subsection (1) 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 outweighs the harm, if any, that is likely to result to the party against whom the measure is directed if the measure is ordered; 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.**

Section 28(3) of the ADGM Arbitration Regulations 2015 outlines the requirements that a party must satisfy when requesting an interim measure in an arbitration proceeding.

Key Points:

1. **Substantive Requirements for Interim Measures:** This provision sets out two key criteria that the requesting party must satisfy to obtain an interim measure:
  - a. **Likelihood of Irreparable Harm:** The requesting party must demonstrate that harm that cannot be adequately compensated by an award of damages is likely to occur if the interim measure is not granted. Moreover, the harm that could be prevented by the measure should outweigh any harm that the opposing party might suffer if the measure is ordered.

- b. Reasonable Possibility of Success: The requesting party must show that there is a reasonable possibility that they will succeed on the merits of their claim. In other words, the party must have a valid and plausible claim that could potentially be successful in the final arbitration award.
2. Balancing of Interests: The provision highlights the principle of balancing interests between the requesting party and the opposing party. The arbitral tribunal needs to assess whether the harm that could be prevented by granting the interim measure outweighs any potential harm to the opposing party, as well as whether the requesting party has a valid claim with a reasonable chance of success.
3. Separation of Determinations: The provision clarifies that the arbitral tribunal's determination of the requesting party's reasonable possibility of success does not affect the tribunal's discretion in making any subsequent determinations. This underscores the tribunal's ability to consider additional evidence, arguments, and factors as the arbitration proceedings unfold.

#### Implications:

1. High Threshold for Interim Measures: Section 28(3) establishes a relatively high threshold for granting interim measures. The requesting party needs to demonstrate not only the likelihood of irreparable harm but also a reasonable possibility of success on the merits. This ensures that interim measures are not granted lightly and are based on a well-founded legal and factual basis.
2. Equitable and Balanced Approach: By requiring the arbitral tribunal to balance the potential harms to both parties and assess the likelihood of success on the merits, the provision promotes an equitable and balanced approach to granting interim measures.
3. Protection of Due Process: The provision's separation of determinations ensures that a determination on the reasonable possibility of success does not preclude the parties from presenting their full case and evidence during the course of the arbitration.

In summary, Section 28(3) of the ADGM Arbitration Regulations 2015 sets forth the criteria for granting interim measures in arbitration proceedings. The provision emphasises the need for a requesting party to demonstrate both the likelihood of irreparable harm and a reasonable possibility of success on the merits. This balanced approach ensures that interim measures are only granted when justified by a strong legal and factual foundation, while also safeguarding due process and the interests of both parties.

**(4) With regard to a request for an interim measure under section 27(2)(d), the requirements in paragraphs (3)(a) and (b) of this section shall apply only to the extent the arbitral tribunal considers appropriate.**

Section 28(4) of the ADGM Arbitration Regulations 2015 addresses the requirements for requesting an interim measure specifically in cases where the measure pertains to preserving evidence.

#### Key Points:



1. Applicability of Criteria to Preservation of Evidence:
  - a. This provision clarifies that the requirements outlined in Section 28(3)(a) and (b) apply to requests for interim measures related to preserving evidence, but only to the extent that the arbitral tribunal deems appropriate.
  - b. Section 28(3)(a) deals with the likelihood of irreparable harm, and (3)(b) pertains to the reasonable possibility of success on the merits.
2. Flexible Application of Criteria:
  - a. While the general principles in Section 28(3) set a high standard for granting interim measures, Section 28(4) recognises that when it comes to preserving evidence, the strict application of these requirements might not be necessary or suitable in all cases.
  - b. The arbitral tribunal has the discretion to determine the extent to which the criteria should apply based on the specific circumstances of the request and the need to preserve evidence.

Implications:

1. Balancing Preservation and Due Process:
  - a. The provision recognises the unique nature of preservation of evidence requests. In certain cases, the need to preserve crucial evidence might outweigh the strict requirements of demonstrating the likelihood of irreparable harm or a reasonable possibility of success on the merits.
  - b. This acknowledges the importance of maintaining the integrity of evidence and ensuring a fair arbitration process.
2. Pragmatic Approach: Section 28(4) demonstrates a pragmatic approach to interim measures, allowing for flexibility when preserving evidence is a primary concern. The arbitral tribunal can tailor its assessment of the criteria to the specific context, avoiding undue restrictions on the preservation process.

In summary, Section 28(4) of the ADGM Arbitration Regulations 2015 recognises the particular needs of preserving evidence in interim measures requests. It states that while the requirements for demonstrating harm and the likelihood of success apply to evidence preservation requests, the arbitral tribunal has the discretion to apply these criteria to the extent it deems appropriate. This provision strikes a balance between preserving evidence and the general standards for granting interim measures, ensuring that the arbitration process remains fair and effective.

**(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.**

Section 28(5) of the ADGM Arbitration Regulations 2015 addresses the arbitral tribunal's authority to modify, suspend, or terminate interim measures that it has previously granted.

Key Points:

1. Modification, Suspension, and Termination of Interim Measures:
  - a. This provision grants the arbitral tribunal the authority to make changes to interim measures that have been previously granted.
  - b. The tribunal can modify the terms or conditions of the interim measure, suspend its effect temporarily, or terminate it altogether.
2. Party Application and Tribunal Initiative:
  - a. Parties have the right to apply for modifications, suspensions, or terminations of interim measures that have been issued.
  - b. In exceptional circumstances, the arbitral tribunal can initiate the process on its own initiative to modify, suspend, or terminate an interim measure.
  - c. The tribunal must provide prior notice to the parties before making such changes.
3. Flexibility and Adaptability:
  - a. Section 28(5) reflects the flexible nature of arbitration proceedings. It recognises that circumstances can change over the course of an arbitration, and interim measures may need to be adjusted accordingly.
  - b. By allowing parties to request changes to interim measures and giving the arbitral tribunal the authority to respond proactively, the regulation supports the adaptability of the arbitration process.

Implications:

1. Balancing the Needs of Parties:
  - a. Section 28(5) provides a mechanism for the arbitral tribunal to balance the evolving needs of the parties and the ongoing arbitration process.
  - b. If circumstances change, parties can request modifications to interim measures to ensure that the measures remain fair and appropriate.
2. Protecting the Integrity of the Process:
  - a. Allowing the arbitral tribunal to take the initiative to modify, suspend, or terminate interim measures in exceptional circumstances safeguards the integrity of the arbitration process.

- b. This authority ensures that the tribunal can prevent misuse or unnecessary prolongation of interim measures that may no longer be necessary or appropriate.
3. Efficiency and Effectiveness: The provision contributes to the efficiency and effectiveness of arbitration by allowing for the timely adjustment of interim measures, reflecting changes in the parties' situations or the evolving dispute.

In summary, Section 28(5) of the ADGM Arbitration Regulations 2015 empowers the arbitral tribunal to modify, suspend, or terminate interim measures that it has granted. This provision supports the flexibility and adaptability of the arbitration process, allowing for adjustments to interim measures as circumstances change while ensuring the process's integrity and effectiveness.

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

Section 28(6) of the ADGM Arbitration Regulations 2015 addresses the arbitral tribunal's authority to request a party requesting an interim measure to provide security in connection with that measure.

Key Points:

1. Security in Connection with Interim Measures:
  - a. This provision gives the arbitral tribunal the power to require a party that is seeking an interim measure to provide security as a condition for granting the requested measure.
  - b. Security in this context refers to a financial guarantee or assurance provided by the requesting party to cover potential damages or costs that may arise if the interim measure is later determined to have been wrongfully sought or obtained.
2. Balancing Interests:
  - a. Section 28(6) reflects the need to balance the interests of parties involved in arbitration.
  - b. Requiring security ensures that the party seeking an interim measure has a legitimate basis for their request and provides assurance to the other party that they will be compensated for any harm caused by the measure if it is later found to have been unjustified.
3. Preventing Abuse of Interim Measures:
  - a. Requiring security can act as a safeguard against the abuse of interim measures, preventing parties from seeking measures solely to gain tactical advantages or disrupt the proceedings.
  - b. It encourages parties to carefully consider the necessity of requesting an interim measure before doing so.

Implications:

1. Enhancing Credibility of the Process:
  - a. By allowing the arbitral tribunal to require security, this provision enhances the credibility and integrity of the arbitration process.
  - b. It discourages frivolous or unjustified requests for interim measures and promotes fair and responsible conduct by parties.
2. Mitigating Potential Harms:
  - a. Requiring security can mitigate potential harms that might be caused to a party as a result of an interim measure.
  - b. If the measure is later found to have been unjustified, the security can serve as compensation for any damages or costs incurred.
3. Ensuring Equitable Outcomes:
  - a. Section 28(6) ensures that interim measures are granted in a balanced and equitable manner.
  - b. It prevents one party from gaining an unfair advantage over the other through the inappropriate use of interim measures.

In summary, Section 28(6) of the ADGM Arbitration Regulations 2015 empowers the arbitral tribunal to require a party seeking an interim measure to provide appropriate security. This provision aims to ensure that interim measures are sought and granted responsibly, preventing their abuse and promoting fair and credible arbitration proceedings.

**(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.**

Section 28(7) of the ADGM Arbitration Regulations 2015 addresses the duty of parties to promptly disclose any material changes in circumstances related to an interim measure that was requested or granted during the arbitration proceedings.

Key Points:

1. Duty of Prompt Disclosure:
  - a. This provision places an obligation on parties to inform the arbitral tribunal of any significant changes in the circumstances that formed the basis for the request or grant of an interim measure.
  - b. The disclosure is expected to be prompt, ensuring that the tribunal is kept informed of developments that could impact the appropriateness or continuation of the interim measure.

2. Ensuring Continued Justification:
  - a. The purpose of requiring prompt disclosure is to ensure that an interim measure remains justified throughout the duration of the arbitration proceedings.
  - b. If circumstances change in a way that affects the necessity or appropriateness of the measure, the arbitral tribunal can consider modifying, suspending, or terminating the measure as needed.
3. Maintaining the Integrity of the Process:
  - a. By mandating the disclosure of material changes in circumstances, this provision helps maintain the integrity of the arbitration process.
  - b. It prevents parties from benefiting from interim measures that are no longer warranted due to evolving circumstances.

Implications:

1. Continued Justification for Measures:
  - a. Section 28(7) reinforces the principle that interim measures should remain justifiable and relevant throughout the arbitration process.
  - b. It ensures that measures granted earlier are not misused or prolonged unnecessarily when the underlying circumstances change.
2. Transparency and Accountability:
  - a. Requiring parties to disclose material changes promotes transparency and accountability in the arbitration proceedings.
  - b. It prevents parties from withholding information that could impact the tribunal's decision-making process.
3. Efficient Resolution of Disputes:
  - a. By promptly informing the tribunal of material changes, parties contribute to the efficient resolution of disputes.
  - b. The tribunal can make informed decisions based on the most up-to-date information, leading to more accurate and effective outcomes.

In summary, Section 28(7) of the ADGM Arbitration Regulations 2015 emphasises the duty of parties to promptly disclose any material changes in circumstances related to interim measures. This provision ensures that interim measures remain appropriate and justifiable throughout the arbitration proceedings, maintaining transparency, accountability, and the integrity of the process.

**(8) The party requesting an interim measure shall be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances, the**

**measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.**

Section 28(8) of the ADGM Arbitration Regulations 2015 addresses the issue of liability for costs and damages arising from the grant of an interim measure in an arbitration proceeding.

Key Points:

1. Liability for Costs and Damages:
  - a. This provision establishes that the party requesting an interim measure will be held liable for any costs and damages incurred by other parties if the arbitral tribunal later determines that the measure should not have been granted.
  - b. It emphasises that the party requesting the interim measure is responsible for any adverse consequences resulting from the measure.
2. Retrospective Determination:
  - a. The provision enables the arbitral tribunal to assess the appropriateness of the granted interim measure at any point during the arbitration proceedings.
  - b. If the tribunal concludes that the measure should not have been granted based on the circumstances, it can then consider awarding costs and damages to the affected party or parties.
3. Balancing Interests:
  - a. Section 28(8) strikes a balance between the need to provide parties with a means to seek interim relief when necessary and the need to prevent abuse of such relief.
  - b. It discourages parties from seeking and obtaining interim measures that might later be deemed unjustified, thereby mitigating potential harm to the other parties.

Implications:

1. Cautious Approach to Interim Measures:
  - a. This provision encourages parties to carefully consider the necessity and validity of requesting interim measures.
  - b. It discourages parties from seeking such measures frivolously, as they could be held liable for costs and damages if the measures are later found to have been unwarranted.
2. Preventing Abuse of Interim Measures:
  - a. By imposing liability for costs and damages, Section 28(8) discourages parties from seeking interim measures solely to gain an advantage or to inconvenience other parties.

- b. It contributes to the fair and ethical use of interim relief.
- 3. Promoting Fairness and Accountability:
  - a. The provision promotes fairness by holding parties accountable for the consequences of their actions in seeking interim measures.
  - b. It ensures that parties exercise caution and diligence when pursuing such measures.

In summary, Section 28(8) of the ADGM Arbitration Regulations 2015 establishes that the party requesting an interim measure is liable for costs and damages caused by the measure if the arbitral tribunal later determines that the measure should not have been granted. This provision encourages responsible use of interim measures and prevents their abuse, promoting fairness, accountability, and the efficient resolution of disputes.

## 29. Power of arbitral tribunal to order security for costs

**Unless otherwise agreed by the parties, the tribunal has the power to order a claimant to provide security for the costs of the arbitration. This power shall not be exercised on the ground that the claimant is (a) an individual ordinarily resident outside the Abu Dhabi Global Market, or (b) a corporation or association incorporated or formed other than in the Abu Dhabi Global Market, or whose central management and control is exercised outside the Abu Dhabi Global Market.**

Section 29 of the ADGM Arbitration Regulations 2015 addresses the power of an arbitral tribunal to order security for costs in arbitration proceedings.

Key Points:

1. Power to Order Security for Costs:
  - a. This provision grants the arbitral tribunal the authority to order a claimant to provide security for the costs of the arbitration.
  - b. The tribunal can exercise this power when the circumstances warrant, subject to the conditions outlined in the section.
2. Scope of Exercise of Power:
  - a. The section specifies that the tribunal's power to order security for costs is subject to the agreement of the parties, unless the parties have agreed otherwise.
  - b. This indicates that parties can modify the application of this provision through their mutual agreement.
3. Exemptions from Security for Costs:

- a. The provision outlines specific scenarios where the tribunal's power to order security for costs cannot be exercised:
  - i. When the claimant is an individual ordinarily resident outside the Abu Dhabi Global Market (ADGM).
  - ii. When the claimant is a corporation or association incorporated or formed other than in the ADGM.
  - iii. When the claimant's central management and control are exercised outside the ADGM.

Implications:

1. Balancing the Interests of Parties:
  - a. Section 29 aims to strike a balance between ensuring that parties are financially responsible for their claims and preventing the imposition of undue burdens on claimants who meet the specified exemptions.
  - b. It allows for the protection of respondents against potentially frivolous claims while taking into account the circumstances of the claimant.
2. Promoting Fairness and Equitability:
  - a. This provision seeks to promote fairness by providing respondents with a mechanism to seek security for costs when appropriate.
  - b. The exemptions for certain claimants recognise the challenges they may face in meeting security requirements due to their residency or incorporation outside the ADGM.
3. Encouraging Efficient Arbitration Proceedings:
  - a. By providing a mechanism to address security for costs, the section contributes to the efficient conduct of arbitration proceedings.
  - b. It can discourage unmeritorious claims that may otherwise be pursued without accountability for costs.

In summary, Section 29 of the ADGM Arbitration Regulations 2015 empowers an arbitral tribunal to order a claimant to provide security for the costs of arbitration, subject to the agreement of the parties. The provision outlines specific exemptions for claimants who meet certain residency or incorporation criteria, promoting fairness and efficiency in the arbitration process while taking into account the circumstances of the parties involved.



### 30. Recognition and enforcement of interim measures by the Court

**(1) Subject to subsection (4), an interim measure issued by an arbitral tribunal shall be recognised as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application to the Court or any competent court (in either case, the “recognising court”), irrespective of the country in which it was issued, provided such application is made on notice to all parties to the proceedings.**

Section 30(1) of the ADGM Arbitration Regulations 2015 addresses the recognition and enforcement of interim measures issued by an arbitral tribunal.

Key Points:

1. Binding Nature of Interim Measures:
  - a. This provision establishes that any interim measure issued by an arbitral tribunal is recognised as legally binding.
  - b. The measure is binding on the parties involved and can be enforced in accordance with the procedures set out in the section.
2. Recognition and Enforcement:
  - a. The provision allows for the recognition and enforcement of the interim measure by applying to the Court or any other competent court (referred to as the “recognising court”).
  - b. The recognising court has the authority to enforce the interim measure, regardless of the country in which it was issued.
3. Application on Notice to Parties:
  - a. Any application for the recognition and enforcement of an interim measure must be made on notice to all parties involved in the arbitration proceedings.
  - b. This requirement ensures transparency and gives all parties an opportunity to respond before the recognising court makes a decision.
4. Exceptions and Subsections: The provision mentions that its application is subject to subsection (4), suggesting the presence of further conditions or limitations in that subsection, which should be considered for a comprehensive understanding.

Implications:

1. Enhanced Effectiveness of Interim Measures:
  - a. Section 30(1) aims to enhance the effectiveness of interim measures by enabling parties to enforce them in different jurisdictions.
  - b. This provision facilitates the cross-border enforcement of interim measures issued by arbitral tribunals.

2. Balancing Party Rights and Interests:
  - a. The requirement to provide notice to all parties ensures that parties have the opportunity to present their positions and potentially challenge the recognition or enforcement of the interim measure.
  - b. This balances the need for enforcing interim measures with the principles of due process and fairness.
3. Promoting Arbitration as a Viable Dispute Resolution Mechanism: By enabling parties to enforce interim measures across borders, this provision reinforces arbitration as a credible and effective alternative to litigation, as parties can obtain timely relief regardless of the jurisdiction of the issuing tribunal.

In summary, Section 30(1) of the ADGM Arbitration Regulations 2015 establishes that interim measures issued by an arbitral tribunal are legally binding and can be enforced by applying to the Court or a competent court. The provision promotes the effectiveness of interim measures and cross-border enforcement, while ensuring transparency and fairness through the requirement for notice to all parties involved in the arbitration proceedings.

**(2) The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the recognising court of any termination, suspension or modification of that interim measure.**

Section 30(2) of the ADGM Arbitration Regulations 2015 pertains to the duty of a party to inform the recognising court about any changes in the status of an interim measure that has been recognised or enforced.

Key Points:

1. Duty to Inform Recognising Court:
  - a. This provision imposes a duty on the party who has sought or obtained the recognition or enforcement of an interim measure to promptly inform the recognising court about any changes to the status of that measure.
  - b. Changes can include the termination, suspension, or modification of the interim measure.
2. Prompt Notification: The requirement for prompt notification underscores the importance of keeping the recognising court informed of any developments that may affect the enforceability or continuation of the interim measure.

Implications:

1. Transparency and Compliance:
  - a. Section 30(2) promotes transparency and ensures that the recognising court is kept updated on the status of interim measures.

- b. Parties are expected to comply with their duty to promptly inform the court about any changes, helping to maintain the integrity of the enforcement process.
2. Efficient Judicial Process: Timely notification allows the recognising court to stay informed about changes to the interim measures, enabling it to make informed decisions regarding the enforcement and any necessary adjustments.
3. Preventing Abuse:
  - a. Requiring parties to inform the court about the termination, suspension, or modification of an interim measure prevents abuse of the enforcement process.
  - b. It prevents parties from seeking recognition or enforcement when the underlying circumstances no longer justify it.

In summary, Section 30(2) of the ADGM Arbitration Regulations 2015 places an obligation on the party seeking or obtaining recognition or enforcement of an interim measure to promptly inform the recognising court about any changes to the status of that measure. This provision ensures transparency, compliance, and efficient administration of the enforcement process.

**(3) The recognising court may, if it considers it appropriate, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or where such a decision is necessary to protect the rights of third parties.**

Section 30(3) of the ADGM Arbitration Regulations 2015 outlines the authority of the recognising court to order a requesting party to provide security in certain situations in relation to the recognition and enforcement of an interim measure.

Key Points:

1. Court's Authority to Order Security:
  - a. This provision grants the recognising court the authority to order the requesting party to provide appropriate security in specific circumstances.
  - b. The court's authority to do so is discretionary and is based on its assessment of whether such an order is appropriate in the given circumstances.
2. Lack of Arbitral Tribunal's Determination:
  - a. The recognising court's power to order security arises if the arbitral tribunal has not already made a determination concerning security.
  - b. In some cases, an interim measure may have been recognised and enforced before the arbitral tribunal had the opportunity to consider the matter of security. In such situations, the recognising court can step in to address the issue.
3. Protection of Third Parties' Rights:

- a. The recognising court's authority to order security is also triggered when it is necessary to protect the rights of third parties.
- b. This emphasises the court's role in balancing the interests of the parties seeking the interim measure with the potential impact on the rights of other parties who may be affected.

Implications:

1. **Balancing Interests:** Section 30(3) allows the recognising court to strike a balance between the interests of the requesting party seeking the enforcement of an interim measure and the potential impact on third parties.
2. **Ensuring Adequate Protection:** The provision aims to ensure that appropriate security measures are in place to protect the interests of the parties involved, especially in cases where the arbitral tribunal has not yet addressed the matter of security.
3. **Judicial Discretion:** The recognising court's authority to order security is discretionary, allowing the court to assess the specific circumstances and make a decision that is fair and appropriate.

In summary, Section 30(3) of the ADGM Arbitration Regulations 2015 empowers the recognising court to order the requesting party to provide appropriate security for the recognition and enforcement of an interim measure in cases where the arbitral tribunal has not determined the issue of security or where such a decision is necessary to protect the rights of third parties. This provision underscores the court's role in safeguarding the interests of all parties involved in the arbitration process.

**(4) Recognition or enforcement of an interim measure may be refused on the grounds set forth in section 62.**

Section 30(4) of the ADGM Arbitration Regulations 2015 addresses the circumstances under which recognition or enforcement of an interim measure can be refused and makes a reference to the grounds specified in section 62 of the same regulations.

Key Points:

1. **Grounds for Refusal:**
  - a. This provision establishes that the recognition or enforcement of an interim measure can be refused under certain conditions.
  - b. The grounds for refusal are not provided directly within Section 30(4) but are cross-referenced to section 62 of the same regulations.
2. **Cross-reference to Section 62:** The specific grounds for refusal are detailed in section 62 of the ADGM Arbitration Regulations 2015. This section likely outlines the circumstances under which the recognising court can refuse recognition or enforcement of an interim measure.

3. **Limiting Recognition and Enforcement:** This provision emphasises that while recognition and enforcement of interim measures are generally encouraged, there are situations in which the recognising court has the discretion to refuse such recognition and enforcement based on the grounds set forth in section 62.

Implications:

1. **Balancing Interests:** By providing grounds for refusal, this provision ensures a balance between facilitating the recognition and enforcement of interim measures and allowing the recognising court to exercise its discretion to protect against potential misuse or abuse.
2. **Legal Framework for Refusal:** While Section 30(4) does not directly list the grounds for refusal, it directs readers to section 62 for the relevant grounds. Section 62 likely contains specific conditions under which recognition or enforcement may be refused, providing a legal framework for making such determinations.
3. **Legal Certainty:** The reference to section 62 ensures that parties seeking recognition and enforcement of interim measures have a clear understanding of the circumstances under which their request could be denied.

In summary, Section 30(4) of the ADGM Arbitration Regulations 2015 highlights that the recognition or enforcement of an interim measure can be refused based on certain grounds, as specified in section 62 of the same regulations. This provision underscores the importance of having a well-defined legal framework to govern the recognition and enforcement process and ensures that parties are aware of the potential reasons for refusal.

**(5) Any determination made by the recognising court under subsection (4) shall be effective only for the purposes of the application to recognise and enforce the interim measure. The recognising court where recognition or enforcement is sought shall not, in making that determination, undertake a review of the substance of the interim measure.**

Section 30(5) of the ADGM Arbitration Regulations 2015 addresses the scope and limitations of the recognising court's authority when making a determination regarding the recognition and enforcement of an interim measure.

Key Points:

1. **Limited Scope of Determination:** This provision emphasises that any determination made by the recognising court under subsection (4) has a specific scope and is limited to the application for recognition and enforcement of the interim measure.
2. **Purpose of Determination:** The determination made by the recognising court under subsection (4) is intended to impact only the application for recognition and enforcement. It does not have broader implications beyond this context.
3. **Restriction on Substance Review:** This provision clarifies that the recognising court, when making the determination under subsection (4), is not allowed to review or assess the substance or merits of the interim measure itself.

Implications:

1. **Focused Decision-Making:** Section 30(5) underscores the limited purpose of the recognising court's determination, which is solely related to the application for recognition and enforcement of the interim measure. This helps maintain a clear and focused decision-making process.
2. **Preservation of Arbitral Tribunal's Decision:** By preventing the recognising court from reviewing the substance of the interim measure, this provision respects the authority and decisions of the arbitral tribunal that issued the interim measure.
3. **Balancing Judicial Review and Autonomy:** This provision strikes a balance between ensuring that the recognising court can assess the grounds for refusal (as outlined in subsection 4) while refraining from second-guessing the underlying rationale or substance of the interim measure.

In summary, Section 30(5) of the ADGM Arbitration Regulations 2015 establishes that any determination made by the recognising court regarding the recognition and enforcement of an interim measure is limited in scope to the specific application for recognition and enforcement. Furthermore, the recognising court is prohibited from reviewing the substance of the interim measure itself, thus respecting the authority of the arbitral tribunal that issued the measure.

### 31. Power of the Court to order interim measures

**(1) The existence of an arbitration agreement shall not preclude a party from applying to the Court, before or during arbitral proceedings, for interim measures including in relation to the taking of evidence under section 48 or provisional or conservatory measures under this section.**

Section 31(1) of the ADGM Arbitration Regulations 2015 addresses the ability of a party to seek interim measures from the Court even when there is an arbitration agreement in place.

Key Points:

1. **Preservation of Court's Jurisdiction:** This provision emphasises that the existence of an arbitration agreement does not restrict a party's ability to approach the Court for certain interim measures. It preserves the jurisdiction of the Court to provide assistance to parties seeking specific measures, even when arbitration proceedings are ongoing or contemplated.
2. **Interim Measures Beyond Arbitral Tribunal:** Section 31(1) specifically refers to interim measures including those related to the taking of evidence under section 48 or provisional or conservatory measures under this section. This implies that parties can seek such measures from the Court rather than relying solely on the arbitral tribunal to grant them.

Implications:

1. **Balancing Autonomy and Assistance:** This provision strikes a balance between the autonomy of parties to resort to arbitration and their right to approach the Court for

specific interim measures. It recognises that certain circumstances may require court intervention for urgent or specific types of relief.

2. **Practical Utility:** Section 31(1) provides parties with a practical avenue to seek interim relief from the Court, ensuring that necessary measures can be obtained promptly, even if arbitration proceedings are already underway.

In summary, Section 31(1) of the ADGM Arbitration Regulations 2015 clarifies that the presence of an arbitration agreement does not prevent a party from seeking interim measures from the Court, such as evidence-taking or provisional measures. This provision ensures that parties have access to both arbitration and court avenues for obtaining necessary interim relief as needed.

**(2) The Court shall have the same power of issuing any interim measure in relation to arbitration proceedings as it has in relation to proceedings in the Court.**

Section 31(2) of the ADGM Arbitration Regulations 2015 outlines the authority of the Court to issue interim measures in relation to arbitration proceedings and its similarity to its power in non-arbitration-related proceedings.

**Key Points:**

1. **Equivalent Powers:** This provision establishes that the Court's authority to issue interim measures in arbitration proceedings is equivalent to its power in regular court proceedings. In other words, the Court can provide the same type of interim relief in arbitration matters as it can in cases brought directly before it.

**Implications:**

1. **Consistency in Remedies:** Section 31(2) ensures that parties seeking interim measures in arbitration proceedings have access to the full range of remedies available in court proceedings. This consistency promotes fairness and helps maintain a level playing field between arbitration and court processes.
2. **Familiarity and Predictability:** Parties and legal practitioners are already familiar with the types of interim measures that can be obtained from the Court. By extending these powers to arbitration proceedings, the process becomes more predictable and easier to navigate for those involved.

In summary, Section 31(2) of the ADGM Arbitration Regulations 2015 asserts that the Court's authority to issue interim measures for arbitration proceedings is aligned with its powers in regular court proceedings. This ensures that parties seeking interim relief in arbitration have access to remedies consistent with those available in traditional litigation.

**(3) The powers conferred by this section apply even if:**

**(a) the seat of the arbitration is outside the Abu Dhabi Global Market or no seat has been designated or determined; or**

**(b) the interim measure is sought against a non-party to the arbitration agreement.**

Section 31(3) of the ADGM Arbitration Regulations 2015 addresses the scope and applicability of the powers granted to the Court to issue interim measures in relation to arbitration proceedings.

**Key Points:**

1. **Extraterritorial Application:** This provision clarifies that the powers granted to the Court under Section 31 to issue interim measures are not limited by the location of the arbitration proceedings' seat. Even if the seat of the arbitration is outside the Abu Dhabi Global Market (ADGM) or if no seat has been designated or determined, the Court's authority to issue interim measures still applies.
2. **Non-Parties to the Arbitration Agreement:** Section 31(3)(b) establishes that the Court's powers to issue interim measures can be invoked against non-parties to the arbitration agreement. In other words, even individuals or entities that have not directly agreed to arbitration can seek or be subject to interim measures granted by the Court in relation to arbitration proceedings.

**Implications:**

1. **Broad Jurisdiction:** This provision underscores the ADGM's commitment to providing a comprehensive and flexible framework for arbitration. By allowing the Court to issue interim measures regardless of the seat of the arbitration or the parties involved, the regulations expand the jurisdiction of the Court to address a wider range of scenarios.
2. **Third-Party Involvement:** The inclusion of non-parties to the arbitration agreement in the scope of Section 31(3)(b) allows the Court to provide interim measures that can affect entities beyond those directly involved in the arbitration agreement. This recognises that certain situations may require the Court to intervene for the preservation of rights or interests, even when not all parties are parties to the arbitration agreement.

In summary, Section 31(3) of the ADGM Arbitration Regulations 2015 highlights the expansive reach of the Court's powers to issue interim measures in relation to arbitration proceedings. These powers are applicable regardless of the arbitration's seat and can extend to non-parties to the arbitration agreement, reflecting the ADGM's commitment to providing a versatile and effective arbitration framework.



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

Section 31(4) of the ADGM Arbitration Regulations 2015 addresses the Court's authority to issue urgent orders in cases where evidence or assets need to be preserved in relation to arbitration proceedings.

Key Points:

1. **Urgency and Preservation of Evidence/Assets:** This provision recognises that certain situations within arbitration proceedings may require urgent attention, particularly when there is a risk of evidence being destroyed or assets being dissipated. In such cases, the Court has the authority to issue orders swiftly to ensure the preservation of evidence or assets that could be relevant to the arbitration.

Implications:

1. **Timely Preservation:** Section 31(4) emphasises the Court's ability to act promptly in cases of urgency. This can be crucial in preventing the loss of evidence or the dissipation of assets that might be necessary for the resolution of the arbitration proceedings.
2. **Ensuring Fair Proceedings:** By enabling the Court to issue orders for the preservation of evidence or assets, this provision contributes to maintaining the fairness and integrity of arbitration proceedings. Parties can feel assured that crucial evidence will not be lost or assets will not be moved while the arbitration is underway.
3. **Balancing Parties' Interests:** The provision is designed to strike a balance between the need for urgent action and the interests of the parties involved. It allows for the Court to intervene when necessary to ensure evidence and assets are preserved while taking into consideration the broader context of the arbitration proceedings.

In summary, Section 31(4) of the ADGM Arbitration Regulations 2015 grants the Court the authority to issue urgent orders to preserve evidence or assets in cases where the arbitration proceedings are at risk due to urgency. This provision highlights the Court's role in ensuring the effectiveness and fairness of arbitration by addressing critical situations promptly.

**(5) If the case is not one of urgency, the Court shall act only on the application of a party to the arbitral proceedings upon notice to the other parties and to the arbitral tribunal.**

Section 31(5) of the ADGM Arbitration Regulations 2015 addresses the circumstances and procedures under which the Court can take action in response to an application for interim measures in arbitration proceedings that are not deemed urgent.

Key Points:

1. **Non-Urgent Cases:** This provision pertains to situations where the circumstances are not of an urgent nature, meaning that there is no immediate threat of evidence being destroyed or assets being dissipated. In such cases, the Court's role is to respond to

applications for interim measures based on a party's request, ensuring a formal process is followed.

2. **Application by a Party:** The Court's intervention in non-urgent cases is initiated through an application made by a party to the arbitral proceedings. This party must apply to the Court seeking the issuance of interim measures, such as orders for preservation of evidence or assets.
3. **Notice and Involvement:** Importantly, the provision requires that the application be made with notice to all parties involved in the arbitral proceedings, as well as to the arbitral tribunal itself. This ensures transparency and gives all relevant parties an opportunity to be heard and potentially present their positions to the Court.

#### Implications:

1. **Formal Process and Participation:** Section 31(5) establishes a formal process for seeking non-urgent interim measures from the Court. This helps ensure that parties have a structured way to request such measures and that all relevant parties are notified and can participate in the process.
2. **Balancing Party Interests:** By requiring notice to all parties and involving the arbitral tribunal, this provision promotes a balanced approach to addressing non-urgent interim measures. All parties have a chance to present their viewpoints, and the arbitral tribunal's involvement allows for its input and potential coordination with the Court.
3. **Efficiency and Fairness:** The provision contributes to the overall efficiency and fairness of arbitration proceedings by providing a clear framework for seeking non-urgent interim measures. This helps maintain a sense of procedural integrity and ensures that parties' rights are respected.

In summary, Section 31(5) of the ADGM Arbitration Regulations 2015 outlines the process for seeking non-urgent interim measures from the Court in arbitration proceedings. It mandates that the Court acts upon application by a party, provided that notice is given to all relevant parties and the arbitral tribunal. This process helps maintain fairness, transparency, and efficiency in addressing non-urgent interim measures.

**(6) In any case, the Court shall act only if, or to the extent that, the arbitral tribunal, and any arbitral or other institution or person vested by the parties with power in that regard, or a court of competent jurisdiction in relation to the matters set out in subsection (3)(a), has no power or is unable for the time being to act effectively.**

Section 31(6) of the ADGM Arbitration Regulations 2015 addresses the circumstances under which the Court is empowered to act in relation to applications for interim measures in arbitration proceedings. This provision clarifies the Court's role when considering such applications and ensures that its intervention is appropriate and effective.

#### Key Points:

1. **Supplementary Jurisdiction:** This provision establishes that the Court’s authority to issue interim measures in arbitration proceedings exists only when the arbitral tribunal, any relevant arbitral institution, any other person or institution entrusted by the parties with such authority, or a court with competent jurisdiction (as specified in Section 31(3)(a)), cannot effectively exercise the power to issue such measures.
2. **Secondary Role of the Court:** Section 31(6) underscores the primary jurisdiction of the arbitral tribunal and other competent bodies or institutions to grant interim measures. The Court’s authority to act is a supplementary and secondary one, only invoked when the primary authorities are unable to act effectively.
3. **Avoiding Duplication of Efforts:** By stipulating that the Court’s intervention should be limited to cases where other competent bodies cannot act effectively, this provision seeks to prevent the duplication of efforts and conflicting decisions. It promotes a clear hierarchy of decision-making, where the arbitral tribunal and other relevant entities have precedence.

**Implications:**

1. **Preserving Jurisdictional Roles:** Section 31(6) emphasises the importance of preserving the intended roles of different entities within the arbitration process. It encourages parties and arbitral institutions to seek interim measures from the arbitral tribunal or other relevant bodies before turning to the Court.
2. **Efficiency and Coordination:** The provision encourages efficient and coordinated decision-making by preventing multiple bodies from issuing conflicting or overlapping interim measures. This ensures that the process remains streamlined and avoids unnecessary complexity.
3. **Balancing Authority:** Section 31(6) helps strike a balance between the authority of the arbitral tribunal and the Court. It recognises the Court’s role as a fallback option, ensuring that parties have recourse to the Court if the primary authorities are unable to address their interim measure needs.

In summary, Section 31(6) of the ADGM Arbitration Regulations 2015 outlines the circumstances in which the Court may act in relation to applications for interim measures in arbitration proceedings. It establishes the Court’s authority as supplementary and secondary to the authority of the arbitral tribunal, other institutions, or courts with jurisdiction over the matter. This provision aims to ensure effective coordination and prevent duplication of efforts while preserving the intended jurisdictional roles within the arbitration process.

### **32. Privacy of arbitration related court proceedings**

**(1) Subject to subsection (4), all arbitration-related proceedings in the Court are to be heard in closed court.**

Section 32(1) of the ADGM Arbitration Regulations 2015 addresses the issue of confidentiality and privacy in arbitration-related proceedings that are brought before the Court. This provision specifies

that such proceedings are generally conducted in a closed court, meaning they are not open to the public.

Key Points:

1. **Confidentiality Emphasis:** Section 32(1) underscores the importance of maintaining the confidentiality of arbitration-related matters. It recognises that parties often choose arbitration as a dispute resolution mechanism due to its private nature, and this provision seeks to extend that privacy to any proceedings related to the arbitration in the Court.
2. **Protection of Sensitive Information:** By mandating that arbitration-related proceedings be conducted in a closed court, this provision aims to protect sensitive information, commercial secrets, proprietary data, and other confidential matters from public disclosure. This protection aligns with the principle of confidentiality that is integral to arbitration.
3. **Preservation of Party Intentions:** Parties often include confidentiality clauses in arbitration agreements or rules, indicating their intention to keep proceedings private. Section 32(1) reinforces this intention by ensuring that any proceedings related to arbitration continue to adhere to the confidentiality principles that parties have agreed upon.

Implications:

1. **Privacy and Confidentiality Assurance:** Section 32(1) offers parties the assurance that their arbitration-related proceedings will be conducted in a confidential and private manner. This promotes an environment in which parties can freely present their case without concerns about public exposure.
2. **Protection of Commercial Interests:** The provision safeguards parties' commercial interests by preventing their proprietary information from becoming publicly accessible. This is particularly significant in commercial disputes where sensitive business details are involved.
3. **Balanced Transparency:** While arbitration proceedings are private, there is often a balance to be maintained with transparency and accountability. While Section 32(1) preserves the confidentiality of arbitration-related proceedings, it's important for decisions and awards resulting from those proceedings to be accessible to the parties involved.

In summary, Section 32(1) of the ADGM Arbitration Regulations 2015 ensures that arbitration-related proceedings brought before the Court are conducted in closed court. This provision reinforces the principle of confidentiality that is fundamental to arbitration and safeguards sensitive information from public disclosure. It aligns with the intentions of parties who choose arbitration for its private nature and contributes to the overall effectiveness of arbitration as a dispute resolution mechanism.

**(2) Where such arbitration-related proceedings are held in closed court, the Court must, on the application of any party, make a direction as to what information, if any, relating to the proceedings may be published.**

Section 32(2) of the ADGM Arbitration Regulations 2015 addresses the issue of transparency in arbitration-related proceedings that are conducted in closed court. This provision establishes a mechanism for parties to seek a direction from the Court regarding the publication of information related to those proceedings.

**Key Points:**

1. **Balancing Privacy and Transparency:** While Section 32(1) ensures that arbitration-related proceedings are held in closed court for confidentiality reasons, Section 32(2) introduces a mechanism to balance this confidentiality with the need for transparency. This provision recognises that while maintaining confidentiality is important, there might be circumstances where limited disclosure of certain information could be appropriate.
2. **Party Application:** Section 32(2) empowers any party involved in the arbitration-related proceedings to apply to the Court for a direction on what information, if any, can be published. This allows parties to have some control over the extent of information that can be made public, taking into consideration their specific concerns and the circumstances of the case.
3. **Customised Approach:** By requiring the Court to make a direction on publication based on the application of a party, Section 32(2) provides a flexible and customised approach. It allows the Court to assess the specific circumstances of each case and determine whether limited disclosure is warranted.

**Implications:**

1. **Transparency with Caution:** Section 32(2) strikes a balance between confidentiality and transparency. While it enables parties to seek limited disclosure of certain information, the provision does not compromise the overall privacy and confidentiality of the arbitration-related proceedings.
2. **Party Control:** Parties have the ability to request the Court's direction on publication, giving them a degree of control over what information becomes public. This is particularly important for parties who want to protect sensitive business or personal information while ensuring that key details are disclosed appropriately.
3. **Case-by-Case Assessment:** The provision recognises that the circumstances of each case can vary significantly. The Court's direction will be tailored to the specific facts and needs of the case, allowing for a nuanced approach to transparency.

In summary, Section 32(2) of the ADGM Arbitration Regulations 2015 supplements Section 32(1) by allowing parties to apply to the Court for a direction on the publication of information related to arbitration-related proceedings held in closed court. This provision ensures that while maintaining confidentiality is essential, there is room for transparency when appropriate and in consideration of the parties' concerns. It demonstrates a commitment to a balanced approach that respects both confidentiality and the need for public access to certain information.

**(3) The Court must not make a direction permitting information disclosed during arbitration-related proceedings held in closed court to be published, unless:**

**(a) all parties agree that the information may be published; or**

**(b) the Court is satisfied that the information, if published, would not reveal any matter (including the identity of any party) that any party reasonably wishes to remain confidential.**

Section 32(3) of the ADGM Arbitration Regulations 2015 outlines the criteria and conditions under which the Court can permit information disclosed during arbitration-related proceedings held in closed court to be published. This provision establishes strict requirements that must be met before the Court can make a direction allowing publication of such information.

Key Points:

1. Prerequisites for Publication: Section 32(3) sets out two scenarios under which the Court can permit the publication of information disclosed during closed court proceedings:
  - a. All parties agree to the publication of the information.
  - b. The Court is convinced that the published information will not reveal any matter, including the identity of any party, that any party reasonably wishes to remain confidential.
2. Balancing Confidentiality and Publication: This provision aims to strike a balance between confidentiality and transparency. It recognises that while certain information might be relevant for public knowledge, the parties' legitimate interests in maintaining the confidentiality of certain matters must also be respected.
3. Party Consensus or Confidentiality Assurance: The provision ensures that parties have control over whether information disclosed in closed court proceedings can be published. Parties can either agree to publication collectively or, alternatively, the Court must be convinced that publication will not compromise any party's desire for confidentiality.

Implications:

1. Consensual Approach to Publication: Section 32(3) gives prominence to party consent. If all parties agree, the Court can permit publication, highlighting the importance of consensus among the parties.
2. Preservation of Confidentiality: The provision safeguards the confidentiality of sensitive matters by requiring the Court to evaluate the potential impact of publication on any party's desire to maintain confidentiality. The Court must ensure that no confidential information is inadvertently disclosed.
3. Protection of Parties' Interests: Section 32(3) underscores the Court's duty to protect parties' interests and sensitive information. It does not allow information to be

published unless the parties are in agreement or the Court is confident that no party's confidential interests will be compromised.

In summary, Section 32(3) of the ADGM Arbitration Regulations 2015 establishes strict criteria for permitting the publication of information disclosed during arbitration-related proceedings held in closed court. This provision emphasises the need for party consensus or a guarantee of confidentiality protection before any information can be made public. It reflects a commitment to balancing the principles of transparency and confidentiality while safeguarding the parties' interests.

**(4) The Court may order arbitration-related court proceedings to be heard in open court if:**

**(a) all parties agree that the proceedings may be heard in open court; or**

**(b) in any particular case, the Court is satisfied that those proceedings ought to be heard in open court.**

Section 32(4) of the ADGM Arbitration Regulations 2015 outlines the circumstances under which the Court can order that arbitration-related court proceedings, which are typically held in closed court, be heard in open court. This provision allows for greater transparency in certain cases, subject to specific conditions.

**Key Points:**

1. **Open Court Hearings:** Section 32(4) provides the Court with the discretion to order that arbitration-related court proceedings, which would normally be conducted in closed court, be conducted in open court. This decision is based on the principle of transparency and public access to legal proceedings.
2. **Agreement or Court's Satisfaction:** The provision specifies two scenarios in which the Court can order open court hearings:
  - a. All parties agree to the proceedings being heard in open court.
  - b. The Court, in a specific case, is convinced that there are compelling reasons for the proceedings to be conducted openly.
3. **Balancing Transparency and Confidentiality:** This provision reflects the importance of balancing the principles of transparency and public access to proceedings with the parties' legitimate interests in maintaining the confidentiality of certain matters.

**Implications:**

1. **Enhanced Transparency:** Section 32(4) promotes transparency in the arbitration process by allowing for certain proceedings to be conducted in open court. This can contribute to public trust and understanding of the arbitration process.
2. **Party Consent or Exceptional Circumstances:** The provision underscores the significance of party consent. If all parties agree, the Court can order open court hearings.

Alternatively, the Court can make this decision if it deems it necessary due to exceptional circumstances in a specific case.

3. Context-Sensitive Approach: Section 32(4) recognises that the decision to hold proceedings in open court should be context-sensitive. The Court must evaluate the circumstances of each case to determine whether openness is appropriate.

In summary, Section 32(4) of the ADGM Arbitration Regulations 2015 grants the Court the authority to order that arbitration-related court proceedings, which are typically held in closed court, be conducted in open court. This provision reflects a commitment to transparency while considering party consent and exceptional circumstances. It strikes a balance between the principles of transparency and confidentiality in arbitration proceedings.

#### **(5) An order of the Court under this section is not subject to appeal.**

Section 32(5) of the ADGM Arbitration Regulations 2015 addresses the finality of an order issued by the Court regarding whether arbitration-related court proceedings should be conducted in open court. This provision emphasises that such orders are not subject to appeal.

#### Key Points:

1. Finality of the Order: Section 32(5) underscores that once the Court makes a decision regarding whether arbitration-related court proceedings should be held in open court, that decision is final and cannot be appealed.
2. Judicial Discretion and Efficiency: This provision reflects the idea that decisions made by the Court on whether to open arbitration-related proceedings are based on the Court's discretion and evaluation of the circumstances. By indicating that such decisions are not appealable, the provision aims to promote efficiency in the arbitration process by minimising unnecessary delays and challenges.

#### Implications:

1. Streamlined Proceedings: Section 32(5) ensures that decisions made by the Court on this matter are not subject to a secondary review through the appeals process. This streamlines the arbitration process and prevents potential delays that could arise from challenges to these decisions.
2. Respect for Judicial Discretion: By stating that orders under this section are not appealable, the provision underscores the importance of respecting the Court's discretion in determining whether to hold proceedings in open court. It preserves the authority of the Court in such matters.

In summary, Section 32(5) of the ADGM Arbitration Regulations 2015 establishes that orders made by the Court regarding whether arbitration-related court proceedings should be held in open court are final and cannot be appealed. This provision aims to maintain the efficiency of the arbitration process and uphold the Court's discretion in these decisions.



**(6) It is not inconsistent with this section for the Court, on its own initiative, to publish a judgment in anonymised form.**

Section 32(6) of the ADGM Arbitration Regulations 2015 addresses the publication of judgments by the Court in relation to arbitration-related proceedings. This provision clarifies that the Court can publish judgments in an anonymised form without being inconsistent with the principles laid out in the previous sections.

Key Points:

1. **Publication of Judgments:** Section 32(6) acknowledges the Court's authority to publish judgments related to arbitration proceedings. These judgments can provide transparency and guidance to the legal community while maintaining the confidentiality of parties involved.
2. **Anonymised Form:** The provision specifically mentions that the judgments can be published in anonymised form. This means that while the judgments may be made public, any sensitive or confidential information that could reveal the identity of the parties involved may be redacted or withheld.

Implications:

1. **Transparency and Precedent:** By allowing the Court to publish anonymised judgments, Section 32(6) promotes transparency in the arbitration process. These judgments can serve as valuable sources of legal precedent and guidance for practitioners, arbitrators, and parties involved in arbitration.
2. **Balancing Confidentiality and Openness:** Anonymising judgments strikes a balance between maintaining confidentiality, which is often a critical aspect of arbitration, and the broader legal principle of open justice. This allows the Court to provide insights and legal principles while protecting the parties' identities.

In summary, Section 32(6) of the ADGM Arbitration Regulations 2015 permits the Court to publish judgments related to arbitration proceedings in an anonymised form. This provision facilitates transparency, legal precedent, and guidance while ensuring that sensitive information is protected and parties' confidentiality is upheld.

## Chapter 6 – Conduct of arbitral proceedings

### 33. Fair treatment of parties

**The parties shall be treated fairly and each party shall be given a reasonable opportunity to present its case.**

Section 33 of the ADGM Arbitration Regulations 2015 addresses the fundamental principle of fair treatment of parties in arbitration proceedings. This principle underscores the importance of ensuring an equitable and balanced process for all parties involved.

Key Points:

1. **Fair Treatment of Parties:** Section 33 establishes the overarching principle that all parties in arbitration proceedings must be treated fairly. This includes providing each party with an equal opportunity to present their case and make submissions.
2. **Reasonable Opportunity to Present Case:** The section emphasises that each party must be given a “reasonable opportunity” to present its case. This requirement ensures that no party is unfairly disadvantaged or denied the chance to present its arguments, evidence, and defences.

#### Implications:

1. **Equitable Proceedings:** Section 33 highlights the importance of maintaining an arbitration process that is fair, impartial, and free from bias. This principle ensures that parties have confidence in the integrity of the proceedings and the eventual outcome.
2. **Preservation of Due Process:** By stipulating that each party must have a “reasonable opportunity” to present its case, the section upholds the principle of due process. This means that parties should have adequate time and resources to prepare and present their arguments and evidence.

In summary, Section 33 of the ADGM Arbitration Regulations 2015 underscores the critical principle of fair treatment of parties in arbitration proceedings. This principle ensures that all parties are provided with a reasonable opportunity to present their cases, contributing to a just and equitable arbitration process.

## **34. Determination of rules of procedure**

### **(1) The parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.**

Section 34(1) of the ADGM Arbitration Regulations 2015 addresses the freedom of the parties to determine the procedural rules that the arbitral tribunal will follow in conducting the arbitration proceedings.

#### Key Points:

1. **Parties’ Autonomy:** This section reflects the fundamental principle of party autonomy in arbitration. It grants the parties the freedom to agree on the procedural rules that will govern the arbitration proceedings. This includes aspects such as the timing, format, and manner of presenting evidence, submissions, and arguments.
2. **Flexibility and Customisation:** By allowing parties to determine the procedure, the section promotes the flexibility and customisation of arbitration proceedings. Parties can tailor the process to their specific needs, taking into account the nature of the dispute, complexity, and any other relevant factors.

Implications:

1. **Tailored Proceedings:** Section 34(1) empowers parties to design an arbitration process that suits their particular circumstances. This can lead to more efficient and effective proceedings, as parties can adopt procedures that are best suited to resolving their dispute.
2. **Reduced Formalities:** Parties may choose to adopt streamlined or simplified procedures under this section, which can help reduce the formalities and costs associated with litigation. This aligns with one of the key advantages of arbitration – its ability to provide a more user-friendly and less rigid process compared to traditional court proceedings.

In summary, Section 34(1) of the ADGM Arbitration Regulations 2015 underscores the importance of party autonomy in arbitration. It allows parties to agree on the procedural rules that the arbitral tribunal will follow, enabling a tailored and flexible process that meets the parties' specific needs and preferences.

**(2) The parties are free to agree to adopt, in whole or part, the ADGM Arbitration Centre Arbitration Guidelines, regardless of the seat or the applicable rules of procedure.**

Section 34(2) of the ADGM Arbitration Regulations 2015 addresses the parties' ability to incorporate or adopt the ADGM Arbitration Centre Arbitration Guidelines into their arbitration agreement or proceedings.

Key Points:

1. **Incorporation of Guidelines:** This section allows parties to agree to adopt the ADGM Arbitration Centre Arbitration Guidelines, either in whole or in part, for their arbitration proceedings. The Guidelines serve as a set of procedural rules and practices that can be used as a framework for conducting the arbitration.
2. **Flexibility and Choice:** By providing the option to adopt the Guidelines, parties are given a flexible and convenient alternative to crafting their own procedural rules. This can be particularly beneficial when parties are not familiar with the intricacies of arbitration procedures or when they prefer a streamlined and standardised process.
3. **Regardless of Seat or Applicable Rules:** One notable feature of Section 34(2) is that parties can choose to adopt the Guidelines regardless of the seat of arbitration or the applicable rules of procedure. This means that the Guidelines can be used even if the arbitration is not seated in the Abu Dhabi Global Market (ADGM) and is subject to different rules.

Implications:

1. **Uniformity and Efficiency:** By adopting the ADGM Arbitration Centre Arbitration Guidelines, parties can achieve a level of procedural uniformity and efficiency, even if their arbitration is subject to different governing laws or seated in a jurisdiction outside the ADGM.

2. Simplified Procedure Selection: Parties who are not well-versed in drafting arbitration procedures can benefit from adopting the Guidelines, as they provide a pre-established framework for conducting the proceedings.

In summary, Section 34(2) of the ADGM Arbitration Regulations 2015 offers parties the option to incorporate or adopt the ADGM Arbitration Centre Arbitration Guidelines into their arbitration agreement. This provision promotes procedural flexibility, efficiency, and uniformity, allowing parties to choose a set of established rules regardless of the seat or applicable rules of procedure.

**(3) In the absence of an agreement on the procedure to be followed, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.**

Section 34(3) of the ADGM Arbitration Regulations 2015 addresses the procedural authority and discretion of the arbitral tribunal in cases where the parties have not agreed on a specific procedure to be followed in the arbitration.

Key Points:

1. Absence of Agreement on Procedure: This section comes into play when the parties have not reached an agreement on the procedure to be followed in their arbitration. In such cases, the arbitral tribunal is granted the authority to determine the procedural aspects of the arbitration proceedings.
2. Tribunal's Discretion: The arbitral tribunal is vested with the discretion to decide how the arbitration should be conducted. This includes determining matters such as the sequence of proceedings, the timing of submissions, the conduct of hearings, and the management of evidence.
3. Wide-Ranging Powers: The section explicitly states that the tribunal's power includes not only the conduct of the proceedings but also the determination of evidentiary matters, such as the admissibility, relevance, materiality, and weight of the evidence presented by the parties.

Implications:

1. Flexibility and Adaptability: Section 34(3) emphasises the flexibility of arbitration proceedings. It allows the arbitral tribunal to tailor the procedural aspects to suit the specific needs of the case, promoting efficiency and adaptability.
2. Efficient and Timely Proceedings: The tribunal's authority to manage evidentiary matters ensures that the proceedings are conducted efficiently and that irrelevant or unnecessary evidence is not considered, which can help expedite the arbitration process.
3. Ensuring Fairness: While the tribunal has wide-ranging powers, it must ensure that the procedures it adopts are fair and afford each party a reasonable opportunity to present its case.

In summary, Section 34(3) of the ADGM Arbitration Regulations 2015 grants the arbitral tribunal the discretion to determine the procedure to be followed when the parties have not agreed on a specific procedure. This provision underscores the flexibility of arbitration and empowers the tribunal to manage the proceedings and evidentiary matters in a way that ensures fairness and efficiency in resolving disputes.

**(4) In all cases, the arbitral tribunal must adopt procedures which are suitable to the circumstances of the particular case, avoid unnecessary delay and expense, and facilitate fair, efficient and expeditious conduct of the arbitration.**

Section 34(4) of the ADGM Arbitration Regulations 2015 emphasises the responsibility of the arbitral tribunal to adopt appropriate and effective procedures to ensure that the arbitration proceedings are conducted fairly, efficiently, and expeditiously.

Key Points:

1. **Tailored Procedures:** This provision underscores the principle that the arbitral tribunal should not apply a one-size-fits-all approach to procedural matters. Instead, it must customise the procedures based on the specific circumstances of each case.
2. **Avoidance of Delay and Expense:** The section explicitly requires the arbitral tribunal to avoid unnecessary delay and expense in the arbitration proceedings. This reflects the importance of streamlining the process to achieve timely resolution of disputes and prevent undue costs for the parties.
3. **Facilitation of Fairness and Efficiency:** The section sets a dual goal for the arbitral tribunal: to facilitate both fairness and efficiency. The procedures adopted should not only ensure that each party is provided with a reasonable opportunity to present its case but also contribute to the swift and effective resolution of the dispute.

Implications:

1. **Balancing Priorities:** Section 34(4) encourages the arbitral tribunal to strike a balance between fairness and efficiency. While ensuring that each party's rights are respected, the tribunal should also manage the proceedings in a way that avoids unnecessary delays and minimises costs.
2. **Customisation for Each Case:** The provision recognises that different cases may have unique characteristics and requirements. Therefore, it empowers the tribunal to choose procedures that suit the specific circumstances, promoting a flexible approach to arbitration.
3. **Promotion of Arbitration's Advantages:** By mandating the adoption of procedures that are conducive to efficient and fair proceedings, this section promotes arbitration as a desirable method of dispute resolution, offering benefits such as faster resolution and lower costs compared to traditional litigation.

In summary, Section 34(4) of the ADGM Arbitration Regulations 2015 reinforces the responsibility of the arbitral tribunal to design procedures that are suitable for the case at hand, while also

prioritising fairness, efficiency, and timely resolution. The provision underscores the importance of achieving a balance between these factors and encouraging parties to use arbitration as an effective means of resolving disputes.

**(5) In exercising its discretion under subsection (4), the arbitral tribunal shall consider the use of technology in order to enhance the efficient and expeditious conduct of the arbitration including, as appropriate, for:**

- (a) the submission, exchange or communication of documents by electronic means;**
- (b) the use of electronic signatures for documents submitted, exchanged or communicated;**
- (c) documents being provided in electronic searchable form;**
- (d) the use of an electronic document review system for disclosure or document production;**
- (e) the use of an electronic document management system for hearings;**
- (f) the use of an online case management platform;**
- (g) conducting hearings, in whole or in part, by video conference, telephone or other communication technology; or**
- (h) enhancing by the use of any other technology the efficient and expeditious conduct of the arbitration.**

Section 34(5) of the ADGM Arbitration Regulations 2015 outlines the importance of utilising technology to enhance the efficiency and expeditious conduct of arbitration proceedings. It emphasises the arbitral tribunal's discretion to incorporate various technological tools and methods for the smooth progression of the arbitration process.

Key Points:

1. **Technology Integration:** The provision highlights the role of technology in modern arbitration by suggesting several ways in which it can be incorporated into the arbitration process, ranging from the electronic exchange of documents to conducting hearings through video conference or other communication technology.
2. **Enhancing Efficiency and Speed:** Section 34(5) underscores the potential of technology to enhance the efficiency and expeditiousness of arbitration proceedings. By utilising electronic means, documents, and communication platforms, the arbitration process can be streamlined, leading to quicker resolutions.
3. **Comprehensive Technological Measures:** The section provides a non-exhaustive list of technological measures that can be employed, from electronic document exchange to online case management platforms. This indicates the broad range of possibilities available to arbitral tribunals and parties.

Implications:

1. **Adoption of Technological Innovations:** Arbitral tribunals and parties are encouraged to embrace technological advancements that can facilitate the arbitration process. This includes adopting tools and platforms that simplify document sharing, case management, and communication.
2. **Global Reach and Flexibility:** Technology allows parties and participants from different parts of the world to participate in arbitration proceedings without the need for physical presence. Video conferences, electronic document submission, and other technology-driven methods offer flexibility and convenience.
3. **Cost Efficiency:** The use of technology can significantly reduce costs associated with traditional methods of communication and document exchange. This aligns with the broader goals of arbitration, which often prioritise cost-effectiveness.

In summary, Section 34(5) of the ADGM Arbitration Regulations 2015 highlights the role of technology in modern arbitration and encourages the adoption of various technological tools and methods to enhance efficiency and expedite the arbitration process. By integrating technology into proceedings, parties and tribunals can leverage its benefits for smoother, faster, and cost-effective dispute resolution.

### 35. Seat of arbitration

#### (1) The parties are free to agree on the seat of arbitration.

Section 35(1) of the ADGM Arbitration Regulations 2015 emphasises the principle of party autonomy in selecting the seat of arbitration. This provision underscores the importance of allowing parties to determine the geographical location where the arbitration proceedings will be conducted.

Key Points:

1. **Party Autonomy:** This section highlights the fundamental principle of party autonomy in international arbitration. It empowers the parties to agree on the seat of arbitration according to their preferences, needs, and strategic considerations.
2. **Flexibility and Choice:** By providing parties with the freedom to choose the seat of arbitration, the provision allows for flexibility and customisation of the arbitration process. Parties can select a seat that aligns with their expectations regarding procedural law, accessibility, convenience, and neutrality.
3. **Legal Framework:** The choice of the seat of arbitration may impact the legal framework governing the arbitration proceedings, including the procedural laws and rules applicable to the arbitration. The law of the chosen seat often governs matters such as the conduct of the proceedings, the setting aside of awards, and the enforcement of awards.

4. Neutral Venue: Parties often choose a seat that is considered neutral and impartial, ensuring that no party has an undue advantage due to familiarity with local laws or practices.

Implications:

1. Customisation of Proceedings: Section 35(1) reinforces the flexibility of arbitration, allowing parties to tailor the arbitration proceedings to their specific needs. They can select a seat that aligns with their expectations and preferences for the arbitration process.
2. Jurisdictional Implications: The chosen seat's legal framework can have significant implications for the arbitration process, including the court's supervisory jurisdiction over the arbitration and the potential for judicial intervention.
3. Party Negotiations: The choice of seat is often a matter negotiated between the parties during the drafting of the arbitration agreement. It may involve considerations such as the parties' familiarity with local laws, potential language barriers, and convenience for the participants.

In summary, Section 35(1) of the ADGM Arbitration Regulations 2015 reflects the principle of party autonomy by granting parties the freedom to agree on the seat of arbitration. This provision underscores the importance of choice and flexibility in international arbitration and recognises that the selection of the seat can have far-reaching implications for the arbitration process.

**(2) If the parties have agreed that the seat of arbitration shall be the Abu Dhabi Global Market, no other connection with the Abu Dhabi Global Market is required for these Regulations to apply.**

Section 35(2) of the ADGM Arbitration Regulations 2015 addresses the situation where the parties have specifically agreed that the seat of arbitration will be the Abu Dhabi Global Market (ADGM). This provision clarifies the implications of designating the ADGM as the seat of arbitration and its relationship with the regulations.

Key Points:

1. Seat of Arbitration in ADGM: When the parties have explicitly chosen the ADGM as the seat of arbitration, the regulations will apply regardless of whether any other connection with the ADGM exists.
2. Jurisdiction of ADGM: This provision confirms that the ADGM Arbitration Regulations will apply if the parties have expressly selected the ADGM as the seat, irrespective of whether the parties or the subject matter of the dispute have any other connection to the ADGM.
3. Autonomy and Legal Framework: This section underscores the parties' autonomy to choose a seat that may be different from their usual place of business or the location of the dispute. By designating the ADGM as the seat, parties opt into the legal framework provided by the ADGM Arbitration Regulations.



Implications:

1. **Regulatory Framework:** When parties agree to designate the ADGM as the seat of arbitration, they implicitly accept the jurisdiction of the ADGM courts for matters related to the arbitration proceedings. This includes the power to grant interim measures, set aside awards, and provide judicial assistance.
2. **Choice of Law:** While this provision relates specifically to the application of the ADGM Arbitration Regulations, it does not dictate the choice of substantive law governing the arbitration. The parties remain free to determine the substantive law applicable to the merits of the dispute.
3. **Predictability:** Designating the seat of arbitration in the ADGM offers predictability and clarity regarding the legal framework that will govern the arbitration process. This can be especially important for parties who desire a well-defined procedural framework.

In summary, Section 35(2) of the ADGM Arbitration Regulations 2015 confirms that if the parties agree to designate the ADGM as the seat of arbitration, the ADGM Arbitration Regulations will apply without requiring any other connection to the ADGM. This provision clarifies the application of the regulations in cases where parties opt for the ADGM as the seat of arbitration.

**(3) Failing the parties' agreement on the seat of arbitration, the seat of arbitration shall be determined by (a) any arbitral or other institution or person vested by the parties with powers in that regard, or (b) the arbitral tribunal, having regard to the circumstances of the case, including the convenience of the parties.**

Section 35(3) of the ADGM Arbitration Regulations 2015 addresses the situation when the parties have not explicitly agreed on the seat of arbitration. This provision outlines the process for determining the seat and highlights the potential authorities responsible for making this determination.

Key Points:

1. **Default Seat Determination:** In the absence of an agreement between the parties regarding the seat of arbitration, this section outlines two possible ways to determine the seat: either by an arbitral institution or person vested with such powers by the parties, or by the arbitral tribunal itself.
2. **Institutional or Tribunal Determination:** The choice between an institution and the tribunal for seat determination depends on whether the parties have designated an institution to make such decisions in their arbitration agreement. If not, the arbitral tribunal would have the authority to determine the seat.
3. **Consideration of Circumstances:** Regardless of who determines the seat, the provision emphasises that the determination should be made with consideration of the circumstances of the case, including the convenience of the parties. This is intended to ensure that the seat is selected in a manner that facilitates a fair and efficient arbitration process for all parties involved.

Implications:

1. **Flexibility and Adaptability:** This provision underscores the flexibility of arbitration as a dispute resolution mechanism. It allows for adaptability to different situations and parties' preferences while ensuring a balanced approach.
2. **Convenience of Parties:** The consideration of the convenience of the parties reflects the importance of selecting a seat that minimises logistical challenges and facilitates the participation of all parties, witnesses, and experts involved in the proceedings.
3. **Autonomy of Parties:** If parties have agreed to delegate the seat determination to a specific arbitral institution or person, their choice is respected, giving them a level of control over the arbitration process.

In summary, Section 35(3) of the ADGM Arbitration Regulations 2015 addresses the determination of the seat of arbitration when the parties have not reached an agreement on this matter. It highlights the role of either an arbitral institution/person or the arbitral tribunal in making this determination and emphasises the importance of considering the circumstances of the case and the convenience of the parties. This provision ensures flexibility and adaptability in the seat selection process.

**(4) Notwithstanding the provisions of subsections (1) and (3), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.**

Section 35(4) of the ADGM Arbitration Regulations 2015 addresses the flexibility and discretion of the arbitral tribunal regarding the location of meetings, hearings, and other necessary activities. This provision empowers the arbitral tribunal to choose suitable places for these activities, even if they are different from the seat of arbitration, subject to certain conditions.

Key Points:

1. **Tribunal's Discretion:** This section acknowledges the arbitral tribunal's authority to determine the physical location where it conducts various activities such as meetings, hearings, witness examinations, expert testimonies, and document inspections. This discretion allows the tribunal to make practical decisions that optimise the arbitration process.
2. **Consultation and Interaction:** The provision recognises that arbitrators might need to communicate and interact among themselves, with parties, witnesses, and experts. It also acknowledges that these interactions may not always need to take place at the official seat of arbitration.
3. **Conditions for Exercise:** The discretion of the arbitral tribunal to meet at places other than the seat of arbitration is subject to the condition that such deviations are not explicitly prohibited by an agreement between the parties. This means that if the parties have agreed on specific rules regarding the location of activities, those rules would prevail.

4. Default Position: If the parties have not agreed otherwise, this provision serves as a default position that grants the arbitral tribunal the freedom to determine the locations that are most appropriate for efficient and effective proceedings.

Implications:

1. Efficiency and Convenience: Section 35(4) underscores the importance of efficiency and convenience in arbitration proceedings. It allows the arbitral tribunal to choose locations that facilitate the smooth conduct of proceedings, taking into account the location of parties, witnesses, and evidence.
2. Adaptive Approach: This provision demonstrates the adaptability of arbitration to the specific circumstances of each case. The arbitral tribunal can decide where to hold activities based on the practical needs of the proceedings.
3. Balancing Parties' Interests: While giving the arbitral tribunal flexibility, the provision also acknowledges that the parties' agreement regarding the location of proceedings holds significance. Therefore, the arbitral tribunal's discretion is subject to any contrary agreement between the parties.

In summary, Section 35(4) of the ADGM Arbitration Regulations 2015 highlights the arbitral tribunal's discretion to determine suitable locations for meetings, hearings, and other activities, even if those locations are different from the seat of arbitration. This provision supports efficient proceedings, adaptive approaches, and the convenience of all parties involved in the arbitration process.

**(5) For the purpose of subsection (4), a meeting may take place, in whole or in part, in person or by video conference, telephone or other communications technology (or any combination thereof) in one or more geographical places.**

Section 35(5) of the ADGM Arbitration Regulations 2015 elaborates on the means by which meetings can be conducted by the arbitral tribunal, offering flexibility in terms of technology and geographic locations. This provision recognises that modern communication technologies can be effectively utilised to facilitate meetings, enhancing efficiency and convenience in arbitration proceedings.

Key Points:

1. Technological Flexibility: The provision emphasises the adaptability of arbitration to modern communication technologies. It acknowledges that meetings, including those involving the arbitral tribunal, parties, witnesses, and experts, can be conducted using various communication methods such as video conferences, telephone calls, and other available technologies.
2. Virtual Meetings: The section explicitly allows meetings to occur virtually, without requiring participants to be physically present in the same location. This recognises the value of video conferencing and other remote communication tools in facilitating effective communication and interaction among participants.
3. Multiple Locations: The provision also permits meetings to take place in different geographic places simultaneously, or in sequence. This recognises that participants may

be located in various regions and may prefer or need to participate from different locations.

Implications:

1. **Efficiency:** Section 35(5) promotes efficiency by acknowledging that modern technology can reduce the need for participants to travel to a single physical location for meetings. This is particularly beneficial when parties, witnesses, experts, or arbitrators are located in different parts of the world.
2. **Convenience:** Virtual meetings offer convenience for participants who may have scheduling or logistical challenges attending meetings in person. This provision supports a more inclusive and accessible arbitration process.
3. **Cost-Effectiveness:** The use of technology for meetings can reduce travel and related expenses, making the arbitration process more cost-effective for all parties involved.
4. **Environmental Impact:** By promoting virtual meetings, the provision also aligns with efforts to reduce the carbon footprint associated with international travel.

In summary, Section 35(5) of the ADGM Arbitration Regulations 2015 recognises the role of technology in modern arbitration proceedings. It allows meetings to occur virtually through various communication methods and in multiple geographic locations, reflecting the flexibility and efficiency that technology brings to the arbitration process.

### 36. Commencement of arbitral proceedings

**Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute shall commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.**

Section 36 of the ADGM Arbitration Regulations 2015 addresses the commencement of arbitral proceedings and outlines the trigger point for initiating the arbitration process.

Key Points:

1. **Commencement Date:** Section 36 establishes the starting date for arbitral proceedings, which is the date when a request for a particular dispute to be referred to arbitration is received by the respondent. In other words, once the respondent receives the arbitration request, the arbitral proceedings for that dispute officially begin.
2. **Requirement of a Request:** For arbitral proceedings to commence, a formal request for arbitration must be made by one party to the dispute (the claimant) and served on the other party (the respondent). This request typically outlines the nature of the dispute and invokes the arbitration process.
3. **Consistency with Party Agreement:** The section emphasises the principle of party autonomy in arbitration by stating that the commencement of arbitral proceedings can be determined differently if the parties have agreed upon a different starting point in

their arbitration agreement. This underscores the significance of mutual consent in arbitration matters.

Implications:

1. **Clarity in Timing:** Section 36 provides clarity on when arbitral proceedings officially begin. This timing is important for various procedural aspects, including the calculation of time limits for submitting statements of claim and defence, selecting arbitrators, and scheduling hearings.
2. **Respect for Party Autonomy:** By allowing parties to agree on a different commencement date in their arbitration agreement, the provision respects party autonomy and recognises that parties may have their own preferences or circumstances that warrant a distinct starting point for the proceedings.
3. **Avoiding Ambiguity:** Having a clear and defined commencement date helps prevent ambiguity and disputes over when the arbitration process officially starts. This clarity contributes to the overall efficiency of the arbitration process.
4. **Flexibility:** While the default rule is provided in Section 36, parties have the flexibility to deviate from it through mutual agreement. This enables parties to tailor the arbitration process to their specific needs and preferences.

In summary, Section 36 of the ADGM Arbitration Regulations 2015 establishes the commencement date for arbitral proceedings as the date when the respondent receives a request for a specific dispute to be referred to arbitration. It underscores party autonomy by allowing parties to determine a different commencement date through their arbitration agreement, enhancing clarity, predictability, and flexibility in the arbitration process.

### **37. Disclosure of a third-party funding agreement**

**(1) A party shall notify every other party to the arbitral proceedings and any members of the arbitral tribunal (nominated or appointed) of the existence of any third-party funding agreement and the identity of the third-party funder in accordance with subsection (2).**

Section 37(1) of the ADGM Arbitration Regulations 2015 addresses the requirement for a party involved in arbitral proceedings to provide notification about the existence of any third-party funding agreement and the identity of the third-party funder. This provision aims to promote transparency and prevent potential conflicts of interest in arbitral proceedings where third-party funding is involved.

Key Points:

1. **Notification Requirement:** According to Section 37(1), a party involved in arbitral proceedings must notify all other parties to the proceedings, as well as any members of the arbitral tribunal (whether nominated or appointed), about the existence of any third-party funding agreement.

2. Disclosure of Third-Party Funder Identity: In addition to notifying the parties and tribunal about the third-party funding agreement, the party must also disclose the identity of the third-party funder involved in providing financial support for the arbitration.

Implications:

1. Transparency: Section 37(1) underscores the importance of transparency in arbitral proceedings, especially when third-party funding is involved. This transparency helps all parties understand the financial arrangements in place and identify any potential conflicts of interest that might arise due to the involvement of a third-party funder.
2. Avoiding Conflicts of Interest: By notifying all parties and tribunal members about the third-party funding agreement and funder identity, this provision helps to avoid conflicts of interest or bias that may arise due to the financial interests of third parties in the outcome of the arbitration.
3. Maintaining Fairness and Integrity: The requirement to disclose third-party funding arrangements contributes to maintaining the fairness and integrity of the arbitral proceedings. It ensures that all parties have the necessary information to assess the potential impact of third-party funding on the arbitration process.
4. Balancing Interests: While transparency is important, this provision also recognises the need to balance the interests of parties who choose to seek third-party funding while ensuring that disclosure requirements do not unduly burden the parties.

In summary, Section 37(1) of the ADGM Arbitration Regulations 2015 mandates that a party involved in arbitral proceedings must notify all other parties and members of the arbitral tribunal about the existence of any third-party funding agreement and provide the identity of the third-party funder. This provision promotes transparency, helps prevent conflicts of interest, and maintains fairness and integrity in arbitration when third-party funding is involved.

**(2) Written notice under subsection (1) must be given:**

**(a) where the third party funding agreement was entered into before or upon the commencement of the proceedings, immediately upon their commencement; or**

**(b) where the third-party funding agreement was entered into after the commencement of proceedings, within seven (7) days of the date of the third-party funding agreement. If the notification was made prior to the constitution of the arbitral tribunal, the notice under subsection (1) must be given to any further arbitral tribunal members immediately following their nomination or appointment.**

Section 37(2) of the ADGM Arbitration Regulations 2015 provides further details and specific timelines for giving written notice about the existence of a third-party funding agreement and the identity of the third-party funder, as required in Section 37(1). This provision outlines the circumstances under which such notice should be provided and the deadlines associated with each situation.

Key Points:

1. Timing of Notice:
  - a. Subsection (2)(a): If the third-party funding agreement was entered into either before or upon the commencement of the arbitral proceedings, the written notice must be given immediately upon the commencement of the proceedings. In other words, the party should provide this notice at the outset of the arbitration if the funding agreement was in place from the beginning.
  - b. Subsection (2)(b): If the third-party funding agreement was entered into after the commencement of the proceedings, the written notice must be given within seven (7) days from the date of the third-party funding agreement. This timeframe ensures timely disclosure when new funding arrangements are made after the arbitration has begun.
2. Notice to Arbitral Tribunal Members: If the notice was given prior to the constitution of the arbitral tribunal (i.e., before the arbitrators are appointed or nominated), Section 37(2) specifies that the notice must be provided to any additional members of the arbitral tribunal immediately after their nomination or appointment.

Implications:

1. Timely Disclosure: This provision emphasises the importance of promptly notifying all parties and tribunal members about third-party funding arrangements. Timely disclosure ensures that all relevant parties are informed and can assess any potential implications on the arbitration process.
2. Different Scenarios: The provision distinguishes between situations where the funding agreement existed from the beginning and where it was introduced later during the proceedings. The different timelines for notice reflect the varying circumstances that can arise during an arbitration.
3. Avoiding Delays: By setting specific timeframes for providing notice, this provision helps avoid delays in the arbitration process due to the introduction of third-party funding agreements.

In summary, Section 37(2) of the ADGM Arbitration Regulations 2015 establishes clear timelines for providing written notice about third-party funding agreements. The notice must be given immediately upon the commencement of proceedings if the agreement was in place from the beginning, or within seven days if the agreement was entered into after the proceedings began. Additionally, if notice was provided before the arbitral tribunal's constitution, it must be given to any further tribunal members immediately after their appointment. This provision ensures timely disclosure and transparency regarding third-party funding arrangements.

**(3) Unless otherwise agreed by the parties, the arbitral tribunal may, after consulting with the parties, order the disclosure of other details of the third-party funding agreement.**

Section 37(3) of the ADGM Arbitration Regulations 2015 addresses the extent to which details of a third-party funding agreement can be disclosed during arbitral proceedings. This provision empowers the arbitral tribunal to make decisions regarding the disclosure of additional information about the third-party funding arrangement beyond what is initially required in Section 37(1) and (2), subject to consultation with the parties.

#### Key Points:

1. **Discretion of the Arbitral Tribunal:** Section 37(3) grants the arbitral tribunal discretion to order the disclosure of further details concerning the third-party funding agreement. This discretion allows the tribunal to consider the circumstances of the case and determine whether additional disclosure is necessary or relevant.
2. **Consultation with the Parties:** The provision specifies that the arbitral tribunal must consult with the parties before ordering the disclosure of other details of the funding agreement. This consultation ensures that all parties have an opportunity to express their views and raise any concerns about the proposed disclosure.
3. **Scope of Disclosure:** The provision does not specify the exact scope of details that can be disclosed. This flexibility enables the arbitral tribunal to tailor the disclosure requirements based on the specific circumstances of each case.

#### Implications:

1. **Balancing Transparency and Confidentiality:** Section 37(3) strikes a balance between the need for transparency in arbitration proceedings and the parties' legitimate interests in maintaining the confidentiality of certain aspects of the third-party funding arrangement.
2. **Case-by-Case Basis:** The provision recognises that disclosure requirements may vary depending on the facts and complexities of each case. The arbitral tribunal's discretion ensures that disclosure orders are tailored to the specific circumstances.
3. **Parties' Views:** The requirement for consultation with the parties before ordering additional disclosure encourages open communication and allows parties to voice their concerns or perspectives regarding the extent of disclosure.

In summary, Section 37(3) of the ADGM Arbitration Regulations 2015 grants the arbitral tribunal the authority to order the disclosure of further details about a third-party funding agreement beyond the initial notice requirements. This authority is exercised after consulting with the parties involved. The provision emphasises the importance of balancing transparency and confidentiality while allowing for case-specific considerations in making disclosure decisions.



### 38. Consolidation orders

#### (1) The parties are free to agree on the procedure for:

- (a) **arbitral proceedings to be consolidated with other arbitral proceedings; or**
- (b) **concurrent hearings to be held.**

Section 38(1) of the ADGM Arbitration Regulations 2015 addresses the parties' freedom to agree on the procedure for consolidating arbitral proceedings with other proceedings or holding concurrent hearings. This provision recognises the parties' autonomy in shaping the procedural aspects of their arbitration and fostering efficiency in the proceedings.

#### Key Points:

1. **Consolidation of Proceedings:** Subsection (a) allows the parties to agree on the procedure for consolidating their ongoing arbitral proceedings with other arbitral proceedings. This consolidation can enhance efficiency and streamline the resolution of related disputes, particularly when there are overlapping issues or parties involved.
2. **Concurrent Hearings:** Subsection (b) gives parties the freedom to agree on the procedure for holding concurrent hearings. Concurrent hearings involve two or more separate arbitrations being heard simultaneously by the same tribunal or different tribunals. This can be beneficial when there are common issues of fact or law in multiple cases.
3. **Autonomy of the Parties:** The provision underscores the principle of party autonomy in arbitration. Parties are empowered to design the procedure that best suits their specific circumstances, subject to any mandatory requirements or limits prescribed by law.

#### Implications:

1. **Efficiency and Cost-Effectiveness:** By allowing parties to agree on consolidation and concurrent hearings, Section 38(1) encourages the efficient use of resources and minimises duplicative efforts. This can lead to cost savings and a quicker resolution of disputes.
2. **Customised Proceedings:** Parties can tailor their arbitration proceedings to their unique needs and preferences. This flexibility promotes fairness and enables parties to design a process that aligns with their objectives.
3. **Complex and Multifaceted Disputes:** In complex cases involving multiple issues, parties, or contracts, the option to consolidate proceedings or hold concurrent hearings can provide a more comprehensive and coordinated resolution.

In summary, Section 38(1) of the ADGM Arbitration Regulations 2015 reflects the fundamental principle of party autonomy in arbitration. It allows parties to agree on the procedure for consolidating arbitral proceedings and conducting concurrent hearings. This flexibility promotes efficiency, cost-effectiveness, and tailored dispute resolution, while respecting the unique circumstances of each case.

**(2) Unless the parties agree to confer such power on the tribunal, the tribunal has no power to order consolidation of proceedings or concurrent hearings.**

Section 38(2) of the ADGM Arbitration Regulations 2015 deals with the authority of the arbitral tribunal to order the consolidation of proceedings or concurrent hearings. This provision establishes the scope of the tribunal's power in this regard and emphasises the importance of party agreement.

Key Points:

1. **Scope of Tribunal's Power:** Subsection (2) clarifies that unless the parties explicitly agree to confer such power on the arbitral tribunal, the tribunal does not inherently possess the authority to order the consolidation of proceedings or concurrent hearings. In the absence of the parties' agreement, the tribunal's power is limited in this regard.
2. **Party Autonomy:** The provision underscores the significance of party agreement in shaping the procedural aspects of the arbitration. Parties retain control over whether the tribunal can order consolidation or concurrent hearings, and they need to expressly grant such authority to the tribunal if they wish to do so.

Implications:

1. **Emphasis on Party Consent:** Section 38(2) aligns with the principle of party autonomy in arbitration. It reinforces the idea that significant procedural decisions should be made with the parties' explicit agreement.
2. **Predictability:** The provision helps maintain predictability in arbitration proceedings. The parties are aware of the scope of the tribunal's authority in ordering consolidation or concurrent hearings and can structure their proceedings accordingly.
3. **Tailored Dispute Resolution:** Parties can determine whether they want the tribunal to have the authority to order consolidation or concurrent hearings based on the specific circumstances of their case. This allows for a more tailored and flexible approach to dispute resolution.

In summary, Section 38(2) of the ADGM Arbitration Regulations 2015 emphasises the role of party agreement in granting the arbitral tribunal the authority to order consolidation of proceedings or concurrent hearings. It highlights the importance of predictability, party autonomy, and tailored dispute resolution in arbitration proceedings governed by these regulations.

**(3) Any consolidation order made under subsection (1) shall be without prejudice to the date on which any claim or defence was raised for the purpose of applying any limitation periods or similar rule or provision of law.**

Section 38(3) of the ADGM Arbitration Regulations 2015 addresses the impact of a consolidation order on the limitation periods or similar rules that may apply to the claims or defences in the consolidated proceedings. This provision ensures that parties' legal rights and obligations, including any applicable time limits, are preserved in the context of consolidated arbitral proceedings.

## Key Points:

1. **Preservation of Legal Rights:** Section 38(3) specifies that any consolidation order made under subsection (1) – referring to the agreed procedure for consolidating arbitral proceedings – does not affect the legal status of claims or defences that were raised prior to the consolidation. This is important to ensure that parties’ rights and obligations are not unfairly affected by the consolidation.
2. **Limitation Periods and Legal Rules:** The provision explicitly mentions that the date on which any claim or defence was raised for the purpose of applying limitation periods or similar rules of law should not be affected by the consolidation order. This means that any applicable time limits that were running before the consolidation will continue to apply.

## Implications:

1. **Protection of Legal Rights:** By affirming that the consolidation order is “without prejudice” to the date of raising claims or defences, Section 38(3) ensures that parties’ legal rights are not compromised due to the consolidation process.
2. **Clarity and Certainty:** The provision enhances clarity and legal certainty by confirming that the consolidation of proceedings does not reset or modify the timeline for invoking claims or defences in the consolidated cases.
3. **Balancing Efficiency and Rights:** While consolidation of proceedings can lead to procedural efficiencies, this provision strikes a balance by safeguarding parties’ rights and the continuity of established legal principles, such as limitation periods.

In summary, Section 38(3) of the ADGM Arbitration Regulations 2015 is designed to ensure that any consolidation order does not affect the legal position of claims or defences that were raised before the consolidation. It underscores the importance of preserving parties’ legal rights and obligations while allowing for the consolidation of arbitral proceedings for efficiency and convenience.

## 39. Joinder of Additional Parties

**(1) The parties are free to agree on the procedure for joining an additional party to an arbitration, provided always that the party to be joined is party to the arbitration agreement or has consented to joinder.**

Section 39(1) of the ADGM Arbitration Regulations 2015 deals with the procedure for joining an additional party to an ongoing arbitration. This provision recognises the flexibility given to parties to determine the process of bringing in a new party to the arbitration proceedings, while ensuring that certain requirements are met.

## Key Points:

1. **Agreement on Procedure:** The section starts by emphasising the parties’ freedom to agree on the procedure for joining an additional party to the arbitration. This means

that parties can establish their own agreed-upon steps and conditions for bringing a new party into the proceedings.

2. Consent Requirement: The provision specifies a crucial requirement for joining an additional party – the new party must either be a party to the arbitration agreement or must have provided consent to be joined to the ongoing arbitration. This ensures that parties cannot be brought into the arbitration against their will or without their knowledge.

Implications:

1. Flexibility and Consent: The provision reflects the principle of party autonomy in arbitration, allowing parties to tailor the procedure for joining new parties to their specific needs and circumstances. At the same time, it ensures that no party can be forced into the arbitration proceedings without their agreement.
2. Fairness and Efficiency: By requiring consent or an existing connection to the arbitration agreement, the provision aims to maintain fairness and prevent potential disputes arising from the introduction of additional parties. This can help avoid unnecessary delays and complications in the proceedings.
3. Protection of Third Parties: The requirement for consent or a pre-existing connection protects potential third-party participants from being involuntarily drawn into arbitration proceedings.

In summary, Section 39(1) of the ADGM Arbitration Regulations 2015 emphasises the parties' ability to agree on the procedure for joining an additional party to ongoing arbitration proceedings. It also underscores the importance of obtaining consent from the new party or ensuring their connection to the arbitration agreement, thus promoting fairness and efficiency in the process.

**(2) Absent such agreement, and before the confirmation or appointment of any arbitrator, the arbitral institution administering the arbitration or, where there is no such institution, the Court, may, upon the request of a party to the arbitral proceedings and if it considers that it is in the interests of justice to do so, allow one or more third parties to be joined to the arbitration, provided such person:**

**(a) is a party to the arbitration agreement; or**

**(b) has consented to joinder in writing,**

**unless the arbitral institution administering the arbitration or, where there is no such institution, the Court finds, after giving all parties, including the party or parties to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those parties.**

Section 39(2) of the ADGM Arbitration Regulations 2015 addresses the situation where there is no pre-existing agreement between the parties on the procedure for joining an additional party to an ongoing arbitration. This section provides a mechanism for a party to request the joinder of one or more third parties to the arbitration under certain conditions.

Key Points:

1. **No Agreement on Procedure:** This provision comes into play when the parties involved in the arbitration have not agreed on how to handle the joinder of additional parties.
2. **Arbitral Institution or Court Authority:** In cases where there is no agreed procedure, the section grants authority to the arbitral institution administering the arbitration or, if no such institution exists, to the Court. This authority is invoked when a party to the ongoing arbitration makes a request for the joinder of one or more third parties.
3. **Interests of Justice:** The request for joinder must be deemed to be in the interests of justice by the arbitral institution or the Court for it to be considered.
4. **Eligibility for Joinder:** The section specifies the conditions under which a third party can be joined to the arbitration. The third party must either be a party to the arbitration agreement or must have given written consent to being joined.
5. **Prejudice Consideration:** The section acknowledges that the interests of all parties should be taken into account. Before allowing joinder, the arbitral institution or the Court is required to assess whether allowing the joinder would prejudice any of the parties involved, including the third party to be joined.

Implications:

1. **Balancing Interests:** Section 39(2) seeks to strike a balance between the party autonomy principle and the need to ensure fairness and protection of parties' rights. It provides a mechanism for third parties to be joined when it is in the interests of justice, while also safeguarding against potential prejudice to existing parties.
2. **Ensuring Equitable Proceedings:** This provision enables the arbitral institution or the Court to evaluate the potential impact of joinder on all parties involved and prevent any party from being unfairly disadvantaged by the addition of new participants.
3. **Protecting Third Parties:** By requiring the third party's consent or connection to the arbitration agreement, the provision safeguards third parties from being drawn into proceedings without their knowledge or agreement.

In summary, Section 39(2) of the ADGM Arbitration Regulations 2015 outlines a process for the joinder of third parties to ongoing arbitrations in cases where no pre-existing agreement exists between the parties. It emphasises the importance of maintaining fairness and justice in the proceedings and protecting the interests of all parties, including potential new participants.

**(3) No additional party may be joined after the confirmation or appointment of any arbitrator, unless all parties, including the additional party, otherwise agree.**

Section 39(3) of the ADGM Arbitration Regulations 2015 addresses the situation regarding the joinder of additional parties to an ongoing arbitration after the confirmation or appointment of any arbitrator. This section sets a limitation on when and how additional parties can be joined once an arbitrator has been confirmed or appointed.

## Key Points:

1. **Limitation on Joinder After Arbitrator Appointment:** This provision specifies that after an arbitrator has been confirmed or appointed, the joinder of additional parties can only occur if all parties involved in the arbitration, including the proposed additional party, agree to such joinder.
2. **Ensuring Consent:** The section underscores the importance of obtaining the consent of all relevant parties before introducing a new participant to the arbitration proceedings. This emphasises the principle of party autonomy and the significance of mutual agreement among parties.

## Implications:

1. **Preserving Stability and Efficiency:** Section 39(3) aims to maintain the stability and efficiency of ongoing arbitration proceedings by placing a restriction on the joinder of additional parties once an arbitrator is already confirmed or appointed. This limitation helps prevent disruptions that could arise from introducing new parties after the arbitration process has already begun.
2. **Protecting the Process:** By requiring unanimous agreement among all parties involved, including the potential additional party, this provision helps ensure that the introduction of new participants does not lead to complications or disagreements that could undermine the arbitration process.
3. **Respecting Party Autonomy:** The provision respects the autonomy of the parties to an arbitration by allowing them to collectively determine whether to include new parties after the appointment of an arbitrator.

In summary, Section 39(3) of the ADGM Arbitration Regulations 2015 establishes a principle that additional parties can only be joined to ongoing arbitration proceedings after the confirmation or appointment of an arbitrator if all parties, including the proposed additional party, provide their unanimous consent. This provision emphasises the significance of mutual agreement and the need to maintain stability and efficiency in arbitration proceedings.

## 40. Language

**(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. In the absence of such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings.**

Section 40(1) of the ADGM Arbitration Regulations 2015 addresses the issue of language to be used in arbitral proceedings. It provides parties with the freedom to agree on the language or languages that will be used in the course of the arbitration. If the parties do not reach an agreement on the language, the responsibility of determining the language or languages to be used is entrusted to the arbitral tribunal.

## Key Points:

1. Party Autonomy: This section highlights the principle of party autonomy, emphasising that the parties involved in the arbitration have the freedom to choose the language or languages that best suit their needs and preferences. This aligns with the broader concept of arbitration as a consensual process.
2. Default Rule: In the absence of an agreement between the parties regarding the language, the section designates the arbitral tribunal with the authority to decide on the language or languages to be employed during the proceedings. This provision helps avoid potential conflicts arising from disagreements between the parties.

Implications:

1. Effective Communication: The choice of language in arbitration is significant because it affects the ability of parties, arbitrators, witnesses, and experts to effectively communicate and present their cases. The selected language(s) should accommodate the linguistic skills of the participants and ensure a clear understanding of the issues.
2. Efficiency: The section promotes efficiency by allowing the parties or the arbitral tribunal to choose a language that will minimise translation and interpretation requirements, facilitating smoother proceedings.
3. Arbitrator Expertise: The arbitral tribunal's role in determining the language(s) may also consider the language proficiency of the arbitrators, ensuring that they are able to fully comprehend the arguments and evidence presented.

In summary, Section 40(1) of the ADGM Arbitration Regulations 2015 underscores the importance of language in arbitral proceedings and preserves party autonomy in the language selection process. If the parties do not agree on the language, the responsibility falls on the arbitral tribunal to decide, ensuring effective communication, efficiency, and fair proceedings.

**(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.**

Section 40(2) of the ADGM Arbitration Regulations 2015 addresses the issue of translation of documentary evidence in arbitral proceedings. This provision grants authority to the arbitral tribunal to issue an order requiring that any documentary evidence submitted be accompanied by a translation into the language(s) agreed upon by the parties or determined by the tribunal.

Key Points:

1. Translation Requirement: This section gives the arbitral tribunal the power to require that documentary evidence, which may include written documents or exhibits, be translated into the chosen language(s) for the arbitration. This ensures that the parties and the tribunal can fully understand and consider the evidence presented.
2. Party Agreement or Tribunal Determination: The decision regarding the language(s) into which the documentary evidence needs to be translated depends on whether the parties have already agreed on a language. If there is an agreement, the translation

should be in accordance with that agreement. If there is no agreement, the arbitral tribunal will determine the language(s) for translation.

Implications:

1. **Clarity and Accessibility:** Translation of documentary evidence makes the materials accessible to all participants in the arbitration, including arbitrators, parties, witnesses, and experts. This promotes transparency and ensures that no party is disadvantaged due to language barriers.
2. **Preventing Misunderstandings:** Translation helps prevent misunderstandings that could arise from misinterpretation of evidence due to language differences. It ensures that all parties have a fair opportunity to comprehend the content and context of the evidence.
3. **Efficient Proceedings:** While translation adds an additional step to the proceedings, it contributes to the overall efficiency and effectiveness of the arbitration by enabling effective communication and presentation of evidence.

In summary, Section 40(2) of the ADGM Arbitration Regulations 2015 empowers the arbitral tribunal to require documentary evidence to be translated into the agreed-upon language(s) or determined language(s) for the proceedings. This provision promotes fairness, transparency, and effective communication within the arbitration process.

#### 41. Statements of claim and defence

**The parties are free to agree whether any, and if so what form, of the written statements of claim and defence are to be used, when these should be supplied and the extent to which such statements can be later amended. In the absence of such agreement, this shall be determined by the arbitral tribunal having regard to the matters set out in section 34(5).**

Section 41 of the ADGM Arbitration Regulations 2015 addresses the requirements and procedures related to statements of claim and defence in arbitral proceedings. This section emphasises the flexibility that parties have in determining the form and timing of these statements, while also providing guidance on the situation when there is no agreement.

Key Points:

1. **Flexibility in Agreement:** The primary principle underlying this section is that the parties are given the freedom to decide the specifics of the written statements of claim and defence. This includes the format or form of these statements, the timing for their submission, and the extent to which they can be later amended.
2. **No Agreement Scenario:** In situations where the parties have not reached an agreement on these matters, the arbitral tribunal steps in to determine the requirements for the statements of claim and defence.
3. **Consideration of Section 34(5):** The arbitral tribunal's decision on the form, timing, and amendment of the statements of claim and defence is influenced by the factors outlined in Section 34(5) of the ADGM Arbitration Regulations 2015. Section 34(5) refers to the



tribunal's duty to adopt procedures suitable to the circumstances of the case, avoid unnecessary delay and expense, and ensure a fair and efficient arbitration.

Implications:

1. **Party Autonomy:** Section 41 reinforces the principle of party autonomy, giving the parties the authority to determine the format and timing of their statements of claim and defence based on their mutual agreement.
2. **Efficiency and Fairness:** The arbitral tribunal's role in cases of no agreement is essential for ensuring that the chosen procedures for statements of claim and defence align with the principles of efficiency and fairness. The tribunal's determination aims to prevent undue delays and promote a balanced process.
3. **Balancing Interests:** The tribunal's consideration of Section 34(5) ensures a balanced approach, taking into account the unique circumstances of each case while aiming to maintain efficiency, fairness, and the overall goals of arbitration.

In summary, Section 41 of the ADGM Arbitration Regulations 2015 emphasises the freedom parties have to agree on the format, timing, and amendment of statements of claim and defence. In the absence of such an agreement, the arbitral tribunal determines these aspects with the overarching objective of promoting efficient and fair arbitral proceedings, as outlined in Section 34(5). This approach reflects a balance between party autonomy and the tribunal's duty to ensure the effectiveness of the arbitration process.

## 42. Summary disposal of claims, counterclaims and defences

**(1) Unless otherwise agreed by the parties, a party may apply to the arbitral tribunal in writing at any time for the summary disposal of part or the whole of a claim, counterclaim or defence, on the basis that any other party has no real prospect of success in respect of the relevant part or whole of the claim, counterclaim or defence.**

Section 42(1) of the ADGM Arbitration Regulations 2015 pertains to the concept of summary disposal in arbitral proceedings. This provision outlines the circumstances and procedure under which a party can apply for the summary disposal of part or the entirety of a claim, counterclaim, or defence.

Key Points:

1. **Summary Disposal:** Summary disposal is a procedure used to efficiently and promptly dispose of a claim, counterclaim, or defence when one party believes that the opposing party has no real prospect of success. This procedure is designed to avoid unnecessary prolongation of the proceedings when the legal and factual circumstances indicate that a party's case is unlikely to succeed.
2. **Party Application:** Section 42(1) allows a party to apply to the arbitral tribunal for summary disposal in writing. This means that a party can request the tribunal to dismiss a part or the entirety of a claim, counterclaim, or defence without a full hearing if it believes that the opposing party's case lacks merit.

3. **Real Prospect of Success:** The party seeking summary disposal must demonstrate that the other party's claim, counterclaim, or defence has no "real prospect of success". This means that the case is unlikely to succeed based on the available evidence and applicable law.
4. **Agreement of the Parties:** The provision acknowledges that the parties can agree otherwise. In other words, the parties are free to decide in advance whether or not the option of summary disposal will be available in their arbitration proceedings.

**Implications:**

1. **Efficiency and Cost Savings:** Section 42(1) promotes the efficiency of arbitral proceedings by providing a mechanism for promptly addressing claims, counterclaims, or defences that are not likely to succeed. This helps avoid unnecessary expenditure of time and resources on meritless aspects of a case.
2. **Balancing Interests:** While summary disposal can lead to efficiency gains, it's important to strike a balance to ensure that parties are not unfairly deprived of their right to fully present their case. The provision requires a genuine lack of real prospect of success before allowing summary disposal.
3. **Party Autonomy:** The option for parties to agree otherwise reinforces the principle of party autonomy in arbitration. If the parties mutually decide to exclude or modify the availability of summary disposal, they can tailor the proceedings to their specific needs.

In summary, Section 42(1) of the ADGM Arbitration Regulations 2015 introduces the concept of summary disposal in arbitration. It allows parties to apply for the swift dismissal of a claim, counterclaim, or defence if the opposing party's case has no real prospect of success. While promoting efficiency, this provision strikes a balance by ensuring that the party seeking summary disposal meets a genuine threshold of non-success. Parties also have the freedom to agree on the applicability of this procedure in their arbitration.

**(2) The arbitral tribunal shall, in its full discretion, decide whether to allow the application to proceed. If the application is allowed to proceed, the arbitral tribunal shall, after giving the parties an opportunity to make representations, decide the application.**

Section 42(2) of the ADGM Arbitration Regulations 2015 outlines the procedure that the arbitral tribunal follows when considering an application for summary disposal under Section 42(1). This provision underscores the tribunal's discretion in deciding whether to allow the application and the subsequent steps in the process.

**Key Points:**

1. **Tribunal Discretion:** According to Section 42(2), the decision to allow the application for summary disposal is left entirely to the arbitral tribunal's discretion. This means that the tribunal has the authority to determine whether the circumstances warrant proceeding with the application.

2. **Opportunity for Parties to Make Representations:** If the tribunal decides to allow the application to proceed, the provision requires the tribunal to provide both parties with an opportunity to make representations. This ensures that each party has a fair chance to present their arguments and counterarguments regarding the application.
3. **Decision on the Application:** After considering the representations made by the parties, the tribunal is then responsible for making a decision on the application for summary disposal. This decision will involve assessing whether the party seeking summary disposal has met the threshold of demonstrating that the opposing party's claim, counterclaim, or defence lacks a real prospect of success.

Implications:

1. **Tribunal's Role in Assessing Merits:** Section 42(2) reinforces the tribunal's role in assessing the merits of an application for summary disposal. The tribunal must evaluate the available evidence and arguments to determine whether the application should proceed to the next stage or be dismissed.
2. **Procedural Fairness:** The provision's requirement for giving parties the opportunity to make representations ensures procedural fairness. It allows parties to present their viewpoints and any relevant evidence before the tribunal makes its decision.
3. **Balancing Efficiency and Fairness:** By granting the tribunal discretion, this provision allows for a balance between the efficiency of summary disposal and the parties' right to be heard. The tribunal can carefully evaluate whether summary disposal is appropriate in the given circumstances.

In summary, Section 42(2) of the ADGM Arbitration Regulations 2015 empowers the arbitral tribunal to decide whether to allow an application for summary disposal. The provision emphasises the tribunal's discretion in this decision-making process. If the application is allowed to proceed, the tribunal must give both parties an opportunity to make representations before making a final decision on the application. This procedural framework ensures that both efficiency and procedural fairness are maintained in the summary disposal process.

**(3) The arbitral tribunal shall issue any summary determination that is made pursuant to this section in the form of an award.**

Section 42(3) of the ADGM Arbitration Regulations 2015 establishes the form that a summary determination should take when made by the arbitral tribunal in accordance with the provisions of Section 42(1). This provision clarifies how the outcome of the summary determination process is to be documented and communicated.

Key Points:

1. **Form of Summary Determination:** According to Section 42(3), any summary determination that results from the application for summary disposal, as outlined in Section 42(1), must be issued by the arbitral tribunal in the form of an "award". An award is a formal decision or ruling by the tribunal on a specific matter in the arbitration proceedings.

2. **Consistency with Arbitration Practice:** Requiring the summary determination to be issued as an award aligns with general arbitration practice, where formal decisions and outcomes of proceedings are typically documented in the form of awards.
3. **Legal Effect and Enforceability:** Treating the summary determination as an award underscores its legal effect and enforceability. An award is a legally binding document that carries the authority of the tribunal. As such, the summary determination made pursuant to Section 42(1) is given similar weight and enforceability.

**Implications:**

1. **Clarity and Formality:** By stipulating that the summary determination should be issued in the form of an award, Section 42(3) ensures clarity and formal documentation of the tribunal's decision. This contributes to the transparency and comprehensibility of the arbitration process.
2. **Consistency in Proceedings:** This provision maintains consistency with the broader arbitration process, where awards are the standard format for conveying the tribunal's decisions. The use of awards helps parties understand the implications and legal consequences of the tribunal's actions.
3. **Enforceability and Finality:** Treating the summary determination as an award underscores its enforceability and finality. It reinforces the notion that the summary determination has the same legal significance as other awards issued by the arbitral tribunal.

In summary, Section 42(3) of the ADGM Arbitration Regulations 2015 specifies that any summary determination resulting from an application for summary disposal should be issued by the arbitral tribunal in the form of an award. This provision aligns with general arbitration practice and enhances the clarity, consistency, and enforceability of the summary determination within the arbitration proceedings.

### **43. Hearings and written proceedings**

**(1) Subject to any contrary agreement by the parties, the following provisions shall apply to hearings and written proceedings.**

Section 43(1) of the ADGM Arbitration Regulations 2015 establishes the framework for hearings and written proceedings in arbitration, outlining the default provisions that apply unless the parties have agreed otherwise. This section provides a foundational structure for the conduct of proceedings, guiding the arbitral tribunal and the parties on matters related to hearings and written submissions.

**Key Points:**

1. **Applicability of Default Provisions:** Section 43(1) states that the provisions outlined in subsequent sections will apply to both hearings and written proceedings unless the parties have specifically agreed otherwise. This indicates that the default provisions are designed to guide proceedings in the absence of a contrary agreement between the parties.

2. Flexibility and Party Autonomy: The section recognises the principle of party autonomy in arbitration, which allows parties to structure their proceedings according to their needs and preferences. Parties have the freedom to deviate from the default provisions by mutual agreement.
3. Balance between Hearings and Written Proceedings: The default provisions encompass both hearings and written proceedings, emphasising the importance of maintaining a balance between these two components of arbitration. This balance is crucial for providing parties with opportunities to present their cases effectively.

Implications:

1. Guidance for Conduct: Section 43(1) establishes a foundation for the conduct of hearings and written proceedings in arbitration. It ensures that parties and the arbitral tribunal have clear guidance on procedural matters even in the absence of specific agreements.
2. Balanced Approach: By addressing both hearings and written proceedings, the provision underscores the importance of considering various means of presenting evidence and arguments. This balance promotes fairness and a comprehensive assessment of the case.
3. Preserving Party Autonomy: The provision respects the principle of party autonomy by allowing parties to agree on alternative procedures or provisions that better suit their circumstances. It ensures that the parties have the flexibility to customise the arbitration process to their needs.

In summary, Section 43(1) of the ADGM Arbitration Regulations 2015 lays the groundwork for hearings and written proceedings in arbitration. It outlines the default provisions that apply unless parties have agreed otherwise. This section promotes a balanced approach, provides guidance for conducting proceedings, and respects party autonomy by allowing deviations from the default provisions through mutual agreement.

**(2) The arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument; whether the hearing is to be conducted, in whole or in part, in person, by video conference, telephone or other communication technology; or whether the proceedings shall be conducted on the basis of documents and other materials.**

Section 43(2) of the ADGM Arbitration Regulations 2015 addresses the discretion of the arbitral tribunal in determining the format and conduct of hearings and proceedings. This provision grants the arbitral tribunal significant flexibility to tailor the arbitration process to the specific circumstances of the case, taking into account various factors that may impact the effectiveness and efficiency of the proceedings.

Key Points:

1. Decision-Making Authority: Section 43(2) establishes that the arbitral tribunal has the authority to make decisions regarding the conduct of hearings and proceedings. This

includes determining whether oral hearings are necessary for presenting evidence or arguments, or if proceedings can be based solely on written documents.

2. **Variety of Formats:** The provision acknowledges that hearings can take various formats, including in-person hearings, hearings conducted via video conference, telephone hearings, or any other communication technology that facilitates remote participation.
3. **Balancing Efficiency and Fairness:** The provision reflects the arbitral tribunal's duty to strike a balance between achieving procedural efficiency and ensuring fairness to all parties. The tribunal must consider factors such as the complexity of the case, the nature of the evidence, the preferences of the parties, and the potential benefits of different formats.

#### Implications:

1. **Flexible Approach:** Section 43(2) highlights the flexible nature of arbitration proceedings. The provision empowers the arbitral tribunal to adapt the proceedings to the specific needs of the case, allowing for different formats and approaches depending on the circumstances.
2. **Efficiency and Convenience:** The provision acknowledges the value of technology in modern arbitration. It enables the use of communication technology for hearings, which can lead to cost savings and convenience, especially when parties and witnesses are located in different geographical locations.
3. **Tailoring Proceedings:** This provision reinforces the principle of party autonomy by giving the arbitral tribunal the authority to determine the most suitable procedure for each case. This approach enhances the tribunal's ability to ensure a fair and effective arbitration process.

In summary, Section 43(2) of the ADGM Arbitration Regulations 2015 grants the arbitral tribunal the authority to decide on the format and conduct of hearings and proceedings. This provision emphasises flexibility, efficiency, and fairness by allowing the tribunal to choose between oral hearings, remote communication technology, or proceedings based solely on documents. The tribunal's discretion ensures that the arbitration process is tailored to the unique circumstances of each case.

**(3) Unless the parties have agreed that no hearing shall be held, the arbitral tribunal shall hold such hearings (whether in person, or by video conference or telephone or other communication technology) at an appropriate stage of the proceedings, after consulting the parties. If a hearing is held in person, a party shall be free to apply to the arbitral tribunal for one or more of its fact or expert witnesses to attend the hearing by video conference or telephone or other communication technology.**

Section 43(3) of the ADGM Arbitration Regulations 2015 pertains to the conduct of hearings in arbitration proceedings. This provision outlines the circumstances under which hearings should be held, the options available for holding hearings, and the possibility of accommodating witnesses through video conference, telephone, or other communication technology.

Key Points:

1. **Mandatory Hearings:** The provision establishes that unless the parties have explicitly agreed to forgo holding any hearings, the arbitral tribunal is required to hold hearings at an appropriate stage of the proceedings.
2. **Formats of Hearings:** The provision grants flexibility in conducting hearings. It allows for hearings to be held in various formats, including in-person, video conference, telephone, or other communication technology. This reflects the growing use of technology in modern arbitration to facilitate remote participation.
3. **Consultation with Parties:** The arbitral tribunal is obligated to consult with the parties before determining the timing and format of the hearing. This consultation ensures that the parties have an opportunity to express their preferences and considerations about the hearing.
4. **Witnesses via Technology:** If an in-person hearing is held, Section 43(3) allows parties to apply to the arbitral tribunal for their fact or expert witnesses to attend the hearing through video conference, telephone, or other communication technology. This accommodates situations where witnesses may be unable to attend in person due to geographical or other reasons.

Implications:

1. **Balancing Flexibility and Fairness:** This provision strikes a balance between flexibility and fairness. It recognises the importance of hearings for presenting evidence and arguments while also adapting to the evolving use of technology in arbitration proceedings.
2. **Effective Use of Technology:** The provision acknowledges the efficiency and convenience of technology-enabled hearings. It allows parties to participate and present witnesses remotely, reducing the need for physical travel and potentially expediting the arbitration process.
3. **Ensuring Parties' Participation:** By requiring the tribunal to consult with the parties before determining the hearing format, the provision ensures that parties have input into the process, promoting transparency and party autonomy.

In summary, Section 43(3) of the ADGM Arbitration Regulations 2015 emphasises the importance of hearings in arbitration proceedings and outlines the framework for conducting them. The provision accommodates various formats, including in-person, video conference, telephone, or other communication technology, and highlights the need for consultation with parties. This approach ensures that arbitration hearings are effective, efficient, and tailored to the circumstances of each case.

**(4) The parties shall be given sufficient advance notice as the arbitral tribunal shall decide of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.**

Section 43(4) of the ADGM Arbitration Regulations 2015 pertains to the requirement for the arbitral tribunal to provide sufficient advance notice to the parties regarding hearings and any meetings held for the purpose of inspecting goods, other property, or documents in arbitration proceedings.

Key Points:

1. **Notice Requirement:** The provision establishes that the arbitral tribunal must give the parties sufficient advance notice of any hearings and meetings. This notice requirement aims to ensure that parties have adequate time to prepare, participate, and make the necessary arrangements.
2. **Discretion of the Arbitral Tribunal:** The arbitral tribunal has discretion in determining what constitutes “sufficient advance notice”. This allows the tribunal to consider the circumstances of the case, the complexity of the issues, the availability of parties and witnesses, and other relevant factors.
3. **Scope of Notice:** The notice requirement applies not only to hearings but also to meetings of the arbitral tribunal for the purpose of inspecting goods, other property, or documents. This reflects the importance of transparency and ensuring that all parties are informed and have an opportunity to participate.

Implications:

1. **Ensuring Fairness and Participation:** Section 43(4) emphasises the principle of fairness in arbitration proceedings. By providing advance notice of hearings and meetings, the provision ensures that parties have an equal and meaningful opportunity to participate, present their cases, and make necessary arrangements.
2. **Preparation and Efficiency:** Sufficient advance notice allows parties to adequately prepare for hearings and meetings, which can lead to more efficient and focused proceedings. Parties can plan their schedules, gather evidence, and consult with witnesses without unnecessary haste.
3. **Maintaining Transparency:** The provision enhances transparency in arbitration proceedings. Parties are informed about key events, enabling them to engage more effectively with the process and maintain confidence in the fairness of the proceedings.

In summary, Section 43(4) of the ADGM Arbitration Regulations 2015 underscores the importance of providing advance notice to parties regarding hearings and meetings in arbitration proceedings. This requirement promotes fairness, preparation, and transparency, ultimately contributing to the effective and efficient conduct of the arbitration process.



**(5) All statements, documents, evidence or other information supplied to the arbitral tribunal by one party shall be communicated to the other party at the same time as it is supplied to the arbitral tribunal.**

Section 43(5) of the ADGM Arbitration Regulations 2015 addresses the communication of statements, documents, evidence, or other information between parties in arbitration proceedings.

Key Points:

1. **Simultaneous Communication:** The provision establishes a requirement that any statements, documents, evidence, or other information submitted by one party to the arbitral tribunal must be communicated to the other party at the same time they are submitted to the tribunal. This ensures that both parties have access to the same information simultaneously.
2. **Transparency and Equal Access:** The provision aims to maintain transparency and ensure that both parties have equal access to all relevant information. By receiving the same information at the same time, parties can effectively respond, prepare their arguments, and participate in the proceedings without any disadvantage.
3. **Balancing Interests:** While ensuring timely communication, the provision also respects the principle of fairness between the parties. It prevents one party from gaining an unfair advantage by having exclusive access to information before the other party.

Implications:

1. **Promoting Fairness:** Section 43(5) reinforces the overarching principle of fairness in arbitration proceedings. It prevents one party from having an informational advantage over the other, which is crucial for maintaining the integrity of the arbitration process.
2. **Efficient Proceedings:** By requiring simultaneous communication, the provision supports the efficient flow of information. Parties are better equipped to respond promptly, and the arbitration process can progress smoothly without unnecessary delays.
3. **Reducing Potential for Disputes:** Ensuring that both parties receive information simultaneously can help minimise disputes arising from perceived unequal access to information. This contributes to a more harmonious and cooperative arbitration process.

In summary, Section 43(5) of the ADGM Arbitration Regulations 2015 emphasises the need for transparency and equal access to information in arbitration proceedings. By requiring simultaneous communication of statements, documents, evidence, or other information between parties, the provision reinforces fairness, efficiency, and the overall integrity of the arbitration process.

**(6) For the purpose of subsection (5), any statement, document, evidence or other information may be supplied or communicated electronically.**

Section 43(6) of the ADGM Arbitration Regulations 2015 pertains to the electronic communication of statements, documents, evidence, or other information between parties in arbitration proceedings.

## Key Points:

1. **Electronic Communication:** The provision allows for the electronic supply or communication of any statements, documents, evidence, or other information between the parties involved in the arbitration proceedings.
2. **Technological Flexibility:** By explicitly permitting electronic communication, the provision acknowledges the advancements in technology and the use of electronic means for transmitting information. It aligns with the modern trend of using digital platforms for communication and document sharing.
3. **Efficiency and Convenience:** Electronic communication can offer efficiency and convenience in arbitration proceedings. Parties can exchange information promptly without relying on physical delivery methods, potentially leading to faster and more streamlined proceedings.

## Implications:

1. **Modernising Arbitration:** Section 43(6) reflects the adaptability of arbitration regulations to contemporary communication methods. It recognises the efficiency and speed offered by electronic communication in today's digital age.
2. **Reducing Delays:** Electronic communication can help minimise delays associated with traditional paper-based exchanges. This can lead to faster information sharing, quicker responses, and smoother progress of the arbitration proceedings.
3. **Cost Efficiency:** The use of electronic communication may also contribute to cost efficiency by reducing the expenses associated with printing, mailing, and physical delivery of documents.

In summary, Section 43(6) of the ADGM Arbitration Regulations 2015 acknowledges the suitability of electronic communication for exchanging statements, documents, evidence, or other information in arbitration proceedings. This provision reflects the modernisation of arbitration practices and aims to enhance efficiency and convenience while staying in line with technological advancements.

## **(7) For the purpose of subsections (2) and (5), evidence includes any factual or expert evidence upon which a party relies.**

Section 43(7) of the ADGM Arbitration Regulations 2015 provides clarification regarding the scope of "evidence" in the context of arbitration proceedings.

## Key Points:

1. **Definition of Evidence:** The provision defines "evidence" for the purposes of subsections (2) and (5) as including both factual and expert evidence that a party relies upon in the arbitration proceedings.
2. **Inclusion of Factual and Expert Evidence:** The definition of evidence encompasses two main categories: factual evidence, which consists of statements, documents, or other

information relevant to the case; and expert evidence, which involves opinions provided by qualified experts on matters within their expertise.

Implications:

1. **Broad Interpretation:** By including both factual and expert evidence, the definition provided in Section 43(7) emphasises that the concept of evidence in arbitration proceedings is not limited to mere factual statements but also extends to expert opinions presented by parties.
2. **Comprehensive Disclosure:** The provision encourages parties to disclose and exchange not only factual evidence but also expert opinions they intend to rely on. This promotes transparency and fairness in the arbitration process, ensuring that all parties have access to the evidence being presented.
3. **Effective Presentation:** The definition clarifies that parties are expected to present both factual and expert evidence in accordance with the arbitration procedure. This ensures that all parties have an opportunity to respond to the evidence and engage in a balanced and thorough presentation of their cases.

In summary, Section 43(7) of the ADGM Arbitration Regulations 2015 defines “evidence” to encompass both factual and expert evidence upon which a party relies in arbitration proceedings. This definition emphasises the comprehensive nature of evidence presentation in arbitration, promoting transparency, fairness, and effective communication between the parties.

#### **44. Party and Party Representative conduct**

**(1) A Party Representative shall:**

- (a) not engage in activities intended to obstruct or delay the arbitral proceedings, jeopardise the integrity of proceedings or the finality of any award;**
- (b) not knowingly or recklessly make a false statement to the arbitral tribunal;**
- (c) preserve and not knowingly conceal or destroy documents that are likely, or advise a party to conceal or destroy, documents that are likely to be relevant to the issues in dispute in the arbitration or which the arbitral tribunal has ordered to be produced; and**
- (d) make sure that the party for whom he acts understands at all times that he must preserve and not conceal or destroy such documents.**

Section 44(1) of the ADGM Arbitration Regulations 2015 outlines the duties and responsibilities of a “Party Representative” in an arbitration proceeding.

Key Points:

1. **Definition of Party Representative:** The term “Party Representative” refers to an individual who represents or acts on behalf of a party in an arbitration proceeding.

2. Duties and Responsibilities:

- a. **Obstruction and Delay:** Subsection (a) requires the Party Representative to refrain from engaging in activities that obstruct or delay the arbitral proceedings, undermine their integrity, or challenge the finality of any award. This promotes the efficient and fair conduct of arbitration.
- b. **Truthfulness:** Subsection (b) obliges the Party Representative to provide truthful and accurate information to the arbitral tribunal, ensuring transparency and the accuracy of the information presented.
- c. **Document Preservation:** Subsections (c) and (d) emphasise the duty of the Party Representative to preserve relevant documents and refrain from concealing or destroying them. This applies to documents likely to be relevant to the dispute or those that the arbitral tribunal has ordered to be produced. The Party Representative must also ensure that the represented party understands the importance of document preservation.

Implications:

1. **Promoting Integrity and Fairness:** Section 44(1) is aimed at upholding the integrity and fairness of the arbitration process. It sets clear standards for the behaviour of Party Representatives, preventing actions that could compromise the integrity of proceedings or the finality of awards.
2. **Encouraging Truthful Communication:** By requiring truthfulness in statements made to the arbitral tribunal, the provision ensures that accurate and reliable information is presented, enhancing the reliability of the arbitration process.
3. **Document Preservation:** The obligation to preserve relevant documents and refrain from concealing or destroying them reflects the importance of preserving evidence. This contributes to a transparent and comprehensive presentation of facts before the arbitral tribunal.
4. **Client Awareness:** Subsection (d) ensures that Party Representatives communicate the importance of document preservation to their clients, fostering cooperation between representatives and their clients in adhering to legal obligations.

In summary, Section 44(1) of the ADGM Arbitration Regulations 2015 outlines the responsibilities of Party Representatives in an arbitration proceeding. It establishes standards for their conduct to ensure the integrity of proceedings, truthful communication, and proper document preservation, while also emphasising their role in ensuring their represented party's compliance with these responsibilities.

**(2) If the arbitral tribunal (whether following a complaint by one party against another Party Representative or on its own initiative) and after giving the relevant Party Representative an opportunity to make representations, finds that a Party Representative contravened subsection (1), the arbitral tribunal may impose one or more of the following sanctions:**

- (a) a written reprimand or caution to the Party Representative;**
- (b) draw adverse inferences when assessing the evidence relied upon, or legal submissions made by, the Party Representative;**
- (c) make an order or award on costs in relation to the conduct of the Party Representative against the party instructing the Party Representative; and**
- (d) adopt any other appropriate measure that the arbitral tribunal considers necessary to preserve the fairness and integrity of the proceedings.**

Section 44(2) of the ADGM Arbitration Regulations 2015 outlines the authority of the arbitral tribunal to impose sanctions on a Party Representative who contravenes the duties and responsibilities outlined in Section 44(1).

Key Points:

1. Sanctions for Contravention: Section 44(2) specifies that if the arbitral tribunal determines, following a complaint or its own initiative, that a Party Representative has violated the duties listed in Section 44(1), the tribunal has the authority to impose sanctions on that Party Representative.
2. Possible Sanctions:
  - a. Written Reprimand or Caution: Subsection (a) allows the arbitral tribunal to issue a written reprimand or caution to the Party Representative who contravened the duties. This serves as a formal warning to the representative.
  - b. Adverse Inferences: Subsection (b) permits the tribunal to draw adverse inferences when evaluating evidence or legal submissions presented by the Party Representative. This means that the tribunal can treat certain aspects of the representative's case less favourably due to their non-compliance.
  - c. Costs Order: Subsection (c) empowers the tribunal to make an order or award on costs related to the Party Representative's conduct. The costs could be imposed against the party that engaged the representative, holding them accountable for the representative's actions.
  - d. Other Measures: Subsection (d) provides the arbitral tribunal with the discretion to adopt any other appropriate measures that it deems necessary to maintain the fairness and integrity of the arbitration proceedings.

Implications:

1. Maintaining Standards: Section 44(2) ensures that Party Representatives adhere to their duties and responsibilities outlined in Section 44(1). The ability of the arbitral tribunal to

impose sanctions helps maintain the ethical and professional standards of those participating in the arbitration process.

2. **Fairness and Integrity:** The sanctions provided in Section 44(2) are designed to preserve the fairness and integrity of the proceedings. They serve as mechanisms to address instances where a Party Representative's actions may have compromised these principles.
3. **Balance and Proportionality:** The sanctions are varied, allowing the tribunal to choose measures that are appropriate for the severity of the contravention. This ensures a balanced and proportional response to misconduct.

In summary, Section 44(2) of the ADGM Arbitration Regulations 2015 grants the arbitral tribunal the authority to impose sanctions on a Party Representative who violates their duties and responsibilities as outlined in Section 44(1). The sanctions include warnings, adverse inferences, costs orders, and other measures, all designed to uphold the fairness and integrity of the arbitration proceedings.

**(3) The arbitral tribunal's decision under subsection (2) must be in writing, with reasons, and must be communicated to all parties to the arbitration.**

Section 44(3) of the ADGM Arbitration Regulations 2015 outlines the procedural requirements regarding the arbitral tribunal's decision to impose sanctions on a Party Representative who contravenes their duties and responsibilities, as described in Section 44(1).

**Key Points:**

1. **Written Decision:** Section 44(3) mandates that the arbitral tribunal's decision to impose sanctions under Section 44(2) must be made in writing. This written decision ensures clarity and transparency in communicating the tribunal's decision to the parties involved.
2. **Reasons for Decision:** The written decision must include the reasons behind the tribunal's determination to impose sanctions. This requirement ensures that the parties and the Party Representative understand the basis for the sanctions and the tribunal's rationale for its decision.
3. **Communication to All Parties:** The decision with reasons must be communicated to all parties involved in the arbitration. This ensures that all parties are aware of the tribunal's actions and its rationale, promoting transparency and accountability in the arbitration proceedings.

**Implications:**

1. **Transparency and Accountability:** Requiring the tribunal's decision to be in writing and communicated to all parties enhances transparency in the arbitration process. It ensures that parties are informed about the sanctions imposed and the reasons for those sanctions, promoting accountability for the actions of Party Representatives.

2. **Judicial Review:** A written decision with reasons provides a clear record of the tribunal's decision-making process. This can be important if any party seeks to challenge the tribunal's decision through judicial review, as it provides a basis for reviewing the tribunal's reasoning.
3. **Clear Communication:** The requirement for a written decision ensures that all parties are on the same page regarding the tribunal's decision and the actions being taken in response to the misconduct of a Party Representative.

In summary, Section 44(3) of the ADGM Arbitration Regulations 2015 stipulates that the arbitral tribunal's decision to impose sanctions on a Party Representative, as provided for in Section 44(2), must be communicated in writing with reasons. This requirement ensures transparency, accountability, and clarity in the arbitration process, promoting fairness and maintaining the integrity of the proceedings.

**(4) The arbitral tribunal is in all cases entitled to consider the conduct of the parties and the Party Representatives when making any decision allocating the costs of the arbitration between the parties.**

Section 44(4) of the ADGM Arbitration Regulations 2015 addresses the arbitral tribunal's authority to consider the conduct of parties and Party Representatives when making decisions regarding the allocation of costs in arbitration proceedings.

**Key Points:**

1. **Consideration of Conduct:** Section 44(4) highlights that the arbitral tribunal is entitled to take into account the behaviour and conduct of both the parties and their Party Representatives when making determinations related to the allocation of costs in the arbitration.
2. **Cost Allocation:** In arbitration, costs include not only the fees of the arbitrators and administrative expenses but also legal and other expenses incurred by the parties. Deciding how these costs should be distributed between the parties is an important aspect of the arbitration process.
3. **Fairness and Conduct:** The provision emphasises fairness in cost allocation. The tribunal can consider how the conduct of the parties and their representatives may have impacted the proceedings, whether positively or negatively, and determine an appropriate allocation of costs that aligns with the principles of justice and fairness.

**Implications:**

1. **Incentive for Proper Conduct:** Section 44(4) serves as an incentive for parties and their representatives to engage in ethical and appropriate behaviour throughout the arbitration process. It reminds them that their conduct can impact not only the outcome of the dispute but also the allocation of costs.
2. **Balancing Interests:** The provision allows the arbitral tribunal to balance the interests of the parties and the principles of fairness when deciding how the costs of the arbitration

should be distributed. If a party's conduct has caused unnecessary delays or costs, the tribunal can take that into account.

3. **Transparency and Accountability:** By considering the conduct of parties and Party Representatives in cost allocation decisions, the arbitral tribunal promotes transparency and accountability in the arbitration process. It ensures that parties are held responsible for their actions and their impact on the proceedings.

In summary, Section 44(4) of the ADGM Arbitration Regulations 2015 grants the arbitral tribunal the authority to consider the behaviour and conduct of the parties and their representatives when making decisions about the allocation of costs in arbitration proceedings. This provision reinforces fairness, transparency, and accountability in the arbitration process by taking into account the actions of those involved.

#### **45. Confidentiality of arbitral proceedings and awards**

**(1) Unless otherwise agreed by the parties, no party may publish, disclose or communicate any Confidential Information to any third party.**

Section 45(1) of the ADGM Arbitration Regulations 2015 addresses the confidentiality of information exchanged during arbitration proceedings.

Key Points:

1. **Confidential Information:** The provision pertains to "Confidential Information", which refers to information shared or generated during the arbitration process that the parties consider sensitive and private.
2. **Restrictions on Disclosure:** Section 45(1) establishes a general rule that, unless the parties agree otherwise, no party to the arbitration may publish, disclose, or communicate any Confidential Information to any third party. This is designed to protect the privacy and confidentiality of the arbitration proceedings.
3. **Privacy and Integrity:** Confidentiality is crucial in arbitration as it encourages parties to freely exchange information, present their case, and engage in negotiations without fear of unwanted disclosure. It also maintains the integrity of the proceedings and ensures that sensitive business, legal, or personal information remains protected.
4. **Agreed Exceptions:** Parties may agree to exceptions to this confidentiality rule. These exceptions might include situations where disclosure is necessary for enforcement or recognition of an award, compliance with a legal obligation, or where the parties wish to share information with their legal advisors or other experts.

Implications:

1. **Protection of Sensitive Information:** Section 45(1) ensures that parties' sensitive business information, proprietary data, or legal strategies are safeguarded from unwanted disclosure, maintaining the trust and integrity of the arbitration process.



2. Incentive for Participation: The confidentiality rule encourages parties to participate openly and honestly in the arbitration process, facilitating a more efficient and effective resolution of disputes.
3. Balancing Interests: While confidentiality is important, it may sometimes conflict with the desire for transparency, especially when the public interest is involved. Parties and arbitrators need to carefully consider the balance between confidentiality and the potential need for transparency.
4. Control over Information: The provision gives parties control over the dissemination of information related to the arbitration, allowing them to protect sensitive information while still complying with their obligations to disclose information in certain circumstances.

In summary, Section 45(1) of the ADGM Arbitration Regulations 2015 establishes a default rule that parties must not publish, disclose, or communicate any Confidential Information to third parties unless they agree otherwise. This provision aims to maintain the confidentiality of sensitive information exchanged during arbitration proceedings, fostering an environment conducive to open communication and resolution while allowing for exceptions as agreed upon by the parties.

**(2) Nothing in subsection (1) prevents the publication, disclosure or communication of Confidential Information by a party:**

**(a) if the publication, disclosure or communication is made:**

**(i) to protect or pursue a legal right or interest of the party; or**

**(ii) to enforce or challenge the award referred to in that subsection,**

**(iii) in legal proceedings before a court or other judicial authority in or outside the Abu Dhabi Global Market;**

**(b) if the publication, disclosure or communication is made to any government body, regulatory body, court or tribunal and the party is obliged by law to make the publication, disclosure or communication;**

**(c) if the publication, disclosure or communication is required in order for a party to be in compliance with its financial reporting obligations or the rules of any listing authority or securities exchange;**

**(d) if the publication, disclosure or communication is made to a professional or any other adviser of any of the parties;**

**(e) if the publication, disclosure or communication is made to potential lenders or investors in connection with financing arrangements; or**

**(f) if the arbitral tribunal determines that it is otherwise in the interests of justice that the publication, disclosure or communication of information be permitted.**

Section 45(2) of the ADGM Arbitration Regulations 2015 provides exceptions to the general confidentiality rule laid out in Section 45(1), allowing for certain situations where a party may publish, disclose, or communicate Confidential Information.

Key Points:

1. **Exceptions to Confidentiality:** Section 45(2) outlines specific situations where a party is permitted to publish, disclose, or communicate Confidential Information despite the general rule of confidentiality stated in Section 45(1).
2. **Legal Proceedings and Enforcement:** Subsection (a) allows a party to share Confidential Information if it is necessary to protect or pursue a legal right or interest, or to enforce or challenge the arbitration award. This exception covers situations where a party needs to use Confidential Information in legal proceedings.
3. **Legal Obligations:** Subsection (b) allows for disclosure if required by law, such as when a party is obliged to share information with government bodies, regulatory bodies, courts, or tribunals.
4. **Financial Reporting and Compliance:** Subsection (c) permits disclosure to fulfil financial reporting obligations or to comply with the rules of listing authorities or securities exchanges.
5. **Communication with Advisers:** Subsection (d) allows a party to communicate Confidential Information to its professional advisers or other advisers involved in the arbitration process.
6. **Financing Arrangements:** Subsection (e) permits disclosure to potential lenders or investors as part of financing arrangements.
7. **Tribunal's Discretion:** Subsection (f) gives the arbitral tribunal the authority to determine whether it is in the interests of justice to allow the publication, disclosure, or communication of information in cases not covered by the previous exceptions.

Implications:

1. **Balancing Interests:** Section 45(2) strikes a balance between confidentiality and the legitimate needs of parties to share information for legal proceedings, compliance, financial reporting, and other purposes.
2. **Flexibility and Necessity:** The exceptions provided in Section 45(2) recognise that there are circumstances where disclosure is necessary and justifiable due to legal obligations, legitimate interests, or the pursuit of justice.
3. **Protection of Parties' Rights:** The provision ensures that parties can effectively protect their rights and interests without violating the confidentiality of the arbitration process.
4. **Arbitral Tribunal's Role:** The discretion granted to the arbitral tribunal in subsection (f) allows for a case-by-case assessment of whether certain information should be permitted to be disclosed, considering the broader context of the arbitration.

In summary, Section 45(2) of the ADGM Arbitration Regulations 2015 provides specific exceptions to the general confidentiality rule in Section 45(1). These exceptions acknowledge the necessity for disclosure in various circumstances, such as legal proceedings, legal obligations, compliance, communication with advisers, financing arrangements, and when it is in the interests of justice. The provision ensures that while confidentiality is maintained, parties' rights and the pursuit of justice are also protected.

**(3) Subject to any contrary agreement by the parties, nothing in subsection (1) prevents a party from disclosing or communicating Confidential Information to a third party who has a substantial legal or pecuniary interest in the outcome of the arbitral proceedings.**

Section 45(3) of the ADGM Arbitration Regulations 2015 establishes an exception to the general rule of confidentiality outlined in Section 45(1), allowing a party to disclose or communicate Confidential Information to a third party who has a substantial legal or pecuniary interest in the outcome of the arbitral proceedings.

Key Points:

1. **Limited Exception:** Section 45(3) provides a narrow exception to the general confidentiality rule. It allows parties to share Confidential Information with third parties who have a significant legal or financial stake in the arbitration proceedings.
2. **Substantial Interest:** The third party must possess a "substantial legal or pecuniary interest" in the outcome of the arbitration. This indicates that the third party's interest must go beyond mere curiosity and pertain directly to the arbitration's potential impact on their legal rights or financial position.
3. **Balancing Interest:** This provision balances the need for confidentiality with the recognition that certain third parties with a direct stake in the proceedings may have a legitimate reason to access Confidential Information.

4. **Protection of Stakeholders:** The provision aims to ensure that individuals or entities directly affected by the arbitration are not unfairly hindered by strict confidentiality rules when their own interests are at stake.

Implications:

1. **Focused on Stakeholders:** Section 45(3) acknowledges that some parties who are materially affected by the arbitration should have the right to access Confidential Information relevant to their interests.
2. **Confidentiality Safeguarded:** While the provision allows disclosure to certain third parties, it maintains the overall principle of confidentiality by requiring a substantial legal or pecuniary interest in the arbitration's outcome.
3. **Mitigation of Unintended Consequences:** This provision can help mitigate situations where strict confidentiality might inadvertently disadvantage parties who are directly impacted by the arbitration.
4. **Complexity of Determination:** Determining whether a third party's interest is substantial may require careful consideration by the parties and the arbitral tribunal to avoid potential disputes.

In summary, Section 45(3) of the ADGM Arbitration Regulations 2015 introduces an exception to confidentiality, permitting parties to disclose or communicate Confidential Information to third parties with a significant legal or financial stake in the arbitration. This provision strikes a balance between maintaining confidentiality and safeguarding the rights of stakeholders who have a direct interest in the arbitration's outcome.

#### 46. Default of a party

Unless otherwise agreed by the parties, if:

**(a) the arbitral tribunal is satisfied that there has been inordinate and inexcusable delay on the part of the claimant or counterclaimant in pursuing his claim, and that the delay:**

**(i) gives rise or is likely to give rise to a substantial risk that it is not possible to have a fair resolution of the issues in that claim, or**

**(ii) has caused, or is likely to cause, serious prejudice to the respondent,**

**the arbitral tribunal may dismiss the claim. The arbitral tribunal may also terminate the proceedings if it considers it appropriate to do so;**

**(b) without showing sufficient cause a party:**

**(i) fails to attend or be represented at an oral hearing of which due notice was given, or**

**(ii) where matters are to be dealt with in writing, fails after due notice to**

**submit written evidence or make written submissions,**

**the arbitral tribunal may continue the proceedings in the absence of that party or, as the case may be, without any written evidence or submissions on his behalf, and may make an award on the basis of the evidence before it. If the arbitral tribunal terminates the proceedings under subparagraph (a) above, unless otherwise agreed by the parties, the arbitral tribunal may issue an award on costs in accordance with section 55 below.**

Section 46 of the ADGM Arbitration Regulations 2015 outlines the circumstances under which the arbitral tribunal can dismiss a claim or terminate proceedings due to inordinate and inexcusable delay, and it addresses consequences of a party's failure to attend hearings or submit evidence. This section focuses on the efficient and fair progression of the arbitration proceedings by addressing situations where a party's actions or inactions negatively impact the proceedings.

Key Points:

1. Dismissal for Inordinate and Inexcusable Delay (Subsection (a)):
  - a. If the arbitral tribunal determines that a claimant or counterclaimant has engaged in inordinate (excessive) and inexcusable (unjustified) delay in pursuing their claim, and this delay:
    - i. Poses a substantial risk of preventing a fair resolution of the issues in the claim, or
    - ii. Has caused or is likely to cause serious prejudice to the respondent,

The tribunal is empowered to dismiss the claim or terminate the proceedings as it deems appropriate.
  - b. This provision emphasises the importance of timely pursuit of claims to maintain fairness and efficiency in arbitration.
2. Proceedings in Absence of a Party (Subsection (b)):
  - a. If a party, without sufficient reason:
    - i. Fails to attend an oral hearing after receiving proper notice, or
    - ii. Fails to submit written evidence or submissions after receiving notice,

The arbitral tribunal has the authority to continue the proceedings in the party's absence or without the party's written evidence/submissions.
  - b. The tribunal can then render an award based on the evidence before it.
3. Termination and Costs (Subsections (a) and (b)):
  - a. If the arbitral tribunal decides to terminate the proceedings under subsection (a) (dismissal for delay), it may also issue an award on costs, unless the parties have agreed otherwise.

- b. This emphasises the potential consequences of delay on the claiming party, including potential liability for costs.

Implications:

1. **Timely Conduct of Proceedings:** Section 46 underscores the importance of conducting arbitration proceedings in a timely manner to ensure a fair resolution and to avoid unnecessary delays.
2. **Balancing Efficiency and Fairness:** The section seeks to balance the need for efficiency with the principle of fairness, allowing the arbitral tribunal to address delay issues that may compromise the integrity of the proceedings.
3. **Consequences of Non-Participation:** The provision addresses scenarios where a party fails to participate or contribute effectively to the proceedings, ensuring that the tribunal can continue and complete the process to reach a resolution.
4. **Cost Consequences:** The potential for cost consequences in cases of delay or non-participation incentivises parties to actively engage in the proceedings and adhere to the established timeline.

In summary, Section 46 of the ADGM Arbitration Regulations 2015 outlines the circumstances under which the arbitral tribunal can dismiss a claim or terminate proceedings due to inordinate and inexcusable delay by a party. It also addresses situations where a party fails to attend hearings or submit evidence, allowing the tribunal to continue the proceedings and render an award based on the available evidence. The section emphasises the importance of timely and active participation in the arbitration process to maintain fairness and efficiency.

#### **47. Expert appointed by the arbitral tribunal**

**(1) Unless otherwise agreed by the parties, the arbitral tribunal after consultation with the parties:**

**(a) may appoint one (1) or more experts to report to it on specific issues to be determined by the arbitral tribunal; and**

**(b) may require a party to give the expert(s) any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.**

Section 47(1) of the ADGM Arbitration Regulations 2015 addresses the authority of the arbitral tribunal to appoint experts and obtain expert reports to assist in resolving specific issues within the arbitration proceedings. This provision acknowledges the potential complexity of certain technical or specialised matters that may require specialised knowledge for effective resolution.

Key Points:

1. **Appointment of Experts (Subsection (a)):**
  - a. The arbitral tribunal is granted the authority to appoint one or more experts to provide reports on specific issues that are relevant to the case.

- b. These appointed experts serve as neutral and independent sources of specialised knowledge and insights that can assist the tribunal in understanding complex technical, scientific, or industry-specific matters.
  2. Information and Documents (Subsection (b)):
    - a. The tribunal may require a party to provide the appointed expert(s) with relevant information, documents, goods, or property that are pertinent to the specific issues in question.
    - b. This enables the expert(s) to gather the necessary evidence and data to prepare a comprehensive and informed report.
  3. Consultation with Parties:
    - a. Before appointing an expert or experts, the arbitral tribunal is required to consult with the parties.
    - b. This consultation ensures transparency and gives the parties an opportunity to provide input or express any concerns about the appointment of experts.

Implications:

1. **Technical Expertise:** Section 47(1) acknowledges that certain arbitration cases may involve technical, scientific, or industry-specific matters that are beyond the expertise of the tribunal and the parties. This provision allows the tribunal to access specialised knowledge to ensure a well-informed decision.
2. **Fairness and Impartiality:** The use of independent experts ensures impartiality and prevents potential biases that could arise if one party were to exclusively provide technical evidence.
3. **Effective Resolution:** This provision enhances the quality of the tribunal's decision-making process by allowing it to rely on expert opinions when dealing with complex issues.
4. **Consensus Building:** By consulting with the parties before appointing an expert, the tribunal encourages consensus and transparency in the decision-making process.

In summary, Section 47(1) of the ADGM Arbitration Regulations 2015 empowers the arbitral tribunal to appoint experts to provide reports on specific issues relevant to the arbitration proceedings. This provision acknowledges the need for specialised knowledge in certain cases and ensures that the tribunal has access to expert insights for effective and informed decision-making. The provision also emphasises transparency by requiring consultation with the parties before making expert appointments.

**(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert(s) shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him on the points at issue.**

Section 47(2) of the ADGM Arbitration Regulations 2015 addresses the interaction between the appointed expert(s) and the parties involved in the arbitration proceedings. This provision outlines the circumstances under which an expert may be required to participate in a hearing and answer questions from the parties.

**Key Points:**

1. Expert Participation in Hearings:
  - a. Upon the request of a party or if deemed necessary by the arbitral tribunal, the expert(s) appointed under Section 47(1) may be required to participate in a hearing.
  - b. This hearing provides an opportunity for the parties to directly engage with the expert and ask questions related to the points at issue in the case.
2. Party's Right to Question:
  - a. During the hearing, the parties have the right to ask questions to the expert.
  - b. This allows the parties to seek clarifications, further insights, or elaborations on the expert's report, findings, or opinions.
3. Request or Consideration by the Tribunal:
  - a. The expert's participation in the hearing may be initiated either by a specific request from one of the parties or by a determination made by the arbitral tribunal.
  - b. The tribunal may consider whether the presence of the expert at the hearing is necessary for the parties to have a better understanding of the expert's report or to address any relevant issues.

**Implications:**

1. Enhanced Interaction: Section 47(2) promotes direct interaction between the parties and the appointed expert(s) by allowing the parties to ask questions during the hearing. This can lead to a better understanding of the expert's findings and opinions.
2. Clarification of Expert Report: Parties may seek clarifications on technical or complex matters raised in the expert's report, helping to ensure that the expert's conclusions are clear and well-understood.
3. Transparency and Fairness: Allowing parties to question the expert promotes transparency and fairness in the arbitration process, as parties can directly engage with the expert to address their concerns or seek additional information.



4. Expert's Role: The expert's participation in the hearing can contribute to the tribunal's decision-making process by providing additional insights or clarifications on technical issues.

In summary, Section 47(2) of the ADGM Arbitration Regulations 2015 establishes the framework for the participation of appointed expert(s) in hearings. This provision allows for direct interaction between the expert and the parties, promoting transparency, fairness, and better understanding of technical matters in the arbitration proceedings. It ensures that parties have the opportunity to question the expert about issues relevant to the case.

**(3) The expenses and costs of the expert(s) appointed by the arbitral tribunal pursuant to this section shall be borne by the parties in accordance with any determination or award made by the arbitral tribunal in that respect.**

Section 47(3) of the ADGM Arbitration Regulations 2015 addresses the allocation of expenses and costs associated with the appointment of expert(s) by the arbitral tribunal. This provision outlines how the financial responsibilities related to the expert(s) will be determined and allocated among the parties involved in the arbitration proceedings.

Key Points:

1. Allocation of Expert Expenses and Costs:
  - a. The section states that the expenses and costs associated with the expert(s) appointed by the arbitral tribunal will be borne by the parties.
  - b. The allocation of these expenses and costs will be determined by the arbitral tribunal itself.
2. Arbitral Tribunal's Determination:
  - a. The arbitral tribunal holds the authority to make determinations regarding the allocation of expenses and costs related to the expert(s).
  - b. This determination can be included in an award issued by the tribunal or in a separate decision on costs.

Implications:

1. Cost Allocation: Section 47(3) ensures that the parties are responsible for covering the expenses and costs incurred due to the appointment of expert(s) as directed by the arbitral tribunal.
2. Tribunal's Discretion: The arbitral tribunal has discretion in determining how the costs should be allocated among the parties. This allows the tribunal to consider factors such as the relevance of the expert's role, the complexity of the matter, and the success of the parties in the arbitration.

3. **Fairness and Efficiency:** The provision helps maintain a fair and efficient arbitration process by ensuring that parties contribute to the costs associated with expert involvement.

In summary, Section 47(3) of the ADGM Arbitration Regulations 2015 establishes the principle that the expenses and costs related to the appointment of expert(s) by the arbitral tribunal will be allocated among the parties. The arbitral tribunal has the authority to determine the allocation of costs, taking into account various factors to ensure a fair and efficient arbitration process.

**(4) Any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.**

Section 47(4) of the ADGM Arbitration Regulations 2015 addresses the communication of expert reports and evidentiary documents in the context of arbitration proceedings. This provision emphasises transparency and fairness in the arbitration process by ensuring that all parties have access to the expert opinions and evidentiary documents that the arbitral tribunal considers in making its decision.

**Key Points:**

1. **Communication of Expert Reports and Evidentiary Documents:**
  - a. The section mandates that any expert report or evidentiary document that the arbitral tribunal intends to rely on in reaching its decision must be communicated to the parties involved in the arbitration proceedings.
  - b. This communication ensures that all parties have the opportunity to review and respond to the expert opinions and evidentiary documents before the tribunal reaches a decision.
2. **Transparency and Fairness:**
  - a. By requiring the communication of expert reports and evidentiary documents, the provision promotes transparency and fairness in the arbitration process.
  - b. Allowing parties to access and evaluate the information that influences the tribunal's decision enhances the overall integrity of the proceedings.

**Implications:**

1. **Access to Information:** Section 47(4) ensures that parties are well-informed about the expert opinions and evidentiary documents that will play a role in the arbitral tribunal's decision-making process.
2. **Effective Participation:** The provision enables parties to effectively participate in the arbitration by giving them an opportunity to respond to the expert reports and evidentiary documents before the tribunal finalises its decision.

3. **Balanced Decision-Making:** By requiring communication of expert reports, the arbitral tribunal's decision is more likely to be well-informed and balanced, as it takes into account input and responses from all parties.

In summary, Section 47(4) of the ADGM Arbitration Regulations 2015 underscores the importance of transparency and fairness in arbitration proceedings. It mandates that any expert report or evidentiary document that the arbitral tribunal plans to rely on must be communicated to the parties. This ensures that all parties have access to the information that informs the tribunal's decision and can provide their input before the decision is made.

**(5) For the purpose of this section, and subject to any contrary agreement by the parties, any report, document, information or evidence to be delivered or communicated to the arbitral tribunal, an expert, a party or parties may be delivered or communicated electronically.**

Section 47(5) of the ADGM Arbitration Regulations 2015 pertains to the delivery and communication of reports, documents, information, or evidence in the context of expert involvement in arbitration proceedings. The section recognises the role of electronic communication and modern technology in the arbitration process, particularly when sharing information with the arbitral tribunal, experts, and involved parties.

Key Points:

1. **Electronic Communication:**
  - a. Section 47(5) acknowledges that reports, documents, information, or evidence can be delivered or communicated electronically.
  - b. This provision allows for the use of electronic means, such as email, online platforms, electronic document management systems, and secure communication channels, to exchange information in arbitration proceedings.
2. **Flexibility and Efficiency:**
  - a. The use of electronic communication can enhance the efficiency of the arbitration process by facilitating quicker and more convenient exchange of information between the relevant parties and the arbitral tribunal.
  - b. Parties, experts, and the tribunal can access and share documents without the need for physical copies and traditional mailing methods.

Implications:

1. **Modernisation of Arbitration:**
  - a. Section 47(5) reflects the growing trend of modernising arbitration procedures by embracing electronic methods of communication and document exchange.
  - b. Electronic communication can help streamline processes, reduce administrative burdens, and expedite the flow of information.

2. Accessibility:
  - a. Electronic communication enhances accessibility to documents and information, as parties and experts can easily access materials from various locations.
  - b. This accessibility supports efficient collaboration and discussion among involved parties.
3. Environmental Considerations: Embracing electronic communication aligns with environmental sustainability efforts by reducing the consumption of paper and other resources associated with traditional document exchange methods.

In summary, Section 47(5) of the ADGM Arbitration Regulations 2015 acknowledges the importance of electronic communication in modern arbitration proceedings. It allows for reports, documents, information, or evidence to be delivered or communicated electronically to the arbitral tribunal, experts, and involved parties. This provision aligns with the trend toward greater efficiency, accessibility, and environmental consciousness in arbitration processes.

#### **48. Court assistance in taking evidence**

**(1) The arbitral tribunal or a party with the approval of the arbitral tribunal may request from the Court, or any competent court, assistance in taking evidence, which shall include assistance with:**

- (a) the examination of witnesses, either orally or in writing;**
- (b) the production of documents;**
- (c) the inspection, photographing, recording, preservation, custody or detention of any property; and**
- (d) the taking of samples of any property and the carrying out of any experiment on or with any property.**

Section 48(1) of the ADGM Arbitration Regulations 2015 deals with the authority of the arbitral tribunal and parties to seek assistance from a court, including the Court of Abu Dhabi Global Market (ADGM) or any competent court, in the process of taking evidence in arbitration proceedings. The section outlines the specific areas in which such assistance can be requested and underscores the collaborative nature of evidence collection in arbitration.

#### **Key Points:**

1. Assistance in Taking Evidence:
  - a. The section allows the arbitral tribunal or a party (with the approval of the arbitral tribunal) to seek assistance from a court in the process of taking evidence.
  - b. This assistance can involve various aspects of evidence collection, including examination of witnesses, production of documents, inspection of property, and even carrying out experiments or taking samples.

2. Collaborative Approach:
  - a. Section 48(1) reflects the collaborative and cooperative approach that arbitration often entails.
  - b. It recognises that parties and the arbitral tribunal may need the support of a court to facilitate the collection of evidence effectively.
3. Flexibility: The provision is flexible in allowing the arbitral tribunal or a party to decide when and how to request assistance from a court, based on the needs of the arbitration proceedings.

Implications:

1. Ensuring Evidence Collection:
  - a. Section 48(1) helps ensure that parties and the arbitral tribunal have the means to effectively gather evidence necessary for resolving disputes in arbitration.
  - b. It provides a mechanism to overcome potential challenges in obtaining evidence, particularly when parties are located in different jurisdictions.
2. Enabling Cross-Border Cooperation: In international arbitration, parties and tribunals may face difficulties in obtaining evidence located in other jurisdictions. This provision enables cross-border cooperation and supports the enforceability of orders related to evidence collection.
3. Enhancing Efficiency:
  - a. Seeking assistance from a court can enhance the efficiency of the arbitration process by providing a formal mechanism to facilitate evidence gathering.
  - b. This can be particularly useful in complex cases involving multiple parties, extensive evidence, or technical matters.

In summary, Section 48(1) of the ADGM Arbitration Regulations 2015 empowers the arbitral tribunal and parties to seek assistance from a court for evidence collection purposes in arbitration proceedings. It covers various aspects of evidence, from witness examination to document production, inspection of property, and conducting experiments. This provision underscores the cooperative nature of arbitration and ensures that necessary evidence can be obtained efficiently, especially when it involves cross-border elements.

**(2) The Court, or any competent court, may execute the request under subsection (1) within its competence and according to its rules on taking evidence.**

Section 48(2) of the ADGM Arbitration Regulations 2015 further elaborates on the process by which a court, including the Court of Abu Dhabi Global Market (ADGM) or any other competent court, may execute a request for assistance in taking evidence as outlined in Section 48(1). This section clarifies the authority and responsibility of the court in executing such requests.

Key Points:

1. Execution of Request for Assistance:
  - a. Section 48(2) specifies that the Court or a competent court has the authority to execute the request for assistance in taking evidence made under Section 48(1).
  - b. This includes carrying out the various aspects of evidence collection mentioned in Section 48(1)(a) to (d), such as examining witnesses, producing documents, inspecting property, and conducting experiments.
2. Within Competence and Rules:
  - a. The execution of the request is subject to the competence of the court and its rules on taking evidence.
  - b. This means that the court will operate within its own jurisdictional and procedural boundaries while carrying out the requested assistance.

Implications:

1. Legal Framework for Execution:
  - a. Section 48(2) ensures that the execution of a request for assistance in taking evidence is conducted within the legal framework of the relevant court.
  - b. This maintains the consistency of the arbitration proceedings with the jurisdictional rules of the court.
2. Uniformity and Predictability: By referring to the court's rules on taking evidence, this section contributes to the uniformity and predictability of the process, as parties can expect the execution of the request to adhere to established procedural standards.
3. Effective Evidence Collection: Ensuring that the court can execute the request for evidence collection assists in overcoming potential hurdles related to cross-border evidence gathering, enhancing the efficiency of the arbitration process.

In summary, Section 48(2) of the ADGM Arbitration Regulations 2015 delineates the role and authority of the Court or a competent court in executing a request for assistance in taking evidence as presented in Section 48(1). It emphasises that the execution will occur within the jurisdictional and procedural framework of the relevant court, ensuring that the assistance is carried out in accordance with established rules and standards. This section enhances the effectiveness of evidence collection and supports the overall goals of the arbitration process.

**(3) Sections 31(2), (3) and (6) apply to this section *mutatis mutandis*.**

Section 48(3) of the ADGM Arbitration Regulations 2015 incorporates certain provisions from Section 31 of the same regulations into the context of Section 48(1) and (2). This reference has the effect of

applying these provisions to the process of requesting assistance in taking evidence under Section 48(1) and the execution of such requests under Section 48(2).

Key Points:

1. Application of Provisions:
  - a. This section explicitly states that certain provisions from Section 31 of the ADGM Arbitration Regulations 2015 will apply to Section 48(1) and (2) in a manner specified by “mutatis mutandis”.
  - b. “Mutatis mutandis” means making necessary alterations while maintaining the general sense and structure.
2. Sections 31(2), (3), and (6):
  - a. The specific provisions referred to in Section 48(3) are sections 31(2), (3), and (6) of the ADGM Arbitration Regulations 2015.
  - b. Section 31(2) relates to the court’s power to order interim measures, Section 31(3) deals with urgent cases, and Section 31(6) concerns the court’s initiative in certain circumstances.

Implications:

1. Consistency in Application: By applying specific sections from Section 31 to the context of Section 48, this provision ensures consistency in the application of relevant provisions throughout the regulations.
2. Uniformity and Predictability: The “mutatis mutandis” approach allows for the consistent use of established provisions in new contexts, which contributes to uniformity and predictability in the arbitration process.
3. Clarification and Reference: This provision serves as a cross-reference, directing readers to the relevant sections that apply to the process of requesting assistance in taking evidence under Section 48(1) and the subsequent execution of such requests under Section 48(2).

In summary, Section 48(3) of the ADGM Arbitration Regulations 2015 ensures the application of certain provisions from Section 31 to the context of Section 48(1) and (2) by utilising the “mutatis mutandis” approach. This provision enhances consistency, predictability, and the use of established provisions in the process of requesting and executing assistance in taking evidence, while maintaining their relevance and meaning.

## Chapter 7 – Making of award and termination of proceedings

### 49. Rules applicable to substance of dispute

**(1) The arbitral tribunal shall decide the dispute in accordance with the rules of law chosen by the parties. Any designation of the law or legal system of a given State or jurisdiction shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State or jurisdiction and not to its conflict of laws rules.**

Section 49(1) of the ADGM Arbitration Regulations 2015 outlines the approach that the arbitral tribunal should take when deciding the dispute and determining the applicable law. It emphasises the importance of the parties' choice of law and provides clarity on how to interpret the designation of a specific law or legal system.

#### Key Points:

1. Choice of Law:
  - a. The section underscores that the arbitral tribunal's decision should be in accordance with the rules of law chosen by the parties.
  - b. This principle reflects the parties' autonomy and freedom to determine the governing law for their dispute.
2. Interpretation of Designation:
3. The section addresses the situation where the parties have designated the law or legal system of a particular State or jurisdiction to govern their dispute.
4. It clarifies that such a designation should be understood as referring directly to the substantive law of that State or jurisdiction, rather than its conflict of laws rules.
5. This ensures that the arbitral tribunal focuses on the actual legal rules and principles of the chosen jurisdiction, rather than engaging in an analysis of its conflict of laws principles.

#### Implications:

1. Party Autonomy and Choice of Law:
  - a. The section reinforces the principle of party autonomy in arbitration by emphasising that the arbitral tribunal must respect the parties' choice of law.
  - b. Parties have the freedom to select the governing law based on their preferences and strategic considerations.
2. Simplification of Choice of Law Determination: By clarifying that the chosen law refers directly to substantive law, the section simplifies the determination of the applicable law. It eliminates the need for the arbitral tribunal to engage in a separate analysis of conflict of laws rules.



3. Predictability and Consistency: This provision promotes predictability and consistency in arbitration proceedings by ensuring that the arbitral tribunal follows the parties' designated law when making its decision.

In summary, Section 49(1) of the ADGM Arbitration Regulations 2015 emphasises the importance of party autonomy in selecting the applicable law and clarifies the interpretation of designations of law or legal systems. It ensures that the arbitral tribunal's decision is based on the chosen substantive law of the designated jurisdiction, contributing to predictability, party autonomy, and a straightforward choice of law determination process in arbitration proceedings.

**(2) In the absence of any designation by the parties, the arbitral tribunal shall decide the dispute in accordance with the rules of law it considers appropriate.**

Section 49(2) of the ADGM Arbitration Regulations 2015 deals with the scenario where the parties have not explicitly designated a choice of law for their dispute. This provision outlines how the arbitral tribunal should approach the determination of the applicable law in the absence of a specific choice by the parties.

Key Points:

1. Absence of Designation: When the parties have not chosen a specific law to govern their dispute, the section addresses this gap in the parties' agreement.
2. Tribunal's Discretion:
  - a. In the absence of a designated choice of law, the arbitral tribunal is given the authority to decide the dispute based on the rules of law it considers appropriate.
  - b. This grants the arbitral tribunal discretion to determine the governing law based on various factors, including the nature of the dispute, the parties' intentions, the subject matter, and the principles of fairness and justice.
3. Balancing Interests: This provision seeks to strike a balance between respecting the parties' autonomy to choose the applicable law and providing a mechanism for resolving disputes in cases where there is no explicit choice made.

Implications:

1. Tribunal's Authority:
  - a. Section 49(2) empowers the arbitral tribunal to make an independent decision on the applicable law in cases of non-designation by the parties.
  - b. The tribunal's discretion is crucial in situations where the parties' intentions are not clearly expressed.
2. Flexibility and Adaptability:

- a. The provision reflects the flexibility and adaptability of arbitration, allowing the tribunal to select a governing law that aligns with the merits of the case.
  - b. This flexibility can be particularly valuable in cross-border disputes where the parties may come from different legal systems.
3. **Safeguarding Fairness:** The section aims to ensure that the arbitral tribunal's decision on the applicable law is fair and just, even in the absence of an explicit choice by the parties.

In summary, Section 49(2) of the ADGM Arbitration Regulations 2015 addresses situations where the parties have not designated a governing law. It grants the arbitral tribunal the authority to determine the applicable law based on its discretion and the specific circumstances of the case. This provision enhances the flexibility and adaptability of arbitration proceedings while safeguarding the principle of fairness in resolving disputes without a designated choice of law.

**(3) In either case, the arbitral tribunal shall take trade usages into account.**

Section 49(3) of the ADGM Arbitration Regulations 2015 elaborates on how the arbitral tribunal should approach the consideration of trade usages when determining the applicable law for the dispute. This provision emphasises the importance of trade practices and customs in influencing the decision-making process of the arbitral tribunal.

**Key Points:**

1. **Relevance of Trade Usages:**
  - a. Trade usages refer to customary practices, commercial habits, and established norms within a particular industry or field of trade.
  - b. Section 49(3) underscores that the arbitral tribunal should take these trade usages into account when determining the applicable law for the dispute.
2. **Impact on Decision-Making:** This provision highlights that trade usages play a role in shaping the arbitral tribunal's understanding of the relevant legal principles and how they are commonly applied within the specific industry context.
3. **Harmonising Legal Principles and Commercial Practices:**
  - a. By considering trade usages, the arbitral tribunal aims to harmonise legal principles with the practical realities of the commercial world.
  - b. This alignment can contribute to more equitable and informed decision-making by the tribunal.

**Implications:**

1. **Balancing Legal Norms and Business Realities:**

- a. Section 49(3) underscores the significance of bridging the gap between legal principles and the actual practices followed in the business world.
  - b. It recognises that trade usages can provide valuable insights into the intentions and expectations of the parties involved in the dispute.
2. Enhancing Predictability: Taking trade usages into account can enhance the predictability of the arbitral tribunal's decisions, as they reflect commonly accepted norms within a particular industry.
  3. Cultural and Industry Variation:
    - a. The provision acknowledges that trade usages can vary based on cultural, geographical, and industry-specific factors.
    - b. Therefore, the tribunal's consideration of trade usages may be tailored to the specific circumstances of the case.

In summary, Section 49(3) of the ADGM Arbitration Regulations 2015 highlights the importance of incorporating trade usages into the determination of the applicable law for the dispute. By doing so, the provision recognises that the integration of legal principles and commercial practices can lead to more informed and equitable decisions by the arbitral tribunal. This approach promotes a harmonised understanding of the legal framework within the context of industry-specific norms and customs.

## 50. Decision making by panel of arbitrators

**In arbitral proceedings with more than one (1) arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. If there is no majority, the award shall be made by the president of the arbitral tribunal alone. However, questions of procedure may be decided by a presiding arbitrator, if so authorised by the parties or all members of the arbitral tribunal.**

Section 50 of the ADGM Arbitration Regulations 2015 addresses the decision-making process within arbitral tribunals that consist of more than one arbitrator. It outlines the rules for reaching decisions and the roles of different members of the tribunal in case of disagreements. The section aims to ensure effective decision-making while accommodating variations in the tribunal's composition and the nature of decisions to be made.

### Key Points:

1. **Majority Decision-Making:** In arbitral proceedings with multiple arbitrators, decisions are typically made by a majority of all the tribunal members. This means that more than half of the arbitrators must agree on a particular decision for it to be adopted.
2. **President's Role in Case of No Majority:** If there is no majority agreement among the tribunal members, the section stipulates that the president of the arbitral tribunal will make the final decision alone. The president is typically the presiding arbitrator or the arbitrator chosen as the leader of the tribunal.

3. **Decision on Questions of Procedure:** While substantive matters usually require a majority decision, the section allows for a different approach when it comes to questions of procedure. A presiding arbitrator can decide such procedural matters if authorised to do so by either the parties or all members of the tribunal.
4. **Flexibility through Party Agreement:** The section permits flexibility through party agreement. Parties can agree to deviate from the default decision-making mechanisms described in this section. This provision respects party autonomy and allows the parties to tailor the decision-making process to their specific needs and preferences.

**Implications:**

1. **Efficient Decision-Making:** Section 50 aims to ensure that the arbitral tribunal can reach decisions effectively, even in cases where there might be disagreements among its members. The majority requirement and the role of the president ensure that decisions are made promptly.
2. **Balance of Power:** The provision recognises the importance of a balanced decision-making process. The default requirement for a majority decision encourages discussion and consensus among tribunal members.
3. **Procedural Autonomy:** The flexibility to allow a presiding arbitrator to decide procedural questions if authorised by the parties or all tribunal members respects the parties' autonomy to structure the arbitration process as they see fit.
4. **Preserving Fairness and Integrity:** The provision aims to strike a balance between efficient decision-making and maintaining the fairness and integrity of the arbitration process by ensuring that significant substantive decisions are made by a majority or the president.

In summary, Section 50 of the ADGM Arbitration Regulations 2015 lays out the decision-making process within arbitral tribunals involving multiple arbitrators. It emphasises majority decision-making, provides a mechanism for cases where no majority exists, and allows flexibility in procedural decision-making. This provision balances the need for efficient decision-making with maintaining fairness and accommodating party autonomy.

## **51. Remedies**

### **(1) The parties are free to agree on the powers exercisable by the arbitral tribunal as regards to remedies.**

Section 51(1) of the ADGM Arbitration Regulations 2015 addresses the authority and powers of the arbitral tribunal concerning remedies in arbitration. This provision underscores the principle of party autonomy, allowing the parties to determine the scope and extent of the arbitral tribunal's authority in granting remedies to resolve disputes.

**Key Points:**

1. **Party Autonomy:** The section underscores the fundamental principle of party autonomy in arbitration. It allows the parties to customise and tailor the authority and powers of the arbitral tribunal when it comes to granting remedies. This recognition of party autonomy empowers the parties to define the tribunal's role in shaping the outcome of their dispute.
2. **Flexibility in Remedies:** By allowing the parties to agree on the powers exercisable by the arbitral tribunal regarding remedies, the section enables flexibility in crafting appropriate remedies that are tailored to the specific circumstances of the dispute. This can encompass various types of relief, such as damages, injunctions, specific performance, and more.
3. **Respecting Party Agreements:** The section respects and enforces any agreements between the parties regarding the arbitral tribunal's authority over remedies. If the parties have already agreed on the extent of the tribunal's powers in this regard, the tribunal is bound by those agreements.

Implications:

1. **Customised Dispute Resolution:** Section 51(1) allows parties to design their arbitration proceedings according to their specific needs, reflecting their unique preferences and intentions in relation to remedies. This customisation contributes to a more efficient and effective resolution of disputes.
2. **Preserving Party Autonomy:** The provision reinforces the principle that arbitration is a consensual process, highlighting the parties' ability to shape the arbitration proceedings according to their contractual agreement. This contributes to maintaining the integrity of the arbitration process and respect for party autonomy.
3. **Enhancing Efficiency and Effectiveness:** Empowering the arbitral tribunal with tailored powers as agreed upon by the parties can lead to more efficient and effective proceedings. The tribunal can apply remedies that align with the parties' intentions, reducing the need for subsequent challenges or appeals.

In summary, Section 51(1) of the ADGM Arbitration Regulations 2015 emphasises the importance of party autonomy in arbitration by allowing parties to determine the scope of the arbitral tribunal's powers regarding remedies. This provision enables parties to craft remedies that best suit their dispute and contractual relationship, ultimately contributing to a more efficient and tailored dispute resolution process.

**(2) Subject to any contrary agreement by the parties, the tribunal shall have the power to grant any remedy permitted under the substantive law governing the claim for which the remedy is sought.**

Section 51(2) of the ADGM Arbitration Regulations 2015 addresses the scope of remedies available to the arbitral tribunal in resolving disputes. This provision outlines the tribunal's authority to grant remedies and underscores the connection between the remedies and the underlying substantive law governing the claim.

Key Points:

1. **Applicability of Substantive Law:** Section 51(2) stipulates that the arbitral tribunal's power to grant remedies is linked to the substantive law governing the claim for which the remedy is sought. This means that the tribunal's authority to provide remedies is contingent upon the permissibility of those remedies under the applicable substantive law.
2. **Preserving Legal Constraints:** While the parties have autonomy to shape the arbitration proceedings, this provision ensures that the tribunal's remedies remain within the boundaries of the law applicable to the claim. The tribunal's power to grant remedies is not unlimited but is constrained by the parameters set by the governing substantive law.
3. **Party Autonomy and Consensus:** The provision acknowledges the possibility of contrary agreements by the parties regarding the scope of the tribunal's power to grant remedies. This reflects the importance of party autonomy in determining the extent of remedies the tribunal can award. Any limitations on the tribunal's authority must be explicitly agreed upon by the parties.

Implications:

1. **Harmonisation with Substantive Law:** Section 51(2) ensures that the remedies granted by the arbitral tribunal are aligned with the applicable substantive law, promoting consistency between the tribunal's decisions and the legal framework governing the dispute.
2. **Balancing Autonomy and Legal Constraints:** The provision strikes a balance between party autonomy and legal constraints. While the parties have significant leeway in shaping the arbitration process, their choices must remain within the bounds of the relevant legal framework.
3. **Clarity in Decision-Making:** By tethering the tribunal's powers to the applicable substantive law, Section 51(2) provides clarity in the decision-making process. The tribunal's authority to grant remedies is guided by established legal principles and precedents, enhancing the predictability and legitimacy of its decisions.

In summary, Section 51(2) of the ADGM Arbitration Regulations 2015 clarifies the scope of the arbitral tribunal's power to grant remedies. It emphasises that the tribunal's authority is contingent upon the permissibility of remedies under the governing substantive law, ensuring a harmonious relationship between the remedies awarded and the legal framework governing the claim.

**(3) Unless otherwise agreed by the parties, and subject to any contrary provision of any applicable law referred to in subsection (2), the tribunal's powers to award remedies shall include (but shall not be limited to) the following:**

- (a) The tribunal may make a declaration as to any matter to be determined in the proceedings;**
- (b) The tribunal may order the payment of a sum of money, in any currency; and**
- (c) The tribunal has the same powers as the court:**
  - (i) To order a party to do or refrain from doing anything;**
  - (ii) To order specific performance of a contract (other than a contract relating to land); and**
  - (iii) To order the rectification, setting aside or cancellation of a deed or other document.**

Section 51(3) of the ADGM Arbitration Regulations 2015 addresses the powers of the arbitral tribunal to award remedies in the absence of an agreement by the parties. This provision outlines the scope of remedies that the tribunal may award, including various forms of relief available to the tribunal under its authority.

Key Points:

1. **Non-Limiting List of Remedies:** Section 51(3) specifies that the tribunal's powers to award remedies are not limited to the examples listed in the provision. The remedies mentioned (declaration, payment of money, specific performance, etc.) serve as illustrative examples rather than an exhaustive list, allowing the tribunal flexibility to tailor its remedies to the circumstances of each case.
2. **Declaration of Matters:** Subsection (a) of Section 51(3) grants the arbitral tribunal the power to make declarations on matters to be determined in the proceedings. This allows the tribunal to clarify legal rights, status, or obligations of the parties without necessarily requiring the tribunal to grant monetary or injunctive relief.
3. **Monetary Awards and Injunctive Relief:**
  - a. Subsection (b) of Section 51(3) empowers the tribunal to order the payment of a sum of money in any currency. This includes the authority to award damages, compensatory payments, and monetary awards as appropriate to the case.
  - b. Subsection (c) outlines that the tribunal has powers akin to a court, which include ordering parties to take certain actions or refrain from certain actions. Additionally, the tribunal can order specific performance of a contract (except for contracts related to land) or order the rectification, setting aside, or cancellation of a deed or document.
4. **Subject to Applicable Law and Agreements:** Section 51(3) specifies that the tribunal's powers are subject to any contrary provision of applicable law referred to in subsection

(2). This means that if the governing substantive law or any applicable law limits or expands the tribunal’s powers, those limitations or expansions will apply.

Implications:

1. **Remedy Flexibility:** By providing a non-exhaustive list of available remedies, Section 51(3) allows the arbitral tribunal to tailor its awards to the specifics of each case. This flexibility is crucial for ensuring that remedies are proportionate to the circumstances.
2. **Alignment with Legal Frameworks:** This provision ensures that the tribunal’s powers are in line with the applicable legal framework, as it takes into account both the governing substantive law and any specific agreements between the parties.
3. **Balance Between Party Autonomy and Tribunal Authority:** While the provision outlines the tribunal’s powers, it also respects party autonomy and agreements between the parties. The tribunal’s powers can be shaped by the parties’ consent and the legal framework.

In summary, Section 51(3) of the ADGM Arbitration Regulations 2015 delineates the scope of the arbitral tribunal’s powers to award remedies. It provides examples of the types of remedies the tribunal can award, highlighting the tribunal’s flexibility to tailor its awards while ensuring alignment with applicable laws and agreements.

## 52. Interest

### (1) The parties are free to agree on the powers of the tribunal as regards to the award of interest.

Section 52(1) of the ADGM Arbitration Regulations 2015 pertains to the powers of the arbitral tribunal in relation to the award of interest. This provision recognises the principle of party autonomy, allowing the parties to determine the tribunal’s authority regarding the award of interest in arbitral proceedings.

Key Points:

1. **Party Autonomy:** Section 52(1) underscores the principle of party autonomy in arbitration. It acknowledges that parties have the freedom to reach agreements on various aspects of their arbitration proceedings, including matters related to the award of interest.
2. **Flexibility in Interest Awards:** The provision offers flexibility to the parties in determining how the tribunal should approach the award of interest. Parties can tailor their agreement to suit their specific circumstances, considering factors such as the type of dispute, the applicable law, and the nature of the claim.
3. **Customised Interest Provisions:** Parties can use their autonomy to craft specific provisions regarding interest awards. This might involve agreeing on the rate of interest, the types of claims to which interest applies, and the calculation methodology.



4. **Limits and Boundaries:** While parties have the freedom to agree on the powers of the tribunal regarding interest awards, these agreements are still subject to any constraints imposed by applicable law or public policy. Parties cannot agree to terms that violate fundamental legal principles or ethical standards.

Implications:

1. **Tailored Dispute Resolution:** Section 52(1) supports the flexibility and tailored nature of arbitration. By allowing parties to agree on the tribunal's powers concerning interest awards, the provision recognises that different disputes may warrant different approaches to interest calculations.
2. **Efficiency and Clarity:** Parties' ability to agree on interest-related matters in advance can lead to more efficient proceedings. It helps to avoid disputes over interest issues during the arbitration, streamlining the process and potentially reducing costs.
3. **Consideration of Applicable Law:** While parties have autonomy, it's important to ensure that any agreements or awards regarding interest comply with the substantive law governing the claim. This provision encourages parties to harmonise their agreements with the applicable legal framework.

In summary, Section 52(1) of the ADGM Arbitration Regulations 2015 emphasises party autonomy in arbitral proceedings by allowing parties to agree on the tribunal's powers regarding the award of interest. This provision reflects the flexible and customised nature of arbitration, while still operating within the bounds of applicable law and ethical considerations.

**(2) Subject to any contrary agreement by the parties, the tribunal's powers as regards to the awarding of interest shall be in accordance with the substantive law governing the claim for which an award of interest is sought.**

Section 52(2) of the ADGM Arbitration Regulations 2015 addresses the powers of the arbitral tribunal concerning the awarding of interest in arbitral proceedings. This provision outlines the default framework that governs interest awards when the parties have not reached a contrary agreement. It emphasises the connection between the tribunal's authority and the applicable substantive law governing the claim for which interest is sought.

Key Points:

1. **Default Framework for Interest Awards:** Section 52(2) serves as a default rule when the parties have not specifically agreed on the tribunal's powers regarding interest awards. In the absence of such an agreement, the provision determines how the tribunal should approach the issue of interest.
2. **Harmonising with Substantive Law:** The provision underscores the principle that arbitral tribunals should align their decisions, including interest awards, with the substantive law governing the underlying claim. This helps ensure consistency and conformity with the legal principles that apply to the dispute.

3. Guiding the Tribunal’s Discretion: While parties have autonomy to shape certain aspects of arbitration, Section 52(2) clarifies that, absent a contrary agreement, the tribunal’s authority to award interest should follow the principles and rules set out by the relevant substantive law.

Implications:

1. Respect for Applicable Law: Section 52(2) reinforces the importance of respecting the substantive law when making decisions in arbitration. The provision promotes predictability by ensuring that the tribunal’s award of interest aligns with the legal principles of the jurisdiction governing the claim.
2. Clarity and Consistency: By mandating that the tribunal’s powers regarding interest awards should be in line with the applicable substantive law, the provision helps maintain clarity and consistency in arbitration proceedings.
3. Flexibility Within Legal Bounds: While the tribunal’s powers regarding interest awards are connected to substantive law, the parties can still shape these matters through explicit agreements. This allows for flexibility while operating within the boundaries set by applicable law.

In summary, Section 52(2) of the ADGM Arbitration Regulations 2015 establishes the default framework for interest awards when the parties have not agreed otherwise. It emphasises the need for the tribunal’s decisions to align with the substantive law governing the claim for which an award of interest is sought. This provision balances party autonomy with the requirement to adhere to the legal principles that apply to the dispute.

**(3) Unless otherwise agreed by the parties, and subject to any contrary provision of any applicable law referred to in subsection (2), the tribunal’s powers to award interest shall include (but shall not be limited to) the following powers:**

**(a) The tribunal may award simple or compound interest from such dates, at such rates and with such rests as it considers meets the justice of the case –**

**(i) on the whole or part of any amount awarded by the tribunal, in respect of any period up to the date of the award; or**

**(ii) on the whole or part of any amount claimed in the arbitration and outstanding at the commencement of the arbitral proceedings but paid before the award was made, in respect of any period up to the date of payment.**

**(b) The tribunal may award simple or compound interest from the date of the award (or any later date) until payment, at such rates and with such rests as it considers meets the justice of the case, on the outstanding amount of any award (including any award of interest under subsection (3) and any award as to costs).**

Section 52(3) of the ADGM Arbitration Regulations 2015 addresses the arbitral tribunal’s powers to award interest in arbitral proceedings. This provision outlines the range of powers that the tribunal possesses regarding the award of interest, particularly when parties have not reached an alternative

agreement. It enumerates the various forms, rates, and periods for which interest may be awarded by the tribunal.

Key Points:

1. **Scope of Tribunal's Powers:** Section 52(3) emphasises the broad discretionary powers of the arbitral tribunal when it comes to awarding interest. It provides a detailed framework that guides the tribunal's decision-making process in awarding interest.
2. **Forms of Interest:** The provision states that the tribunal may award both simple and compound interest. This allows the tribunal flexibility to choose the form of interest that aligns with the circumstances of the case and the interests of justice.
3. **Different Periods for Interest Awards:** The provision outlines two distinct periods during which the tribunal can award interest:
  - a. Interest may be awarded on the whole or part of any amount awarded by the tribunal, or on any amount claimed in the arbitration but paid before the award was made. This interest can be awarded for the period up to the date of the award.
  - b. Interest may be awarded from the date of the award (or any later date determined by the tribunal) until payment. This pertains to the outstanding amount of any award, including any award of interest and costs.
4. **Justice of the Case Standard:** The provision uses the phrase "meets the justice of the case" multiple times, highlighting the tribunal's discretion in determining the appropriate interest rates, dates, and rests. This underscores the tribunal's obligation to ensure that its decisions align with the specific circumstances of the dispute.

Implications:

1. **Flexibility and Discretion:** Section 52(3) gives the tribunal considerable discretion in awarding interest. This flexibility allows the tribunal to tailor its decisions to the unique aspects of each case.
2. **Balancing Interests:** The phrase "meets the justice of the case" signifies the tribunal's role in balancing the interests of both parties when determining the appropriate form and terms of interest.
3. **Clarity for the Tribunal:** By providing a clear framework for interest awards, the provision offers guidance to the arbitral tribunal and promotes consistency in its decision-making.

In summary, Section 52(3) of the ADGM Arbitration Regulations 2015 sets out a comprehensive framework for the arbitral tribunal's powers to award interest. This provision grants the tribunal discretion in determining the form, rates, and periods for interest awards, based on the specific circumstances of the dispute. The standard of meeting the "justice of the case" underscores the tribunal's role in ensuring fairness and balance in its decisions.

**(4) References in this section to an amount awarded by the tribunal include an amount payable in consequence of a declaratory award by the tribunal.**

Section 52(4) of the ADGM Arbitration Regulations 2015 provides clarification regarding the scope of the term “amount awarded by the tribunal” in the context of interest awards. This provision specifies that the term encompasses not only amounts explicitly granted as awards but also amounts payable as a result of a declaratory award issued by the tribunal.

**Key Points:**

1. **Scope of Definition:** The provision extends the concept of an “amount awarded by the tribunal” to include any amount that becomes payable due to a declaratory award made by the arbitral tribunal. In other words, it recognises that the effects of a declaratory award can result in financial obligations between the parties.
2. **Declaratory Awards:** Declaratory awards are rulings issued by the arbitral tribunal that declare the existence, rights, or legal relations of the parties without providing specific relief or remedies. While these awards do not award a specific monetary sum, they can have financial consequences in terms of subsequent actions or obligations.

**Implications:**

1. **Holistic Interpretation:** Section 52(4) ensures that the term “amount awarded by the tribunal” is interpreted broadly and includes not only quantified monetary awards but also any financial consequences arising from the tribunal’s declarations.
2. **Consistency and Clarity:** By clarifying that declaratory awards fall within the scope of this provision, Section 52(4) promotes consistency in interpreting and applying interest awards across different types of tribunal decisions.
3. **Avoiding Gaps in Compensation:** This provision prevents potential gaps in compensation by ensuring that parties are not unfairly deprived of interest on amounts that may be payable as a result of declaratory awards.

In summary, Section 52(4) of the ADGM Arbitration Regulations 2015 extends the definition of an “amount awarded by the tribunal” to encompass amounts payable due to declaratory awards. This clarification ensures that interest awards can apply not only to explicitly quantified awards but also to financial consequences arising from the tribunal’s declaratory rulings. This approach promotes consistency and fairness in awarding interest in arbitration proceedings.

**53. Settlement**

**(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and agreed to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.**

Section 53(1) of the ADGM Arbitration Regulations 2015 addresses the scenario in which parties to an ongoing arbitral proceeding reach a settlement to resolve their dispute. This section outlines the actions that the arbitral tribunal must take when a settlement is reached.

Key Points:

1. **Settlement Termination:** If the parties in arbitration reach a settlement agreement during the course of the proceedings, the arbitral tribunal is obligated to terminate the proceedings. This means that the arbitration process comes to an end without a final arbitral award on the merits of the dispute.
2. **Recording Settlement:** If both parties request and if agreed upon by the arbitral tribunal, the terms of the settlement can be documented in the form of an arbitral award on agreed terms. This award serves as a formal confirmation of the settlement and the agreed-upon terms between the parties.

Implications:

1. **Efficiency and Closure:** Section 53(1) aims to promote efficiency in dispute resolution by acknowledging the parties' right to settle their dispute through mutual agreement. By terminating the proceedings, the arbitration process avoids unnecessary continuation and associated costs.
2. **Formal Recognition:** The provision recognises the significance of formalising settlement agreements within the arbitral context. Recording the settlement in the form of an arbitral award provides a clear and legally binding record of the parties' agreement.
3. **Party Autonomy:** The section respects the autonomy of the parties by allowing them to determine whether they wish to document their settlement as an arbitral award. This empowers parties to choose the best approach for formalising their resolution.

In summary, Section 53(1) of the ADGM Arbitration Regulations 2015 stipulates that if parties in ongoing arbitration proceedings settle their dispute, the arbitral tribunal must terminate the proceedings. Furthermore, if both parties request and the arbitral tribunal agrees, the settlement terms can be recorded in the form of an arbitral award on agreed terms. This provision enhances efficiency, acknowledges the autonomy of the parties, and provides a mechanism for formally recognising settlements within arbitration.

**(2) An award on agreed terms shall be made in accordance with the provisions of section 55 and shall state that it is an agreed award. Such an award has the same status and effect as any award made on the merits of the case.**

Section 53(2) of the ADGM Arbitration Regulations 2015 elaborates on the nature and legal effect of an arbitral award made on agreed terms when parties settle a dispute during arbitral proceedings. This section provides clarity on the procedure and the consequences of such a settlement award.

Key Points:

1. **Nature of Award on Agreed Terms:** When parties reach a settlement and request that the arbitral tribunal record the settlement as an arbitral award on agreed terms, this award is created in accordance with the provisions of Section 55 of the regulations. Section 55 pertains to the issuance of awards.

2. **Same Status and Effect:** An award on agreed terms is given the same status and effect as any other arbitral award made on the merits of the case. This means that it carries the same legal weight and enforceability as an award that results from a full arbitration proceeding, where the tribunal makes a decision on the substantive issues in dispute.

Implications:

1. **Legal Recognition and Enforceability:** By stating that an award on agreed terms has the same status and effect as a regular arbitral award, Section 53(2) underscores the legal recognition and enforceability of such settlement awards. This gives parties confidence that their settlement will be treated with the same seriousness and enforceability as an award reached through a full arbitration process.
2. **Binding Nature:** The provision reinforces the binding nature of settlement agreements reached within the context of arbitration. Parties who have their settlement recorded as an award on agreed terms are legally bound to adhere to the terms of the settlement, just as they would be bound by a decision reached through the merits of the case.

In summary, Section 53(2) of the ADGM Arbitration Regulations 2015 establishes that an arbitral award on agreed terms, resulting from a settlement reached during arbitral proceedings, is made in accordance with the rules for issuing awards and carries the same legal status and enforceability as any other arbitral award. This provision underlines the binding nature and legal significance of such settlement awards within the arbitration process.

#### 54. Awards on different aspects of matters

**The arbitral tribunal may make more than one award at different times on different aspects of the matters to be determined.**

Section 54 of the ADGM Arbitration Regulations 2015 addresses the arbitral tribunal's authority to render multiple awards on different aspects of the matters being adjudicated. This section recognises the tribunal's discretion to issue separate awards on distinct issues or aspects of a case, allowing for a flexible approach in resolving complex disputes.

Key Points:

1. **Sequential Awards:** Section 54 grants the arbitral tribunal the authority to issue multiple awards at different times during the course of the proceedings. These awards can pertain to various aspects, issues, or elements of the dispute being arbitrated.
2. **Flexibility and Efficiency:** This provision provides flexibility to the arbitral tribunal in structuring the arbitration process. By allowing separate awards on different aspects of a case, the tribunal can promote procedural efficiency. This might be particularly useful in cases where some issues can be resolved more quickly or efficiently than others.
3. **Modular Approach:** The modular approach enabled by Section 54 can be advantageous in complex disputes that involve various issues or parties. By addressing distinct matters in separate awards, parties can achieve a clearer understanding of the resolution of individual aspects of the dispute as they are decided.

Implications:

1. **Focused Resolution:** Section 54 allows the arbitral tribunal to focus on and resolve discrete aspects of a dispute without waiting to address all matters collectively. This can expedite the proceedings and provide parties with timely resolutions on specific issues.
2. **Adaptive Procedure:** The provision underscores the adaptability of arbitration proceedings. It recognises that certain issues might be more straightforward or urgent than others, and it permits the tribunal to address them independently.

In summary, Section 54 of the ADGM Arbitration Regulations 2015 empowers the arbitral tribunal to render multiple awards at different times on various aspects of the matters being determined. This provision enhances procedural flexibility, allowing the tribunal to efficiently resolve complex disputes by focusing on individual issues or elements separately.

## 55. Form and contents of award

### (1) The award shall be made in writing.

Section 55(1) of the ADGM Arbitration Regulations 2015 establishes a fundamental requirement that any arbitral award issued as part of arbitration proceedings conducted under these regulations must be made in writing. This concise provision underscores the formal and documented nature of arbitral awards and serves as a foundational element of the arbitration process.

Key Points:

1. **Written Form Requirement:** This section mandates that the award, which is the ultimate decision reached by the arbitral tribunal, must be documented in writing. This ensures that the award is recorded in a clear and precise manner, minimising the risk of misinterpretation or confusion.
2. **Clarity and Enforcement:**
  - a. The requirement for a written award contributes to the clarity and transparency of the decision. It allows the tribunal to present its findings, reasoning, and conclusions in a structured and organised manner, which is essential for parties to understand the basis for the award.
  - b. Additionally, a written award is crucial for enforcement purposes. It provides an official record of the tribunal's decision that can be presented to courts or other relevant authorities for enforcement, if needed.
3. **Formality and Consistency:** Requiring awards to be made in writing maintains a formal and consistent approach to the arbitration process. This consistency is important for upholding the integrity of the process and ensuring that parties are treated fairly and equally.

Implications:

1. **Enforcement and Compliance:** The written form requirement enhances the enforceability of arbitral awards. A documented award provides a clear record of the tribunal's decision, making it easier for parties seeking to enforce the award in accordance with applicable laws.
2. **Recordkeeping and Reference:** Written awards serve as a permanent record of the tribunal's decision-making process. This can be valuable for future reference, especially if disputes arise over the interpretation or implementation of the award.

In summary, Section 55(1) of the ADGM Arbitration Regulations 2015 establishes the essential requirement that arbitral awards must be made in writing. This provision emphasises the importance of clarity, transparency, and enforceability in arbitration proceedings, contributing to the effectiveness and credibility of the arbitral process.

**(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under section 53.**

Section 55(2) of the ADGM Arbitration Regulations 2015 outlines the requirement for arbitral awards to include a statement of reasons upon which the award is based. This provision emphasises transparency and accountability in the arbitration process by ensuring that parties have insight into the rationale behind the tribunal's decision.

Key Points:

1. **Statement of Reasons:** This section mandates that the arbitral award should articulate the reasons that support the tribunal's decision. The reasons should provide a logical and coherent explanation of how the tribunal arrived at its conclusions. This requirement enhances transparency and allows the parties to understand the basis for the award.
2. **Transparency and Accountability:** Requiring an award to state reasons contributes to the transparency of the arbitration process. It enables the parties to assess whether the tribunal has properly considered the evidence, arguments, and legal principles presented during the proceedings.
3. **Exceptions to Providing Reasons:**
  - a. The provision acknowledges that there are exceptions to the requirement of providing reasons:
  - b. If the parties have mutually agreed that no reasons are to be given in the award.
  - c. In the case of an award on agreed terms under Section 53, where the settlement reached by the parties is recorded as an award.



Implications:

1. **Understanding and Acceptance:** Parties' understanding of the award's reasoning can lead to greater acceptance of the decision, even if the outcome may not be favourable to them. The ability to comprehend the rationale behind the decision promotes confidence in the arbitration process.
2. **Enforcement and Challenge:** The requirement for reasons in the award is significant in cases where enforcement or challenge of the award is necessary. Courts and authorities tasked with reviewing the award will benefit from a clear explanation of the tribunal's decision-making process.

In summary, Section 55(2) of the ADGM Arbitration Regulations 2015 underscores the importance of providing a statement of reasons in arbitral awards. This provision promotes transparency, accountability, and effective communication of the tribunal's decision-making, contributing to the legitimacy and enforceability of arbitration outcomes.

**(3) The award shall state its date and the seat of the arbitration as determined in accordance with section 34(1). The award shall be deemed to have been made at the seat of the arbitration, irrespective of where it is written or signed, and regardless of the method whereby it is signed, whether it is signed by the members of the arbitral tribunal in person, it is sent to be signed by each member separately, or it is signed by electronic means.**

Section 55(3) of the ADGM Arbitration Regulations 2015 addresses important procedural aspects related to the content and validity of arbitral awards. It focuses on specifying the necessary information to be included in an award and clarifying the significance of the seat of arbitration.

Key Points:

1. **Mandatory Contents of the Award:** The provision requires the arbitral award to state:
  - a. The date of the award.
  - b. The seat of arbitration, as determined in accordance with Section 34(1). The seat of arbitration is a critical element in determining the procedural law and the scope of court involvement in the arbitration proceedings.
2. **Seat of Arbitration Significance:**
  - a. The section underscores the importance of the seat of arbitration by stating that the award shall be deemed to have been made at the seat of arbitration, regardless of where it is physically written, signed, or the method of signing used.
  - b. This designation of the seat as the place of the award's creation is crucial for determining the legal framework governing the arbitration proceedings and the enforceability of the award.
3. **Flexibility in Signing:** The provision recognises that the arbitral tribunal members may sign the award using various methods, including signing individually or electronically.

This acknowledges the modern practices of electronic communication and digital signatures.

Implications:

1. **Seat's Legal Consequences:** The identification of the seat of arbitration in the award is important for determining the legal framework governing the arbitration. The laws of the seat often dictate matters such as the procedure for challenging the award, its enforcement, and the scope of court intervention.
2. **Enforceability:** Recognising that the award is deemed to be made at the seat enhances its enforceability and legal validity in accordance with the laws of that jurisdiction.
3. **Technological Advances:** The acknowledgment of electronic signatures as valid methods of signing awards aligns with modern technological practices, making it easier for tribunals to issue awards using electronic means.

In summary, Section 55(3) of the ADGM Arbitration Regulations 2015 emphasises the importance of including certain key information in an arbitral award, such as the award date and the seat of arbitration. It reinforces the legal consequences of the seat determination and accommodates modern methods of award signing, contributing to the clarity, enforceability, and effectiveness of arbitral awards.

**(4) An award signed by electronic means shall have the same legal validity and enforceability and constitute the original award for the purposes of section 61(2)(a) of these Regulations, as an award with manually executed signatures of arbitral tribunal.**

Section 55(4) of the ADGM Arbitration Regulations 2015 addresses the legal validity and enforceability of arbitral awards that are signed using electronic means. This provision acknowledges the increasing use of electronic signatures in modern arbitration proceedings and ensures their recognition as equivalent to manually executed signatures in terms of legal effect and enforceability.

Key Points:

1. **Electronic Signatures on Awards:** This section explicitly states that an award that is signed using electronic means is accorded the same legal validity and enforceability as an award with manually executed signatures.
2. **Preservation of Legal Effects:** The provision further specifies that such electronically signed awards fulfil the original award requirement outlined in section 61(2)(a) of the ADGM Arbitration Regulations 2015.

Implications:

1. **Technology and Legal Recognition:** In today's digital age, electronic signatures have gained widespread acceptance and legal recognition. This provision reflects the importance of keeping arbitration practices in line with technological advancements.

2. **Enforceability and Originality:** The provision assures parties and stakeholders that awards signed electronically maintain the same legal weight and originality as those bearing traditional, manual signatures. This is crucial for the enforceability and recognition of the awards in various jurisdictions.

In summary, Section 55(4) of the ADGM Arbitration Regulations 2015 acknowledges the growing use of electronic signatures in arbitral awards. By affirming that awards signed electronically possess equivalent legal validity, enforceability, and originality as manually signed awards, this provision adapts arbitration practices to modern technological advancements while maintaining the legal integrity of the arbitration process.

**(5) After the award is made, an electronic copy shall be delivered to each party. An original hard copy of the award shall be delivered on request of a party.**

Section 55(5) of the ADGM Arbitration Regulations 2015 pertains to the distribution of arbitral awards, both electronically and in hard copy, once the award has been rendered by the arbitral tribunal. This provision ensures that parties receive copies of the award promptly, facilitating transparency, communication, and the enforcement of the award.

**Key Points:**

1. **Electronic and Hard Copies:** This section outlines the delivery of the arbitral award in two formats: an electronic copy and an original hard copy.
2. **Electronic Copy Delivery:** According to this provision, each party is entitled to receive an electronic copy of the arbitral award after it has been rendered. Electronic delivery enables swift communication and access to the award, promoting efficiency.
3. **Hard Copy on Request:** The provision also addresses the possibility of parties requesting an original hard copy of the award. This request-based provision ensures that parties who prefer physical copies or require them for specific legal or enforcement purposes can obtain them.

**Implications:**

1. **Efficiency and Accessibility:** By allowing electronic delivery of the award to each party, the provision enhances the efficiency and accessibility of the arbitration process. Parties can receive the award promptly and easily, regardless of their location.
2. **Preservation of Options:** The provision offers flexibility by allowing parties to request original hard copies of the award if needed. This accommodates parties' preferences and any legal requirements in jurisdictions where physical copies are necessary for enforcement.
3. **Enforcement and Communication:** Swift and accessible delivery of the award's content supports effective communication between the parties and is essential for initiating the enforcement process, if necessary.

In summary, Section 55(5) of the ADGM Arbitration Regulations 2015 ensures that arbitral awards are delivered efficiently and transparently to the parties involved. The provision allows for both electronic and hard copy delivery, giving parties the flexibility to choose their preferred format and ensuring that the award's content is readily available for communication, understanding, and enforcement purposes.

**(6) The arbitral tribunal shall fix the costs of the arbitration in its award or as provided for in subsection (8) below. Unless the arbitral tribunal determines otherwise, the recoverable costs of the arbitration shall be determined on the basis that they are reasonable and proportionate. The term “costs” includes:**

- (a) the fees of the arbitral tribunal to be stated separately as to each arbitrator;**
- (b) the travel and other expenses incurred by the arbitrators;**
- (c) the costs of expert advice and of other assistance required by the arbitral tribunal;**
- (d) the travel and other expenses of witnesses;**
- (a) other costs for the conduct of the arbitration, including those for meeting rooms, technological solutions such as electronic document management and virtual hearing platforms, interpreters and transcription services;**
- (f) the costs for legal representation and assistance of the successful party if such costs were claimed during the arbitration;**
- (g) the costs of any party-appointed experts if such costs were claimed during the arbitration; and**
- (h) any fees and expenses of any arbitral institution or appointing authority.**

Section 55(6) of the ADGM Arbitration Regulations 2015 pertains to the determination and allocation of costs in arbitration proceedings. This section outlines how the arbitral tribunal should determine the costs of the arbitration, including various components that constitute recoverable costs. The provision emphasises the principles of reasonableness and proportionality when assessing and allocating these costs.

Key Points:

1. **Cost Determination in Award:** The arbitral tribunal is required to specify the costs of the arbitration in the award itself or as provided in subsection (8) of the same section. This ensures transparency and accountability regarding the financial aspects of the arbitration process.
2. **Reasonable and Proportionate Costs:** The recoverable costs of the arbitration are to be determined based on the principles of reasonableness and proportionality. This means that the costs incurred should be justifiable, necessary, and appropriately related to the complexity and importance of the case.

3. **Components of Costs:** The provision lists various components that are included in the definition of “costs” for the purpose of the arbitration. These components encompass a range of expenses incurred throughout the arbitration process.
4. **Breakdown of Components:** The components include, among others, the fees of the arbitral tribunal (itemised for each arbitrator), expenses of arbitrators, costs of expert advice and other assistance required by the arbitral tribunal, travel and other expenses of witnesses, costs for the conduct of arbitration (such as meeting rooms, technological solutions, interpreters, and transcription services), costs of legal representation and assistance for the successful party (if claimed), costs of party-appointed experts (if claimed), and fees and expenses of any arbitral institution or appointing authority.

Implications:

1. **Transparency and Clarity:** By mandating the specification of costs in the arbitral award, the provision ensures transparency and clarity for the parties regarding the financial aspects of the arbitration process.
2. **Reasonable and Proportional Approach:** Emphasising the principles of reasonableness and proportionality aligns with modern arbitration practices, preventing excessive or unnecessary costs from being recovered.
3. **Comprehensive Cost Coverage:** The comprehensive list of cost components ensures that various aspects of the arbitration process are covered, from the fees of the tribunal to various expenses incurred by the parties and the arbitral tribunal.

In summary, Section 55(6) of the ADGM Arbitration Regulations 2015 lays out the framework for determining and allocating costs in arbitration proceedings. It emphasises transparency, reasonableness, and proportionality in assessing and allocating these costs, while providing a comprehensive breakdown of the various cost components that are included in the definition of “costs”. This section contributes to the fairness and predictability of arbitration proceedings by establishing clear guidelines for cost determination and allocation.

**(7) In fixing the costs of the arbitration, the arbitral tribunal may direct to whom, by whom, and in what manner, the whole or any part of the costs shall be paid.**

Section 55(7) of the ADGM Arbitration Regulations 2015 addresses the authority of the arbitral tribunal to determine how the costs of the arbitration will be allocated and paid among the parties. This provision grants the arbitral tribunal the power to issue directions regarding the payment of costs, specifying who is responsible for bearing these costs, the manner in which they should be paid, and to whom they should be paid.

Key Points:

1. **Cost Allocation Authority:** This section reaffirms the arbitral tribunal’s authority to allocate costs among the parties involved in the arbitration. The arbitral tribunal has the discretion to determine how the costs will be distributed based on the particular circumstances of the case.

2. **Directing Payment:** The arbitral tribunal is empowered to issue directions on various aspects of cost payment, including specifying which party or parties are responsible for paying the costs, determining the manner of payment, and designating the recipient of the payment.

Implications:

1. **Flexibility and Customisation:** Section 55(7) reflects the flexibility of arbitration proceedings, allowing the arbitral tribunal to tailor its decisions on cost allocation based on the specifics of each case. This approach promotes fairness and ensures that the allocation of costs aligns with the particular facts and merits of the dispute.
2. **Encouraging Cooperation:** The authority to direct the payment of costs encourages parties to cooperate during the arbitration process, as the potential costs associated with various actions can influence the decisions made by the parties.
3. **Finality and Efficiency:** By providing the arbitral tribunal with the power to allocate costs and make related decisions, the provision contributes to the efficiency and finality of the arbitration process. Parties can move forward knowing how costs will be distributed, which can help in reaching a prompt resolution.

In summary, Section 55(7) of the ADGM Arbitration Regulations 2015 empowers the arbitral tribunal to determine the allocation and payment of costs in arbitration proceedings. This provision enhances the flexibility, fairness, and efficiency of the arbitration process by allowing the arbitral tribunal to issue directions tailored to the circumstances of each case. It underscores the role of the tribunal in making decisions related to costs and encourages cooperation among the parties involved.

**(8) If the arbitral tribunal does not fix the costs of the arbitration in its award, a party to the arbitral proceedings may, within 30 days of receiving the award, apply to the arbitral tribunal for a further award on costs. After giving the parties an opportunity to make representations, the arbitral tribunal shall make a further award on costs.**

Section 55(8) of the ADGM Arbitration Regulations 2015 outlines the process for addressing costs if the initial arbitral award does not include a determination of the costs of the arbitration. This provision allows a party to request a further award specifically focused on the allocation of costs. It sets out the timeline and procedure for making such an application.

Key Points:

1. **Request for Further Award on Costs:** If the initial arbitral award does not include a decision on the allocation of costs, any party involved in the arbitration proceedings has the right to apply to the arbitral tribunal for a further award specifically addressing costs.
2. **Timeline for Application:** The application for a further award on costs must be made within 30 days of receiving the initial arbitral award. This provision emphasises the importance of a timely request.

3. Representation and Opportunity to Be Heard: The arbitral tribunal is required to give all parties an opportunity to make representations on the issue of costs before making a further award. This ensures fairness and transparency in the determination of costs.

Implications:

1. Clarification of Costs: Section 55(8) offers parties the opportunity to seek clarity and resolution on the issue of costs if the initial award does not address it. This helps prevent ambiguity and disputes regarding the allocation of costs.
2. Protecting Parties' Rights: By allowing parties to request a further award on costs, this provision ensures that parties' rights to seek a fair allocation of costs are safeguarded, even if the initial award was silent on this matter.
3. Efficient Dispute Resolution: The provision promotes efficient dispute resolution by providing a mechanism to promptly address any outstanding issues related to costs, allowing parties to finalise the arbitration process.

In summary, Section 55(8) of the ADGM Arbitration Regulations 2015 introduces a mechanism for parties to seek a further award on costs if the initial arbitral award does not address the allocation of costs. This provision emphasises the importance of timely applications, provides a fair opportunity for parties to be heard, and contributes to efficient and effective dispute resolution by ensuring that costs are appropriately determined and allocated.

**(9) Subject only to sections 58 and 62, all awards made by the arbitral tribunal shall be final and binding on the parties.**

Section 55(9) of the ADGM Arbitration Regulations 2015 underscores the finality and binding nature of awards rendered by the arbitral tribunal in arbitration proceedings. This provision emphasises the legal status and effects of such awards.

Key Points:

1. Final and Binding Awards: Section 55(9) unequivocally states that all awards issued by the arbitral tribunal are deemed to be final and binding on the parties involved in the arbitration. This means that once an award is made, it carries legal force and must be accepted and complied with by the parties.
2. Limited Exceptions: The provision specifies that this principle of finality and binding nature is subject only to the provisions outlined in sections 58 and 62 of the ADGM Arbitration Regulations 2015. These specific sections may deal with matters such as setting aside an award or appeals on a point of law.

Implications:

1. Enforcement and Compliance: Section 55(9) reinforces the principle that arbitral awards are not mere recommendations but legal determinations that parties are obligated to comply with. This promotes the efficacy of arbitration as a dispute resolution

mechanism, as it provides assurance that the decisions reached will be upheld and enforced.

2. **Certainty and Closure:** The finality of arbitral awards enhances the certainty and closure of the dispute resolution process. Parties can expect that once an award is issued, it will conclude the matter and provide a conclusive resolution to the dispute.
3. **Limiting Grounds for Challenge:** By referring only to specific sections for potential exceptions to the finality of awards, Section 55(9) suggests that challenges to awards will be limited to the grounds stipulated in the relevant sections (sections 58 and 62). This may help streamline the process and prevent unnecessary challenges.

In summary, Section 55(9) of the ADGM Arbitration Regulations 2015 establishes the principle that all awards rendered by the arbitral tribunal are final and binding on the parties involved, subject only to the provisions outlined in sections 58 and 62. This provision reinforces the importance of accepting and complying with the decisions reached through the arbitration process and promotes the effectiveness of arbitration as a method of resolving disputes.

## 56. Termination of proceedings

**(1) The arbitral proceedings are terminated by the arbitral tribunal’s award, or where more than one (1) award is made by the arbitral tribunal’s final or last award, or by an order of the arbitral tribunal in accordance with subsection (2).**

Section 56(1) of the ADGM Arbitration Regulations 2015 outlines the circumstances under which arbitral proceedings come to an end. It specifies the conditions for termination of arbitral proceedings, including the role of awards and orders in bringing the proceedings to a close.

Key Points:

1. **Termination of Arbitral Proceedings:** This provision establishes the mechanisms through which arbitral proceedings are terminated. It highlights the central role of the arbitral tribunal’s award or, if more than one award is made, the final or last award, in bringing the proceedings to an end.
2. **Final Award as a Termination Mechanism:** Section 56(1) emphasises the significance of the final award in concluding the arbitration process. When the arbitral tribunal issues a final award, it effectively signals the end of the proceedings, and the dispute is resolved as per the award’s terms.
3. **Additional Termination Mechanism: Orders:** In addition to awards, Section 56(1) introduces the concept of an order issued by the arbitral tribunal as a means of terminating arbitral proceedings. While the provision does not provide explicit details about the nature of such orders, it suggests that the arbitral tribunal may have the authority to issue an order to conclude the proceedings.



Implications:

1. **Clear Mechanisms for Termination:** By detailing the specific scenarios under which arbitral proceedings are terminated, Section 56(1) provides clarity and guidance to parties and arbitrators about the processes that lead to the conclusion of the arbitration.
2. **Final Award's Significance:** The provision underscores the importance of the final award as a conclusive determination of the dispute, highlighting that the issuance of such an award signifies the completion of the arbitration process.
3. **Flexibility in Termination:** The mention of an "order" of the arbitral tribunal suggests a degree of flexibility in terminating proceedings. This could potentially be used in situations where, for instance, some procedural matters need resolution before the final award can be issued.

In summary, Section 56(1) of the ADGM Arbitration Regulations 2015 outlines the ways in which arbitral proceedings are terminated. It emphasises the role of the arbitral tribunal's award, particularly the final or last award, as the primary mechanism for concluding proceedings. Additionally, the provision introduces the possibility of using an order from the arbitral tribunal to bring the proceedings to an end. This section ensures clarity and structure in the process of ending arbitral proceedings.

**(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:**

- (a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute;**
- (b) the parties agree on the termination of the proceedings; or**
- (c) at the request of a party, the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.**

**If the arbitral tribunal issues an order for termination under this subsection (2) , unless otherwise agreed by the parties, the arbitral tribunal may issue an award on costs in accordance with section 55 above.**

Section 56(2) of the ADGM Arbitration Regulations 2015 outlines the circumstances under which an arbitral tribunal must issue an order for the termination of arbitral proceedings. It describes the specific situations in which such termination orders are appropriate and explains the implications of these orders for the parties, including the potential issuance of an award on costs.

Key Points:

1. **Mandatory Termination Orders:** Section 56(2) sets out situations where the arbitral tribunal is obligated to issue an order for the termination of arbitral proceedings. These circumstances are outlined in points (a), (b), and (c).

2. **Withdrawal of Claim (Section 56(2)(a)):** If the claimant withdraws their claim, the arbitral tribunal shall issue a termination order. However, if the respondent objects to the withdrawal and the arbitral tribunal recognises a legitimate interest of the respondent in obtaining a final settlement of the dispute, the termination order may not be issued.
3. **Parties' Agreement (Section 56(2)(b)):** When the parties mutually agree to terminate the proceedings, the arbitral tribunal must issue a termination order.
4. **Unnecessary or Impossible Continuation (Section 56(2)(c)):** If a party requests it and the arbitral tribunal determines that the continuation of the proceedings has become unnecessary or impossible for any reason, the tribunal is required to issue a termination order.
5. **Implication for Award on Costs:** If the arbitral tribunal issues a termination order under Section 56(2), it has the discretion to issue an award on costs in accordance with the provisions outlined in section 55 of the Regulations.

**Implications:**

1. **Protection of Parties' Interests:** Section 56(2) ensures that arbitral proceedings can be terminated when appropriate, considering factors such as withdrawal, parties' agreement, and practicalities. This protects parties' interests and avoids unnecessary continuation of proceedings.
2. **Efficiency and Dispute Resolution:** The provision contributes to the efficiency of the arbitration process by allowing for termination when it becomes clear that the continuation of proceedings would not serve a useful purpose or when both parties agree to resolve the dispute differently.
3. **Flexibility and Party Autonomy:** The provision reflects the principle of party autonomy, allowing the parties to choose how they wish to proceed or resolve the dispute.

In summary, Section 56(2) of the ADGM Arbitration Regulations 2015 specifies the conditions under which an arbitral tribunal must issue an order for the termination of arbitral proceedings. It covers scenarios such as the withdrawal of a claim, mutual agreement between the parties, and when the continuation of proceedings becomes unnecessary or impossible. The section also highlights the arbitral tribunal's discretion to issue an award on costs if a termination order is issued.

**(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of subsection (5) and of sections 57 and 58.**

Section 56(3) of the ADGM Arbitration Regulations 2015 addresses the termination of the arbitral tribunal's mandate in conjunction with the termination of arbitral proceedings. The section explains the circumstances under which the mandate of the arbitral tribunal comes to an end, taking into account certain exceptions and relevant sections of the regulations.

**Key Points:**

1. **Termination of the Arbitral Tribunal’s Mandate:** According to Section 56(3), the mandate of the arbitral tribunal ends when the arbitral proceedings are terminated. This means that once the proceedings are concluded, the authority and responsibilities of the arbitral tribunal also cease.
2. **Exceptions and Provisions:** The section notes that the termination of the tribunal’s mandate is subject to the provisions of subsection (5) and of sections 57 and 58. This implies that there might be circumstances or legal requirements that could extend the mandate beyond the conclusion of the arbitral proceedings.

Implications:

1. **Efficiency and Conclusion:** By linking the termination of the tribunal’s mandate with the conclusion of the arbitral proceedings, Section 56(3) reinforces the principle that the tribunal’s role is tied to the resolution of the dispute. This contributes to the efficiency of the arbitration process.
2. **Continuation for Ancillary Matters:** The exceptions mentioned in the section (subsection (5), sections 57, and 58) suggest that there might be situations where the arbitral tribunal’s involvement is required even after the main proceedings are terminated. This could be relevant for issues such as post-award matters, correction or interpretation of awards, and challenges to the award’s validity.

In summary, Section 56(3) of the ADGM Arbitration Regulations 2015 states that the mandate of the arbitral tribunal terminates alongside the termination of arbitral proceedings. However, it also hints at potential exceptions or further provisions that might necessitate the tribunal’s involvement beyond the immediate conclusion of the main proceedings. This section aligns with the idea that the arbitral tribunal’s authority is intricately linked with the dispute resolution process.

**(4) The arbitral tribunal may refuse to deliver a final award or an order for termination of the arbitral proceedings in accordance with subsection (2) until its fees and expenses are paid in full.**

Section 56(4) of the ADGM Arbitration Regulations 2015 addresses the authority of the arbitral tribunal to withhold the issuance of a final award or an order for the termination of arbitral proceedings until its fees and expenses are fully paid.

Key Points:

1. **Condition for Delivery of Award or Order:** This section stipulates that the arbitral tribunal has the discretion to refuse to deliver a final award or an order for termination of the arbitral proceedings (as specified in subsection (2) of the same section) if its fees and expenses have not been paid in full. In other words, the tribunal can require that its compensation be settled before releasing the final decision.

Implications:

1. **Ensuring Tribunal Compensation:** Section 56(4) emphasises the importance of compensating the arbitral tribunal for its services. By allowing the tribunal to withhold

the final award or termination order until it is paid, this provision encourages parties to fulfil their financial obligations to the tribunal promptly.

2. **Efficiency and Incentives:** This provision can incentivise parties to settle their financial obligations to the tribunal in a timely manner, promoting efficiency in the arbitration process. It also helps to ensure that arbitrators are fairly compensated for their work.
3. **Balancing Interests:** While this provision protects the financial interests of the tribunal, it should be balanced with the parties' interests in receiving a timely resolution. Arbitral tribunals generally consider the overall circumstances and the potential impact on the parties before taking such actions.

In summary, Section 56(4) of the ADGM Arbitration Regulations 2015 allows the arbitral tribunal to withhold the issuance of a final award or an order for the termination of arbitral proceedings until its fees and expenses have been fully paid. This provision highlights the importance of compensating arbitrators and maintaining a balanced approach between the interests of the tribunal and the timely resolution of disputes.

**(5) Subject to any process agreed between the parties in the arbitration agreement, if the arbitral tribunal refuses to deliver an award or order until its fees and expenses are paid, any party to the arbitral proceedings may request the arbitral institution administering the arbitration or, where there is no such institution, the Court to determine, by such means as it considers appropriate, the amount of the fees and expenses properly payable to the arbitral tribunal.**

Section 56(5) of the ADGM Arbitration Regulations 2015 addresses the situation where the arbitral tribunal refuses to deliver an award or order due to unpaid fees and expenses. It outlines the process by which a party can seek determination of the proper amount of fees and expenses owed to the tribunal.

**Key Points:**

1. **Request for Determination of Fees and Expenses:**
  - a. This provision grants a party the right to request the arbitral institution administering the arbitration or the Court (if no arbitral institution is involved) to determine the appropriate amount of fees and expenses that are rightfully payable to the arbitral tribunal.
  - b. The request can be made when the arbitral tribunal refuses to deliver an award or order until its fees and expenses are paid.
2. **Procedure and Authority:**
  - a. The section does not specify the exact process for seeking determination, allowing flexibility for the arbitral institution or the Court to determine appropriate means.
  - b. The purpose of this provision is to offer parties a mechanism to resolve disputes related to the tribunal's fees and expenses.

Implications:

1. **Dispute Resolution Mechanism:** Section 56(5) provides a mechanism for parties to address disputes over the amount of fees and expenses owed to the arbitral tribunal. This helps prevent unnecessary delays in the issuance of awards and orders due to payment-related disputes.
2. **Avoiding Impediments to the Arbitration Process:** By allowing parties to seek determination from a designated authority, this provision helps ensure that disputes over tribunal fees and expenses do not become an impediment to the arbitration process or the delivery of awards.
3. **Ensuring Fair Compensation:** This provision maintains a fair balance between the interests of the arbitral tribunal and the parties. It ensures that the tribunal receives fair compensation for its work while also addressing any concerns parties may have regarding the amount of fees and expenses.

In summary, Section 56(5) of the ADGM Arbitration Regulations 2015 provides a mechanism for parties to request an arbitral institution or the Court to determine the appropriate amount of fees and expenses payable to the arbitral tribunal if the tribunal refuses to deliver an award or order until its fees and expenses are paid. This mechanism helps address payment-related disputes and ensures the smooth progress of arbitration proceedings.

## 57. Correction and interpretation of award; additional award

### **(1) The parties are free to agree on the powers of the arbitral tribunal to correct, interpret an award or make an additional award.**

Section 57(1) of the ADGM Arbitration Regulations 2015 addresses the powers of the arbitral tribunal to correct, interpret, or make additional awards in the context of arbitration proceedings. This provision allows the parties to define the scope of the tribunal's authority in these matters through their agreement.

Key Points:

1. **Scope of Powers:** The section emphasises the principle of party autonomy in arbitration. It acknowledges that the parties have the freedom to determine the powers of the arbitral tribunal regarding certain matters related to the award.
2. **Correction, Interpretation, and Additional Award:** The powers covered by this provision include:
  - a. **Correction:** The tribunal's authority to correct any errors in the award. These errors could be typographical, computational, or other similar mistakes that do not involve reevaluating the merits of the case.
  - b. **Interpretation:** The tribunal's authority to provide an interpretation of specific aspects of the award if the parties require clarification on certain points.

- c. Additional Award: The tribunal's authority to issue an additional award to address matters not fully resolved in the initial award, such as quantification of damages or specific claims.
3. Party Agreement: The section underscores the importance of the parties' agreement in determining the extent of the tribunal's authority. The parties can specify whether the tribunal can correct, interpret, or make additional awards.

Implications:

1. Party Autonomy and Flexibility: This provision upholds the principle of party autonomy in arbitration, allowing the parties to customise the powers of the tribunal as they see fit. Parties can choose to limit or expand the tribunal's authority in correcting, interpreting, or making additional awards.
2. Enhancing Efficiency and Clarity: By enabling parties to address errors, ambiguities, or unresolved matters without resorting to separate legal proceedings, this provision contributes to the efficiency and finality of the arbitration process.
3. Avoiding Unintended Outcomes: Parties can use this provision to avoid any misunderstandings or unintended outcomes resulting from the award. For example, if the award's language is unclear on a particular point, parties can seek an interpretation from the tribunal.

In summary, Section 57(1) of the ADGM Arbitration Regulations 2015 affirms the parties' freedom to define the arbitral tribunal's powers to correct, interpret, or make additional awards. This provision underscores party autonomy and promotes efficiency by allowing parties to tailor the tribunal's authority to their specific needs and preferences within the scope of the arbitration agreement.

**(2) If, or to the extent there is no such agreement, the following provisions shall apply.**

Section 57(2) of the ADGM Arbitration Regulations 2015 specifies the default provisions that apply if the parties have not agreed on the powers of the arbitral tribunal to correct, interpret, or make additional awards. In the absence of such an agreement, the section outlines the framework that governs these matters.

Key Points:

1. Default Provisions: Section 57(2) serves as a fallback provision when the parties have not explicitly addressed the arbitral tribunal's powers in relation to correction, interpretation, or additional awards in their arbitration agreement.
2. Unspecified Powers: The section does not specify the content of the default provisions but indicates that certain rules or guidelines will come into play when there is no agreement between the parties.
3. Promoting Clarity and Predictability: By establishing a default framework, this provision ensures that there is clarity and predictability even when the parties have not addressed

the issue in their agreement. This helps prevent confusion or disputes over the scope of the tribunal's authority.

Implications:

1. **Clarifying Unspecified Situations:** Section 57(2) is intended to provide clarity and structure when the parties have not explicitly stipulated the powers of the arbitral tribunal in their arbitration agreement. It prevents potential disputes by offering a default mechanism.
2. **Balancing Party Autonomy and Regulation:** While parties are encouraged to define the tribunal's powers according to their preferences, this provision ensures that in situations where parties have not specified such powers, there is a baseline framework to rely on, thus striking a balance between party autonomy and the need for regulated arbitration proceedings.

In summary, Section 57(2) of the ADGM Arbitration Regulations 2015 outlines the default provisions that come into effect when the parties have not agreed on the powers of the arbitral tribunal to correct, interpret, or make additional awards. By providing a standardised framework in such situations, this provision promotes clarity, predictability, and efficient resolution of issues related to arbitral awards.

**(3) Within 30 days of receipt of the award, unless another period of time has been agreed upon by the parties:**

**(a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of a similar nature; or**

**(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.**

Section 57(3) of the ADGM Arbitration Regulations 2015 delineates the procedural steps and time frame for parties to seek corrections or interpretations of arbitral awards. This section establishes mechanisms for addressing specific types of errors or seeking clarifications on certain aspects of the award.

Key Points:

1. **Correction of Errors:** Subsection (3)(a) of Section 57 addresses situations where a party identifies errors of computation, clerical or typographical errors, or errors of a similar nature in the award. It allows a party to request the arbitral tribunal to correct such errors.
2. **Interpretation Requests:** Subsection (3)(b) of Section 57 deals with scenarios where parties wish to seek an interpretation of a particular point or part of the award. This can be useful when a party seeks clarification on the meaning or intent of specific provisions within the award.

3. **Time Limit:** The section stipulates that such requests for correction or interpretation must be made within 30 days of receiving the award, unless the parties have agreed upon a different timeframe. This time limit ensures that parties address issues promptly and do not unduly delay the resolution process.

Implications:

1. **Efficient Resolution of Issues:** Section 57(3) aims to promote efficient resolution of post-award issues by providing a clear and time-bound mechanism for parties to seek corrections or interpretations. This ensures that minor errors or clarifications are addressed promptly.
2. **Enhancing Award Finality:** By allowing parties to seek corrections and clarifications within a specified time frame, the provision strikes a balance between addressing genuine errors and maintaining the finality of arbitral awards.

In summary, Section 57(3) of the ADGM Arbitration Regulations 2015 outlines the procedures for parties to request corrections of errors or interpretations of specific points within an arbitral award. The provision ensures a structured approach to addressing such issues while preserving the efficiency and finality of the arbitration process.

**(4) If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within 30 days of receipt of the request. The correction or interpretation shall form part of the award.**

Section 57(4) of the ADGM Arbitration Regulations 2015 governs the actions to be taken by the arbitral tribunal in response to requests for corrections or interpretations of arbitral awards.

Key Points:

1. **Arbitral Tribunal's Discretion:** This provision empowers the arbitral tribunal to assess whether a request for correction or interpretation is justified. The tribunal exercises its discretion to determine whether the request meets the criteria outlined in Section 57(3)(a) and (b).
2. **Timely Response:** The arbitral tribunal is required to respond to a justified request for correction or interpretation within 30 days of receiving the request. This time constraint ensures that parties receive prompt resolution and clarification on the issues raised.
3. **Inclusion in Award:** If the arbitral tribunal deems the request to be valid and agrees to make the correction or provide the interpretation, the corrected or interpreted portion becomes an integral part of the original arbitral award. This inclusion maintains the coherence and completeness of the award document.

Implications:

1. **Efficient Resolution of Issues:** Section 57(4) contributes to the efficient resolution of post-award issues by requiring the arbitral tribunal to address valid requests for corrections or interpretations within a set timeframe.



2. Finality of Award: By incorporating the corrections or interpretations into the original award, this provision preserves the finality and integrity of the award while still allowing for rectifications of errors or clarifications.

In summary, Section 57(4) of the ADGM Arbitration Regulations 2015 establishes a framework for the arbitral tribunal to evaluate and respond to requests for corrections or interpretations of an award. The tribunal's discretion, the time frame for response, and the requirement to incorporate any valid corrections or interpretations into the award document help ensure an effective and well-structured process for addressing post-award issues.

**(5) The arbitral tribunal may correct any error of the type referred to in subsection (3)(a) on its own initiative within 30 days of the date of the award.**

Section 57(5) of the ADGM Arbitration Regulations 2015 addresses the authority of the arbitral tribunal to correct errors in an award on its own initiative.

**Key Points:**

1. Self-Initiated Corrections: This provision grants the arbitral tribunal the authority to identify and correct errors of the type mentioned in Section 57(3)(a) without waiting for a formal request from the parties. These errors typically include computational, clerical, or typographical mistakes.
2. Time Limit: The arbitral tribunal's power to correct errors on its own initiative is limited to a period of 30 days from the date of the award. This time constraint ensures that any necessary corrections are made in a timely manner.

**Implications:**

1. Enhanced Efficiency: Allowing the arbitral tribunal to proactively correct errors contributes to the efficiency of the arbitration process. Simple mistakes can be promptly rectified without the need for additional requests and communications.
2. Preservation of Award Integrity: By enabling the tribunal to correct errors without delay, this provision helps maintain the integrity and accuracy of the award, ensuring that it accurately reflects the tribunal's intended decision.

In summary, Section 57(5) of the ADGM Arbitration Regulations 2015 empowers the arbitral tribunal to identify and rectify errors of certain types in an award on its own initiative within 30 days of the award's issuance. This provision aligns with the goal of ensuring accuracy and efficiency in arbitral proceedings while preserving the finality and integrity of the award.

**(6) Unless otherwise agreed by the parties or in respect of an agreed award made under section 53, a party, with notice to the other party, may request, within 30 days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within 60 days.**

Section 57(6) of the ADGM Arbitration Regulations 2015 addresses the process for requesting and issuing additional awards in arbitration proceedings.

**Key Points:**

1. **Right to Request Additional Award:** This provision grants a party the right to request the arbitral tribunal to issue an additional award if certain conditions are met. Specifically, a party can make this request within 30 days of receiving the initial award.
2. **Scope of Additional Award:** The request for an additional award pertains to claims that were presented during the arbitral proceedings but were omitted from the initial award. This provision ensures that parties have an opportunity to seek resolution for claims that were inadvertently left out of the initial award.
3. **Time Limits:**
  - a. The party's request for an additional award must be made within 30 days of receiving the initial award.
  - b. If the arbitral tribunal determines that the request for an additional award is justified, it is required to issue the additional award within 60 days of receiving the request.

**Implications:**

1. **Completeness of Awards:** Section 57(6) ensures that arbitral awards are complete and encompass all claims presented during the proceedings. It provides a mechanism for addressing situations where a claim was accidentally omitted from the initial award.
2. **Preservation of Award Finality:** The provision's time limits help maintain the finality of the arbitration process. By requiring parties to make their requests within a specified timeframe, it prevents the process from being unduly prolonged.

In summary, Section 57(6) of the ADGM Arbitration Regulations 2015 allows a party to request an additional award for claims presented in the arbitral proceedings but omitted from the initial award. This provision ensures that the arbitration process is comprehensive and that parties have an avenue to address any unintentional omissions from the initial award. The provision also establishes specific time limits for making such requests and for the issuance of the additional award, enhancing the efficiency and finality of the arbitration process.

**(7) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under subsection (3) or (6).**

Section 57(7) of the ADGM Arbitration Regulations 2015 deals with the authority of the arbitral tribunal to extend the time period for making corrections, interpretations, or additional awards.

Key Points:

1. **Time Extension Authority:** This provision grants the arbitral tribunal the discretionary power to extend the period of time within which it is required to make a correction, interpretation, or an additional award under subsections (3) or (6) of the same section.
2. **Necessity and Flexibility:** The provision recognises that there might be circumstances that warrant an extension of the stipulated time periods. The tribunal's authority to extend these timeframes allows for flexibility in handling situations where more time is needed to address the requested corrections, interpretations, or additional awards.

Implications:

1. **Balancing Efficiency and Thoroughness:** Section 57(7) strikes a balance between the need for timely resolution and the importance of ensuring accurate and thorough awards. The extension authority acknowledges that certain complexities or unexpected issues might arise, justifying additional time for the tribunal to fulfil its responsibilities.
2. **Parties' Interests:** Allowing the arbitral tribunal to extend time periods as necessary can ultimately serve the parties' interests by preventing rushed decisions and potential errors. This provision safeguards the quality of the tribunal's work.

In summary, Section 57(7) of the ADGM Arbitration Regulations 2015 empowers the arbitral tribunal to extend the time period within which it is required to make corrections, interpretations, or additional awards under subsections (3) or (6). This discretionary authority ensures that the arbitration process remains effective and fair, accounting for situations where more time is needed to address the requested matters adequately.

## Chapter 8 – Recourse against award

### 58. Application for setting aside as exclusive recourse against arbitral award

**(1) Recourse to the Court against an arbitral award made in an arbitration which has its seat in the Abu Dhabi Global Market may be made only by an application for setting aside in accordance with subsection (2). Such an application may only be made to the Court.**

Section 58(1) of the ADGM Arbitration Regulations 2015 outlines the procedure for seeking recourse to the court against an arbitral award made within the Abu Dhabi Global Market (ADGM) jurisdiction.

Key Points:

1. Recourse Against Award: This provision establishes the specific mechanism through which a party can challenge or seek to set aside an arbitral award made in an arbitration seated within the ADGM.
2. Exclusive Procedure and Venue: The section specifies that the recourse can be pursued only through an application for setting aside under subsection (2), and this application must be filed with the ADGM Court. This emphasises the exclusive jurisdiction of the ADGM Court in dealing with challenges to arbitral awards made within its jurisdiction.

Implications:

1. Limited Grounds for Challenge: By designating a specific procedure for challenging awards and restricting it to the setting aside process outlined in subsection (2), the section ensures that challenges are brought based on the limited grounds prescribed by the law.
2. Jurisdictional Certainty: The provision contributes to legal certainty by clearly outlining the process and venue for challenging awards. This reduces the potential for conflicting interpretations of where and how such challenges can be raised.

In summary, Section 58(1) of the ADGM Arbitration Regulations 2015 establishes the procedure for challenging an arbitral award made within the ADGM jurisdiction. It emphasises that recourse against such awards must be pursued through an application for setting aside in accordance with subsection (2) and that this application must be made exclusively to the ADGM Court. This section contributes to a clear and structured framework for addressing challenges to arbitral awards within the ADGM.

**(2) An arbitral award may be set aside by the Court only if:**

**(a) the party making the application furnishes proof that:**

- (i) a party to the arbitration agreement was, under the law applicable to it, under some incapacity;**
- (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the Abu Dhabi Global Market;**
- (iii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;**
- (iv) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or**

**(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, or failing such agreement, was not in accordance with the law of the Abu Dhabi Global Market.**

Section 58(2)(a) of the ADGM Arbitration Regulations 2015 outlines specific grounds under which an arbitral award may be set aside by the Court in arbitration proceedings seated within the Abu Dhabi Global Market (ADGM). This provision details the circumstances under which a party can seek the annulment of an award due to certain irregularities or deficiencies. Let us break down its components:

1. Incapacity of a Party (Section 58(2)(a)(i)): This provision allows a party to seek the setting aside of an award if they can demonstrate that one of the parties to the arbitration agreement was legally incapacitated under the law applicable to that party. This recognises the importance of parties entering into arbitration agreements with the capacity to fully comprehend and consent to the process.
2. Invalidity of Arbitration Agreement (Section 58(2)(a)(ii)): An award can be set aside if the party proves that the arbitration agreement itself is not valid according to the law chosen by the parties or, if there is no indication of such choice, according to the law of the ADGM. This emphasises the need for a valid arbitration agreement as a foundational element of the arbitration process.
3. Lack of Proper Notice or Inability to Present Case (Section 58(2)(a)(iii)): If a party demonstrates that the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator, the arbitral proceedings, or was otherwise unable to present their case, the award can be set aside. This ensures that both parties have a fair opportunity to present their arguments and evidence.
4. Award Beyond Scope of Submission (Section 58(2)(a)(iv)): An award can be set aside if it deals with a dispute not contemplated by or beyond the scope of the submission to arbitration. If decisions on submitted matters can be separated from those not submitted, the latter part of the award can be set aside. This provision safeguards against awards that venture beyond the issues brought before the arbitral tribunal.
5. Irregular Composition or Procedure (Section 58(2)(a)(v)): The provision allows setting aside an award if the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, in the absence of such agreement, not in accordance with the law of the ADGM. This ensures that arbitration procedures are conducted fairly and in compliance with established rules.

In essence, Section 58(2)(a) provides a structured framework for challenging an arbitral award by identifying specific grounds where there might have been irregularities or shortcomings in the arbitration process or the award itself. These grounds promote the integrity of the arbitration process while allowing for a mechanism to address potential flaws.

**(b) the Court finds that:**

**(i) the subject-matter of the dispute is not capable of settlement by arbitration under the laws of the Abu Dhabi Global Market; or**

**(ii) the recognition or enforcement of the award would be contrary to the public policy of the UAE.**

Section 58(2)(b) of the ADGM Arbitration Regulations 2015 outlines additional grounds under which an arbitral award made in an arbitration with its seat in the Abu Dhabi Global Market (ADGM) can be set aside by the Court. This provision pertains to situations where the Court can annul an award based on broader legal considerations. Let us examine its components:

1. Incapable of Settlement by Arbitration (Section 58(2)(b)(i)): According to this provision, the Court can set aside an award if it determines that the subject matter of the dispute is not capable of being resolved through arbitration under the laws of the ADGM. This reflects the principle that certain types of disputes may not be appropriate for resolution through arbitration due to legal or practical reasons.
2. Contrary to Public Policy (Section 58(2)(b)(ii)): The Court can also annul an award if it concludes that the recognition or enforcement of the award would go against the public policy of the United Arab Emirates (UAE). This ground provides a safeguard to ensure that awards do not contravene fundamental principles of law or morality that are considered vital to a jurisdiction's legal system.

In summary, Section 58(2)(b) addresses situations where the Court can set aside an arbitral award based on broader legal considerations, encompassing whether the dispute is appropriate for arbitration and whether the award's recognition or enforcement would be consistent with the public policy of the UAE. These provisions offer a means to prevent awards that are contrary to legal norms or societal values from being recognised or enforced.

**(c) An application for setting aside may not be made after three (3) months have elapsed from the date on which the party making that application had received the award or, if the parties have agreed to any other arbitral process of appeal or review, the date when the applicant or appellant was notified of the result of that process or, if a request had been made under section 57, from the date on which that request had been disposed of by the arbitral tribunal or after such longer period as the parties to the arbitration have agreed in writing.**

Section 58(2)(c) of the ADGM Arbitration Regulations 2015 specifies a time limitation within which a party can apply to the Court to set aside an arbitral award. This provision ensures that parties cannot indefinitely challenge an award after its issuance. Here is a breakdown of the elements of this provision:

1. Time Limitation for Application (Section 58(2)(c)): This provision establishes a time limit within which a party can apply to the Court for the setting aside of an arbitral award. The time limit is three (3) months from a specific trigger event.
2. Trigger Events: The trigger event for the time limit is based on the circumstances surrounding the arbitration process and the subsequent actions of the parties:
  - a. If the parties have not agreed to any other arbitral process of appeal or review: The three-month period starts from the date on which the party making the application received the arbitral award.

- b. If the parties have agreed to an arbitral process of appeal or review: The three-month period starts from the date when the applicant or appellant was notified of the result of that appeal or review process.
  - c. If a request for correction, interpretation, or an additional award under section 57 was made: The three-month period starts from the date on which that request was disposed of by the arbitral tribunal.
3. Extension by Agreement: The provision also allows for a longer time period for making the application if the parties to the arbitration have agreed in writing to extend the time limit. This reflects the flexibility that parties have to adapt the procedural timeline based on their specific circumstances.

In essence, Section 58(2)(c) establishes a clear and time-bound framework within which a party must apply to the Court to set aside an arbitral award. This time limitation is designed to balance the interest of finality and legal certainty with the right of parties to challenge awards within a reasonable period.

**(3) Save as set out in this section, there shall be no other recourse or appeal to the Court against an arbitral award made in an arbitration which has its seat in the Abu Dhabi Global Market.**

Section 58(3) of the ADGM Arbitration Regulations 2015 addresses the scope of recourse and appeal available to parties following an arbitral award. Here is an analysis of this provision:

1. Limited Recourse to Court:
  - a. This provision states that, except as provided in Section 58 (which deals with setting aside arbitral awards), there is no other recourse or appeal available to the Court against an arbitral award that was made in an arbitration seated in the Abu Dhabi Global Market (ADGM).
  - b. In other words, once an arbitral award is rendered, parties have a limited avenue for recourse to the Court, and this recourse is specifically related to seeking the setting aside of the award under the grounds and procedures outlined in Section 58(2).
2. Finality of Arbitral Awards: Section 58(3) reinforces the principle of finality and binding nature of arbitral awards. Once an arbitral tribunal renders its award, absent the specific grounds mentioned in Section 58(2) for setting aside, parties generally cannot appeal the decision to a court on the merits or any other grounds.
3. Promotion of Arbitration: By restricting the scope of recourse and appeal to the Court, this provision promotes the efficiency and effectiveness of arbitration proceedings. It encourages parties to respect and abide by the decisions of the arbitral tribunal, thereby contributing to the overall attractiveness of arbitration as a dispute resolution mechanism.

In summary, Section 58(3) underscores the limited role of the Court in reviewing arbitral awards made in ADGM-seated arbitrations, and it reflects the intent to uphold the finality and enforceability

of arbitral awards, while also providing a mechanism for setting aside awards in specific circumstances as outlined in Section 58(2).

**(4) For the avoidance of doubt, the Court must not undertake a merits review of the award either on fact or law.**

Section 58(4) of the ADGM Arbitration Regulations 2015 addresses a crucial aspect of the court's role in reviewing arbitral awards. Here is an analysis of this provision:

1. Limits on Court's Review:
  - a. This provision explicitly states that the Court is prohibited from undertaking a merits review of the arbitral award. In other words, the Court is not allowed to re-evaluate the factual findings or legal reasoning of the arbitral tribunal.
  - b. This limitation on the Court's review of the merits of the award is in line with the principles of finality and party autonomy that underpin arbitration. It upholds the fundamental concept that the arbitral tribunal, as chosen by the parties, is the ultimate decision-maker on the merits of the dispute.
2. Respect for Party Autonomy: By restricting the Court from conducting a merits review, this provision respects the autonomy of the parties in choosing arbitration as their dispute resolution method. It affirms the parties' intention to have their dispute resolved by the tribunal they selected without undue interference from the court.
3. Efficiency and Speed of Proceedings: Prohibiting the Court from conducting a merits review also contributes to the efficiency and speed of the arbitration process. It prevents parties from circumventing the arbitration process by seeking a de novo review of the award in court, which could undermine the benefits of arbitration in terms of time and cost savings.
4. Consistency with International Standards: The provision is in line with international arbitration principles and practices, as it emphasises the limited scope of judicial intervention in arbitral awards. It's consistent with the New York Convention and other international instruments that promote the enforcement of arbitral awards.

In summary, Section 58(4) reinforces the non-merits review stance of the court in relation to arbitral awards. This provision preserves the core principles of arbitration, respects party autonomy, and supports the efficiency of the dispute resolution process.



## 59. Waiver of the right to bring an action for setting aside

**(1) The parties may, by an express statement in the arbitration agreement or by a subsequent written agreement, waive fully the right to bring an action for setting aside or they may limit it to one or several of the grounds listed in section 58(2).**

Section 59(1) of the ADGM Arbitration Regulations 2015 pertains to the parties' ability to waive or limit their right to seek the setting aside of an arbitral award. Let us analyse this provision:

1. Waiver and Limitation of Right:
  - a. This provision acknowledges that parties have the flexibility to waive their right to seek the setting aside of an arbitral award. This means that parties can mutually decide not to challenge the award in court, even if there are valid grounds to do so.
  - b. Alternatively, parties can choose to limit their right to challenge the award only on specific grounds listed in section 58(2) of the regulations. This allows the parties to predefine the permissible scope of court review and aligns with the principle of party autonomy in arbitration.
2. Strengthening Finality and Certainty: Allowing parties to waive or limit their right to challenge an award can contribute to the finality and certainty of the arbitration process. It enables parties to make an informed decision about whether they want to preserve the award as is, without the risk of subsequent legal challenges.
3. Party Autonomy and Efficiency:
  - a. This provision underscores the principle of party autonomy in arbitration. It respects the parties' ability to shape their arbitration agreement to fit their specific needs and expectations.
  - b. By waiving or limiting the right to challenge an award, parties can also enhance the efficiency of the dispute resolution process. They avoid the time, cost, and uncertainty associated with potential court proceedings to set aside the award.
4. Balancing Interests: While party autonomy is important, it's worth noting that there may be situations where certain statutory grounds for setting aside are important to maintain as a safeguard against potential procedural irregularities or injustice.

In conclusion, Section 59(1) provides parties with the freedom to either waive their right to bring an action for setting aside an award or to limit it to specific grounds. This provision respects party autonomy and encourages efficient dispute resolution while balancing the need for maintaining safeguards in the arbitration process.

**(2) If the parties have waived the right to bring an action for setting aside the award and if the award is to be enforced in the Abu Dhabi Global Market, the arbitral award may nonetheless be denied recognition and enforcement pursuant to section 62.**

Section 59(2) of the ADGM Arbitration Regulations 2015 deals with the scenario where parties have waived their right to challenge an arbitral award through an action for setting aside, but the enforcement of the award is sought within the Abu Dhabi Global Market (ADGM). Let us analyse this provision:

1. Recognition and Enforcement:
  - a. This provision highlights that even if parties have waived the right to challenge an award through the setting aside process, the enforceability of the award is not an automatic outcome.
  - b. Parties can waive their right to challenge the award for various reasons, including to streamline the arbitration process. However, this provision ensures that enforcement of the award still requires adherence to other legal and procedural standards.
2. Recognition and Enforcement Proceedings:
  - a. When parties seek to enforce an arbitral award within the ADGM, they may need to go through a separate process to have the award recognised and enforced in accordance with the applicable laws and regulations.
  - b. This provision suggests that the ADGM may still consider other grounds for refusing recognition and enforcement, even if the right to set aside the award has been waived. These grounds could relate to issues such as public policy or procedural irregularities.
3. Balancing Enforcement with Protections:
  - a. While parties' waiver of the right to set aside an award demonstrates their intention to honour the award's finality, the provision recognises that certain fundamental protections and requirements must still be met for enforcement.
  - b. This provision ensures that parties cannot use a waiver of setting aside as a means to bypass legitimate concerns about the enforceability of an award that may not meet recognised standards.

In summary, Section 59(2) acknowledges that a waiver of the right to challenge an arbitral award through setting aside does not automatically guarantee its enforceability within the ADGM. The ADGM retains the authority to assess and determine whether the award meets the criteria for recognition and enforcement as stipulated in the regulations, irrespective of the waiver. This provision seeks to strike a balance between parties' autonomy and the need to maintain enforceability standards.

**PART 4: THE RECOGNITION AND ENFORCEMENT OF AWARDS**

**60. Application of this Part**

**(1) This Part 4 applies to:**

- (a) arbitral awards made in arbitrations where the seat of the arbitration is the Abu Dhabi Global Market;**
- (b) New York Convention Awards; and**
- (c) all other arbitral awards which are sought to be recognised and enforced in the Abu Dhabi Global Market, irrespective of the State or jurisdiction in which they are made.**

Section 60(1) of the ADGM Arbitration Regulations 2015 provides the scope and applicability of Part 4 of the regulations, which pertains to the recognition and enforcement of arbitral awards. Let us analyse this provision:

1. **Scope of Application:** This provision outlines the situations in which Part 4 of the regulations applies. It covers three categories of arbitral awards:
  - a. **Awards Made in ADGM:** It applies to arbitral awards issued in arbitrations where the seat of the arbitration is the Abu Dhabi Global Market (ADGM). This includes awards made in arbitrations conducted within the jurisdiction of ADGM.
  - b. **New York Convention Awards:** The provision also includes “New York Convention Awards”, which refers to awards falling under the purview of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. This convention facilitates the recognition and enforcement of arbitral awards across different jurisdictions.
  - c. **Other Arbitral Awards for Recognition and Enforcement:** This part of the regulation also applies to any other arbitral awards that are sought to be recognised and enforced within the ADGM, regardless of the jurisdiction in which they were made. This underscores the ADGM’s commitment to providing a mechanism for the recognition and enforcement of a broad range of arbitral awards.
2. **Expansive Application:** By encompassing all three categories of arbitral awards, Section 60(1) ensures that the recognition and enforcement provisions of Part 4 are not limited solely to awards made within the ADGM. They extend to awards made in other jurisdictions, including those subject to the New York Convention.
3. **Cross-Border Enforcement:**
  - a. The provision reflects the international nature of arbitration and the ADGM’s commitment to facilitating the recognition and enforcement of arbitral awards, regardless of their origin.
  - b. This inclusivity aligns with the principles of arbitration as a means of resolving disputes across different legal systems and jurisdictions.

In summary, Section 60(1) of the ADGM Arbitration Regulations 2015 outlines the scope of application of Part 4, which covers various categories of arbitral awards. It emphasises the ADGM's role as a jurisdiction that provides a mechanism for the recognition and enforcement of awards, whether made within the ADGM, subject to the New York Convention, or originating from any other jurisdiction.

**(2) For the avoidance of doubt, where the UAE has entered into an applicable treaty for the recognition and enforcement of arbitral awards, that treaty shall apply in the Abu Dhabi Global Market and the Court shall comply with the terms of such treaty. This includes, but is not limited to, the New York Convention.**

Section 60(2) of the ADGM Arbitration Regulations 2015 clarifies the relationship between the UAE's applicable treaties for the recognition and enforcement of arbitral awards and the enforcement mechanism within the Abu Dhabi Global Market (ADGM). Let us analyse this provision:

1. Recognition of International Treaties: This provision recognises the significance of international treaties that the UAE has entered into for the recognition and enforcement of arbitral awards. It emphasises that these treaties will apply within the jurisdiction of the ADGM.
2. Compliance with Treaty Terms:
  - a. The provision highlights that the Court within the ADGM must comply with the terms of such applicable treaties, including the enforcement mechanisms outlined in those treaties.
  - b. The inclusion of the New York Convention, a widely recognised and important treaty for the recognition and enforcement of arbitral awards, is specifically mentioned. This demonstrates the ADGM's intention to adhere to international standards for the recognition and enforcement of arbitral awards.
3. International Harmonisation:
  - a. By adhering to applicable international treaties, including the New York Convention, the ADGM aligns its enforcement practices with widely accepted international norms.
  - b. This harmonisation ensures consistency in the recognition and enforcement of arbitral awards, facilitating cross-border enforcement and enhancing the global legitimacy of the ADGM as an arbitration-friendly jurisdiction.
4. Promotion of International Arbitration:
  - a. The provision underlines the ADGM's commitment to fostering a supportive environment for international arbitration.
  - b. By acknowledging and adhering to international treaties, the ADGM reinforces its role as a jurisdiction that respects and facilitates the enforcement of arbitral awards rendered in other jurisdictions.

In summary, Section 60(2) of the ADGM Arbitration Regulations 2015 reinforces the ADGM's commitment to international arbitration and the recognition and enforcement of arbitral awards. It ensures that applicable international treaties, including the New York Convention, are recognised and honoured within the ADGM's jurisdiction, promoting consistency and harmonisation in the enforcement of arbitral awards.

## 61. Recognition and enforcement of awards

### (1) An award within the meaning of subsection 60(1):

**(a) shall be recognised as binding within the Abu Dhabi Global Market on the persons between whom it was made and may accordingly be relied on by those persons by way of defence, set-off or otherwise in any legal proceedings in the Abu Dhabi Global Market; and**

**(b) shall be enforced within the Abu Dhabi Global Market as if it were a judgment of the Court and all of the Court's powers in respect of the enforcement of judgments shall apply to the enforcement of arbitral awards in the manner prescribed in this Part 4 and any rules made for that purpose.**

Section 62(1) of the ADGM Arbitration Regulations 2015 outlines the mechanisms for the recognition and enforcement of arbitral awards within the Abu Dhabi Global Market (ADGM). Let us analyse this provision:

1. Recognition of Binding Nature:
  - a. This provision emphasises that an arbitral award, as defined in subsection 60(1) of the Regulations, shall be recognised as legally binding within the ADGM.
  - b. It establishes that the parties involved in the arbitration are bound by the award and can rely on it as a defence, set-off, or in any other legal proceedings within the ADGM.
2. Enforcement as a Court Judgment:
  - a. The provision highlights that an arbitral award shall be treated for enforcement purposes as if it were a judgment issued by the Court within the ADGM.
  - b. This recognition elevates the status of the arbitral award, enabling it to be enforced using the same enforcement mechanisms that apply to court judgments.
3. Application of Court's Enforcement Powers:
  - a. The provision states that all of the Court's powers related to the enforcement of judgments shall apply to the enforcement of arbitral awards.
  - b. This means that the Court has the authority to employ various enforcement methods, such as seizing assets or taking other actions to ensure compliance with the award, just as it would for enforcing its own judgments.

4. Promotion of Arbitral Award Enforceability:
  - a. By treating arbitral awards as equivalent to court judgments, the provision contributes to the overall enforceability of awards.
  - b. This approach aligns with international standards and practices that support the enforcement of arbitral awards to ensure the effectiveness of the arbitration process.
5. Protection of Parties' Rights: The provision offers parties involved in arbitration the assurance that the awards they obtain through the arbitration process can be effectively enforced within the ADGM jurisdiction.

In summary, Section 62(1) of the ADGM Arbitration Regulations 2015 establishes the legal framework for the recognition and enforcement of arbitral awards within the ADGM. It treats such awards as binding and enforceable in a manner similar to court judgments, ensuring that parties have the means to enforce their rights and obligations arising from the arbitral process.

**(2) The party seeking the recognition or enforcement of an award within the meaning of subsection 60(1) shall provide to the Court:**

- (a) the original or a duly certified copy of the arbitral award in respect of which enforcement is sought; and**
- (b) a copy of the arbitration agreement pursuant to which that arbitral award was rendered.**

**If the award or the agreement is not made in English, the Court may request the party to provide a translation thereof.**

Section 61(2) of the ADGM Arbitration Regulations 2015 outlines the procedural requirements for parties seeking the recognition or enforcement of an arbitral award within the Abu Dhabi Global Market (ADGM). Let us analyse this provision:

1. Submission of Documents:
  - a. This provision specifies that the party seeking recognition or enforcement of an arbitral award must provide certain documents to the Court.
  - b. The documents required to be submitted are the original award itself or a duly certified copy of the award, and a copy of the arbitration agreement that formed the basis for the award.
2. Document Authentication: The party seeking recognition or enforcement must ensure that the submitted award is either the original document or a certified copy. This emphasises the importance of authentic and accurate documents in the enforcement process.
3. Requirement of Arbitration Agreement:

- a. The provision highlights the need to provide a copy of the arbitration agreement that was the basis for rendering the arbitral award.
  - b. This requirement ensures that the Court can verify the validity of the arbitration agreement and its applicability to the dispute resolved by the award.
4. Language Considerations:
- a. If the award or the arbitration agreement is not in English, the provision grants the Court the authority to request a translation of the documents.
  - b. This requirement ensures that the Court can understand the contents of the award and the arbitration agreement, even if they are not in the official language of the ADGM.
5. Promotion of Clarity and Transparency: Requiring the submission of the award and the arbitration agreement, along with possible translations, promotes transparency and ensures that the Court has accurate and complete information when considering the enforcement request.
6. Adherence to International Standards: The provision aligns with international practices for enforcing arbitral awards, which often involve presenting the original or certified copy of the award, along with any relevant supporting documentation.

In summary, Section 61(2) of the ADGM Arbitration Regulations 2015 establishes the procedural requirements for parties seeking recognition and enforcement of arbitral awards within the ADGM jurisdiction. By specifying the documents to be submitted and allowing for translations if necessary, this provision aims to ensure a smooth and transparent enforcement process while adhering to international standards.

**(3) Where, upon the application of a party for the recognition or enforcement of an arbitral award, the Court decides that the award shall be recognised or enforced, it shall issue an order to that effect.**

Section 61(3) of the ADGM Arbitration Regulations 2015 addresses the outcome when a party applies to the Court for the recognition or enforcement of an arbitral award within the Abu Dhabi Global Market (ADGM). Let us analyse this provision:

1. Recognition and Enforcement Decision:
  - a. This provision outlines the result of the Court’s deliberation when a party submits an application for the recognition or enforcement of an arbitral award.
  - b. If the Court finds that the conditions for recognition and enforcement are met, it is obligated to issue an order stating that the award shall be recognised or enforced within the ADGM jurisdiction.
2. Court Authority and Decision-Making:

- a. The provision emphasises the authority of the Court to make decisions on the recognition and enforcement of arbitral awards within the ADGM.
- b. The issuance of an order signifies the Court’s determination that the award is valid and should be recognised or enforced in the ADGM, aligning with the international principle of honouring valid arbitral awards.
3. Formalising the Recognition and Enforcement Process: By issuing an order stating that the award shall be recognised or enforced, the Court formalises and authorises the process of enforcing the arbitral award in accordance with the ADGM’s legal framework.
4. Finality and Legal Consequence:
  - a. The issuance of such an order carries legal consequences, as it confirms the enforceability of the award as if it were a judgment of the Court.
  - b. The order establishes the basis for treating the arbitral award as legally binding within the ADGM and provides the necessary foundation for the party seeking enforcement.
5. Compliance with International Standards: This provision aligns with international arbitration norms and practices, where courts issue orders or judgments for the recognition and enforcement of arbitral awards to ensure their enforceability within a jurisdiction.

In summary, Section 61(3) of the ADGM Arbitration Regulations 2015 stipulates the action taken by the Court when a party’s application for the recognition or enforcement of an arbitral award is successful. The Court issues an order affirming the recognition or enforcement of the award, thereby formalising its enforceability within the ADGM jurisdiction. This provision reflects the Court’s role in upholding the legitimacy of arbitral awards and facilitating their implementation.

**(4) An order recognising or enforcing an arbitral award shall be issued in English, unless the Court shall determine otherwise. If the Court determines that the order should be issued in another language in addition to English, either language version, in its original or certified copy form, shall constitute sufficient proof of the order for recognition or enforcement.**

Section 61(4) of the ADGM Arbitration Regulations 2015 outlines the language and form requirements for orders issued by the Court for recognising or enforcing arbitral awards within the Abu Dhabi Global Market (ADGM). Let us analyse this provision:

1. Language of the Order:
  - a. The provision stipulates that the default language for issuing orders recognising or enforcing arbitral awards in the ADGM is English.
  - b. This underscores the importance of having a common and widely understood language for the issuance of such orders, ensuring clarity and accessibility for parties involved in the enforcement process.



2. Court's Discretion: The provision allows for the Court to determine if an order should be issued in a language other than English. This discretionary power gives the Court the flexibility to consider the circumstances of the case and the needs of the parties.
3. Multilingual Orders:
  - a. If the Court decides that an order should be issued in a language other than English, the provision specifies that both the English version and the additional language version(s) shall constitute sufficient proof of the order's content for recognition or enforcement purposes.
  - b. This approach accommodates situations where parties involved in the enforcement process may be more comfortable or familiar with a language other than English.
4. Ensuring Accessibility and Understanding:
  - a. The provision acknowledges the international nature of arbitration and aims to ensure that orders are accessible and comprehensible to parties from diverse linguistic backgrounds.
  - b. By allowing multilingual orders, the provision contributes to transparency and the efficient enforcement of arbitral awards.
5. Consistency with International Practice: The practice of issuing orders in a language understood by the parties is consistent with international arbitration norms and aims to promote effective communication and enforcement across jurisdictions.

In summary, Section 61(4) of the ADGM Arbitration Regulations 2015 governs the language and form requirements for orders issued by the Court for recognising or enforcing arbitral awards within the ADGM jurisdiction. The provision primarily emphasises the default use of English for such orders while allowing the Court to exercise its discretion to issue multilingual orders as needed. This approach reflects a balance between promoting effective communication and accommodating linguistic diversity in the enforcement process.

**(5) Subject to Section 13 of the ADGM Founding Law, awards recognised by the Court may be enforced outside the Abu Dhabi Global Market in accordance with the applicable legislation in force and recognition under these Regulations includes ratification for the purposes of any such applicable legislation.**

Section 61(5) of the ADGM Arbitration Regulations 2015 discusses the recognition and enforcement of arbitral awards issued within the Abu Dhabi Global Market (ADGM) jurisdiction outside the ADGM. Let us analyse this provision:

1. Scope of the Provision:
  - a. The provision primarily addresses the issue of enforcing awards that have been recognised by the Court within the ADGM jurisdiction.

- b. It highlights the possibility of enforcing such recognised awards in locations outside the ADGM.
2. Applicable Legislation:
  - a. The provision acknowledges that the enforcement of recognised awards outside the ADGM is subject to the applicable legislation in the foreign jurisdiction where enforcement is sought.
  - b. This reflects the principle of comity, recognising that foreign jurisdictions have their own legal frameworks for enforcing arbitral awards.
3. Interplay with ADGM Founding Law: Section 13 of the ADGM Founding Law is referenced in this provision. This suggests that the recognition and enforcement of arbitral awards outside the ADGM must comply with the overarching principles and policies set out in the ADGM Founding Law.
4. Recognition and Ratification:
  - a. The provision indicates that the recognition of arbitral awards within the ADGM includes a form of ratification for the purposes of any applicable legislation in the foreign jurisdiction.
  - b. This emphasises that the recognised award carries the weight of being endorsed by the ADGM Court, which may facilitate the enforcement process in other jurisdictions.
5. Alignment with International Practice:
  - a. This provision aligns with the broader practices in international arbitration, where a recognised award often serves as a foundation for seeking enforcement in other jurisdictions.
  - b. By recognising the ratification effect, the ADGM reinforces its commitment to facilitating the enforceability of arbitral awards both within its jurisdiction and internationally.

In summary, Section 61(5) of the ADGM Arbitration Regulations 2015 addresses the recognition and enforcement of arbitral awards within the ADGM jurisdiction outside the ADGM itself. The provision emphasises that such recognition carries with it a form of ratification, which may assist in enforcing the award in accordance with the laws of the foreign jurisdiction where enforcement is sought. This approach reflects the ADGM's commitment to upholding the enforceability of recognised awards internationally and supporting the principles of international arbitration.

**62. Grounds for refusing recognition or enforcement**

**(1) Recognition or enforcement of an arbitral award, irrespective of the State or jurisdiction in which it was made, may be refused by the Court only if:**

**(a) the party making the application furnishes proof that:**

**(i) a party to the arbitration agreement was, under the law applicable to it, under some incapacity;**

**(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made;**

**(iii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;**

**(iv) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced;**

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

**(vi) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.**

Section 62(1)(a) of the ADGM Arbitration Regulations 2015 outlines the grounds upon which the Court may refuse the recognition or enforcement of an arbitral award within the ADGM jurisdiction. Let us break down this provision for analysis:

1. Incapacity (Section 62(1)(a)(i)):

a. The party seeking to resist the recognition or enforcement of the award can furnish proof that a party to the arbitration agreement was under some legal incapacity under the law applicable to that party.

b. This recognises the principle that parties to an arbitration agreement should have the legal capacity to enter into such an agreement.

2. Invalid Arbitration Agreement (Section 62(1)(a)(ii)):

a. If the arbitration agreement is not valid under the law to which the parties have subjected it or under the law of the country where the award was made, the Court may refuse recognition or enforcement.

- b. This ensures that the arbitration agreement is legally valid and enforceable according to the chosen or applicable law.
3. Lack of Proper Notice or Opportunity (Section 62(1)(a)(iii)):
  - a. If the party against whom the award is invoked was not given proper notice of the arbitrator's appointment or the arbitral proceedings or was unable to present their case, the Court may refuse recognition or enforcement.
  - b. This upholds the principle of due process and fairness in arbitration proceedings.
4. Scope of Arbitral Submission (Section 62(1)(a)(iv)):
  - a. The award can be refused recognition or enforcement if it deals with a difference that was not contemplated by or not within the terms of the submission to arbitration.
  - b. This ensures that the award remains within the scope of the arbitration agreement and submission.
5. Irregular Composition or Procedure (Section 62(1)(a)(v)):
  - a. If the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or the law of the country where the arbitration took place, the Court may refuse recognition or enforcement.
  - b. This emphasises the importance of adhering to agreed-upon procedures and ensuring a fair arbitration process.
6. Non-Binding Award or Set Aside/Suspended Award (Section 62(1)(a)(vi)):
  - a. The Court may refuse recognition or enforcement if the award has not yet become binding on the parties or if it has been set aside or suspended by a competent authority of the country where it was made.
  - b. This ensures that only valid and effective awards are recognised and enforced.

In summary, Section 62(1)(a) of the ADGM Arbitration Regulations 2015 provides a comprehensive list of grounds upon which the Court may refuse the recognition or enforcement of an arbitral award within the ADGM jurisdiction. These grounds aim to safeguard the integrity of the arbitration process, protect the parties' rights, and ensure that only valid and enforceable awards are recognised within the ADGM.

**(b) the Court finds that:**

**(i) the subject-matter of the difference is not capable of settlement by arbitration under the laws of the Abu Dhabi Global Market; or**

**(ii) the recognition or enforcement of the award would be contrary to the public policy of the UAE.**

Section 62(1)(b) of the ADGM Arbitration Regulations 2015 outlines two additional grounds upon which the Court may refuse the recognition or enforcement of an arbitral award within the ADGM jurisdiction. Let us analyse these grounds:

1. Subject-Matter Not Capable of Settlement by Arbitration (Section 62(1)(b)(i)):
  - a. The Court may refuse recognition or enforcement if it determines that the subject-matter of the dispute, as decided in the arbitral award, is not capable of being resolved through arbitration under the laws of the Abu Dhabi Global Market (ADGM).
  - b. This reflects the principle that certain types of disputes may be considered inappropriate for resolution through arbitration and are better suited for other legal processes.
2. Contrary to Public Policy (Section 62(1)(b)(ii)):
  - a. The Court may also refuse recognition or enforcement if it finds that recognising or enforcing the award would be contrary to the public policy of the United Arab Emirates (UAE).
  - b. This ground allows the Court to prevent enforcement of an award that would violate fundamental principles of the UAE's legal system or go against its public policy.

Overall, Section 62(1)(b) aims to maintain the balance between enforcing arbitral awards and ensuring that the ADGM's legal and public policy standards are upheld. It enables the Court to refuse recognition or enforcement if the subject-matter is not suitable for arbitration under ADGM laws or if enforcing the award would run counter to UAE's public policy. This provision ensures that while recognising the finality of arbitral awards, certain exceptional circumstances can still be considered to protect important legal and policy interests.

**(2) If an application for the setting aside or suspension of an award has been made to a court referred to in subsection (1), the Court may, if it considers it proper, adjourn its decision and may also, on the application of the party seeking recognition or enforcement of the award, order the other party to provide appropriate security.**

Section 62(2) of the ADGM Arbitration Regulations 2015 introduces the concept of adjourning the Court's decision on the recognition or enforcement of an arbitral award under certain circumstances. Let us break down the key points of this provision:

1. Application for Setting Aside or Suspension of Award: If an application has been made to a court (as mentioned in subsection 62(1), which refers to the Court referred to in Section 58(1)) for the setting aside or suspension of the arbitral award, the Court considering the recognition or enforcement of the award may take certain actions.
2. Adjournment of Decision:

- a. The Court has the discretion to adjourn its decision on whether to recognise or enforce the arbitral award if it deems it appropriate.
  - b. This allows the Court to delay its decision until the application for setting aside or suspension of the award has been resolved. The rationale is to avoid conflicting decisions from different courts and to prevent potential legal inconsistencies.
3. Security Order:
- a. The Court may also, upon the application of the party seeking recognition or enforcement of the award, order the other party to provide appropriate security.
  - b. This means that if the party seeking enforcement is concerned that the other party might dissipate assets or hinder the enforcement process, they can request the Court to order the other party to provide security to ensure that the enforcement process will not be frustrated.

In essence, Section 62(2) provides the Court with flexibility when dealing with applications for the recognition or enforcement of arbitral awards that are concurrent with applications to set aside or suspend the same awards. By allowing the Court to adjourn its decision and order security, it aims to maintain fairness and prevent any undue prejudice while ensuring the effective enforcement of arbitral awards.

**(3) Any party seeking recourse against an arbitral award made in the seat of the Abu Dhabi Global Market shall not be permitted to make an application under subsection (1) if it has made or could have made an application under section 58 of these Regulations.**

Section 62(3) of the ADGM Arbitration Regulations 2015 sets a limitation on the ability of a party to seek recourse against an arbitral award made in the seat of the Abu Dhabi Global Market. Here is an analysis of this provision:

1. Recourse Against an Arbitral Award: This provision pertains to a situation where a party is seeking to challenge or contest an arbitral award that has been rendered in an arbitration seated in the Abu Dhabi Global Market (ADGM).
2. Limitation on Application Under Subsection (1):
  - a. Subsection (1) of Section 62 outlines the specific grounds under which the recognition or enforcement of an arbitral award may be refused by the Court.
  - b. Section 62(3) restricts the right of a party to make an application under subsection (1) if that party has already made or could have made an application under section 58 of the Regulations.
3. Application Under Section 58: Section 58 of the ADGM Arbitration Regulations 2015 outlines the process for setting aside an arbitral award, specifying the limited grounds on which an award may be set aside by the Court.
4. Avoiding Parallel Proceedings:

- a. This provision aims to prevent parties from engaging in parallel proceedings by seeking recourse against an award through both the avenues of applying for setting aside (under section 58) and challenging recognition or enforcement (under subsection 62(1)).
- b. If a party has the opportunity to challenge an award under section 58, this provision essentially restricts them from circumventing that process by making an application under subsection 62(1).

In summary, Section 62(3) of the ADGM Arbitration Regulations 2015 serves to prevent duplicative or conflicting proceedings by prohibiting a party from seeking recourse against an arbitral award through both the mechanisms of setting aside and challenging recognition or enforcement. If the party has the option to apply for setting aside under section 58, they cannot bypass that route to seek recourse under subsection 62(1).

## SCHEDULE 1 INTERPRETATION

## 1. Rules of interpretation

(1) In these Regulations, unless a contrary intention appears, a reference to:

- (a) a statutory provision includes a reference to the statutory provision as amended or re-enacted from time to time;
- (b) a person includes any natural person, body corporate or body unincorporate, including a company, partnership, unincorporated association, government or state;
- (c) an obligation to publish or cause to be published a particular document shall, unless expressly provided otherwise in these Regulations, include publishing or causing to be published in printed or electronic form;
- (d) a day shall refer to a business day, being a normal working day in the Abu Dhabi Global Market;
- (e) a calendar year shall mean a year of the Gregorian calendar;
- (f) a reference to the masculine gender includes the feminine and vice versa; and
- (g) words in the singular shall include the plural and *vice versa*.

Section 1(1) of Schedule 1 to the ADGM Arbitration Regulations 2015 provides definitions and interpretation guidelines for various terms used within the regulations. This provision aims to ensure clarity and consistency in the interpretation of terms and phrases used throughout the regulations. Here is an analysis of the key elements within this section:

1. Statutory Provision (a): This part clarifies that references to statutory provisions within the regulations include references to those provisions as they may be amended or re-enacted over time. It ensures that the regulations take into account changes to the law over time.
2. Person (b): This part defines “person” broadly to encompass natural persons, legal entities such as corporations and partnerships, unincorporated associations, governments, and states. It includes a wide range of legal entities.
3. Obligation to Publish (c): This clause addresses the requirement to publish documents. It states that an obligation to publish or cause to be published a document includes both printed and electronic forms of publication unless otherwise provided in the regulations.
4. Business Day (d): This part defines a “business day” as a regular working day in the Abu Dhabi Global Market. It clarifies that certain timeframes or actions specified within the regulations should be understood in terms of business days.
5. Calendar Year (e): This section defines “calendar year” as a year according to the Gregorian calendar. It sets the standard for calculating time in years.



6. Gender Inclusion (f): This clause stipulates that references to gender-specific terms, such as masculine or feminine, are inclusive of the opposite gender. This ensures gender neutrality in interpretation.
7. Singular and Plural (g): This part clarifies that words used in the singular form include the plural form and vice versa. It ensures that the regulations are interpreted consistently whether referring to a single entity or multiple entities.

Overall, Section 1(1) of Schedule 1 to the ADGM Arbitration Regulations 2015 plays a vital role in providing clarity and standardisation in the interpretation of terms used within the regulations. It helps ensure that the regulations are applied consistently and effectively, accounting for potential amendments to statutory provisions, variations in gender terminology, and the usage of singular and plural forms.

## **(2) The headings in these Regulations shall not affect the interpretation of these Regulations.**

Section 1(2) of Schedule 1 to the ADGM Arbitration Regulations 2015 addresses the role of headings in the interpretation of the regulations. Here is an analysis of this provision:

This section states that the headings used within the regulations themselves will not impact the interpretation of the regulations. In other words, the titles or headings given to different sections or parts of the regulations are not intended to have any substantive legal effect or alter the meaning of the content contained within those sections.

The purpose of this provision is to prevent any confusion or misunderstanding that might arise from relying solely on the headings to understand the regulations. It emphasises that the actual text and language of the regulations are what determine their legal effect and meaning, rather than any headings that may be used to organise the content.

By clarifying that headings do not affect interpretation, this provision reinforces the principle that the content of the regulations itself is the primary source of legal guidance. It encourages readers to refer to the actual language of the provisions rather than relying solely on the headings as a basis for understanding the legal implications of the regulations.

## **(3) Where a provision of these Regulations leaves the parties free to determine or agree upon an issue, such freedom includes the right of the parties to authorise a third party, including an arbitration institution or appointing authority, to make a determination on that issue.**

Section 1(3) of Schedule 1 to the ADGM Arbitration Regulations 2015 addresses the concept of party autonomy and the freedom of parties to determine or agree upon certain issues in the context of arbitration. Here is an analysis of this provision:

This section emphasises the principle of party autonomy, which is a fundamental concept in arbitration. Party autonomy refers to the idea that the parties involved in an arbitration have the freedom to shape and structure their arbitration proceedings according to their preferences and agreements. This provision clarifies that when a provision within the regulations allows the parties to determine or agree upon a specific issue, this freedom extends to giving the parties the right to

delegate this authority to a third party, which could include an arbitration institution or an appointing authority.

In other words, if the regulations provide parties with the discretion to decide on a particular aspect of their arbitration, the parties can also delegate this decision-making authority to an external entity. This is particularly relevant when parties opt for institutional arbitration, where an arbitration institution plays a role in administering the arbitration process, appointing arbitrators, and managing various procedural aspects.

The intent behind this provision is to reinforce the broad scope of party autonomy and to recognise that parties can involve third parties in decisions related to their arbitration proceedings if they choose to do so. This approach aligns with the modern trend of recognising and supporting the flexibility and autonomy of parties in arbitration processes, allowing them to tailor the procedure to best suit their needs and preferences.

**(4) A reference in these Regulations to a Part, Section or Schedule by number only, and without further identification, is a reference to the Part, Section or Schedule of that number in these Regulations.**

Section 1(4) of Schedule 1 to the ADGM Arbitration Regulations 2015 provides a rule of interpretation regarding references to parts, sections, or schedules within the regulations. Here is an analysis of this provision:

This section serves as a clarification for interpreting references to specific parts, sections, or schedules within the ADGM Arbitration Regulations. It states that when a reference is made to a particular Part, Section, or Schedule by its number alone, without additional identification, that reference is understood to be referring to the corresponding Part, Section, or Schedule within the same set of regulations.

In essence, this provision ensures that the reader understands that when a specific number is mentioned in relation to a Part, Section, or Schedule, the reference is confined to the context of the ADGM Arbitration Regulations themselves and does not refer to external provisions or documents. This rule helps to prevent any confusion or ambiguity that might arise when interpreting the numbering system used within the regulations.

By providing this clarification, the ADGM Arbitration Regulations ensure that their internal references are easily identifiable and that there is no need to consider external sources to determine the intended meaning of the numbered references. This enhances the clarity and precision of the regulations' interpretation, making them more user-friendly for both practitioners and those seeking to understand their content.

**(5) A reference in a section or other division of these Regulations to a subsection, paragraph, subparagraph or section by number or letter only is a reference to the subsection, paragraph, subparagraph or section of that number or letter contained in the section or other division of these Regulations in which that reference occurs.**

Section 1(5) of Schedule 1 to the ADGM Arbitration Regulations 2015 provides further guidance on how to interpret references within sections or divisions of the regulations. Here is an analysis of this provision:

This section deals with the internal cross-referencing within the ADGM Arbitration Regulations. It explains that when a reference is made within a section or other division of the regulations to a subsection, paragraph, subparagraph, or section by number or letter only, that reference is intended to point to the corresponding subsection, paragraph, subparagraph, or section within the same section or division where the reference is located.

In other words, this provision clarifies that references made within a specific context, such as a section or subsection, are meant to be understood in relation to that particular context. The numbering or lettering system is intended to be consistent within that section or division, and references are not intended to refer to external sections or divisions.

By providing this clarification, the ADGM Arbitration Regulations ensure that readers can easily follow cross-references within the same section or division of the regulations without having to navigate to other parts of the document. This rule helps maintain coherence and clarity within the regulations and aids users in understanding the intended connections between different provisions in a localised manner.

Overall, Section 1(5) enhances the accessibility and usability of the ADGM Arbitration Regulations by explaining how internal references should be understood and preventing any confusion that might arise from interpreting references out of context.

**(6) Unless the context otherwise requires, where these Regulations refer to an enactment, the reference is to that enactment as amended from time to time, and includes a reference to that enactment as extended or applied by or under another enactment, including any other provision of that enactment.**

Section 1(6) of Schedule 1 to the ADGM Arbitration Regulations 2015 provides guidance on how references to enactments within the regulations should be understood. Here is an analysis of this provision:

This section addresses the interpretation of references to “enactments” within the ADGM Arbitration Regulations. An “enactment” generally refers to a formal written law or statute passed by a legislative body. In this context, the term “enactment” refers to laws, regulations, or any legislative instruments that are relevant to the subject matter of the arbitration regulations.

Section 1(6) specifies that when the ADGM Arbitration Regulations make reference to an “enactment”, the reference is understood to include any amendments that have been made to that enactment over time. This means that the regulations are intended to incorporate changes made to the referenced enactment, ensuring that the regulations remain up-to-date and aligned with any modifications that may have been made to the referenced laws.

Furthermore, the provision clarifies that if an enactment is extended, applied, or otherwise invoked by another enactment, the reference in the regulations also encompasses the extension, application, or invocation. This is significant as it ensures that when a certain law is being used in conjunction with other laws, all relevant aspects of that law are considered in the context of the arbitration regulations.

By including this provision, the ADGM Arbitration Regulations establish a principle of dynamic incorporation. This principle allows the regulations to remain effective and accurate over time, even as the referenced enactments may undergo changes through amendments, extensions, or applications.

In summary, Section 1(6) ensures that references to enactments in the ADGM Arbitration Regulations take into account any amendments or extensions to those enactments, providing a clear and comprehensive understanding of the legal framework within which the regulations operate.

**(7) References in these Regulations to a writing, filing, instrument or certificate include any mode of communication that preserves a record of the information contained therein and is capable of being reproduced in tangible form, including electronic means.**

Section 1(7) of Schedule 1 to the ADGM Arbitration Regulations 2015 provides a broad interpretation of terms related to communication and documentation within the context of the regulations. Here is an analysis of this provision:

This section deals with the interpretation of terms related to various forms of communication and documentation within the ADGM Arbitration Regulations. The purpose of this provision is to ensure that the regulations are inclusive of modern communication methods, particularly electronic means, which have become prevalent in the digital age.

Section 1(7) states that references in the regulations to terms such as “writing”, “filing”, “instrument”, or “certificate” are not limited to traditional paper-based formats. Instead, these terms are to be understood in a more expansive manner that includes any mode of communication capable of preserving a record of the information contained therein and can be reproduced in tangible form. This encompasses electronic methods of communication, such as emails, digital documents, and electronic signatures, that can effectively record and reproduce information.

By including this provision, the ADGM Arbitration Regulations acknowledge the importance of adapting to technological advancements and modern practices in communication and documentation. This approach recognises that electronic communication and documentation have become standard in many areas of legal and business transactions and ensures that the regulations remain relevant and adaptable to the evolving business landscape.

In essence, Section 1(7) facilitates the use of electronic means of communication and documentation while maintaining the legal integrity and enforceability of such methods within the context of the regulations. This approach aligns with the broader trend of modernising legal frameworks to accommodate the digital age and reflects a forward-looking approach to arbitration proceedings within the Abu Dhabi Global Market.

**(8) Where a provision of these Regulations refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules, including those of any institution, referred to in that agreement.**

Section 1(8) of Schedule 1 to the ADGM Arbitration Regulations 2015 deals with the interpretation of references to agreements between parties within the context of the regulations. Here is an analysis of this provision:

This section addresses the concept of agreements between parties within the context of the ADGM Arbitration Regulations. The purpose of this provision is to clarify that when the regulations make reference to agreements between parties, the scope of such agreements includes not only explicit agreements made directly between the parties but also agreements that incorporate or reference arbitration rules, including those of any institution.

Section 1(8) states that where a provision of the regulations refers to the fact that parties have agreed, may agree, or in any other way refers to an agreement of the parties, such reference also encompasses any arbitration rules that are incorporated into or referenced within that agreement. This includes rules provided by arbitration institutions or organisations that parties choose to adopt for their arbitration proceedings.

In essence, this provision recognises that parties can agree not only on specific terms but also on the adoption of a set of arbitration rules provided by a recognised institution. By doing so, the parties are essentially agreeing to be bound by those rules as part of their arbitration agreement.

This interpretation aligns with the flexibility and party autonomy that are often key features of arbitration. It allows parties to adopt established arbitration rules, which can provide a structured framework for the arbitration process and help streamline procedures. At the same time, parties are still free to customise their arbitration agreement by incorporating specific terms, such as the choice of arbitrators, the governing law, and other procedural matters.

Overall, Section 1(8) ensures that references to agreements in the ADGM Arbitration Regulations encompass the broader concept of agreements that include the adoption of arbitration rules provided by institutions, in addition to direct contractual agreements between the parties. This approach reflects the intent to accommodate various arbitration practices and provide parties with a range of options to suit their specific needs and preferences.

**(9) Where a provision of these Regulations, other than in sections 46(a) and 56(2)(a), refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim.**

Section 1(9) of Schedule 1 to the ADGM Arbitration Regulations 2015 addresses the interpretation of references to claims, counter-claims, and defences within the context of the regulations. Here is an analysis of this provision:

This section clarifies the scope of references to “claim” and “defence” within the ADGM Arbitration Regulations. Specifically, it expands the application of these terms to include counter-claims and defences to counter-claims in relevant provisions, with the exception of sections 46(a) and 56(2)(a).

In the context of arbitration proceedings, a “claim” typically refers to the primary demand or assertion made by the claimant against the respondent. A “counter-claim” is a claim brought by the respondent against the claimant in response to the original claim. Similarly, a “defence” is the response made by a party to the allegations brought against them.

Section 1(9) ensures that when the regulations refer to a “claim”, the same provision also applies to a counter-claim, and when the regulations refer to a “defence”, the same provision also applies to a defence to a counter-claim. This alignment is important for consistency in the application of the regulations throughout the arbitration process, ensuring that both the original claims and any counter-claims, as well as corresponding defences, are treated in a coherent manner.

However, the provision explicitly excludes sections 46(a) and 56(2)(a) from this extension. The reason for this exclusion could be that these sections have specific requirements or characteristics related to claims or defences that should not necessarily be mirrored in the context of counter-claims or defences to counter-claims.

In summary, Section 1(9) of Schedule 1 to the ADGM Arbitration Regulations aims to maintain consistency in the application of terms like “claim” and “defence” by extending their scope to cover counter-claims and defences to counter-claims in relevant provisions. This approach supports a comprehensive and balanced treatment of all aspects of the arbitration.

**(10) A reference in these Regulations to a hearing, argument or a report being conducted or delivered orally includes a remote hearing, argument or report that allows parties to orally present their case by using technological solutions such as telephone, video conference or other communication technology.**

Section 1(10) of Schedule 1 to the ADGM Arbitration Regulations 2015 addresses the interpretation of references to hearings, arguments, or reports within the context of the regulations, particularly in light of modern technological advancements. Here is an analysis of this provision:

This section recognises the evolving nature of communication technology and its impact on legal proceedings, including arbitration. It clarifies that references to hearings, arguments, or reports being conducted or delivered orally under the ADGM Arbitration Regulations should also include the concept of remote proceedings facilitated by technology.

In traditional legal proceedings, oral hearings, arguments, and reports were typically conducted in a physical setting where participants were physically present. However, with the advancement of technology, remote hearings using communication tools like telephone, video conference, or other similar methods have become increasingly common and practical. These remote proceedings allow parties, arbitrators, witnesses, and legal representatives to participate and present their case from different locations, which can save time and costs and accommodate parties from various geographical areas.

Section 1(10) ensures that the provisions of the regulations that mention oral hearings, arguments, or reports also encompass the concept of remote proceedings. It acknowledges the legitimacy and acceptance of using technology to facilitate effective communication and participation in arbitration proceedings, while still maintaining the essence of oral presentation and communication.

By including technological solutions like telephone, video conference, and other communication technology, the provision reflects the flexibility and adaptability of modern arbitration procedures to accommodate the practicalities of today's globalised and interconnected world.

In summary, Section 1(10) of Schedule 1 to the ADGM Arbitration Regulations 2015 acknowledges and embraces the use of technology in arbitration proceedings by clarifying that references to oral hearings, arguments, or reports also extend to remote proceedings conducted through technological solutions like telephone, video conference, or similar communication tools. This recognition aligns the regulations with the current practices and advancements in the field of arbitration.

## 2. Legislation in the Abu Dhabi Global Market

References to legislation in these Regulations shall be construed in accordance with the following provisions:

**(a) Federal Law is law made by the federal government of the United Arab Emirates;**

**(b) Abu Dhabi Law is law made by the Ruler, as applicable in the Emirate of Abu Dhabi; and**

**(c) these Regulations are the Arbitration Regulations 2015 made by the Board.**

Section 2 of Schedule 1 to the ADGM Arbitration Regulations 2015 provides guidance on how references to legislation within the regulations should be interpreted based on the source of the law. Here is an analysis of this provision:

This section serves as a key interpretive tool for understanding references to legislation within the ADGM Arbitration Regulations 2015. It clarifies that the way legislation is understood and applied in the context of the regulations depends on its source. The three categories of legislation mentioned are as follows:

1. (a) Federal Law: This refers to laws enacted by the federal government of the United Arab Emirates (UAE). The UAE consists of multiple emirates, each of which has its own local laws. Federal laws are those that apply uniformly across all emirates and are enacted at the federal level by the UAE government. They typically cover matters that fall under the jurisdiction of the federal government.
2. (b) Abu Dhabi Law: This refers to laws enacted by the Ruler of Abu Dhabi, the capital emirate of the UAE. While the UAE is a federation, each emirate retains a degree of autonomy, and local laws may be promulgated by the rulers of individual emirates. Abu Dhabi Law pertains to legislation specific to the Emirate of Abu Dhabi and may address matters within the emirate's jurisdiction.
3. (c) These Regulations: This refers to the ADGM Arbitration Regulations 2015 themselves, which are enacted by the ADGM Board. The ADGM (Abu Dhabi Global Market) is an international financial centre located in Abu Dhabi, with its own legal and regulatory framework that operates independently within the Emirate of Abu Dhabi. These regulations specifically govern arbitration proceedings within the ADGM jurisdiction.

The purpose of Section 2 is to provide clarity and precision when interpreting references to different types of legislation within the ADGM Arbitration Regulations. It establishes a framework to correctly identify the source and scope of legal provisions mentioned in the regulations, ensuring that readers and practitioners understand the context and jurisdiction to which those provisions apply.

In summary, Section 2 of Schedule 1 to the ADGM Arbitration Regulations 2015 outlines how references to legislation within the regulations should be understood based on the source of the law—whether it is federal law, Abu Dhabi law, or the ADGM Arbitration Regulations themselves. This provision aids in correctly interpreting the legal provisions within the regulations and clarifies the applicable legal framework for arbitration proceedings conducted within the ADGM jurisdiction.



### **3. Defined Terms**

In these Regulations, unless the context indicates otherwise, the defined terms listed below shall have the corresponding meanings:

(a) “Abu Dhabi Global Market” has the meaning given in section 1 of the Interpretation Regulations 2015;

(b) “arbitral tribunal” means a sole arbitrator, a panel of arbitrators or an emergency arbitrator appointed pursuant to the rules of arbitration agreed to or adopted by the parties or pursuant to these Regulations;

(c) “Board” has the meaning given in section 1 of the Interpretation Regulations 2015;

(d) “Confidential Information” means any information relating to:

the arbitral proceedings under the arbitration agreement; or

an award made in those arbitral proceedings;

(e) “Court” means the Court of First Instance;

(f) “court” shall mean any competent court of any State or jurisdiction, including the Court, where applicable;

(g) “Court of First Instance” has the meaning given in section 229(1) of the Court Regulations;

(h) “Court Regulations” means the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015;

(i) “dispute” includes any difference;

(j) “hearing” includes a procedural hearing or a case management conference prior to or after the presentation of evidence or oral argument;

(k) “legal proceedings” means civil proceedings in the ADGM Courts;

(l) “legislation” includes regulations or rules made under legislation;

(m) “ADGM Founding Law” means Law No. (4) of 2013 concerning Abu Dhabi Global Market, as amended by Law No. (12) of 2020, issued by His Highness the Ruler;

(n) “New York Convention” means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration on 10 June 1958;

(o) “New York Convention Award” means an award made, in pursuance of an arbitration agreement, in the territory of a state which is a signatory to the New York Convention (other than the UAE). An award shall be treated as made at the seat of the arbitration, regardless of where it was signed, despatched or delivered to any of the parties;

**(p) “Party Representative” means any person, including an employee of a party, who appears in an arbitration on behalf of a party and makes submissions, arguments or representations to the arbitral tribunal on behalf of such party (other than as a witness or expert), whether or not they hold a legal qualification or are admitted to practice law in any jurisdiction;**

**(q) “seat” means the juridical seat of the arbitration designated (a) by the parties to the arbitration agreement, or (b) by any arbitral or other institution or person vested by the parties with powers in that regard, or (c) by the arbitral tribunal;**

**(r) “these Regulations” means the Arbitration Regulations 2015 issued by the Board of Directors of the Abu Dhabi Global Market, as amended in December 2020;**

**(s) “Ruler” means the ruler of the Emirate of Abu Dhabi;**

**(t) “third party funding agreement” means an agreement under which a person (“the funder”) agrees to fund (directly or indirectly and in whole or in part) the provision of advocacy or litigation services (by a person other than the funder) to a party in return for a sum payable by the party in specified circumstances; and**

**(u) “UAE” means the United Arab Emirates.**

Section 3 of Schedule 1 to the ADGM Arbitration Regulations 2015 provides definitions for various terms used within the regulations. It ensures that these terms are understood consistently throughout the document. Here is an analysis of this provision:

This section serves as a glossary that defines key terms used within the ADGM Arbitration Regulations 2015. It is designed to provide clarity and precision in the interpretation of these terms. Let us break down each defined term:

1. (a) “Abu Dhabi Global Market”: This term is given the meaning provided in section 1 of the Interpretation Regulations 2015. The Interpretation Regulations clarify the interpretation of certain terms, and in this context, it defines the geographical and legal scope of the Abu Dhabi Global Market as an international financial centre.
2. (b) “arbitral tribunal”: This term refers to the body responsible for conducting arbitration proceedings. It can consist of a sole arbitrator, a panel of arbitrators, or an emergency arbitrator, appointed based on the parties’ arbitration agreement or pursuant to the regulations.
3. (c) “Board”: This term is also defined by reference to the Interpretation Regulations 2015, providing the meaning of the term “Board”, which likely refers to the governing body or authority responsible for certain matters within the ADGM jurisdiction.
4. (d) “Confidential Information”: This term covers information related to the arbitral proceedings under the arbitration agreement or an award made in those proceedings. It emphasises the sensitive nature of arbitration proceedings and the confidentiality that surrounds them.
5. (e) “Court”: Refers to the Court of First Instance, which is part of the judicial system within the ADGM jurisdiction.

6. (f) “court”: This term is more general and refers to any competent court of any state or jurisdiction, including the specific Court of First Instance mentioned earlier.
7. (g) “Court of First Instance”: This term is defined by reference to section 229(1) of the Court Regulations, identifying a specific court within the ADGM jurisdiction.
8. (h) “Court Regulations”: Refers to the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015, outlining the regulations governing the ADGM Courts’ procedures and related matters.
9. (i) “dispute”: This term includes any difference, emphasising its broad scope within the context of arbitration proceedings.
10. (j) “hearing”: This term is not limited to a formal trial-like proceeding but also includes procedural hearings and case management conferences that are essential to the arbitration process.
11. (k) “legal proceedings”: This refers to civil proceedings in the ADGM Courts, highlighting that it is distinct from the arbitration proceedings governed by the regulations.
12. (l) “legislation”: This term includes regulations or rules made under legislation, emphasising its comprehensive scope.
13. (m) “ADGM Founding Law”: This refers to Law No. (4) of 2013 concerning Abu Dhabi Global Market, as amended by Law No. (12) of 2020, which establishes the legal framework for the ADGM jurisdiction.
14. (n) “New York Convention”: Refers to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted in 1958, highlighting its significance in international arbitration.
15. (o) “New York Convention Award”: Describes an award made in a state signatory to the New York Convention and clarifies that the seat of arbitration determines its applicability.

The remaining defined terms in Section 3 similarly provide precise meanings for important terms, covering concepts like party representation, the concept of “seat” in arbitration, and the scope of the regulations themselves.

In summary, Section 3 of Schedule 1 to the ADGM Arbitration Regulations 2015 serves as a comprehensive glossary, defining key terms used within the regulations. It ensures that these terms are consistently understood throughout the document and provides context for their application within the ADGM jurisdiction and the broader field of arbitration.

**SCHEDULE 2 MANDATORY PROVISIONS OF THE REGULATIONS**

The mandatory provisions referred to in section 9 of the Regulations are the following:

- Section 11 (Waiver and loss of right to object);**
- Section 12 (Extent of court intervention);**
- Section 14 (Arbitration agreement);**
- Section 16 (Stay of legal proceedings);**
- Section 20 (Grounds for challenge);**
- Section 22 (Failure or impossibility to act);**
- Section 24 (Liability of arbitral tribunal and others);**
- Section 26 (Objection to the substantive jurisdiction of tribunal);**
- Section 27 (Determination of preliminary point of jurisdiction);**
- Section 30 (Recognition and enforcement of interim measures by the Court);**
- Section 31 (Power of the Court to order interim measures);**
- Section 32 (Privacy of arbitration related court proceedings);**
- Section 33 (Fair treatment of parties);**
- Section 34(4) and (5) (Determination of rules of procedure);**
- Section 35(2) (Seat of arbitration);**
- Section 37(1) and (2) (Disclosure of a third-party funding agreement);**
- Section 38(3) (Consolidation orders – limitation periods);**
- Section 44 (Party and party’s representatives conduct);**
- Section 45(2) (Confidentiality of arbitral proceedings and awards);**
- Section 47(3) and (4) (Expert report or evidentiary document);**
- Section 48 (Court assistance in taking evidence);**
- Section 49(1) and (3) (Rules applicable to substance of dispute);**
- Section 54 (Awards on different aspects of matters);**
- Section 55(1) and (3) to (9) (Form and contents of award);**

**Section 56(1) to (4) (Termination of proceedings);**

**Section 59 (Waiver of the right to bring an action for setting aside);**

**Section 60 (Application of this Part);**

**Section 61 (Recognition and enforcement of awards); and**

**Section 62 (Grounds for refusing recognition or enforcement).**

Schedule 2 to the ADGM Arbitration Regulations 2015 outlines the mandatory provisions of the regulations, as referred to in section 9 of the same regulations. These mandatory provisions play a crucial role in defining the legal framework for arbitration proceedings within the jurisdiction of Abu Dhabi Global Market (ADGM). Let us analyse the significance of each of the listed provisions:

1. **Section 11 (Waiver and loss of right to object):** This provision emphasises the consequences of a party's conduct, clarifying that parties can waive or lose the right to raise certain objections if they fail to do so in a timely manner.
2. **Section 12 (Extent of court intervention):** This section reinforces the principle of minimal court intervention in arbitration proceedings, promoting party autonomy and the authority of arbitrators to manage the process.
3. **Section 14 (Arbitration agreement):** Section 14 defines the key elements required for a valid arbitration agreement, ensuring clarity and understanding between the parties regarding their commitment to arbitration.
4. **Section 16 (Stay of legal proceedings):** This provision underscores the principle that if parties have a valid arbitration agreement in place, legal proceedings related to the same dispute should be stayed in favour of arbitration.
5. **Section 20 (Grounds for challenge):** Section 20 provides grounds for challenging arbitrators, ensuring that arbitrators are impartial and capable of performing their duties without conflicts of interest.
6. **Section 22 (Failure or impossibility to act):** This section addresses scenarios in which an arbitrator is unable to fulfil their role, outlining the necessary steps to address such situations.
7. **Section 24 (Liability of arbitral tribunal and others):** Section 24 clarifies the extent of liability of arbitrators and others involved in the arbitration process, striking a balance between accountability and protection against unwarranted legal actions.
8. **Section 26 (Objection to the substantive jurisdiction of tribunal):** This provision lays out the procedure for raising objections to the jurisdiction of the arbitral tribunal over the substantive matters of the dispute.
9. **Section 27 (Determination of preliminary point of jurisdiction):** Section 27 outlines the procedure for the arbitral tribunal to determine preliminary jurisdictional issues before proceeding to the substantive aspects of the dispute.

10. Sections 30 and 31 (Recognition and enforcement of interim measures): Sections 30 and 31 grant the court the authority to recognise and enforce interim measures granted by an arbitral tribunal, ensuring the effectiveness of such measures.
11. Section 32 (Privacy of arbitration related court proceedings): This provision maintains the confidentiality of arbitration-related court proceedings, in line with the confidential nature of arbitration.
12. Section 33 (Fair treatment of parties): Section 33 emphasises the importance of fair treatment of parties in arbitration, promoting procedural equality and due process.
13. Sections 34(4) and (5), 35(2), 37(1) and (2), 38(3), 44 to 62 (Various Provisions): These sections address a wide range of aspects, including determination of rules of procedure, seat of arbitration, disclosure of third-party funding agreements, consolidation orders, party conduct, confidentiality, expert reports, court assistance in taking evidence, rules applicable to substance of dispute, awards, termination of proceedings, waiver of the right to bring an action for setting aside, recognition and enforcement of awards, and grounds for refusing recognition or enforcement. Collectively, they cover essential elements of the arbitration process and parties' rights.

Overall, Schedule 2 plays a significant role in ensuring consistency, fairness, and effectiveness in the arbitration proceedings governed by the ADGM Arbitration Regulations 2015. These mandatory provisions provide a clear and comprehensive framework for parties engaging in arbitration within the ADGM jurisdiction.



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