



## **AI COMMENTARY: SCCA ARBITRATION RULES 2023**

Prepared by Galadari Advocates & Legal Consultants with ChatGPT

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

## About Galadari

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

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

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

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

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

## Galadari's International Arbitration Practice

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

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

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

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

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

## Galadari's International Arbitration Team



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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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November 2023

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**SCCA ARBITRATION RULES 2023<sup>1</sup>**

**Section I — Introductory Rules**

**Article 1: Definitions**

In these SCCA Arbitration Rules and appendices, the following words have these meanings:

<b>Administrator</b>	<b>The SCCA acting in the role of the administrator</b>
<b>Arbitral Tribunal</b>	<b>A panel of one or more arbitrators that decides arbitrations</b>
<b>award or awards</b>	<b>Includes an interim, partial, final, or additional award issued by an arbitrator</b>
<b>Claimant</b>	<b>Includes one or more claimants</b>
<b>claim or claims</b>	<b>Includes claims, counterclaims, claim or claims crossclaims, and any claim for the purpose of a set-off</b>
<b>day or days</b>	<b>Calendar day(s)</b>
<b>Emergency Arbitrator</b>	<b>A sole arbitrator who decides emergency arbitrations</b>
<b>Notice</b>	<b>Any written notification, communication, proposal, request, answer, pleading, or submission</b>
<b>party or parties</b>	<b>Includes claimants, respondents, and additional parties</b>
<b>President</b>	<b>The president of the SCCA Court</b>
<b>Respondent</b>	<b>Includes one or more respondents</b>
<b>Rules</b>	<b>SCCA Arbitration Rules</b>
<b>SCCA</b>	<b>Saudi Center for Commercial Arbitration</b>
<b>SCCA Court</b>	<b>Court of the Saudi Center for Commercial Arbitration, including its president, vice presidents, members, and committees</b>
<b>Vice President or Vice Presidents</b>	<b>One or more vice presidents of the SCCA Court</b>

Article 1 of the SCCA Arbitration Rules 2023 provides definitions for various terms used throughout the rules. These definitions clarify the meaning of the terms as they are used in the context of the rules. Let us analyse the definitions provided in Article 1:

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<sup>1</sup> Source: [https://sadr.org/assets/uploads/download\\_file/Arbitration\\_Rules\\_2023\\_En.pdf](https://sadr.org/assets/uploads/download_file/Arbitration_Rules_2023_En.pdf).

1. Administrator: Refers to the Saudi Center for Commercial Arbitration (SCCA) acting in the role of the administrator. The administrator is responsible for administering the arbitration process and ensuring its proper conduct.
2. Arbitral Tribunal: Refers to a panel of one or more arbitrators that is responsible for deciding arbitrations. The arbitral tribunal is appointed to hear and resolve the dispute between the parties involved in the arbitration.
3. Award or Awards: Encompasses various types of awards issued by an arbitrator. This includes interim, partial, final, or additional awards. An award is a decision or judgment<sup>2</sup> rendered by the arbitrator on the matters in dispute.
4. Claimant: Includes one or more claimants. A claimant is a party that initiates a claim or brings a dispute before the arbitral tribunal seeking a remedy or relief.
5. Claim or Claims: Refers to different types of claims made in the arbitration process. It includes claims, counterclaims, crossclaims, and any claim for the purpose of a set-off. This definition highlights the various types of claims that can be raised by the parties involved.
6. Day or Days: Refers to calendar day(s). This definition clarifies that the calculation of time under the rules is based on the calendar days.
7. Emergency Arbitrator: Refers to a sole arbitrator appointed to decide emergency arbitrations. An emergency arbitrator is designated to hear urgent matters that require immediate attention before the constitution of the full arbitral tribunal.
8. Notice: Refers to any written notification, communication, proposal, request, answer, pleading, or submission. This definition covers a broad range of written communications exchanged between the parties or with the arbitral tribunal.
9. Party or Parties: Includes claimants, respondents, and additional parties. This definition encompasses all the parties involved in the arbitration, whether they are initiating a claim or responding to a claim.
10. President: Refers to the president of the SCCA Court. The SCCA Court is the court of the Saudi Center for Commercial Arbitration, and the president holds a leadership position within the court.
11. Respondent: Includes one or more respondents. A respondent is a party against whom a claim is brought in the arbitration process. They are the party that must respond to the claims made by the claimant.
12. Rules: Refers to the SCCA Arbitration Rules. These are the rules governing the conduct of the arbitration proceedings administered by the SCCA.
13. SCCA: Abbreviation for the Saudi Center for Commercial Arbitration. It is an institution responsible for the administration of commercial arbitrations in Saudi Arabia.

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<sup>2</sup> Marginally correct guess by ChatGPT.

14. SCCA Court: Refers to the Court of the Saudi Center for Commercial Arbitration, which includes its president, vice presidents, members, and committees. The SCCA Court plays a significant role in the administration and oversight of the arbitration process.
15. Vice President or Vice Presidents: Refers to one or more vice presidents of the SCCA Court. The vice presidents hold positions of authority within the SCCA Court and contribute to its functioning.

In summary, Article 1 of the SCCA Arbitration Rules 2023 provides important definitions for key terms used throughout the rules. These definitions help ensure clarity and consistency in the interpretation and application of the rules in the context of Saudi Center for Commercial Arbitration proceedings.

## Article 2: Scope of Application

**1. Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under these Rules, or have provided for arbitration of a dispute by the SCCA without designating particular rules, then such disputes shall be settled in accordance with these Rules. They thereby authorize the SCCA to administer the arbitration.**

Article 2.1 of the SCCA Arbitration Rules 2023 addresses the circumstances under which disputes between parties, arising from a defined legal relationship, are to be resolved through arbitration under the SCCA (Sharjah Chamber of Commerce and Industry<sup>3</sup>) Arbitration Rules. This article outlines the authority of the SCCA to administer arbitrations when parties have agreed to refer their disputes to arbitration but have not specifically designated the applicable arbitration rules. Key points from Article 2.1 are as follows:

1. **Agreement to Arbitrate:** The provision applies when parties have explicitly agreed that any disputes arising from a particular legal relationship, whether it is a contractual relationship or not, will be resolved through arbitration. This indicates that parties have mutually decided to resort to arbitration as the method of dispute resolution for their disputes.
2. **Reference to the SCCA Arbitration Rules:** Parties might explicitly reference the SCCA Arbitration Rules 2023 in their agreement, indicating their intention to follow these rules for the arbitration proceedings. Alternatively, parties might have simply provided for arbitration administered by the SCCA without specifically designating any particular set of rules.
3. **Application of SCCA Rules:** If the parties have chosen to refer their disputes to arbitration under the SCCA Arbitration Rules 2023 or if they have agreed to SCCA-administered arbitration without specifying the rules, then the disputes shall be resolved in accordance with these Rules. This means that the SCCA Arbitration Rules 2023 will govern the arbitration proceedings, including the procedures and requirements for conducting the arbitration.

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<sup>3</sup> Incorrect guess by ChatGPT.

4. **Authority to Administer Arbitration:** By agreeing to the use of these rules or to SCCA-administered arbitration, the parties are effectively authorising the SCCA to oversee and administer the arbitration process. This includes the appointment of arbitrators, the management of procedural aspects, and the facilitation of the overall arbitration proceedings.

In essence, Article 2.1 of the SCCA Arbitration Rules 2023 clarifies the application of these rules in cases where parties have agreed to arbitrate their disputes but have not specifically chosen a set of arbitration rules. It establishes the SCCA's authority to administer the arbitration proceedings and ensures that the process follows the procedures outlined in the SCCA Arbitration Rules 2023. This article helps provide clarity and consistency in cases where parties have chosen arbitration as their preferred method of resolving disputes.

**2. These Rules shall come into force on 1 May 2023 and shall apply to any arbitration that is commenced on or after that date. The appendices to these Rules shall form an integral part of these Rules.**

Article 2.2 of the SCCA Arbitration Rules 2023 sets out important provisions related to the effective date and applicability of the rules, as well as the role of the appendices in the arbitration process. Here is an analysis of this article:

1. **Effective Date and Applicability:** The article states that the SCCA Arbitration Rules 2023 shall come into force on 1 May 2023. This indicates the specific date from which these rules will be officially applicable. Any arbitration proceedings that are commenced on or after this date will be subject to these rules. This provision ensures that parties and practitioners are aware of when the new rules take effect and applies them to arbitration cases that are initiated after the stipulated date.
2. **Retroactive Application:** Notably, the rules only apply to arbitrations that are commenced on or after the effective date. This means that any ongoing arbitration proceedings that were initiated before 1 May 2023 will not be subject to the SCCA Arbitration Rules 2023. This approach prevents potential disruptions to ongoing cases and maintains the continuity of proceedings under the rules that were in force when those cases began.
3. **Integration of Appendices:** The article also states that the appendices to the SCCA Arbitration Rules 2023 will be considered an integral part of these rules. Appendices usually contain supplementary information, forms, guidelines, and procedural details that complement the main text of the rules. By including the appendices as an integral part, it emphasises their importance in understanding and implementing the arbitration process as outlined by the SCCA.

In summary, Article 2.2 of the SCCA Arbitration Rules 2023 provides clarity regarding the commencement of the rules, their applicability to arbitration cases, and the role of appendices in the overall arbitration process. It ensures that parties, arbitrators, and practitioners are aware of when the rules take effect and establishes the scope of their application. Additionally, by including the appendices as integral parts, the article underscores their significance in facilitating proper arbitration procedures.

**3. These Rules specify the duties and responsibilities of the SCCA as the Administrator. Except those functions reserved for the SCCA Court under these Rules and the Internal Rules of the SCCA Court, the Administrator may provide services through any SCCA case management office or through arbitral institutions with which the SCCA has cooperation agreements. Arbitrations administered under these Rules shall be administered exclusively by the SCCA or by an organization authorized by the SCCA to do so.**

Article 2.3 of the SCCA Arbitration Rules 2023 addresses the role and responsibilities of the SCCA (Sharjah Chamber of Commerce and Industry<sup>4</sup>) as the Administrator of the arbitration process under these rules. This article outlines the duties and authority of the SCCA, the functions reserved for the SCCA Court, and the scope of administering arbitrations under these rules. Here is an analysis of this article:

- 1. Duties and Responsibilities of the Administrator:** The article states that these rules specify the duties and responsibilities of the SCCA as the Administrator of the arbitration process. This means that the SCCA takes on the role of overseeing and managing the arbitration proceedings, ensuring that they are conducted in accordance with the SCCA Arbitration Rules 2023. The Administrator's duties can include tasks such as appointing arbitrators, facilitating communication between parties, managing procedural matters, and administering the logistics of the arbitration process.
- 2. Reserved Functions for SCCA Court:** The article notes that certain functions are reserved for the SCCA Court under both the SCCA Arbitration Rules 2023 and the Internal Rules of the SCCA Court. The SCCA Court, which is typically responsible for matters related to the administration of arbitration proceedings, may have specific roles outlined in the rules or internal regulations. These roles might include the appointment of arbitrators in specific cases or addressing certain disputes that arise during the arbitration process.
- 3. Service Provision and Cooperation Agreements:** The article grants the Administrator (SCCA) the flexibility to provide its services through various channels. It can administer arbitration proceedings through its own case management offices or through arbitral institutions with which the SCCA has cooperation agreements. This allows the SCCA to collaborate with other established arbitral institutions, enhancing its ability to effectively manage and administer arbitrations.
- 4. Exclusive Administration Authority:** The article clarifies that arbitrations conducted under the SCCA Arbitration Rules 2023 will be administered exclusively by the SCCA or by organisations authorised by the SCCA to do so. This means that the SCCA retains the primary authority to oversee the administration of arbitrations under these rules. Other organisations can participate in the administration only if they are authorised by the SCCA.

In summary, Article 2.3 of the SCCA Arbitration Rules 2023 outlines the SCCA's role as the Administrator of arbitration proceedings under these rules. It delineates the responsibilities of the Administrator, indicates the functions reserved for the SCCA Court, emphasises the potential use of various service channels and cooperation agreements, and asserts the SCCA's exclusive authority over the administration of arbitrations conducted under these rules.

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<sup>4</sup> Incorrect guess by ChatGPT.

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

Article 2.4 of the SCCA Arbitration Rules 2023 addresses the relationship between the rules themselves and the applicable law to the arbitration. This article clarifies how conflicts between the rules and mandatory provisions of applicable law are to be resolved. Here is an analysis of this article:

1. **Primacy of the SCCA Arbitration Rules 2023:** The article establishes that the SCCA Arbitration Rules 2023 serve as the governing framework for the arbitration proceedings. This means that, unless specified otherwise, the procedures, guidelines, and principles outlined in these rules will apply to the arbitration process.
2. **Conflict with Applicable Law:** The article acknowledges the possibility of conflicts between the SCCA Arbitration Rules 2023 and provisions of the law that are applicable to the arbitration. These provisions could be part of the legal system of the governing jurisdiction or any international treaties or conventions that are relevant to the arbitration process.
3. **Non-Derogable Provisions:** The article emphasises that if a provision in the SCCA Arbitration Rules 2023 conflicts with a mandatory provision of the applicable law, and if that provision of law cannot be overridden or waived by the parties' agreement, the provision of the applicable law will take precedence. In other words, the parties cannot deviate from certain mandatory legal requirements even if they have agreed to arbitration under the SCCA Arbitration Rules 2023.
4. **Priority of Mandatory Law:** This provision underscores the fundamental principle that arbitration agreements and rules cannot contravene or nullify non-derogable provisions of the law. The applicable law may safeguard certain rights, procedural fairness, public policy, or other essential legal considerations that parties cannot compromise through their arbitration agreement.

In summary, Article 2.4 of the SCCA Arbitration Rules 2023 clarifies the interplay between the rules themselves and the mandatory provisions of applicable law in the arbitration process. It highlights that while the SCCA rules govern the arbitration proceedings, they must yield to non-derogable provisions of the law that parties cannot override. This ensures that essential legal protections and requirements remain intact, even in the context of arbitration where parties have a degree of autonomy in shaping their dispute resolution process.



5. Unless the parties agree otherwise, these Rules shall apply together with:
- a) The Expedited Procedure Rules, if the matter falls within the scope of application as set forth in Article 1 of Appendix II; or, alternatively,
  - b) The Online Dispute Resolution Procedure Rules, if the matter falls within the scope of application as set forth in Article 1 of Appendix IV.

**In the event of any conflict, the provisions of Appendix II (if applicable) or, alternatively, Appendix IV (if applicable) shall prevail over these Rules.**

Article 2.5 of the SCCA Arbitration Rules 2023 introduces the interaction between the main arbitration rules and two specific sets of rules: the Expedited Procedure Rules and the Online Dispute Resolution Procedure Rules. This article outlines the scenarios in which these additional rules apply, and it establishes the priority of the Expedited Procedure Rules or the Online Dispute Resolution Procedure Rules over the main rules in case of conflicts. Here is an analysis of this article:

1. Additional Procedure Rules: The article provides that, unless the parties decide otherwise, the main SCCA Arbitration Rules 2023 will be accompanied by either the Expedited Procedure Rules or the Online Dispute Resolution Procedure Rules, depending on the circumstances of the case.
2. Expedited Procedure Rules: If the dispute falls within the scope defined in Article 1 of Appendix II, the Expedited Procedure Rules will apply. These rules are designed for cases where urgency and efficiency are crucial, streamlining the arbitration process to achieve a faster resolution.
3. Online Dispute Resolution Procedure Rules: Alternatively, if the matter falls within the scope set out in Article 1 of Appendix IV, the Online Dispute Resolution Procedure Rules will apply. These rules are likely tailored to disputes that can be effectively addressed through online mechanisms, offering a digital platform<sup>5</sup> for dispute resolution.
4. Resolution of Conflicts: In cases where there is a conflict between the main SCCA Arbitration Rules 2023 and either the Expedited Procedure Rules (Appendix II) or the Online Dispute Resolution Procedure Rules (Appendix IV), the provisions of the respective appendix will prevail. This prioritisation ensures that, if a specific set of rules is designated due to the nature of the dispute, its provisions take precedence over the general provisions of the main arbitration rules.

In summary, Article 2.5 of the SCCA Arbitration Rules 2023 addresses the incorporation of additional procedure rules, specifically the Expedited Procedure Rules and the Online Dispute Resolution Procedure Rules, into the arbitration process. Depending on the nature of the dispute and the agreed-upon procedures, these additional rules may accompany the main arbitration rules. In case of conflicts, the article establishes that the provisions of the relevant appendix will take precedence, ensuring a coherent and effective arbitration process tailored to the specific needs of the case.

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<sup>5</sup> Marginally correct guess by ChatGPT.

### Article 3: SCCA Court

#### 1. The SCCA Court is a body independent of the SCCA, which performs certain functions set forth in the Rules and the Internal Rules of the SCCA Court.

Article 3.1 of the SCCA Arbitration Rules 2023 defines the SCCA Court and its relationship to the SCCA (Sharjah Chamber of Commerce and Industry<sup>6</sup>) as well as its role in the arbitration process. Here is an analysis of this article:

1. **SCCA Court Independence:** The article states that the SCCA Court is an independent body separate from the SCCA itself. The SCCA Court serves a distinct function within the framework of the arbitration rules. This distinction is important to underscore the Court's impartiality<sup>7</sup> and its role as an arbitrator-supporting entity, separate from the administrative and operational aspects of the SCCA.
2. **Functions and Authority:** The article mentions that the SCCA Court performs certain functions that are defined within the SCCA Arbitration Rules 2023 and the Internal Rules of the SCCA Court. These functions may include decisions related to the appointment and removal of arbitrators, challenges to arbitrators, determination of costs, and other procedural matters. The SCCA Court essentially acts as a body responsible for overseeing specific aspects of the arbitration process to ensure its fairness and efficiency.
3. **Internal Rules of the SCCA Court:** The article references the "Internal Rules of the SCCA Court," which likely detail the specific procedures, guidelines, and regulations governing the operations and decision-making processes of the SCCA Court. These internal rules are likely designed to ensure consistent and transparent administration of the Court's functions.

In summary, Article 3.1 of the SCCA Arbitration Rules 2023 introduces the SCCA Court as an independent body responsible for carrying out specific functions within the arbitration process. It emphasises the separation between the SCCA Court and the SCCA itself to maintain its impartiality.<sup>8</sup> The article also indicates that the specific functions and responsibilities of the SCCA Court are defined in both the arbitration rules and the internal rules governing its operations. This arrangement helps ensure the integrity and effectiveness of the arbitration process under the SCCA's jurisdiction.

#### 2. Except where the Rules state otherwise, the decisions of the SCCA Court shall be final and binding upon the parties and the Arbitral Tribunal. The parties waive any right of appeal or review in respect of the decisions of the SCCA Court.

Article 3.2 of the SCCA Arbitration Rules 2023 addresses the finality and binding nature of decisions made by the SCCA Court within the arbitration process. This article clarifies the authority of the SCCA Court and the parties' obligations regarding its decisions. Here is an analysis of this article:

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<sup>6</sup> Incorrect guess by ChatGPT.

<sup>7</sup> Incorrect guess by ChatGPT.

<sup>8</sup> Incorrect guess by ChatGPT.

1. **Final and Binding Decisions:** The article specifies that the decisions of the SCCA Court are considered final and binding. This means that the determinations, rulings, and decisions made by the SCCA Court in the course of the arbitration process are conclusive and must be complied with by the parties involved. Once the SCCA Court has made a decision on a particular matter, it holds legal weight and must be respected and followed.
2. **Waiver of Appeal or Review:** The article further states that the parties expressly waive any right to appeal or review decisions made by the SCCA Court. This waiver implies that the parties agree not to seek a higher judicial or appellate review of the SCCA Court's decisions, even if they disagree with the outcome. This is an important aspect of arbitration, as it contributes to the efficiency and finality of the arbitration process.
3. **Subject to Rules Exceptions:** The article acknowledges that there might be instances where the SCCA Arbitration Rules 2023 themselves specify a different process for challenging or reviewing decisions. This means that while the default stance is that the SCCA Court's decisions are final, there may be certain specific circumstances outlined in the rules where parties can seek a different course of action.

In summary, Article 3.2 of the SCCA Arbitration Rules 2023 confirms the binding and conclusive nature of decisions made by the SCCA Court. It reinforces the principle of finality in arbitration, contributing to the effectiveness and efficiency of the dispute resolution process. Additionally, it highlights the parties' waiver of any right to appeal or review decisions made by the SCCA Court, promoting the notion that arbitration awards and determinations are meant to be resolved within the arbitral process itself.

#### Article 4: Notice and Calculation of Periods of Time

**1. Unless the parties agree, or the Arbitral Tribunal orders, otherwise, a Notice shall be transmitted by courier, registered mail, or any means of communication that provides a record of its transmission, including email or other electronic means.**

Article 4.1 of the SCCA Arbitration Rules 2023 addresses the methods of transmitting notices in the arbitration process. This article outlines the default options for sending notices, such as the use of courier, registered mail, and electronic means, while allowing for flexibility based on party agreement or orders from the Arbitral Tribunal. Here is an analysis of this article:

1. **Default Methods of Notice Transmission:** The article establishes the default methods by which notices are to be transmitted in the arbitration process. These methods include:
  - a. **Courier:** Physical delivery by a courier service, ensuring secure and tracked delivery.
  - b. **Registered Mail:** Sending notices through registered mail services, which provide proof of delivery and tracking.
  - c. **Electronic Means:** Use of email or other electronic communication methods that provide a record of transmission.
2. **Party Agreement or Arbitral Tribunal Orders:** The article introduces flexibility by stating that parties can agree to use a different method of transmitting notices. This means that

if the parties mutually decide on an alternative method that suits their preferences or circumstances, they can depart from the default methods mentioned in the article. Additionally, the Arbitral Tribunal also has the authority to order a specific method of notice transmission based on the circumstances of the case.

In summary, Article 4.1 of the SCCA Arbitration Rules 2023 sets out the default methods for transmitting notices in the arbitration process, including courier, registered mail, and electronic means. This provision emphasises the importance of secure and tracked communication methods. However, it also recognises the need for flexibility, allowing parties to agree on different methods of notice transmission or allowing the Arbitral Tribunal to order a specific method based on the case's requirements. This approach ensures that parties can effectively communicate while maintaining the integrity of the arbitration process.

**2. If a party has designated a physical or electronic address specifically for this purpose, any Notice shall be delivered to that party or its authorized representative at that address, and if so delivered shall be deemed to have been received. In the absence of such a designation, a Notice shall be deemed to have been received if it has been delivered to that party or its authorized representative (1) by personal service, (2) at the place of business, (3) at the habitual residence, (4) at the email address which the addressee represents as its authorized email address at the time of such a communication, or (5) if, after reasonable efforts, none of these can be found or delivery fails, at the addressees' last known place of business or habitual residence.**

Article 4.2 of the SCCA Arbitration Rules 2023 deals with the rules surrounding the delivery and receipt of notices in arbitration proceedings. This article outlines the procedures for delivering notices to parties involved in the arbitration and establishes a hierarchy of delivery methods. Here is an analysis of this article:

1. **Designated Addresses:** The article begins by addressing situations where a party has designated a specific physical or electronic address for receiving notices related to the arbitration process. If such a designation exists, any notice sent to that designated address will be considered as received by the intended recipient. This reinforces the importance of parties providing clear and accurate contact information for communication purposes during the arbitration.
2. **Methods of Deemed Receipt:** The article then outlines several scenarios under which a notice will be deemed to have been received by the party:
  - a. **Personal Service:** If a notice is personally delivered to the party or its authorised representative.
  - b. **Place of Business:** If a notice is delivered at the party's place of business.
  - c. **Habitual Residence:** If a notice is delivered at the party's habitual residence.
  - d. **Authorised Email Address:** If a notice is sent to the email address that the party has represented as its authorised email address at the time of communication.

- e. Last Known Place: If none of the above methods are successful due to the unavailability of the addressee, then the notice can be delivered at the last known place of business or habitual residence.
3. Hierarchy of Delivery Methods: The article establishes a hierarchy of delivery methods, with designated addresses taking precedence. If a party has not designated an address, the methods of personal service, place of business, and habitual residence are considered before resorting to the authorised email address or the last known place of business or habitual residence.

In summary, Article 4.2 of the SCCA Arbitration Rules 2023 provides a detailed framework for the delivery and deemed receipt of notices in arbitration proceedings. It takes into consideration designated addresses, various physical and electronic delivery methods, and prioritises these methods in a logical hierarchy. This article helps ensure that notices are effectively communicated to the intended recipients while accommodating different circumstances that may arise during the arbitration process.

**3. A Notice shall be deemed to have been received on the day it is delivered in accordance with paragraph 2 of this Article. A Notice transmitted by email or other electronic means shall be deemed to have been received on the day it is sent.**

Article 4.3 of the SCCA Arbitration Rules 2023 focuses on determining when a notice is considered to be received by the intended recipient. This article provides rules regarding the timing of receipt for notices delivered through various methods, including physical and electronic means. Here is an analysis of this article:

1. Receipt of Notice: The article establishes that a notice is deemed to have been received on a specific day, depending on the method of delivery used:
  - a. If the notice is delivered through the methods outlined in Article 4.2 (paragraph 2), it is deemed to have been received on the day it is delivered in accordance with those methods. This reinforces the principle that effective physical delivery results in the immediate receipt of the notice.
  - b. If the notice is transmitted via email or other electronic means, it is deemed to have been received on the day it is sent. This acknowledges the instantaneous nature of electronic communication and considers the moment of transmission as the moment of receipt.
2. Clarity and Certainty: The article's clear distinction between the timing of receipt for physical delivery and electronic transmission helps to establish a precise point in time for determining when a notice becomes effective. This clarity is important for ensuring that parties are aware of when their communications are legally recognised as having been received by the other party.

In summary, Article 4.3 of the SCCA Arbitration Rules 2023 provides a concise rule for determining when a notice is considered to have been received. It differentiates between physical delivery and electronic transmission, reflecting the immediacy of electronic communication. By defining these

points in time, the article contributes to the overall efficiency and effectiveness of communication within the arbitration process.

**4. A Notice submitted to the Arbitral Tribunal by one party shall at the same time be transmitted by that party to all other parties and, unless the Administrator instructs otherwise, to the Administrator.**

Article 4.4 of the SCCA Arbitration Rules 2023 focuses on the requirement for parties to transmit notices to multiple recipients when submitting a notice to the Arbitral Tribunal. This article outlines the simultaneous transmission of notices to ensure proper communication among all relevant parties and administrative bodies. Here is an analysis of this article:

1. **Simultaneous Notice Transmission:** The article stipulates that when one party submits a notice to the Arbitral Tribunal, that party is also obligated to transmit the same notice to all other parties involved in the arbitration process. This simultaneous transmission ensures that all relevant parties are kept informed and have access to the same information as the initiating party.
2. **Involvement of the Administrator:** Additionally, the article mentions that unless the Administrator (SCCA) instructs otherwise, the party submitting the notice must also transmit the notice to the Administrator. This underscores the importance of the Administrator's involvement and oversight in the arbitration process. Transmitting the notice to the Administrator allows for transparency and administrative coordination throughout the proceedings.
3. **Efficiency and Communication:** By requiring simultaneous transmission of notices, the article promotes efficient communication and transparency among all parties and administrative bodies involved in the arbitration process. This practice helps prevent any potential misunderstandings or information gaps that could arise if parties were not informed in a timely and uniform manner.

In summary, Article 4.4 of the SCCA Arbitration Rules 2023 emphasises the importance of proper communication within the arbitration process. It mandates that when a party submits a notice to the Arbitral Tribunal, the same notice must be transmitted to all other parties and, unless instructed otherwise, to the Administrator as well. This approach ensures that all relevant parties are informed and facilitates coordination and transparency throughout the arbitration proceedings.

**5. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a Notice has been transmitted or deemed to have been transmitted in accordance with paragraph 2 of this Article. If the last day of such period is an official holiday or a non-business day at the addressee's place of business or habitual residence, the period of time shall be extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating such period.**

Article 4.5 of the SCCA Arbitration Rules 2023 addresses how periods of time are calculated within the context of the arbitration process. This article outlines rules for determining the start and end dates

of such periods, taking into account official holidays and non-business days. Here is an analysis of this article:

1. **Commencement of Time Period:** The article states that for the purpose of calculating any time period specified in the SCCA Arbitration Rules 2023, the period begins to run from the day following the transmission or deemed transmission of a Notice. This establishes a clear and consistent starting point for measuring various timeframes within the arbitration proceedings.
2. **Extension for Holidays or Non-Business Days:** If the last day of the calculated time period falls on an official holiday or a non-business day at the addressee's place of business or habitual residence, the period of time is extended until the first business day that follows. This provision accounts for situations where parties may not be able to effectively respond or take action due to holidays or non-business days. It ensures that parties have the same amount of working time to comply with the timeframes regardless of potential interruptions due to non-working days.
3. **Inclusion of Holidays or Non-Business Days:** Importantly, the article specifies that official holidays or non-business days that occur during the running of the period of time are included in the calculation of that period. This approach ensures that parties are not disadvantaged by the occurrence of holidays or non-business days during the specified timeframe.

In summary, Article 4.5 of the SCCA Arbitration Rules 2023 provides a comprehensive framework for calculating time periods within the arbitration process. It establishes the starting point for measuring time, allows for extensions in cases of holidays or non-business days, and ensures that such days are taken into account when calculating the period. This article contributes to fairness and practicality in managing time constraints within the arbitration proceedings.

**6. The Administrator, if the Arbitral Tribunal has not yet been constituted, may extend any of the periods of time provided in these Rules if it considers such an extension justified. Once constituted, the Arbitral Tribunal may extend such periods of time at its discretion except the one provided in Article 33(4) and any other periods of time established by the Administrator.**

Article 4.6 of the SCCA Arbitration Rules 2023 deals with the authority to extend the periods of time specified in the rules for various actions within the arbitration process. This article outlines the circumstances under which the Administrator and the Arbitral Tribunal can extend these timeframes. Here is an analysis of this article:

1. **Administrator's Authority:** The article states that the Administrator of the arbitration process has the authority to extend any of the time periods established in the SCCA Arbitration Rules 2023. This extension is permissible if the Administrator deems it justified. The Administrator's role includes overseeing the administrative aspects of the arbitration proceedings, and this provision grants flexibility in managing time constraints before the Arbitral Tribunal is constituted.
2. **Arbitral Tribunal's Authority:** Once the Arbitral Tribunal has been constituted, it gains the discretion to extend the time periods specified in the rules. However, there are exceptions to this discretion:

- a. The time period provided in Article 33(4) is not subject to extension by the Arbitral Tribunal. This suggests that certain timeframes, likely those that pertain to the constitution of the Arbitral Tribunal itself, are treated as fixed and not open to extension.
- b. Any other time periods established by the Administrator are also not subject to extension by the Arbitral Tribunal. This recognises the Administrator’s role in setting specific timeframes and ensures that extensions granted by the Arbitral Tribunal do not undermine the intended timelines.

In summary, Article 4.6 of the SCCA Arbitration Rules 2023 delineates the authority to extend time periods within the arbitration process. It grants the Administrator the ability to extend time periods when the Arbitral Tribunal has not yet been constituted, based on the justification. Once the Tribunal is constituted, it can extend time periods at its discretion, except for specific timeframes established by the Administrator, ensuring a balance between flexibility and procedural efficiency.

### Article 5: Request for Arbitration

#### 1. The Claimant shall transmit the Request for Arbitration, including all accompanying documents, to the other parties and to the Administrator as set forth in Article 4.

Article 5.1 of the SCCA Arbitration Rules 2023 outlines the initial procedural step of the arbitration process, specifically focusing on the role of the Claimant and the submission of the Request for Arbitration. Here is an analysis of this article:

1. **Claimant’s Role:** The article highlights the role of the Claimant in initiating the arbitration process. The Claimant is the party who wishes to bring a dispute to arbitration, seeking resolution through this alternative dispute resolution method.
2. **Request for Arbitration:** The core action specified in this article is the transmission of the “Request for Arbitration.” The Request for Arbitration is a formal document submitted by the Claimant to initiate the arbitration proceedings. It typically contains essential information such as the names of the parties, the dispute’s subject matter, the relief sought, and any relevant supporting documentation.
3. **Transmittal to Other Parties:** The article emphasises that the Claimant is responsible for transmitting the Request for Arbitration, along with all accompanying documents, to the other parties involved in the dispute. This communication ensures that all parties are made aware of the initiation of the arbitration process, the claims being raised, and the specific details of the dispute.
4. **Transmittal to Administrator:** Additionally, the Claimant is required to transmit the Request for Arbitration and accompanying documents to the Administrator (SCCA) as well. This step facilitates the official registration of the arbitration case and enables the Administrator to proceed with the administrative aspects of the arbitration process.
5. **Reference to Article 4:** The article refers to “Article 4,” suggesting that the specific methods of transmitting the Request for Arbitration and the accompanying documents are governed by the provisions outlined in Article 4 of the SCCA Arbitration Rules 2023.



Article 4 addresses the rules for transmitting notices within the arbitration process, ensuring consistency and adherence to the established procedures.

In summary, Article 5.1 of the SCCA Arbitration Rules 2023 establishes the Claimant's responsibility for initiating the arbitration process by transmitting the Request for Arbitration to the other parties and the Administrator. This article marks the beginning of the formal dispute resolution process and sets the stage for subsequent procedural steps as outlined in the rules.

**2. The Request for Arbitration shall include:**

- a) A statement that the dispute be referred to SCCA arbitration;**
- b) The names and contact details of the parties and, if known, of their authorized representatives;**
- c) A copy of the contract(s) or legal instrument(s) out of which or in relation to which the dispute arises, and a copy of the arbitration agreement(s) invoked by the Claimant to support its claims if not part of the contract(s) or legal instrument(s);**
- d) A description of the claim and a concise summary of the facts supporting it;**
- e) A statement of the relief or remedy sought and any amount claimed; and**
- f) A proposal as to the number of arbitrators, language of arbitration, and place of arbitration, if the parties have not previously agreed thereon.**

Article 5.2 of the SCCA Arbitration Rules 2023 outlines the specific requirements that must be met when submitting a Request for Arbitration. This article details the essential information that must be included in the Request to ensure clarity and comprehensiveness. Here is an analysis of this article:

1. **Statement of Referral to SCCA Arbitration:** The article begins by stipulating that the Request for Arbitration must include a clear statement by the Claimant that they wish to refer the dispute to SCCA arbitration. This statement is essential in indicating the choice of arbitration under the SCCA rules as the chosen method of resolving the dispute.
2. **Identification of Parties and Representatives:** The Request must include the names and contact details of all parties involved in the dispute. Additionally, if known, the names and contact details of their authorised representatives should also be provided. This ensures that all relevant parties and their representatives are properly identified for communication purposes.
3. **Documents Related to Dispute:** The Request must include copies of the relevant contract(s) or legal instrument(s) that are connected to the dispute, along with copies of the arbitration agreement(s) invoked by the Claimant. These documents are crucial for providing the context of the dispute and demonstrating the existence of a valid arbitration agreement.
4. **Description of Claim and Facts:** The Request must contain a description of the actual claim being made by the Claimant. Additionally, a concise summary of the facts that support

the claim should be provided. This allows the other parties and the Arbitral Tribunal to understand the nature of the dispute and the factual basis on which the claim rests.

5. Relief or Remedy Sought: The Request must clearly state the relief or remedy sought by the Claimant. This includes specifying the type of relief (such as damages, specific performance, etc.) and any monetary amount claimed. This information is crucial for the Arbitral Tribunal to understand the nature and extent of the relief being sought.
6. Arbitration Specifics: The Request must include certain proposals related to the arbitration process if the parties have not previously agreed on these matters. These proposals include:
  - a. The number of arbitrators to be appointed.
  - b. The language in which the arbitration will be conducted.
  - c. The place (venue) of arbitration.

In summary, Article 5.2 of the SCCA Arbitration Rules 2023 outlines the comprehensive set of information that must be included in the Request for Arbitration. This article ensures that the Claimant provides all necessary details to initiate the arbitration process effectively, and it enables the other parties and the Arbitral Tribunal to understand the nature of the dispute, the parties involved, the claims made, and the proposed arbitration process parameters.

**3. The constitution of the Arbitral Tribunal shall not be affected by any disagreement between the parties with respect to the adequacy of the Request for Arbitration, which shall be finally resolved by the Arbitral Tribunal.**

Article 5.3 of the SCCA Arbitration Rules 2023 addresses the role of the Arbitral Tribunal in cases where there is a disagreement between the parties regarding the adequacy of the Request for Arbitration. This article emphasises the Tribunal's authority and decision-making power in resolving such disputes. Here is an analysis of this article:

1. Adequacy of Request for Arbitration: The article focuses on situations where the parties disagree on whether the Request for Arbitration submitted by the Claimant is adequate or sufficient to properly initiate the arbitration process. The adequacy of the Request is crucial as it forms the foundation of the case and sets the stage for subsequent proceedings.
2. Independence of Arbitral Tribunal: The article asserts that the constitution of the Arbitral Tribunal, which includes the selection of arbitrators, should not be affected by any disagreements between the parties concerning the adequacy of the Request for Arbitration. This underscores the principle that the process of appointing arbitrators should not be stalled or compromised due to disputes over the sufficiency of the initial filing.
3. Role of the Arbitral Tribunal: The article further clarifies that any such disagreement over the adequacy of the Request for Arbitration is a matter that will be resolved by the Arbitral

Tribunal itself. In other words, the Tribunal has the authority to determine whether the Request meets the necessary criteria to proceed with the arbitration process.

4. Finality of Tribunal's Decision: The article's language suggests that the Arbitral Tribunal's resolution of the disagreement is final and binding. This reinforces the Tribunal's authority to make determinations related to the adequacy of the Request and ensures that parties must adhere to the Tribunal's decision.

In summary, Article 5.3 of the SCCA Arbitration Rules 2023 highlights the Arbitral Tribunal's authority in resolving disagreements between the parties regarding the adequacy of the Request for Arbitration. It ensures that disputes over the initial filing do not hinder the process of constituting the Arbitral Tribunal or initiating the arbitration proceedings. This article reinforces the Tribunal's independence and decision-making role in matters related to the commencement of the arbitration process.

**4. The Request for Arbitration shall be accompanied by the appropriate SCCA registration fee set forth in Article 1 of Appendix I. An arbitration shall be deemed to commence on the date on which the Administrator determines at its discretion that the above filing requirements have been satisfied and the SCCA registration fee has been paid.**

Article 5.4 of the SCCA Arbitration Rules 2023 addresses the financial aspect of initiating arbitration and provides clarity on when the arbitration process is deemed to have commenced. This article outlines the requirement for the Claimant to pay the SCCA registration fee alongside the Request for Arbitration. Here is an analysis of this article:

1. Registration Fee Requirement: The article stipulates that the Request for Arbitration must be accompanied by the appropriate SCCA registration fee, as specified in Article 1 of Appendix I of the rules. The registration fee is a financial requirement that the Claimant must fulfil when submitting the Request. This fee is likely intended to cover administrative costs associated with processing the arbitration case.
2. Commencement of Arbitration: The article clarifies that an arbitration is considered to commence on a specific date. This date is determined by the Administrator (SCCA) at its discretion, and it is based on two key factors:
  - a. Satisfaction of Filing Requirements: The Administrator must determine that the filing requirements, which likely include the submission of the Request for Arbitration and accompanying documents, have been satisfied. This ensures that all necessary information is provided to initiate the arbitration process.
  - b. Payment of Registration Fee: In addition to satisfying the filing requirements, the Claimant must have paid the SCCA registration fee. The article makes it clear that the commencement of arbitration is linked to the payment of this fee.
3. Administrator's Discretion: The article emphasises that the determination of the commencement date is made at the discretion of the Administrator. This underscores the administrative role of the SCCA in managing the initiation of arbitration cases and ensuring compliance with procedural requirements.

In summary, Article 5.4 of the SCCA Arbitration Rules 2023 specifies the requirement for the Claimant to pay the SCCA registration fee when submitting the Request for Arbitration. It also outlines the criteria for when an arbitration is considered to have commenced, which is based on the Administrator's determination that the filing requirements have been satisfied and the registration fee has been paid. This article ensures that the financial and procedural aspects of initiating arbitration are clearly defined and understood by all parties involved.

## Article 6: Answer to the Request for Arbitration

**1. Within 30 days of the commencement of the arbitration, the Respondent shall transmit the Answer to the Request for Arbitration, including all accompanying documents, to the other parties and the Administrator as set forth in Article 4.**

Article 6.1 of the SCCA Arbitration Rules 2023 outlines the procedural timeline and requirements for the Respondent to provide their response to the Claimant's Request for Arbitration. Here is an analysis of this article:

1. **Respondent's Obligation:** The article states that the Respondent, the party against whom the arbitration has been initiated, has a specific obligation to provide a formal response to the Claimant's Request for Arbitration. This response is referred to as the "Answer to the Request for Arbitration."
2. **Timeframe:** The Respondent is required to submit the Answer to the Request for Arbitration within 30 days of the commencement of the arbitration. The "commencement of the arbitration" likely refers to the date determined by the Administrator when the Claimant fulfils the filing requirements and pays the SCCA registration fee. This 30-day period starts counting from that date.
3. **Contents of the Answer:** Similar to the Request for Arbitration, the Answer must include all accompanying documents relevant to the Respondent's position and arguments. These documents help provide a comprehensive response to the claims made by the Claimant and support the Respondent's defence.
4. **Transmittal to Parties and Administrator:** The Respondent is obligated to transmit the Answer to the Request for Arbitration not only to the Claimant but also to the other parties involved in the dispute. Additionally, the Answer must be transmitted to the Administrator (SCCA), ensuring that all relevant parties and administrative bodies are informed about the Respondent's position.
5. **Reference to Article 4:** Similar to Article 5.1, this article refers to "Article 4," indicating that the methods of transmitting the Answer to the Request for Arbitration are governed by the provisions outlined in Article 4 of the SCCA Arbitration Rules 2023.

In summary, Article 6.1 of the SCCA Arbitration Rules 2023 establishes the timeframe and procedural requirements for the Respondent to provide their response to the Claimant's Request for Arbitration. This article ensures that both parties have an opportunity to present their respective positions early in the arbitration process, promoting transparency and efficiency in the resolution of the dispute.

**2. The Answer to the Request for Arbitration shall include:**

- a) The Respondent's name and contact details;**
- b) A response to the claim and the relief or remedy sought that has been set out in the Request for Arbitration, in accordance with Article 5(2)(d) and (e); and**
- c) Any plea that the Arbitral Tribunal to be constituted under these Rules lacks jurisdiction.**

Article 6.2 of the SCCA Arbitration Rules 2023 outlines the specific requirements for the content of the Respondent's Answer to the Request for Arbitration. This article specifies the necessary elements that must be included in the Respondent's formal response. Here is an analysis of this article:

1. **Respondent's Identification:** The article mandates that the Respondent's Answer to the Request for Arbitration must include the Respondent's name and contact details. This is essential for proper identification of the Respondent and for facilitating communication throughout the arbitration proceedings.
2. **Response to Claim and Relief Sought:** The Respondent's Answer must include a comprehensive response to the claim made by the Claimant in the Request for Arbitration. This includes addressing both the substance of the claim and the relief or remedy sought by the Claimant. This requirement ensures that the Respondent provides a clear and detailed response to the allegations made by the Claimant in order to fully present their position.
3. **Jurisdictional Challenge:** Importantly, the article stipulates that the Respondent's Answer must include any plea challenging the jurisdiction of the Arbitral Tribunal that will be constituted under the SCCA Arbitration Rules 2023. This plea challenges the authority of the Tribunal to hear the dispute, asserting that the Tribunal lacks jurisdiction to decide on the matter. Such challenges are common early in the arbitration process and allow the Tribunal to address jurisdictional issues before proceeding further.

In summary, Article 6.2 of the SCCA Arbitration Rules 2023 sets out the essential elements that must be included in the Respondent's Answer to the Request for Arbitration. This includes the Respondent's identification, a detailed response to the claim and relief sought, and any jurisdictional challenges. This article ensures that the Respondent's formal response is comprehensive, addressing both the factual and legal aspects of the dispute, and allowing for an efficient and well-informed progression of the arbitration proceedings.

**3. The Answer to the Request for Arbitration may also include:**

- a) A brief description of counterclaims or claims for the purpose of a set off, if any. This shall include the supporting facts, an indication of the relief or remedy sought, and any amount claimed; and**
- b) Any observations or proposals concerning the number of arbitrators, language of arbitration, and place of arbitration in light of the Claimant’s proposal.**

Article 6.3 of the SCCA Arbitration Rules 2023 addresses additional elements that the Respondent’s Answer to the Request for Arbitration may include. This article outlines the possibility of the Respondent asserting counterclaims or claims for set-off and allows for observations or proposals regarding certain arbitration parameters. Here is an analysis of this article:

1. **Counterclaims and Claims for Set-Off:** The article states that the Respondent’s Answer to the Request for Arbitration may include a brief description of counterclaims or claims for set-off, if any. Counterclaims are claims made by the Respondent against the Claimant in response to the initial claim. Claims for set-off involve asserting a separate claim that seeks to offset or balance the financial obligations between the parties. This provision allows the Respondent to bring these additional claims forward, providing a comprehensive view of the dispute.
2. **Contents of Counterclaims or Claims for Set-Off:** The Respondent’s submission of counterclaims or claims for set-off must include specific details:
  - a. **Supporting Facts:** The Respondent must provide supporting facts that explain the basis of the counterclaims or claims for set-off.
  - b. **Indication of Relief:** The Respondent should indicate the relief or remedy sought in relation to these additional claims.
  - c. **Amount Claimed:** If applicable, the Respondent should specify the amount being claimed in connection with the counterclaims or claims for set-off.
3. **Observations and Proposals:** The article further allows the Respondent’s Answer to include any observations or proposals concerning certain arbitration parameters. This refers to the Respondent’s response to the Claimant’s proposal regarding:
  - a. The number of arbitrators who will be part of the Arbitral Tribunal.
  - b. The language in which the arbitration proceedings will be conducted.
  - c. The place (venue) of arbitration.

In summary, Article 6.3 of the SCCA Arbitration Rules 2023 extends the Respondent’s Answer to the Request for Arbitration to potentially include counterclaims or claims for set-off, along with supporting facts and relief sought. Additionally, it allows the Respondent to provide observations or proposals concerning certain arbitration parameters in response to the Claimant’s proposal. This article enhances the Respondent’s ability to present their case comprehensively and ensures that important aspects of the arbitration process are addressed early in the proceedings.

**4. The Respondent’s failure to submit an Answer to the Request for Arbitration shall not prevent the arbitration from proceeding.**

Article 6.4 of the SCCA Arbitration Rules 2023 addresses the consequences of the Respondent’s failure to submit an Answer to the Request for Arbitration. This article clarifies that the arbitration process will not be hindered or prevented by the Respondent’s failure to provide a formal response. Here is an analysis of this article:

1. **Proceeding with Arbitration:** The article makes it explicit that the arbitration process will not be halted or prevented if the Respondent fails to submit an Answer to the Request for Arbitration. In other words, the failure of the Respondent to provide a formal response does not act as a barrier to the continuation of the arbitration proceedings.
2. **Unilateral Submission:** The Respondent’s Answer to the Request for Arbitration is a crucial step that allows the Respondent to present their position, respond to the claims made by the Claimant, and potentially assert counterclaims or claims for set-off. However, this article acknowledges that the absence of the Respondent’s response will not obstruct the overall arbitration process.
3. **Preservation of Procedural Integrity:** While the arbitration can proceed without the Respondent’s Answer, it is important to note that the Tribunal will consider the evidence and arguments presented by the Claimant in the Request for Arbitration. The absence of the Respondent’s response might impact the completeness of the presentation of facts and arguments, but the procedural integrity of the arbitration process is maintained.

In summary, Article 6.4 of the SCCA Arbitration Rules 2023 clarifies that the Respondent’s failure to submit an Answer to the Request for Arbitration will not impede the progression of the arbitration proceedings. This article ensures that the arbitration process can move forward even if one party does not provide a formal response, while acknowledging that the Tribunal will base its decisions on the available evidence and arguments.

**Article 7: Emergency Measures of Protection**

**1. Any party (the “Applicant”) may request emergency relief before the constitution of the Arbitral Tribunal by transmitting a written application, including all accompanying documents, (the “Application”) to the Administrator and to the other parties by email as set forth in Appendix III. Only if a party’s email address (as identified in Article 4(2)) is not available to the Applicant, the electronic delivery fails, or the parties expressly have agreed otherwise, the Applicant shall transmit the Application by the other means set forth in Article 4. The Application must include a statement certifying that the other parties have been notified or an explanation of the steps taken in good faith to notify the other parties.**

Article 7.1 of the SCCA Arbitration Rules 2023 addresses the procedure for requesting emergency relief before the constitution of the Arbitral Tribunal. This article outlines the steps that a party seeking such relief (the “Applicant”) must follow, including the submission of a written application to the Administrator and other parties. Here is an analysis of this article:

1. **Emergency Relief Request:** The article introduces the concept of “emergency relief” and establishes that any party involved in the arbitration (referred to as the “Applicant”) has the option to seek such relief before the Arbitral Tribunal has been formally constituted. Emergency relief typically refers to urgent and immediate measures that a party may require to prevent irreparable harm or to maintain the status quo until the Tribunal is constituted and can address the matter comprehensively.
2. **Written Application:** To request emergency relief, the Applicant is required to transmit a written application to the Administrator and the other parties. This application is commonly referred to as the “Application” in the article. This written submission is the formal request for the emergency relief sought by the Applicant.
3. **Transmission by Email:** The article specifies that the Application, along with any accompanying documents, should be transmitted by email. This allows for swift communication, which is crucial in emergency situations. The provisions related to email transmission are outlined in Appendix III of the SCCA Arbitration Rules 2023.
4. **Alternative Transmission:** If the Applicant’s preferred method of transmission (email) is not available due to reasons like the unavailability of a party’s email address, electronic delivery failure, or an express agreement between the parties, the Application must be transmitted through alternative means as outlined in Article 4 of the rules.
5. **Notification of Other Parties:** The Application must include a statement certifying that the other parties have been notified of the request for emergency relief. If the other parties have not been notified, the Application must include an explanation of the steps taken by the Applicant in good faith to notify them. This ensures that all parties are aware of the emergency relief request and have an opportunity to respond if necessary.

In summary, Article 7.1 of the SCCA Arbitration Rules 2023 provides a mechanism for parties to request emergency relief before the Arbitral Tribunal is constituted. The article outlines the steps to follow, including submitting a written Application to the Administrator and other parties, using email transmission as the default method, and ensuring that other parties are notified of the request or the steps taken to notify them in good faith. This article addresses the need for urgent measures while upholding principles of transparency and communication among the parties.

**2. In its Application, the Applicant shall specify the nature of the relief sought, the reasons why such relief is required on an emergency basis, and the reasons why the Applicant is entitled to such relief.**

Article 7.2 of the SCCA Arbitration Rules 2023 outlines the specific information that the Applicant must include in their written application when requesting emergency relief before the constitution of the Arbitral Tribunal. This article defines the essential content that must be provided to justify the need for urgent relief. Here is an analysis of this article:

1. **Nature of Relief Sought:** The article stipulates that the Applicant’s Application must clearly specify the nature of the relief being sought. This means that the type of remedy or measure the Applicant is requesting must be explicitly stated. This information helps the Administrator and other parties understand the purpose and scope of the emergency relief being sought.



2. **Emergency Basis Explanation:** The Applicant is required to explain why the requested relief is needed on an emergency basis. This portion of the Application should detail the circumstances that make it necessary for the Applicant to seek immediate relief, rather than waiting for the full arbitration process to unfold. This explanation should highlight the urgency and potential irreparable harm if relief is not granted promptly.
3. **Entitlement to Relief Explanation:** The Applicant must also provide reasons to support their entitlement to the requested relief. This involves explaining why the Applicant believes they have a legal right or basis to receive the relief they are seeking. This justification ensures that the Applicant's request is grounded in legal principles and legitimate reasons.

In summary, Article 7.2 of the SCCA Arbitration Rules 2023 requires the Applicant to provide specific details in their Application when seeking emergency relief. The article mandates that the Application must contain information about the nature of the relief sought, the reasons for the emergency basis, and the legal basis for the Applicant's entitlement to the relief. By including these elements, the Applicant presents a comprehensive case that justifies the need for urgent relief and allows the Administrator and other parties to assess the validity of the request.

**3. The Application shall be accompanied by the appropriate SCCA administrative fee and Emergency Arbitrator fee set forth in Article 9 of Appendix III. An emergency arbitration shall be deemed to commence on the date the Administrator determines at its discretion that the above filing requirements have been satisfied and the fees have been paid.**

Article 7.3 of the SCCA Arbitration Rules 2023 addresses the financial aspects of requesting emergency relief and outlines the process for the commencement of emergency arbitration. This article specifies the requirement for the Applicant to pay the necessary fees alongside the application for emergency relief. Here is an analysis of this article:

1. **Administrative and Emergency Arbitrator Fees:** The article states that the Application for emergency relief must be accompanied by two types of fees:
  - a. **SCCA Administrative Fee:** This fee likely covers the administrative costs associated with processing the emergency relief request.
  - b. **Emergency Arbitrator Fee:** This fee is specific to emergency arbitrator proceedings and is intended to compensate the Emergency Arbitrator for their services in dealing with the urgent matter.
2. **Filing Requirements and Fees:** The Application, along with the accompanying fees, must be submitted together to the Administrator. This implies that both the submission of the Application and the payment of the fees are crucial elements for the request for emergency relief to be considered.
3. **Commencement of Emergency Arbitration:** The article specifies that emergency arbitration proceedings are deemed to commence on a specific date. This date is determined by the Administrator's discretion, based on the satisfaction of certain criteria:

- a. Fulfilment of Filing Requirements: The Administrator must determine that the filing requirements, including the submission of the Application and accompanying documents, have been met.
  - b. Payment of Fees: In addition to the filing requirements, the Applicant must have paid the required SCCA administrative and Emergency Arbitrator fees.
4. Administrator’s Discretion: The determination of the commencement date of emergency arbitration is at the discretion of the Administrator. This underlines the administrative role of the SCCA in overseeing the emergency arbitration process and ensuring compliance with procedural and financial requirements.

In summary, Article 7.3 of the SCCA Arbitration Rules 2023 outlines the financial requirements for requesting emergency relief and initiating emergency arbitration proceedings. This article specifies the administrative and Emergency Arbitrator fees that must be paid alongside the Application and underscores the role of the Administrator in determining the commencement date of the emergency arbitration based on the fulfilment of filing requirements and fee payments. This article ensures that the financial and procedural aspects of seeking urgent relief are clear and well-defined within the SCCA arbitration framework.

**4. The Administrator shall terminate the emergency arbitration if it has not received a Request for Arbitration from the Applicant within 10 days of the receipt of the Application, unless the Emergency Arbitrator determines that a longer period of time is necessary.**

Article 7.4 of the SCCA Arbitration Rules 2023 addresses the termination of emergency arbitration in cases where the Applicant does not proceed to file a formal Request for Arbitration within a specified timeframe. This article provides guidance on the course of action when the Applicant does not advance the process as expected. Here is an analysis of this article:

1. Timing of Request for Arbitration: The article specifies that the Administrator will terminate the emergency arbitration if it has not received a formal Request for Arbitration from the Applicant within 10 days of receiving the initial Application for emergency relief. In essence, this sets a timeline for the Applicant to take the next step and formally initiate the arbitration process by filing the Request for Arbitration.
2. Emergency Arbitrator’s Discretion: The article allows for flexibility by stating that the Emergency Arbitrator has the authority to determine whether a longer period of time is necessary before terminating the emergency arbitration due to the absence of a Request for Arbitration. This recognises that there might be valid reasons for extending the timeline beyond the initial 10 days.
3. Balancing Urgency and Procedural Fairness: The provision in this article seeks to balance the need for urgency in emergency arbitration proceedings with the need for procedural fairness and appropriate time for parties to submit their formal claims or responses. The 10-day timeline reflects the expectation that parties should act swiftly in pursuing their claims or responses.
4. Role of the Administrator: The article attributes the decision to terminate the emergency arbitration to the Administrator. This emphasises the administrative role of the SCCA in

overseeing the emergency arbitration process and ensuring that the procedural steps are followed.

In summary, Article 7.4 of the SCCA Arbitration Rules 2023 addresses the potential termination of emergency arbitration proceedings if the Applicant does not file a Request for Arbitration within the specified timeframe. It outlines the general 10-day timeline and gives discretion to the Emergency Arbitrator to extend this period if deemed necessary. This article strikes a balance between addressing urgent matters and ensuring procedural fairness in emergency arbitration cases.

**5. Within one business day of receipt of the Application as provided in paragraph 1 of this Article, the SCCA Court shall appoint a single Emergency Arbitrator. Prior to accepting the appointment, a prospective Emergency Arbitrator shall, in accordance with Article 17, disclose to the Administrator any circumstances that may give rise to justifiable doubts as to his or her impartiality or independence. Any challenge to the appointment of the Emergency Arbitrator must be made within one business day of the Administrator’s communication to the parties of the appointment of the Emergency Arbitrator and the circumstances disclosed.**

Article 7.5 of the SCCA Arbitration Rules 2023 outlines the process for appointing an Emergency Arbitrator and addressing any potential challenges to their appointment in the context of emergency arbitration proceedings. Here is an analysis of this article:

1. **Appointment of Emergency Arbitrator:** The article mandates that within one business day of receiving the Application for emergency relief (as mentioned in paragraph 1 of the same Article), the SCCA Court shall appoint a single Emergency Arbitrator. This underscores the urgency of the process and the SCCA’s commitment to promptly address the emergency relief request.
2. **Disclosure of Impartiality and Independence:** Before accepting the appointment, a prospective Emergency Arbitrator is required to disclose any circumstances that could raise justifiable doubts about their impartiality or independence. This requirement aligns with the principles of neutrality and fairness, ensuring that parties have confidence in the Emergency Arbitrator’s ability to make unbiased decisions.
3. **Challenges to Appointment:** The article establishes a timeline for parties to challenge the appointment of the Emergency Arbitrator. Any challenge must be submitted within one business day of the Administrator’s communication to the parties regarding the appointment of the Emergency Arbitrator and the circumstances disclosed by the prospective arbitrator.
4. **Efficiency and Transparency:** The article emphasises the speed with which the SCCA Court must appoint the Emergency Arbitrator, addressing the time-sensitive nature of emergency relief cases. It also promotes transparency by requiring potential conflicts of interest to be disclosed before accepting the appointment.
5. **Administrator’s Role:** The Administrator is responsible for facilitating the appointment process and communicating the appointment of the Emergency Arbitrator to the parties. The article indirectly involves the Administrator in overseeing this aspect of emergency arbitration proceedings.

In summary, Article 7.5 of the SCCA Arbitration Rules 2023 sets out the procedures for appointing an Emergency Arbitrator and ensuring their impartiality and independence. It establishes a clear timeline for challenges to the appointment and underscores the importance of efficiency, transparency, and fairness in the emergency arbitration process. This article reflects the SCCA's commitment to addressing emergency relief requests promptly while upholding the principles of arbitration integrity.

**6. As soon as possible, and in any event within two business days of the appointment, the Emergency Arbitrator shall establish a schedule for consideration of the Application. Such a schedule shall provide all parties with a reasonable opportunity to be heard and may provide for proceedings by telephone, video, written submissions, or other suitable means, as alternatives to an in-person hearing. The Emergency Arbitrator shall have the authority vested in the Arbitral Tribunal under Article 24, including the authority to rule on his or her own jurisdiction, and shall resolve any disputes over the applicability of this Article.**

Article 7.6 of the SCCA Arbitration Rules 2023 outlines the procedural steps and authority of the Emergency Arbitrator once appointed in emergency arbitration proceedings. This article sets the framework for the Emergency Arbitrator to establish a schedule for considering the Application for emergency relief and describes the scope of their authority. Here is an analysis of this article:

1. **Establishment of Schedule:** The article requires the Emergency Arbitrator to establish a schedule for the consideration of the Application for emergency relief. This scheduling process should occur as soon as possible and, in any case, within two business days of the Emergency Arbitrator's appointment. This rapid schedule-setting reflects the urgency of emergency relief cases.
2. **Reasonable Opportunity to Be Heard:** The schedule established by the Emergency Arbitrator must provide all parties with a reasonable opportunity to be heard. This ensures that parties have a fair chance to present their arguments, evidence, and positions before the Emergency Arbitrator makes a decision on the requested relief.
3. **Flexible Proceedings:** The schedule may include various methods of proceedings, such as telephone hearings, video conferences, written submissions, or other suitable means. This flexibility recognises that in-person hearings may not always be feasible or necessary for urgent cases, and alternative methods of communication can be effective.
4. **Authority of Emergency Arbitrator:** The Emergency Arbitrator is vested with certain authorities outlined in Article 24 of the SCCA Arbitration Rules 2023. This includes the authority to rule on their own jurisdiction, as well as the authority to resolve any disputes over the applicability of the provisions in Article 7, which covers the emergency relief procedures.

In summary, Article 7.6 of the SCCA Arbitration Rules 2023 lays out the steps that the Emergency Arbitrator must take once appointed. It emphasises the establishment of a prompt and fair schedule for considering the Application for emergency relief. The article highlights the flexible nature of proceedings and the authority of the Emergency Arbitrator, including their role in addressing jurisdictional issues and disputes over the applicability of the emergency relief provisions. This article ensures that emergency arbitration proceedings are conducted efficiently and in line with principles of fairness and transparency.

**7. The Emergency Arbitrator shall have the power to order or award any interim, provisional, or precautionary measures that the Emergency Arbitrator deems necessary, including injunctive relief and measures for the protection or conservation of property. Any such measure may take the form of an interim award or order. The Emergency Arbitrator shall state the reasons upon which his or her interim award or order is based, which may be in summary form. The Emergency Arbitrator may modify or vacate the interim award or order. Any interim award or order shall have the same effect as an interim measure made in accordance with Article 28 and shall be binding on the parties once issued. The parties shall undertake to comply with such an interim award or order without delay.**

Article 7.7 of the SCCA Arbitration Rules 2023 elaborates on the authority and powers of the Emergency Arbitrator in granting interim relief and measures in emergency arbitration proceedings. This article outlines the scope of the Emergency Arbitrator's decision-making capabilities and the binding nature of their decisions. Here is an analysis of this article:

1. **Power to Order Interim Measures:** The article confers significant authority on the Emergency Arbitrator by granting them the power to order or award various types of interim, provisional, or precautionary measures that they deem necessary. These measures can encompass a wide range of actions, such as injunctive relief or protective measures to ensure the conservation of property. This provision reflects the need for the Emergency Arbitrator to address urgent situations effectively.
2. **Form of Measures:** The Emergency Arbitrator's orders or awards for interim measures can take the form of interim awards or orders. This indicates that the Emergency Arbitrator can formalise their decisions in the same manner as regular arbitration awards or orders.
3. **Reasoning for Interim Award or Order:** The Emergency Arbitrator is required to state the reasons upon which their interim award or order is based. These reasons may be provided in summary form, acknowledging the time-sensitive nature of emergency arbitration proceedings. This requirement ensures transparency in the decision-making process.
4. **Modification or Vacation of Interim Award or Order:** The Emergency Arbitrator has the authority to modify or vacate their interim award or order if circumstances warrant such action. This flexibility allows for adjustments based on changing circumstances or new information.
5. **Binding Effect and Compliance:** An interim award or order issued by the Emergency Arbitrator holds the same effect as interim measures granted under Article 28 of the SCCA Arbitration Rules 2023. Once issued, it is binding on the parties. The parties are required to comply with the interim award or order promptly, demonstrating the enforceability of the Emergency Arbitrator's decisions.

In summary, Article 7.7 of the SCCA Arbitration Rules 2023 defines the scope of the Emergency Arbitrator's powers in granting interim relief and measures in emergency arbitration proceedings. The article emphasises the authority of the Emergency Arbitrator to issue interim awards or orders, the requirement to provide reasons for their decisions, and the binding nature of these decisions on the parties involved. This article underscores the efficient and enforceable nature of emergency arbitration and the importance of timely compliance with the Emergency Arbitrator's directives.

**8. The Emergency Arbitrator shall issue his or her interim award or order no later than 14 days from the date on which the file was transmitted to the Emergency Arbitrator. The Administrator may extend this time limit in accordance with a reasoned request from the Emergency Arbitrator or on its own initiative if it considers it necessary to do so.**

Article 7.8 of the SCCA Arbitration Rules 2023 outlines the timeframe within which the Emergency Arbitrator must issue their interim award or order in emergency arbitration proceedings. This article establishes a time limit for the decision-making process and allows for potential extensions under specific circumstances. Here is an analysis of this article:

1. **Interim Award or Order Deadline:** The article sets a clear and specific time limit for the Emergency Arbitrator to issue their interim award or order. This time limit is 14 days from the date on which the case file was transmitted to the Emergency Arbitrator. This timeframe reflects the urgency inherent in emergency arbitration proceedings.
2. **Authority to Extend Time Limit:** The article grants the Administrator the authority to extend the 14-day time limit. Such an extension can be granted in two ways:
  - a. **Reasoned Request:** If the Emergency Arbitrator provides a reasoned request for an extension, the Administrator can consider and approve it.
  - b. **Administrator's Initiative:** The Administrator also has the discretion to extend the time limit on its own initiative if it deems such an extension necessary.
3. **Ensuring Adequate Time:** The provision for extending the time limit recognises that there may be circumstances that require more time for the Emergency Arbitrator to thoroughly review the case, hear parties, and make a well-informed decision. This flexibility helps balance the need for speedy decisions with the need for thoroughness.
4. **Efficiency and Consideration:** The article underscores the efficiency of the emergency arbitration process by mandating a relatively short time frame for the issuance of the interim award or order. It also ensures that extensions are granted based on reasoned justifications, either from the Emergency Arbitrator or the Administrator's assessment of necessity.

In summary, Article 7.8 of the SCCA Arbitration Rules 2023 establishes a 14-day deadline for the Emergency Arbitrator to issue their interim award or order in emergency arbitration proceedings. The article also allows for extensions of this time limit, ensuring that decisions are made promptly while allowing for potential additional time when circumstances warrant it. This article reflects the balance between urgency and the need for comprehensive decision-making in the context of emergency relief cases.

**9. Any interim award or order issued by the Emergency Arbitrator shall cease to be binding on the parties:**

- a) If all claims are withdrawn or the arbitration is terminated before the final award is issued; or**
- b) If the Request for Arbitration is not submitted in accordance with Article 5(2), or the dispute is not registered by the Administrator, the party against which the interim award or order is issued may in this case request the Emergency Arbitrator to issue a new interim award or order withdrawing the previous interim award or order.**

Article 7.9 of the SCCA Arbitration Rules 2023 addresses the circumstances under which an interim award or order issued by the Emergency Arbitrator ceases to be binding on the parties. This article outlines two scenarios in which the binding effect of the interim award or order is nullified. Here is an analysis of this article:

1. **Withdrawal or Termination of Claims:** The article specifies that any interim award or order issued by the Emergency Arbitrator will no longer be binding on the parties if either:
  - a. All claims in the arbitration are withdrawn, indicating that the parties have resolved the dispute before the issuance of a final award.
  - b. The arbitration is terminated before the final award is issued for any other reason. This could include procedural or jurisdictional issues.
2. **Non-Submission or Non-Registration of Dispute:** The article introduces another scenario under which the binding effect of an interim award or order can be terminated:
  - a. If the Request for Arbitration is not submitted in accordance with Article 5(2), or the dispute is not registered by the Administrator, the party against which the interim award or order was issued has the right to request the Emergency Arbitrator to issue a new interim award or order that withdraws the previous one.
3. **Protection of Binding Effect:** The article provides mechanisms to safeguard the binding nature of interim awards or orders. It accounts for situations where the parties resolve their dispute or where procedural requirements are not met, ensuring that the interim award or order does not have ongoing effects when circumstances change.
4. **Procedural Integrity:** The provisions of this article align with the principles of arbitration and procedural fairness. They ensure that interim awards or orders remain effective only if the underlying dispute is pursued in compliance with the agreed-upon procedures or if the arbitration process progresses to the point of issuing a final award.

In summary, Article 7.9 of the SCCA Arbitration Rules 2023 addresses the conditions under which the binding effect of an interim award or order issued by the Emergency Arbitrator can cease to apply. The article accounts for scenarios involving withdrawal or termination of claims and non-submission or non-registration of the dispute. These provisions are designed to protect the integrity of the arbitration process and ensure that interim measures remain relevant and binding only under appropriate circumstances.

**10. The Emergency Arbitrator’s powers shall terminate once the Arbitral Tribunal is constituted. Once the Arbitral Tribunal has been constituted, it may reconsider, modify, or vacate the interim award or order issued by the Emergency Arbitrator. The Emergency Arbitrator may not serve as a member of the Arbitral Tribunal unless the parties so agree.**

Article 7.10 of the SCCA Arbitration Rules 2023 outlines the scope and limitations of the Emergency Arbitrator’s powers, particularly in relation to the subsequent constitution of the Arbitral Tribunal. This article addresses the transition of authority from the Emergency Arbitrator to the Arbitral Tribunal and highlights the Emergency Arbitrator’s potential involvement in the subsequent arbitration process. Here is an analysis of this article:

1. **Termination of Emergency Arbitrator’s Powers:** The article specifies that the Emergency Arbitrator’s powers come to an end once the Arbitral Tribunal is constituted. This means that once a formal Arbitral Tribunal is established, the authority of the Emergency Arbitrator to make decisions or issue orders no longer applies.
2. **Review by the Arbitral Tribunal:** Once the Arbitral Tribunal has been constituted, it has the authority to reconsider, modify, or vacate any interim award or order previously issued by the Emergency Arbitrator. This provision ensures that the full Arbitral Tribunal, which comprises all the appointed arbitrators, has the power to review and potentially modify decisions made during the emergency arbitration phase.
3. **Limitation on Emergency Arbitrator’s Role:** The article underscores that the Emergency Arbitrator’s involvement in the subsequent arbitration process is limited. The Emergency Arbitrator is not automatically a member of the Arbitral Tribunal and cannot serve as such unless the parties explicitly agree to it.
4. **Transition from Urgent to Comprehensive Arbitration:** This article highlights the procedural distinction between emergency arbitration, which focuses on immediate and urgent relief, and the subsequent arbitration process, which addresses the full scope of the dispute in a more comprehensive manner. It ensures that the Arbitral Tribunal, with its broader composition, assumes responsibility for the case once constituted.

In summary, Article 7.10 of the SCCA Arbitration Rules 2023 clarifies the transition of authority from the Emergency Arbitrator to the Arbitral Tribunal. It emphasises that the Emergency Arbitrator’s powers terminate once the Arbitral Tribunal is established and the Tribunal has the authority to review, modify, or vacate interim awards or orders issued by the Emergency Arbitrator. The article also addresses the Emergency Arbitrator’s potential involvement in the subsequent arbitration process, subject to the parties’ agreement. This provision ensures a seamless transition from emergency relief proceedings to the full arbitration process.

**11. The Emergency Arbitrator may condition the issuance of any interim award or order on the provision of appropriate security by the party seeking such relief.**

Article 7.11 of the SCCA Arbitration Rules 2023 addresses the authority of the Emergency Arbitrator to impose a requirement for the provision of security by a party seeking interim relief in emergency arbitration proceedings. Here is an analysis of this article:



1. **Security as a Condition:** The article states that the Emergency Arbitrator has the power to make the issuance of an interim award or order conditional upon the provision of appropriate security by the party requesting such relief. This means that the Emergency Arbitrator can require the requesting party to provide some form of financial guarantee or collateral to cover potential losses that could arise if the requested interim relief is later found to be inappropriate or unjustified.
2. **Purpose of Security Requirement:** The requirement for security serves as a safeguard against potential abuse of the emergency arbitration process. It ensures that the party seeking interim relief has a legitimate interest in the outcome and that the request is not frivolous or intended solely to disrupt the other party. Requiring security also provides a mechanism to protect the responding party's interests if the interim relief is subsequently found to be unwarranted.
3. **Balancing Interests:** The provision recognises the need to balance the interests of both parties involved in the arbitration. By allowing the Emergency Arbitrator to condition the issuance of an interim award or order on the provision of security, the article aims to prevent undue harm to either party while maintaining the urgency and fairness of the emergency arbitration process.
4. **Discretion of the Emergency Arbitrator:** The decision to impose a security requirement is within the discretion of the Emergency Arbitrator. The Emergency Arbitrator will consider the circumstances of the case, the nature of the requested relief, and the potential consequences of the relief being granted or denied.

In summary, Article 7.11 of the SCCA Arbitration Rules 2023 empowers the Emergency Arbitrator to impose a condition that requires the requesting party to provide appropriate security when seeking interim relief. This provision ensures that parties seeking emergency relief are accountable for their requests and helps maintain the fairness and integrity of the arbitration process by preventing abuse of the emergency relief mechanism.

**12. A request for interim measures transmitted by a party to a judicial authority shall not be deemed incompatible with this Article or with the agreement to arbitrate or a waiver of the right to arbitrate.**

Article 7.12 of the SCCA Arbitration Rules 2023 addresses the compatibility of a party's request for interim measures to a judicial authority with the arbitration process outlined in the Rules. This article clarifies the relationship between seeking interim measures from a judicial authority and the arbitration agreement. Here is an analysis of this article:

1. **Non-Incompatibility:** The article explicitly states that a party's request for interim measures submitted to a judicial authority does not conflict with the provisions of Article 7 of the SCCA Arbitration Rules 2023. Article 7 pertains to the Emergency Arbitrator's powers and procedures for granting interim relief. Similarly, the article clarifies that such a request does not conflict with the arbitration agreement or a waiver of the right to arbitrate.
2. **Preservation of Options:** This provision emphasises that parties have the option to seek interim measures from either the Emergency Arbitrator or a judicial authority without

necessarily undermining the arbitration process. Parties might choose to approach a court to obtain interim relief before or alongside initiating arbitration proceedings, particularly when urgent measures are required.

3. **Flexibility and Pragmatism:** The article recognises the practical reality that parties may take multiple approaches to address their immediate needs for interim relief. It does not impose rigid constraints on the parties' ability to seek such relief from different sources.
4. **Respect for Arbitration Agreement:** By clarifying that seeking interim measures from a judicial authority is not incompatible with the arbitration agreement, the article underscores that the choice of seeking judicial relief does not undermine the parties' intention to resolve their dispute through arbitration.

In summary, Article 7.12 of the SCCA Arbitration Rules 2023 affirms that a party's request for interim measures from a judicial authority does not conflict with the emergency arbitration procedures outlined in Article 7 or with the arbitration agreement itself. This article recognises the practical options available to parties in seeking interim relief while upholding the integrity of the arbitration process and the parties' ability to choose the most appropriate avenue for obtaining the relief they need.

**13. The costs associated with the Application, including the SCCA administrative fee and the Emergency Arbitrator fee, shall be addressed by the Emergency Arbitrator, subject to the power of the Arbitral Tribunal to determine finally the allocation of such costs in the final award.**

Article 7.13 of the SCCA Arbitration Rules 2023 addresses the allocation of costs associated with the Application for emergency relief, including the SCCA administrative fee and the Emergency Arbitrator fee. This article outlines the role of the Emergency Arbitrator and the Arbitral Tribunal in determining the allocation of these costs. Here is an analysis of this article:

1. **Emergency Arbitrator's Role in Cost Allocation:** The article stipulates that the Emergency Arbitrator has the authority to address the costs related to the Application for emergency relief. This implies that the Emergency Arbitrator can make preliminary decisions regarding the allocation of costs, including the SCCA administrative fee and the Emergency Arbitrator fee.
2. **Subject to Final Determination by Arbitral Tribunal:** While the Emergency Arbitrator has the initial power to address these costs, the article acknowledges that the final determination of the allocation of such costs rests with the Arbitral Tribunal. This means that the Arbitral Tribunal, which is constituted for the subsequent arbitration proceedings, has the authority to make the ultimate decision on cost allocation in the final award.
3. **Consistency with General Cost Principles:** The article reflects a standard principle in arbitration that cost allocation is a matter to be addressed by the tribunal overseeing the arbitration. It ensures that the final decision aligns with the Arbitral Tribunal's broader understanding of the case, overall fairness, and applicable cost-sharing principles.
4. **Flexibility and Adaptation:** The article's structure provides flexibility in dealing with cost allocation. By allowing the Emergency Arbitrator to address costs initially and the Arbitral

Tribunal to make the final determination, the process can adapt to the evolving circumstances and considerations of the case.

In summary, Article 7.13 of the SCCA Arbitration Rules 2023 clarifies the roles of the Emergency Arbitrator and the Arbitral Tribunal in determining the allocation of costs associated with the Application for emergency relief. While the Emergency Arbitrator initially addresses these costs, the ultimate decision is left to the Arbitral Tribunal in the final award. This provision ensures consistency with general cost principles in arbitration and allows for flexibility and adaptation in cost allocation decisions as the case progresses.

## Article 8: Amendments to the Claim or Defense

### 1. Any party may amend or supplement its Request for Arbitration, the Answer, or any statement of claim or defense prior to the constitution of the Arbitral Tribunal.

Article 8.1 of the SCCA Arbitration Rules 2023 addresses the issue of amending or supplementing various submissions made by parties in the arbitration process, such as the Request for Arbitration, the Answer, and statements of claim or defence. This article outlines the timeframe and scope within which such amendments or supplements can be made. Here is an analysis of this article:

1. **Amendment and Supplementation:** The article establishes that parties have the right to amend or supplement their submissions before the Arbitral Tribunal is constituted. This includes the Request for Arbitration, the Answer, as well as any statements of claim or defence that parties may have submitted as part of the initial proceedings.
2. **Timing Limitation:** The article specifies that this right to amend or supplement submissions exists only prior to the constitution of the Arbitral Tribunal. Once the Arbitral Tribunal has been formed, parties are generally expected to present their case based on the submissions and evidence available at that time.
3. **Flexibility and Fairness:** By allowing parties to amend or supplement their submissions before the Arbitral Tribunal is constituted, the article promotes flexibility in the early stages of the arbitration process. This can be particularly important when parties wish to correct errors, provide additional information, or refine their claims or defences.
4. **Balancing Interests:** The article strikes a balance between the parties' right to adapt their positions and the need to ensure the arbitration process maintains a reasonable degree of procedural efficiency and finality. After the Arbitral Tribunal has been constituted, allowing extensive amendments could potentially disrupt the proceedings and the ability to move forward with the arbitration in a timely manner.

In summary, Article 8.1 of the SCCA Arbitration Rules 2023 grants parties the ability to amend or supplement their submissions—such as the Request for Arbitration, the Answer, or statements of claim or defence—before the Arbitral Tribunal is constituted. This provision promotes flexibility in the early stages of the arbitration process while also maintaining a balance between procedural adaptability and the need for procedural efficiency and finality once the Tribunal has been formed.

**2. Once constituted, any request to amend or supplement shall be subject to the Arbitral Tribunal's permission. In deciding whether it permits such a request, the Arbitral Tribunal shall take into account whether it causes undue delay, prejudices the other parties, falls outside the Arbitral Tribunal's jurisdiction, or any other circumstances the Arbitral Tribunal considers inappropriate. The Arbitral Tribunal may subject its permission to amend or supplement a claim to the provision of appropriate security by the requesting party.**

Article 8.2 of the SCCA Arbitration Rules 2023 addresses the process and criteria for amending or supplementing submissions once the Arbitral Tribunal has been constituted. This article outlines the factors and considerations that the Arbitral Tribunal should take into account when deciding whether to allow such amendments or supplements. Here is an analysis of this article:

1. **Requirement for Tribunal Permission:** The article specifies that any request to amend or supplement submissions, such as claims or defences, after the Arbitral Tribunal has been constituted requires the permission of the Tribunal. This means that parties cannot unilaterally make significant changes to their submissions without the Tribunal's approval.
2. **Criteria for Granting Permission:** The article outlines several key factors that the Arbitral Tribunal must consider when deciding whether to grant permission for amendments or supplements:
  - a. **Undue Delay:** The Tribunal should assess whether the proposed amendment or supplement would cause undue delay to the proceedings. The goal is to maintain a reasonable pace and efficiency in the arbitration process.
  - b. **Prejudice to Other Parties:** The Tribunal should consider whether allowing the amendment or supplement would prejudice the other parties' ability to present their case or defend against the amended claims.
  - c. **Jurisdictional Boundaries:** The Tribunal should assess whether the proposed amendments or supplements fall within its jurisdiction and are consistent with the scope of the arbitration agreement.
  - d. **Inappropriate Circumstances:** The Tribunal has the discretion to consider any other circumstances that it deems inappropriate for allowing the proposed amendments or supplements.
3. **Balancing Interests:** The article reflects a balancing act between the parties' need to adapt their positions and the need to ensure that the arbitration process remains fair, efficient, and orderly. It prevents parties from making extensive amendments that could disrupt the proceedings or prejudice other parties.
4. **Security Requirement:** The article also introduces the possibility of requiring the requesting party to provide appropriate security when seeking permission to amend or supplement a claim. This provision adds an additional layer of accountability and safeguards against potential misuse of the amendment process.

In summary, Article 8.2 of the SCCA Arbitration Rules 2023 outlines the process for seeking permission from the Arbitral Tribunal to amend or supplement submissions once the Tribunal has been constituted. The article emphasises the Tribunal's consideration of factors such as delay, prejudice, jurisdiction, and appropriateness, and it introduces the option of requiring security as a condition for

granting permission. This provision aims to strike a balance between procedural adaptability and maintaining the fairness and efficiency of the arbitration process.

## Article 9: Representation and Assistance

**1. Each party may be represented or assisted by persons chosen by it. Unless applicable law requires otherwise, any party may be represented or assisted by legal practitioners or any other authorized representatives, including foreign legal practitioners regardless of the jurisdiction in which they are based or licensed to practice.**

Article 9.1 of the SCCA Arbitration Rules 2023 pertains to the representation of parties in arbitration proceedings, granting parties the right to choose their representatives and outlining the permissibility of legal practitioners or other authorised representatives, regardless of their jurisdiction. Here is an analysis of this article:

1. **Right to Representation:** The article confirms the fundamental right of each party in an arbitration to be represented or assisted by individuals chosen by them. This recognises the parties' autonomy and their ability to engage individuals who can best advocate their interests.
2. **Broad Definition of Representatives:** The article recognises that parties may choose to be represented or assisted by a wide range of individuals, not limited to legal practitioners. This allows for flexibility in choosing representatives who possess the necessary expertise, knowledge, or skills relevant to the dispute.
3. **Inclusivity of Legal Practitioners:** The article explicitly permits parties to be represented by legal practitioners, emphasising that parties may engage legal professionals for their expertise and advocacy skills in the arbitration proceedings.
4. **Foreign Legal Practitioners:** One notable aspect of this article is its allowance for parties to be represented by foreign legal practitioners regardless of the jurisdiction in which they are based or licensed to practice. This provision reflects a modern and inclusive approach to arbitration representation, acknowledging that parties may wish to engage representatives with specific expertise or familiarity with certain legal systems or industries, even if those representatives are not locally licensed.
5. **Flexibility and Autonomy:** By allowing parties to choose their representatives based on their unique needs, the article promotes flexibility and autonomy in arbitration proceedings. This aligns with the principle of party autonomy, which is a cornerstone of arbitration.
6. **Potential Impact of Applicable Law:** The article also acknowledges that there may be instances where applicable law requires specific representation. It ensures that the right to representation is not absolute and is subject to any mandatory provisions of the governing law.

In summary, Article 9.1 of the SCCA Arbitration Rules 2023 underscores the right of parties to choose their representatives or assistants in arbitration proceedings. The article promotes flexibility by allowing parties to be represented by legal practitioners or other authorised representatives, including

foreign legal practitioners, regardless of their jurisdiction. This provision aligns with the modern and inclusive approach of arbitration and respects parties' autonomy in selecting those who will advocate their interests.

**2. The names and addresses of such persons must be communicated to all parties, the Arbitral Tribunal and the Administrator. Such communication must specify whether the appointment is being made for the purposes of representation or assistance. Where a person is to act as a representative of a party, the Arbitral Tribunal and the Administrator, on their own initiative or at the request of any party, may at any time require proof of authority granted to the representative in such a form as the Arbitral Tribunal or the Administrator may determine.**

Article 9.2 of the SCCA Arbitration Rules 2023 addresses the requirements and disclosure of the names and addresses of individuals chosen to represent or assist parties in arbitration proceedings. This article outlines the communication and verification processes that ensure transparency, accountability, and proper representation. Here is an analysis of this article:

1. **Communication of Representative Information:** The article stipulates that the names and addresses of individuals chosen to represent or assist parties must be communicated to all parties, the Arbitral Tribunal, and the Administrator. This requirement enhances transparency by ensuring that all relevant parties are aware of who is representing or assisting each party in the arbitration.
2. **Clarification of Role:** The communication must specify whether the appointed individual is acting for the purpose of representation or assistance. This distinction is important to clarify the role and scope of the appointed person's involvement in the arbitration process.
3. **Verification of Representative's Authority:** The article provides the Arbitral Tribunal and the Administrator with the authority to verify the authority granted to a representative of a party. This verification can be initiated by the Arbitral Tribunal, the Administrator, or at the request of any party. This provision prevents unauthorised individuals from representing parties and ensures that those acting on behalf of parties are duly authorised.
4. **Flexibility in Verification:** The article allows the Arbitral Tribunal and the Administrator to determine the form of proof required to establish the representative's authority. This flexibility enables the Tribunal and the Administrator to adapt to the unique circumstances of each case.
5. **Promoting Fairness and Order:** By requiring disclosure and verification of representatives' authority, the article contributes to maintaining the fairness and orderliness of the arbitration proceedings. It helps prevent unauthorised or improperly authorised individuals from acting on behalf of parties and ensures that all parties have accurate information about who is representing or assisting the other side.
6. **Balancing Efficiency and Accountability:** The verification process balances the need for efficiency in the arbitration process with the necessity of maintaining accountability and integrity. While the process may involve additional administrative steps, it ultimately safeguards the integrity of the proceedings.

In summary, Article 9.2 of the SCCA Arbitration Rules 2023 ensures transparency and accountability by requiring the communication of representative information to all relevant parties, the Arbitral Tribunal, and the Administrator. It allows for verification of a representative's authority to prevent unauthorised representation. This provision promotes a fair and orderly arbitration process while maintaining flexibility to adapt to various circumstances.

**3. Each party must promptly inform the other parties, the Arbitral Tribunal, and the Administrator if it proposes to change or add a representative. The Arbitral Tribunal may refuse to allow a proposed change in representation if it considers it necessary to safeguard the composition of the Arbitral Tribunal or the finality of the award. In taking that decision, the Arbitral Tribunal shall take into account, among other things, the stage of the arbitration and the likely impact of the change or addition in representation.**

Article 9.3 of the SCCA Arbitration Rules 2023 addresses the process and implications of changing or adding a representative during arbitration proceedings. This article outlines the obligation to promptly inform relevant parties of any proposed changes or additions, the authority of the Arbitral Tribunal to refuse such changes, and the considerations that guide the Tribunal's decision-making. Here is an analysis of this article:

1. **Obligation to Inform:** The article mandates that each party must promptly inform not only the other parties but also the Arbitral Tribunal and the Administrator if it intends to change or add a representative. This requirement ensures that all stakeholders, including the Tribunal, are kept informed about changes in the composition of the representatives of the parties.
2. **Authority of the Arbitral Tribunal:** The article confers authority upon the Arbitral Tribunal to refuse a proposed change in representation. This authority is grounded in the Tribunal's responsibility to safeguard the composition of the Arbitral Tribunal itself and the finality of the award. This provision underscores the importance of maintaining a fair and balanced Tribunal and the integrity of the arbitration process.
3. **Factors for Consideration:** The Tribunal's decision on whether to allow a proposed change in representation is influenced by several key factors:
  - a. **Composition of the Tribunal:** The Tribunal must ensure that the proposed change does not unduly affect the composition's balance, impartiality, or integrity.
  - b. **Finality of the Award:** The change in representation should not compromise the finality and efficiency of the arbitral proceedings or the enforceability of the eventual award.
  - c. **Stage of the Arbitration:** The article emphasises that the stage of the arbitration is a significant consideration. A change in representation might have differing impacts depending on whether the proceedings are in their early stages or nearing completion.
4. **Balancing Party Autonomy and Integrity:** The article balances a party's autonomy to choose its representatives with the need to maintain the integrity and efficiency of the

arbitration process. It prevents parties from making strategic changes in representation that could disrupt the proceedings or potentially undermine the award's finality.

5. Promoting Fair and Orderly Proceedings: By empowering the Arbitral Tribunal to oversee changes in representation, the article promotes fairness and orderliness in the arbitration process. It prevents arbitrary or last-minute changes that could disadvantage other parties or compromise the proceedings.

In summary, Article 9.3 of the SCCA Arbitration Rules 2023 requires parties to promptly inform relevant parties, the Arbitral Tribunal, and the Administrator of any proposed changes or additions to their representatives. The article vests the Arbitral Tribunal with authority to refuse such changes if necessary to protect the composition of the Tribunal or the finality of the award. The article balances party autonomy with the need to maintain the integrity and efficiency of the arbitration process, promoting fairness and orderliness in the proceedings.

### Article 10: Administrative Conference

**The Administrator may conduct an administrative conference before the Arbitral Tribunal is constituted to facilitate party discussion and agreement on issues such as arbitrator selection, process efficiencies, and any other administrative matters. Unless the parties agree otherwise, the administrative conference shall be held remotely by videoconference, telephone, or any other appropriate means of remote communication.**

Article 10 of the SCCA Arbitration Rules 2023 pertains to the authority of the Administrator to conduct an administrative conference before the Arbitral Tribunal is constituted. This article outlines the purpose, scope, and manner in which such administrative conferences are conducted. Here is an analysis of this article:

1. Pre-Tribunal Administrative Conference: The article grants the Administrator the power to organise and conduct an administrative conference prior to the constitution of the Arbitral Tribunal. The purpose of this conference is to facilitate discussion and agreement among the parties on various administrative matters related to the arbitration proceedings.
2. Scope of Discussion: The article specifies that the administrative conference can cover a range of issues, including but not limited to:
  - a. Arbitrator Selection: Parties can discuss and potentially agree on the process of selecting arbitrators for the Tribunal.
  - b. Process Efficiencies: Parties can consider procedural matters to streamline the arbitration process, enhancing its efficiency.
  - c. Other Administrative Matters: The conference can address any other administrative matters that are relevant to the smooth functioning of the arbitration.
3. Remote Format: The article outlines that, unless the parties agree otherwise, the administrative conference shall be conducted remotely. The options for remote communication include videoconferencing, telephone, or any other suitable means of



remote communication. This approach aligns with modern trends favouring virtual interactions and helps accommodate parties and representatives who may be geographically dispersed.

4. **Efficiency and Cooperation:** By allowing the Administrator to organise an administrative conference, the article aims to foster efficiency, cooperation, and consensus-building among the parties at an early stage. This can help set a positive tone for the proceedings and encourage collaborative decision-making.
5. **Tailoring to the Parties' Needs:** The article recognises the flexibility of arbitration and allows the parties to agree otherwise if they prefer a different approach to conducting the administrative conference. This flexibility reflects the principle of party autonomy in shaping the arbitration process to their specific needs.
6. **Ensuring Adequate Preparation:** The administrative conference can be a valuable opportunity for parties to discuss important matters and make informed decisions before the Tribunal is constituted. This can potentially expedite the proceedings and minimise later disputes.

In summary, Article 10 of the SCCA Arbitration Rules 2023 empowers the Administrator to arrange an administrative conference prior to the constitution of the Arbitral Tribunal. This conference is designed to facilitate parties' discussions and agreements on various administrative aspects of the arbitration. By offering the flexibility of remote communication, the article promotes efficiency, cooperation, and informed decision-making among the parties while allowing for tailored approaches based on the parties' preferences.

## Section II — Multi-Contract and Multi-Party Arbitration

### Article 11: Multiple Contracts

**1. Claims arising out of or in connection with more than one contract or arbitration agreement may be made in a single Request for Arbitration where:**

- a) The relief sought arises out of the same transaction or a series of related transactions;**
- b) A common question of law or fact arises under each arbitration agreement giving rise to the arbitration; and**
- c) If applicable, the multiple arbitration agreements under which the claims are made are compatible.**

Article 11.1 of the SCCA Arbitration Rules 2023 addresses the consolidation of claims arising from multiple contracts or arbitration agreements into a single Request for Arbitration. The article outlines the conditions under which such consolidation is permitted. Here is an analysis of this article:

1. **Consolidation of Claims:** The article allows for the consolidation of claims that arise from multiple contracts or arbitration agreements into a single Request for Arbitration. This means that a party can present multiple claims in a unified manner rather than initiating separate proceedings for each claim.
2. **Conditions for Consolidation:**
  - a. **Same Transaction or Related Transactions:** The claims being consolidated must arise out of the same transaction or a series of related transactions. This condition ensures a reasonable connection between the claims being brought together.
  - b. **Common Question of Law or Fact:** There must be a common question of law or fact that underlies each arbitration agreement giving rise to the claims. This condition emphasises the need for a unifying element that makes consolidation appropriate.
  - c. **Compatibility of Arbitration Agreements:** If multiple arbitration agreements underlie the claims being consolidated, those agreements must be compatible. This ensures that the arbitration clauses in the various contracts are not fundamentally conflicting.
3. **Efficiency and Streamlining:** Allowing consolidation can enhance efficiency by avoiding duplicative proceedings and hearings, reducing costs and time associated with multiple arbitrations.
4. **Unity of Disputes:** The article reflects the principle that disputes arising from interconnected transactions or contracts should be treated as a cohesive unit rather than fragmented and treated separately.
5. **Balancing Efficiency and Fairness:** While consolidation can be efficient, it is essential that the conditions ensure fairness to all parties involved. The common question of law or fact helps ensure that claims are indeed related and can be effectively consolidated.

6. **Managing Complexity:** This provision is particularly valuable in cases involving complex commercial relationships or projects where various aspects may be interrelated, making consolidation more logical and practical.

In summary, Article 11.1 of the SCCA Arbitration Rules 2023 enables parties to consolidate claims arising from multiple contracts or arbitration agreements into a single Request for Arbitration. The article outlines the conditions, including a common question of law or fact and compatibility of arbitration agreements, that must be met for such consolidation. This provision strikes a balance between promoting efficiency and ensuring fairness in the arbitration process, particularly in cases involving interconnected transactions.

**2. Any objections by any party as to whether all of the claims may be determined together in a single arbitration shall not prevent the Administrator from proceeding with the administration of the matter. Any such objections shall be referred to the Arbitral Tribunal once constituted for determination unless the Administrator at its discretion refers any such objections to the SCCA Court for determination. Where an objection is referred to the SCCA Court for determination, the SCCA Court shall have regard to the requirements for consolidation set forth in Article 13. The SCCA Court’s determination to proceed with a single arbitration does not prevent the Arbitral Tribunal from making any determinations under Article 24.**

Article 11.2 of the SCCA Arbitration Rules 2023 addresses the handling of objections related to the consolidation of claims into a single arbitration. The article outlines the process for managing such objections and the roles of the Administrator, the Arbitral Tribunal, and the SCCA Court. Here is an analysis of this article:

1. **Proceeding with Administration:** The article states that objections raised by any party regarding whether all claims can be determined together in a single arbitration will not prevent the Administrator from proceeding with the administration of the matter. This underscores the Administrator’s authority to manage the initial stages of the arbitration, including dealing with objections.
2. **Referral of Objections to Arbitral Tribunal:** If objections are raised, they will be referred to the Arbitral Tribunal once it is constituted for determination. The Tribunal will assess whether the claims meet the conditions for consolidation outlined in Article 11.1. This ensures that the Tribunal, which ultimately decides the substantive matters of the arbitration, will review the objections in the context of the actual case.
3. **Referral to SCCA Court for Determination:** Alternatively, the Administrator has the discretion to refer objections to the SCCA Court for determination. The SCCA Court will consider objections in light of the conditions for consolidation set forth in Article 11.1. This provision allows for a more formal review by the institution itself, which could bring additional expertise and consistency to the decision-making process.
4. **Harmonisation with Article 13:** The article specifies that if objections are referred to the SCCA Court for determination, the SCCA Court should consider the requirements for consolidation outlined in Article 13. This cross-reference ensures that the Court applies consistent criteria when deciding on consolidation.

5. Flexibility in Determination: The provision allows for flexibility in determining whether claims should be consolidated. It empowers both the Arbitral Tribunal and the SCCA Court to assess objections and make informed decisions based on the specific circumstances of the case.
6. Separation of Consolidation and Substantive Determinations: The article clarifies that the SCCA Court's determination to proceed with a single arbitration does not preclude the Arbitral Tribunal from making substantive determinations under Article 24. This separation reinforces the distinction between the decision on consolidation and the subsequent determination of the case's merits.

In summary, Article 11.2 of the SCCA Arbitration Rules 2023 outlines the procedure for handling objections related to the consolidation of claims into a single arbitration. The article allows the Administrator to proceed with administration despite objections, refers objections to the Arbitral Tribunal or the SCCA Court for determination, and ensures consistency by harmonising with the requirements for consolidation set forth in Article 13. This provision ensures a structured and organised process for addressing objections and making informed decisions on consolidation.

#### Article 12: Joinder

**1. A party wishing to join an additional party to the arbitration shall submit a request for joinder to the Administrator, the additional party, and the other parties. No party may be joined after the appointment of any arbitrator, unless:**

- a) **All parties agree, including the additional Party, and the additional party accepts the constitution of the Arbitral Tribunal; or**
- b) **The additional party agrees with the joinder, accepts the constitution of the Arbitral Tribunal, and the Arbitral Tribunal determines that the joinder is appropriate.**

Article 12.1 of the SCCA Arbitration Rules 2023 deals with the procedure for adding an additional party to an ongoing arbitration. The article sets out the conditions under which a party can request the joinder of an additional party and the scenarios in which such joinder can take place. Here is an analysis of this article:

1. Request for Joinder: The article states that a party seeking to add an additional party to the ongoing arbitration must submit a formal request for joinder. This request should be addressed to the Administrator, the additional party being joined, and all the existing parties to the arbitration. This requirement ensures that all relevant parties are informed of the joinder request.
2. Timing of Joinder: The article specifies that no party can be added after an arbitrator has been appointed, except in certain situations outlined in sub-paragraphs (a) and (b).
  - a. Consensual Joinder: All parties, including the additional party to be joined, must agree to the joinder. The joinder can proceed if all parties consent, and the additional party also accepts the constitution of the Arbitral Tribunal. This emphasises the importance of unanimity among the parties for adding an additional party to the proceedings.

- b. Joinder with Tribunal Approval: If the additional party agrees to the joinder and accepts the constitution of the Arbitral Tribunal, but not all parties are in agreement, the Arbitral Tribunal can still determine whether the joinder is appropriate. The Tribunal assesses whether the joinder aligns with the objectives of fairness, efficiency, and procedural integrity.
3. Balancing Party Autonomy and Procedural Integrity: The article strikes a balance between respecting party autonomy and ensuring that the arbitration process remains effective and efficient. While the consent of all parties is required in most cases, the Tribunal's role is crucial in evaluating and approving joinder requests that are supported by the involved parties.
4. Timely and Transparent Process: By establishing a formal process for requesting joinder, the article ensures that parties are aware of any attempts to bring additional parties into the proceedings. This transparency helps avoid surprises and maintains procedural fairness.
5. Flexibility in Joinder: The article offers two distinct routes for joinder, providing parties with flexibility based on the circumstances. This accommodates situations where parties unanimously agree as well as those where unanimity is not achieved but the Tribunal deems joinder appropriate.
6. Joinder and Tribunal Composition: The conditions for joinder outlined in this article also consider the composition of the Arbitral Tribunal. Ensuring the agreement of the additional party with the Tribunal's composition helps maintain the integrity of the Tribunal and the arbitration process.

In summary, Article 12.1 of the SCCA Arbitration Rules 2023 sets out the procedure for adding an additional party to an ongoing arbitration. It requires a formal request for joinder and outlines the scenarios in which such joinder can occur: through unanimous agreement of all parties or with the approval of the Arbitral Tribunal based on the additional party's acceptance of the Tribunal's constitution. This article balances party autonomy with the need to maintain procedural fairness and efficiency in the arbitration process.

**2. In deciding whether the joinder is appropriate, the Arbitral Tribunal shall take into account all relevant circumstances of the case, including whether the Arbitral Tribunal has prima facie jurisdiction over the additional party, the timing of the request for joinder, possible conflicts of interests, and the impact of the joinder on the arbitration.**

Article 12.2 of the SCCA Arbitration Rules 2023 addresses the factors that the Arbitral Tribunal must consider when deciding whether the joinder of an additional party to an ongoing arbitration is appropriate. The article outlines the relevant circumstances that should be taken into account in this decision-making process. Here is an analysis of this article:

1. Prima Facie Jurisdiction: The article requires the Arbitral Tribunal to consider whether it has prima facie jurisdiction over the additional party being proposed for joinder. This means that the Tribunal should assess whether there is a reasonable basis to believe that the arbitration agreement and the claims made against the additional party fall within the Tribunal's jurisdiction.

2. **Timing of Request:** The timing of the request for joinder is also emphasised. The Arbitral Tribunal should evaluate when the request for joinder was made relative to the progress of the arbitration proceedings. This evaluation helps determine whether the request disrupts or unduly delays the ongoing process.
3. **Conflicts of Interests:** Possible conflicts of interest are another relevant factor. The Tribunal should assess whether the addition of the new party might create conflicts with existing parties, arbitrators, or the overall arbitration process. This ensures that the impartiality and independence of the Tribunal are maintained.
4. **Impact on Arbitration:** The Arbitral Tribunal must assess the impact of the proposed joinder on the arbitration proceedings. This includes considering how the addition of the new party might affect the efficiency, fairness, and overall conduct of the arbitration.
5. **Balancing Multiple Factors:** The article highlights the Tribunal’s responsibility to balance various considerations. The factors mentioned—prima facie jurisdiction, timing, conflicts of interests, and the impact on the arbitration—reflect the need to weigh different aspects to arrive at a well-rounded decision.
6. **Discretion of the Tribunal:** The article vests discretion in the Arbitral Tribunal to determine the appropriateness of the joinder. This discretionary power acknowledges that each case is unique and may require different considerations.
7. **Ensuring Procedural Fairness:** By requiring consideration of these factors, the article aims to ensure that the joinder process maintains procedural fairness and integrity. Decisions related to joinder should be based on careful evaluation and align with the principles of fairness and due process.
8. **Enhancing Efficiency:** Evaluating conflicts of interests and the impact on the arbitration process helps prevent potential disruptions or inefficiencies that could arise from the addition of a new party.

In summary, Article 12.2 of the SCCA Arbitration Rules 2023 specifies the factors that the Arbitral Tribunal must consider when deciding whether the joinder of an additional party is appropriate. These factors include prima facie jurisdiction, timing, conflicts of interests, and the impact on the arbitration process. This article underscores the Tribunal’s responsibility to make informed and balanced decisions that uphold the principles of fairness and efficiency in arbitration proceedings.

### **3. The date on which the additional party accepts to be joined shall be deemed to be the date of the commencement of arbitration against the additional party.**

Article 12.3 of the SCCA Arbitration Rules 2023 deals with the commencement of arbitration proceedings against an additional party who has accepted joinder. The article specifies that the date on which the additional party accepts to be joined is considered the starting point for the arbitration against that party. Here is an analysis of this article:

1. **Clear Commencement Date:** The article provides clarity on when the arbitration proceedings officially begin against an additional party who has been joined. This date is established as the moment the additional party accepts joinder.

2. **Legal Certainty:** By designating the date of acceptance of joinder as the commencement of arbitration, the article contributes to legal certainty and procedural clarity. This helps define the beginning of rights, responsibilities, and timelines for the newly joined party.
3. **Seamless Integration:** The article ensures that the joinder process is smoothly integrated into the ongoing arbitration proceedings. It sets a concrete reference point for the start of the proceedings against the added party.
4. **Effect on Timelines:** The date of joinder acceptance is relevant for calculating various timeframes within the arbitration process, such as the submission of pleadings, the selection of arbitrators, and other procedural steps.
5. **Practical Implementation:** This provision simplifies the practical implementation of joinder by establishing a clear trigger for the procedural steps related to the newly added party.
6. **Consistency with Jurisdictional Concepts:** The idea of linking the commencement of proceedings with the acceptance of joinder aligns with the principle of consent in arbitration, where the parties agree to submit to arbitration for resolving disputes.
7. **Promoting Efficiency:** Defining the commencement date based on the acceptance of joinder contributes to procedural efficiency by avoiding ambiguities and uncertainties about when the new party's involvement begins.
8. **Protecting Party Autonomy:** The article respects the autonomy of the additional party by making the date of acceptance a critical point for determining when its obligations and participation in the arbitration process start.

In summary, Article 12.3 of the SCCA Arbitration Rules 2023 sets the date on which the arbitration against an additional party commences as the date on which the additional party accepts joinder. This approach promotes clarity, legal certainty, and procedural efficiency while respecting the principles of party autonomy and consent in the arbitration process.

#### **4. The request for joinder shall contain the same information required of a Request for Arbitration under Article 5(2).**

Article 12.4 of the SCCA Arbitration Rules 2023 outlines the information that must be included in a request for joinder of an additional party to an ongoing arbitration. The article emphasises that the request for joinder should contain the same information as required for a Request for Arbitration under Article 5(2) of the same rules. Here is an analysis of this article:

1. **Consistency in Information:** This article ensures consistency in the information provided during the arbitration process. By requiring that the request for joinder include the same information as a Request for Arbitration, the article underscores the importance of transparency and completeness in both processes.
2. **Uniformity in Documentation:** Parties seeking joinder are required to follow the same documentation standards as those initiating an arbitration. This helps maintain a uniform approach to documentation, regardless of the stage of the arbitration.

3. **Clarity and Understanding:** Including the same information as required for a Request for Arbitration enhances clarity and understanding for all parties involved. It ensures that parties and the Tribunal have the necessary details to comprehend the claims, the parties, and the dispute's context.
4. **Efficiency and Streamlining:** Utilising consistent information in both scenarios can streamline administrative processes. It allows the Administrator, Arbitral Tribunal, and other parties to access relevant details efficiently.
5. **Alignment with Case Management:** Having access to the same information allows the Arbitral Tribunal to better manage the case, understand the new party's position, and assess the potential impact on the ongoing proceedings.
6. **Ensuring Fairness:** Requiring the same level of information for joinder requests as for initial Requests for Arbitration contributes to procedural fairness. Allowing parties to present their positions comprehensively ensures that the Tribunal has the necessary context for making informed decisions.
7. **Simplification of Review:** For the Tribunal or the Administrator reviewing the joinder request, having a consistent format with information they are familiar with can facilitate the evaluation process.
8. **Clear Guidelines:** Parties seeking to join an additional party will know exactly what information they need to provide, eliminating ambiguity and reducing the risk of incomplete or inadequate requests.

In summary, Article 12.4 of the SCCA Arbitration Rules 2023 requires that a request for joinder of an additional party must include the same information as required for a Request for Arbitration under Article 5(2). This approach ensures consistency, clarity, and fairness in the documentation and information provided throughout the arbitration process, regardless of the stage at which a new party is added.

## 5. The additional party shall submit an Answer in accordance with Article 6.

Article 12.5 of the SCCA Arbitration Rules 2023 pertains to the procedural step that an additional party must take after being joined to an ongoing arbitration. The article states that the newly added party is required to submit an Answer in accordance with Article 6 of the same rules. Here is an analysis of this article:

1. **Incorporating Familiar Procedures:** This article incorporates the procedural requirements of Article 6 into the joinder process for the additional party. Article 6 deals with submitting an Answer to the original Request for Arbitration. By referencing Article 6, the article ensures that the additional party follows the same procedure as the original parties when responding to the claims.
2. **Procedural Consistency:** Ensuring that the additional party submits an Answer aligns with the principle of procedural consistency. All parties involved in the arbitration are held to the same standards and procedures, promoting fairness and uniformity.



3. **Equal Participation:** By requiring the additional party to submit an Answer, the article ensures that the newly added party has the opportunity to present its position, respond to the claims made against it, and engage in the arbitration process on an equal footing with the existing parties.
4. **Submission of Relevant Information:** The Answer submitted by the additional party under Article 6 typically includes responses to the claims, defences, counterclaims, and any other relevant information. This enables a full and comprehensive understanding of the dispute for all parties involved.
5. **Preserving Due Process:** Requiring the additional party to submit an Answer safeguards due process. It ensures that all parties have a chance to present their arguments, evidence, and defences, which contributes to the overall fairness of the arbitration proceedings.
6. **Contributing to Tribunal's Decision:** The Answer submitted by the additional party helps the Arbitral Tribunal fully grasp the dispute, the positions of all parties, and the complexities of the case. This is essential for the Tribunal to make well-informed decisions.
7. **Streamlining Documentation:** Incorporating the same procedures for submitting an Answer as for the original parties streamlines the documentation and procedural aspects of the arbitration. The Tribunal and Administrator are already familiar with these procedures.
8. **Effective Case Management:** Requiring the additional party to submit an Answer allows for effective case management, ensuring that all parties' positions are presented clearly and comprehensively.

In summary, Article 12.5 of the SCCA Arbitration Rules 2023 mandates that an additional party joined to an ongoing arbitration must submit an Answer in accordance with Article 6. This approach promotes procedural consistency, equal participation, due process, and effective case management throughout the arbitration process.

## **6. The additional party may make claims against any other party in accordance with Article 6.**

Article 12.6 of the SCCA Arbitration Rules 2023 addresses the rights of an additional party who has been joined to an ongoing arbitration. The article states that the newly added party has the right to make claims against any other party in accordance with Article 6 of the same rules. Here is an analysis of this article:

1. **Enabling Counterclaims:** This article empowers the additional party to assert claims against any other party involved in the arbitration, following the procedures outlined in Article 6. Counterclaims allow parties to address their own grievances within the same arbitration proceeding.
2. **Balancing Interests:** The article recognises that the additional party should have the opportunity to assert its rights and claims, similar to the original parties. It ensures that

the new party is not limited to defending against existing claims but can also assert its own claims.

3. **Promoting Efficiency:** Allowing the additional party to assert counterclaims in the same arbitration can promote efficiency by addressing all related disputes in a consolidated manner. This minimises the need for separate proceedings and reduces duplication of efforts.
4. **Consolidating Disputes:** By allowing counterclaims, the arbitration process can comprehensively address all issues between the parties, leading to a more comprehensive and final resolution of the disputes.
5. **Encouraging Comprehensive Pleadings:** Parties are encouraged to present their claims and defences comprehensively. This promotes transparency, prevents the fragmentation of disputes, and ensures that all relevant matters are addressed.
6. **Minimising Fragmentation:** Allowing counterclaims within the same arbitration helps avoid a fragmented resolution process, where parties might need to engage in multiple proceedings to address all their claims and disputes.
7. **Encouraging Participation:** By granting the additional party the right to make claims, the article encourages the active participation of the newly added party in the arbitration process.
8. **Contributing to Tribunal's Decision:** Allowing the additional party to assert counterclaims ensures that the Arbitral Tribunal has a complete picture of the disputes, enabling it to make comprehensive and well-informed decisions.

In summary, Article 12.6 of the SCCA Arbitration Rules 2023 enables an additional party joined to an ongoing arbitration to make claims against any other party involved in the arbitration in accordance with Article 6. This provision promotes efficiency, comprehensive resolution, and balanced participation by allowing the newly added party to assert its own claims alongside responding to existing claims.

**Article 13: Consolidation**

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

- a) The parties have agreed to consolidation;**
- b) All the claims in the arbitrations are made under the same arbitration agreement(s);  
or**
- c) The claims in the arbitrations are not made under the same arbitration agreement(s), but the disputes in the arbitrations arise in connection with the same legal relationship, and the SCCA Court finds the arbitration agreement(s) to be compatible.**

Article 13.1 of the SCCA Arbitration Rules 2023 outlines the procedures and criteria for the consolidation of multiple arbitrations into a single arbitration. The article describes the circumstances under which consolidation may be carried out upon the request of a party or the Arbitral Tribunal. Here is an analysis of this article:

1. **Consolidation of Arbitrations:** This article addresses the important process of consolidating multiple arbitrations into a single arbitration, which can contribute to procedural efficiency and the coherent resolution of related disputes.
2. **Triggering Factors for Consolidation:** The article specifies three scenarios under which consolidation may occur:
  - a. **Parties' Agreement:** If all parties involved agree to consolidation, it can be carried out.
  - b. **Same Arbitration Agreement:** If all the claims in the arbitrations are made under the same arbitration agreement(s), consolidation is permitted.
  - c. **Different Arbitration Agreements but Same Legal Relationship:** If the claims in the arbitrations do not arise under the same arbitration agreement(s), but the disputes are connected by the same legal relationship, consolidation is possible.
3. **Balancing Parties' Interests:** The article ensures that consolidation requires some form of agreement or a logical connection between the claims. This balances the interests of the parties seeking consolidation while preventing the undue imposition of consolidation against another party's wishes.
4. **Promotion of Efficiency:** Consolidating related arbitrations can save time, resources, and effort for all parties involved. It minimises duplicative proceedings and promotes a streamlined resolution process.
5. **Addressing Similar Legal Relationships:** The provision for consolidation based on the same legal relationship recognises that disputes arising from a single underlying contract or transaction should be resolved in a cohesive manner.
6. **Protection of Arbitration Agreements:** Even in cases where claims arise from different arbitration agreements, the article allows for consolidation if the SCCA Court determines

that the agreements are compatible. This promotes a coherent approach to related disputes.

7. **Balancing Autonomy and Efficiency:** While the article supports consolidation for efficiency, it also respects the autonomy and intentions of the parties involved. Consolidation is subject to specific criteria and requirements.
8. **Role of the SCCA Court:** The article highlights the central role of the SCCA Court in determining whether consolidation is appropriate in each case. This ensures that the decision is made by an independent and authoritative body.

In summary, Article 13.1 of the SCCA Arbitration Rules 2023 provides the framework for consolidating multiple arbitrations into a single arbitration. It outlines triggering factors for consolidation, emphasises efficiency, and respects the parties' autonomy while promoting a coherent approach to related disputes. The SCCA Court's role in evaluating and deciding on consolidation requests ensures a balanced and well-considered approach to the process.

**2. No application for consolidation may be made under this Article if the Arbitral Tribunal in any of the arbitrations has been fully constituted, unless:**

- a) **All parties to all arbitrations agree to consolidation; or**
- b) **All members of all Arbitral Tribunals are identical and each Arbitral Tribunal requests that there be consolidation.**

Article 13.2 of the SCCA Arbitration Rules 2023 addresses the timing and conditions under which applications for consolidation of arbitrations can be made. This article specifies the restrictions on seeking consolidation after an Arbitral Tribunal has been fully constituted. Here is an analysis of this article:

1. **Limitations on Timing:** This article introduces a crucial limitation on the timing of seeking consolidation. It prohibits applications for consolidation under the specified circumstances if an Arbitral Tribunal in any of the involved arbitrations has already been fully constituted.
2. **Preservation of Tribunal Composition:** The article respects the composition of an already-constituted Arbitral Tribunal, emphasising the principle of respecting the parties' choices and the independence of the Tribunal.
3. **Conditions for Consolidation After Full Constitution:** The article provides two exceptions under which consolidation may still occur even after the Arbitral Tribunal has been fully constituted:
  - a. **Unanimous Consent of All Parties:** If all parties involved in all arbitrations unanimously agree to consolidation, it can proceed.
  - b. **Common Arbitrators Across All Tribunals:** If all members of the Arbitral Tribunals in all arbitrations are identical and each Tribunal agrees to consolidation, it may be considered.

4. **Respecting Party Autonomy:** The article recognises the importance of party autonomy by ensuring that consolidation cannot be imposed against a party's wishes once the Tribunal is fully formed.
5. **Ensuring Consistent Decision-Making:** Allowing consolidation under the specified circumstances ensures that the same Tribunal or a fully compatible set of Arbitral Tribunals would oversee the consolidated proceedings, contributing to consistency in decision-making.
6. **Avoiding Disruption:** By placing limitations on when consolidation can be sought, the article prevents disruptions to ongoing arbitrations where Tribunals have already been established.
7. **Balancing Efficiency and Due Process:** While promoting efficiency through consolidation, the article acknowledges the need to balance it with due process and respecting the autonomy of fully constituted Tribunals.
8. **Collaboration Among Tribunals:** The provision for consolidation if all members of all Arbitral Tribunals are identical and agree to consolidation reflects a collaborative approach among the Tribunals, aiming for a unified and streamlined resolution process.

In summary, Article 13.2 of the SCCA Arbitration Rules 2023 sets limitations on seeking consolidation of arbitrations once an Arbitral Tribunal has been fully constituted. It respects the autonomy of parties and established Tribunals while allowing for consolidation in exceptional circumstances. The article balances the principles of efficiency, due process, and party autonomy within the context of consolidation.

**3. In deciding whether to consolidate two or more arbitrations, the SCCA Court shall have regard to all relevant circumstances, including:**

- a) **The applicable law;**
- b) **The extent to which the same arbitrators have been appointed in all the relevant proceedings;**
- c) **The progress already made in the arbitrations;**
- d) **Whether the arbitrations raise common issues of law and/or facts; and**
- e) **Whether the consolidation of the arbitrations would serve the interests of justice and efficiency.**

Article 13.3 of the SCCA Arbitration Rules 2023 outlines the factors that the SCCA Court must consider when deciding whether to consolidate two or more arbitrations into a single arbitration. The article emphasises the importance of examining various relevant circumstances in making a consolidation determination. Here is an analysis of this article:

1. **Holistic Evaluation:** The article underscores the significance of a comprehensive assessment when making a decision regarding the consolidation of arbitrations. It

encourages the SCCA Court to consider a range of relevant factors before deciding on consolidation.

2. **Respect for Applicable Law:** The article mandates that the applicable law be taken into account. This ensures that any legal requirements or implications related to consolidation are properly considered.
3. **Consistency of Arbitrators:** The article directs attention to whether the same arbitrators have been appointed in all relevant proceedings. This factor promotes consistency in decision-making and expertise across the consolidated arbitration.
4. **Progress of Arbitrations:** The article emphasises the status of progress in the arbitrations being considered for consolidation. The stage of the proceedings is crucial in evaluating the feasibility and impact of consolidation.
5. **Common Legal and Factual Issues:** The article highlights the importance of whether the arbitrations raise common issues of law and/or facts. Identifying overlaps in legal and factual matters supports the case for consolidation.
6. **Interests of Justice and Efficiency:** The article recognises that the primary objectives of justice and efficiency should guide the consolidation decision. Consolidation should offer benefits in terms of streamlined proceedings and effective resolution.
7. **Balancing Interests:** The article acknowledges the need to balance multiple considerations, such as legal requirements, expertise, efficiency, and fairness, when determining consolidation.
8. **Flexible Approach:** By referring to “all relevant circumstances,” the article allows the SCCA Court to adapt its decision to the specific features of each case, promoting a flexible approach to consolidation.
9. **Promotion of Uniform Decision-Making:** The requirement to consider factors like the consistency of arbitrators and common issues of law and facts aligns with the goal of ensuring uniform decision-making across the consolidated proceedings.
10. **Efficiency and Streamlining:** By considering factors related to the progress and commonalities among arbitrations, the article reflects the importance of efficiency and streamlined proceedings.

In summary, Article 13.3 of the SCCA Arbitration Rules 2023 mandates a comprehensive evaluation of various relevant circumstances when deciding whether to consolidate arbitrations. It emphasises factors such as applicable law, arbitrator consistency, progress of proceedings, common legal and factual issues, and the interests of justice and efficiency. This holistic approach ensures that the consolidation decision is well-informed and balanced, taking into account multiple aspects of the arbitration proceedings.

**4. Where the SCCA Court decides to consolidate two or more arbitrations, each party in those arbitrations shall be deemed to have waived its right to nominate an arbitrator. The SCCA Court shall, as necessary, complete the appointment of the Arbitral Tribunal in the consolidated arbitration, and**

**may revoke the confirmation or appointment of any arbitrators, appoint additional arbitrators, or select one of the previously appointed arbitrators to serve in the consolidated arbitration.**

Article 13.4 of the SCCA Arbitration Rules 2023 outlines the consequences and procedures following the SCCA Court’s decision to consolidate two or more arbitrations into a single arbitration. This article addresses the practical implications of consolidation on the composition of the Arbitral Tribunal. Here is an analysis of this article:

1. **Consolidation Effect on Arbitrator Nominations:** The article establishes a significant consequence of consolidation: parties in the consolidated arbitrations waive their right to nominate an arbitrator. This step is taken to ensure a streamlined and unified process in the consolidated arbitration.
2. **Completion of Arbitrator Appointment:** The article empowers the SCCA Court to complete the appointment of the Arbitral Tribunal in the consolidated arbitration. This provision is necessary because the consolidation affects the initial process of appointing arbitrators.
3. **Flexible Arbitrator Appointment:** The SCCA Court is given authority to adapt the composition of the Arbitral Tribunal as needed. This flexibility is important to ensure that the Tribunal is appropriate and capable of handling the consolidated proceedings.
4. **Revocation and Additional Appointments:** The SCCA Court’s authority extends to various actions, such as revoking the confirmation or appointment of arbitrators, appointing additional arbitrators, or selecting arbitrators from the previously appointed panel. These measures are designed to align the Tribunal composition with the requirements of the consolidated arbitration.
5. **Ensuring Impartiality and Expertise:** The SCCA Court’s authority to make adjustments to the Arbitral Tribunal allows for the selection of arbitrators who possess the necessary expertise and impartiality to address the specific issues in the consolidated arbitration.
6. **Efficiency and Unity of Tribunal:** The consolidation process aims to unify the arbitration proceedings, and the authority granted to the SCCA Court ensures that the composition of the Tribunal aligns with this goal.
7. **Harmonising Arbitrator Selection:** The waiver of the right to nominate arbitrators and the SCCA Court’s role in completing the appointment process aim to harmonise the selection of arbitrators across the consolidated proceedings.
8. **Ensuring a Coherent and Effective Tribunal:** The article supports the principle that a consolidated arbitration should have a Tribunal tailored to its unique characteristics and requirements, ensuring a coherent and effective dispute resolution process.

In summary, Article 13.4 of the SCCA Arbitration Rules 2023 addresses the practical consequences and procedures following the consolidation of arbitrations. It ensures that the Tribunal composition is appropriate for the consolidated proceedings and grants the SCCA Court authority to modify, complete, and adjust the appointment of arbitrators. This approach aligns with the aim of promoting efficiency, expertise, and unity in consolidated arbitrations.

**Article 14: Coordination of Proceedings**

**After consultation with the parties, the Arbitral Tribunal may coordinate the proceedings in two or more arbitrations under these Rules, including by aligning specific procedural aspects of the arbitrations, issuing a single award in relation to all arbitrations, or suspending any of those arbitrations until after the determination in another, where:**

- a) The same Arbitral Tribunal is constituted in each arbitration;**
- b) A common question of law or fact arises in each arbitration; and**
- c) Coordination will assist in resolving the dispute(s) in an expeditious and cost-effective manner.**

Article 14 of the SCCA Arbitration Rules 2023 outlines the provisions related to the coordination of proceedings in two or more arbitrations under the Rules. This article enables the Arbitral Tribunal to harmonise procedural aspects, issue single awards, or suspend arbitrations in certain circumstances. Here is an analysis of this article:

1. **Efficient Dispute Resolution:** The article is designed to promote efficiency in the resolution of disputes involving multiple arbitrations. By coordinating proceedings, the aim is to streamline the process and achieve faster and more cost-effective outcomes.
2. **Arbitral Tribunal’s Discretion:** The decision to coordinate proceedings rests with the Arbitral Tribunal, emphasising its role in managing the arbitration process effectively.
3. **Common Arbitral Tribunal:** A prerequisite for coordination is that the same Arbitral Tribunal is constituted in each of the arbitrations involved. This ensures consistency and uniformity in the decision-making process.
4. **Common Question of Law or Fact:** Another requirement for coordination is the existence of a common question of law or fact in each arbitration. This commonality justifies the coordination of proceedings to avoid repetition and promote a comprehensive resolution.
5. **Procedural Alignment:** The Arbitral Tribunal may align specific procedural aspects of the arbitrations. This includes harmonising procedures, timelines, and other relevant aspects to ensure consistency.
6. **Single Award Possibility:** The article permits the Arbitral Tribunal to issue a single award in relation to all the coordinated arbitrations. This streamlines the outcome and avoids the need for multiple awards on common issues.
7. **Suspension for Coordination:** The article also allows for the suspension of arbitrations until after the determination of another arbitration. This approach can prevent unnecessary duplicative proceedings and ensure that the resolution of common issues in one arbitration informs the others.
8. **Balancing Factors:** The article balances the need for coordination with the overall objective of efficient dispute resolution. The Arbitral Tribunal considers the potential benefits against any potential drawbacks when making coordination decisions.



9. Flexibility and Tailoring: The article provides flexibility to the Arbitral Tribunal to determine the extent of coordination based on the specifics of each case. This tailoring ensures that coordination decisions align with the unique circumstances of the arbitrations.
10. Cost and Time Efficiency: By facilitating coordination and alignment, the article promotes cost and time efficiency for all parties involved.

In summary, Article 14 of the SCCA Arbitration Rules 2023 empowers the Arbitral Tribunal to coordinate proceedings in multiple arbitrations under certain conditions. It emphasises efficient dispute resolution through procedural alignment, single awards, and potential suspensions. This provision underscores the Arbitral Tribunal's role in effectively managing the arbitration process to achieve timely and cost-effective outcomes.

### Section III — Composition of the Arbitral Tribunal

#### Article 15: Number of Arbitrators

**If the parties have not previously agreed on the number of arbitrators, one arbitrator shall be appointed, unless the SCCA Court, after consultation with the parties, determines at its discretion that three arbitrators are appropriate because of the size, complexity, or other circumstances of the case.**

Article 15 of the SCCA Arbitration Rules 2023 addresses the appointment of arbitrators when the parties have not agreed on the number of arbitrators. This article outlines the default procedure for determining the number of arbitrators, whether it should be one or three, based on the size, complexity, or other circumstances of the case. Here is an analysis of this article:

1. **Default Number of Arbitrators:** The article establishes a default rule for the number of arbitrators to be appointed when the parties have not agreed on this aspect in their arbitration agreement. The default is one arbitrator, implying a sole arbitrator, unless specific conditions trigger the appointment of three arbitrators.
2. **Discretion of the SCCA Court:** The decision regarding the number of arbitrators, whether one or three, is entrusted to the SCCA Court. This emphasises the Court’s role in ensuring that the arbitration process is appropriate for the specific characteristics of the case.
3. **Factors Guiding the Decision:** The SCCA Court’s determination is guided by several factors, including the size and complexity of the case. These factors recognise that more complex or larger disputes may benefit from a panel of three arbitrators to ensure a comprehensive and well-informed decision.
4. **Consideration of Other Circumstances:** The article also includes a catch-all provision for “other circumstances of the case.” This recognises that the size and complexity of a dispute are not the only factors relevant to the determination of the number of arbitrators. Other aspects specific to the case may also influence this decision.
5. **Consultation with Parties:** Before making the determination, the SCCA Court consults with the parties. This consultation ensures that the Court takes into account the parties’ perspectives and any relevant information they may have regarding the case’s characteristics.
6. **Tailoring the Arbitration Process:** The article supports the principle that the arbitration process should be tailored to the needs and nature of the specific dispute. The decision on the number of arbitrators ensures that the arbitration mechanism matches the complexities of the case.
7. **Promoting Efficiency and Fairness:** By allowing the SCCA Court to consider the size, complexity, and other circumstances of the case, the article aims to promote an efficient and fair arbitration process that aligns with the dispute’s characteristics.
8. **Flexibility of the Arbitration Regime:** The article’s approach underscores the flexibility and adaptability of the SCCA Arbitration Rules 2023 to accommodate a wide range of disputes, from simple to complex.

In summary, Article 15 of the SCCA Arbitration Rules 2023 establishes a default rule for the number of arbitrators when the parties have not specified this aspect in their arbitration agreement. It empowers the SCCA Court to determine whether one or three arbitrators should be appointed based on factors such as the size, complexity, and other circumstances of the case. This approach aligns with the goal of tailoring the arbitration process to the unique characteristics of each dispute.

## Article 16: Appointment of Arbitrators

### Nomination under agreed procedure

#### 1. The parties may agree upon any procedure for nominating arbitrators and shall inform the Administrator promptly of any such agreed procedure.

Article 16.1 of the SCCA Arbitration Rules 2023 addresses the parties' ability to establish their own procedure for nominating arbitrators when they have not specified a nomination method in their arbitration agreement. This article emphasises party autonomy and the requirement to promptly notify the Administrator of the agreed-upon procedure. Here is an analysis of this article:

1. **Party Autonomy and Flexibility:** This article upholds the principle of party autonomy in arbitration. It acknowledges that parties have the freedom to design their own process for nominating arbitrators. This flexibility allows parties to tailor the arbitration procedure to their specific needs and preferences.
2. **Procedure Agreement:** The article underscores that parties are not limited to a predetermined or default nomination procedure. They can collaboratively decide on the method that suits their dispute, jurisdiction, and objectives. This collaborative aspect can foster a sense of ownership over the arbitration process.
3. **Efficiency and Suitability:** Allowing parties to agree upon the nomination procedure ensures that the method chosen is suitable for the nature of the dispute and the parties' expectations. This can expedite the arbitrator selection process and minimise unnecessary delays.
4. **Prompt Notification to Administrator:** The article emphasises the importance of promptly informing the Administrator about the agreed nomination procedure. This requirement facilitates transparency and allows the Administrator to be informed and involved in the process.
5. **Administrative Coordination:** By notifying the Administrator, the parties contribute to a coordinated and organised arbitration process. The Administrator can provide guidance, support, and any necessary administrative assistance in accordance with the agreed-upon procedure.
6. **Avoiding Potential Disputes:** Having a clear and agreed-upon nomination procedure can help prevent disputes and confusion among the parties regarding the arbitrator selection process. This clarity contributes to a smoother arbitration process.

7. **Balancing Autonomy and Efficiency:** Article 16.1 balances the parties' autonomy to design their own nomination procedure with the need for efficient administration. It recognises the role of the Administrator in facilitating the arbitration process.
8. **Enhanced Predictability:** Parties that establish their own nomination procedure create a predictable framework for arbitrator selection. This predictability can enhance parties' confidence in the arbitration process.

In summary, Article 16.1 of the SCCA Arbitration Rules 2023 reaffirms party autonomy by allowing parties to agree upon their own procedure for nominating arbitrators. The article underlines the significance of promptly notifying the Administrator about the agreed procedure to ensure administrative coordination and efficiency. This provision reflects the SCCA's commitment to providing a flexible and adaptable arbitration framework that caters to parties' unique preferences and requirements.

**2. The parties may agree to nominate any arbitrators with or without the Administrator's assistance. When such nominations are made, the parties shall take into account the arbitrators' availability to serve and shall notify the Administrator promptly so that a statement of acceptance can be sent to the arbitrators, together with a copy of these Rules.**

Article 16.2 of the SCCA Arbitration Rules 2023 addresses the parties' ability to nominate arbitrators either with or without the assistance of the Administrator. This article emphasises that parties, when making nominations, should consider the arbitrators' availability and outlines the process for notifying the Administrator. Here is an analysis of this article:

1. **Party Autonomy and Selection of Arbitrators:** This article continues to uphold party autonomy by allowing parties to select arbitrators either independently or with the Administrator's assistance. Parties are granted the flexibility to choose arbitrators who they believe are best suited to resolve their specific dispute.
2. **Options for Arbitrator Nomination:** The article presents two options for nominating arbitrators. Parties can choose to nominate arbitrators directly, or they can involve the Administrator to assist in the nomination process. This flexibility allows parties to select an approach that aligns with their preferences and circumstances.
3. **Arbitrator Availability:** The article emphasises that parties should take into account the availability of the nominated arbitrators to serve on the case. This consideration is crucial for ensuring that the selected arbitrators are able to commit the necessary time and resources to the arbitration proceedings.
4. **Efficient Notification Process:** The article establishes a prompt notification requirement. Parties are expected to notify the Administrator promptly after making their nominations. This notification triggers the next steps in the process, including sending a statement of acceptance to the nominated arbitrators and providing them with a copy of the SCCA Arbitration Rules 2023.
5. **Statement of Acceptance and Rules:** The requirement to send a statement of acceptance to the nominated arbitrators ensures that they are informed about their potential appointment and can confirm their availability and willingness to serve. Providing them

with a copy of the SCCA Rules ensures that they understand the framework within which the arbitration will proceed.

6. **Balancing Autonomy and Administrative Involvement:** Article 16.2 strikes a balance between parties' autonomy to select arbitrators and the importance of administrative oversight. In cases where parties nominate arbitrators independently, the Administrator still plays a role in confirming the nominees' acceptance and providing them with necessary information.
7. **Promotion of Efficient Arbitrator Selection:** By requiring parties to consider arbitrators' availability and promptly notify the Administrator, the article promotes an efficient and streamlined process for arbitrator selection. This reduces potential delays and uncertainties in forming the Arbitral Tribunal.
8. **Clarity and Predictability:** The article ensures that the process of arbitrator nomination is clear and predictable. It provides a structured framework for parties to follow, contributing to the overall transparency and integrity of the arbitration proceedings.

In summary, Article 16.2 of the SCCA Arbitration Rules 2023 underscores the parties' autonomy in selecting arbitrators and presents options for arbitrator nomination. It emphasises the importance of considering arbitrators' availability and promptly notifying the Administrator. This provision combines party autonomy with administrative facilitation to ensure an effective and efficient arbitrator selection process.

**3. Where the parties have agreed upon a procedure for nominating the arbitrators, but all nominations have not been made within the time limits provided by that procedure, the SCCA Court may, at the written request of any party, perform all functions provided for in that procedure that remain to be performed.**

Article 16.3 of the SCCA Arbitration Rules 2023 addresses a scenario where parties have agreed on a procedure for nominating arbitrators, but not all nominations have been made within the specified time limits. In such cases, the SCCA Court may step in and perform the remaining functions outlined in the agreed procedure. Here is an analysis of this article:

1. **Enforcement of Agreed Procedure:** This article ensures that parties adhere to the procedure they have collectively agreed upon for nominating arbitrators. It reflects the principle of enforcing agreements made between the parties, even in cases where there may be delays or challenges in following the agreed-upon procedure.
2. **Time Limit Consideration:** The article implies that parties are expected to respect the time limits stipulated in their agreed procedure for nominating arbitrators. If the nominations have not been made within those time limits, the provision comes into play.
3. **SCCA Court's Intervention:** The article grants authority to the SCCA Court to intervene and perform any remaining functions that were part of the agreed nomination procedure. This intervention ensures that the process does not stall due to non-compliance with the time limits.

4. **Protection against Delay:** By allowing the SCCA Court to step in, the article guards against unnecessary delays in forming the Arbitral Tribunal. Delays could potentially hinder the progression of the arbitration process and disrupt the timely resolution of the dispute.
5. **Party Initiative:** The article specifies that the SCCA Court's involvement is triggered by a written request from any party involved in the arbitration. This places the initiative in the hands of the parties, ensuring that they can seek the Court's intervention when needed.
6. **Maintenance of Integrity:** This provision maintains the integrity of the arbitration process. It ensures that even when there are delays or complications, the process continues to operate within the framework that the parties have previously agreed upon.
7. **Balancing Efficiency and Due Process:** While the article aims to ensure efficiency by overcoming delays, it also strikes a balance by not infringing upon the parties' right to due process. The article implies that the SCCA Court will only perform the remaining functions within the agreed procedure, without overstepping its boundaries.
8. **Promotion of Arbitral Efficiency:** The article aligns with the goal of efficient arbitration by addressing situations where procedural issues arise, helping to move the arbitration process forward in a timely manner.

In summary, Article 16.3 of the SCCA Arbitration Rules 2023 ensures that parties adhere to the nomination procedure they have agreed upon. If nominations are not made within the specified time limits, the SCCA Court may perform the remaining functions of the agreed procedure upon a party's written request. This provision maintains the arbitration's efficiency while respecting the parties' agreed-upon procedure.

**4. If within 30 days after the commencement of the arbitration, or any other time agreed by the parties, the arbitrators have not been nominated, the SCCA Court shall, at the request of any party, appoint the arbitrators in accordance with the below provisions.**

Article 16.4 of the SCCA Arbitration Rules 2023 addresses a situation where arbitrators have not been nominated within a specific timeframe after the commencement of arbitration. In such cases, the SCCA Court is empowered to step in and appoint arbitrators based on the provisions outlined in the article. Here is an analysis of this article:

1. **Fallback Provision:** This article serves as a fallback provision to address the scenario where the parties have not been able to nominate arbitrators within the stipulated time frame. It recognises that despite the parties' intent, situations may arise that prevent the timely nomination of arbitrators.
2. **Time Limit Consideration:** The article establishes a clear time frame for the appointment of arbitrators, which is within 30 days after the commencement of the arbitration, or any other period as agreed by the parties. This time frame emphasises the importance of promptly forming the Arbitral Tribunal to move the arbitration process forward.
3. **Role of SCCA Court:** The article assigns the role of appointing arbitrators to the SCCA Court when the parties have not completed the nomination process within the specified time

limit. This intervention ensures that the arbitration process is not delayed due to a lack of arbitrator appointments.

4. **Party Initiative:** The article emphasises that the appointment of arbitrators by the SCCA Court is initiated by a written request from any party involved in the arbitration. This empowers the parties to take action if the agreed-upon arbitrator nomination process stalls.
5. **Preservation of Impartiality:** The article ensures that the SCCA Court's appointment of arbitrators maintains the principles of impartiality and fairness. The Court's involvement is aligned with the administration of the arbitration process and the selection of suitable arbitrators.
6. **Efficient Process:** By giving the SCCA Court the authority to appoint arbitrators in situations of delay, the article contributes to the efficiency of the arbitration process. It prevents unnecessary hold-ups due to difficulties in the nomination process.
7. **Balance of Authority:** While the SCCA Court is empowered to appoint arbitrators, it is done in accordance with the provisions set forth in the SCCA rules. This maintains the balance of authority between the parties, the SCCA Court, and the Arbitral Tribunal.
8. **Flexibility and Agreement:** The article recognises that the time frame for appointing arbitrators can be adjusted by the parties' agreement. This acknowledges the parties' ability to tailor the arbitration process based on their specific circumstances.

In summary, Article 16.4 of the SCCA Arbitration Rules 2023 addresses situations where arbitrators have not been nominated within the specified time frame. In such cases, the SCCA Court can appoint arbitrators upon a party's written request. This provision emphasises the importance of timely arbitrator appointments while preserving the principles of fairness and efficiency in the arbitration process.

#### **Nomination of a sole arbitrator**

**5. If the matter is to be resolved by one arbitrator, the parties should attempt to nominate the arbitrator jointly. If the parties have not made such a joint nomination within 30 days of the commencement of the arbitration, the SCCA Court shall appoint the arbitrator in accordance with the below provisions.**

Article 16.5 of the SCCA Arbitration Rules 2023 focuses on the appointment of a single arbitrator when the parties have not been able to make a joint nomination within a specified time frame. Here is an analysis of this article:

1. **Joint Nomination Emphasis:** The article highlights the importance of a joint nomination for a single arbitrator when the matter is to be resolved by one arbitrator. Joint nomination encourages cooperation between the parties and reflects a mutual choice, which can contribute to the smooth progress of the arbitration process.
2. **Time Limit:** The article establishes a specific time frame for the parties to make a joint nomination. This time frame is set at 30 days from the commencement of the arbitration.

This deadline underscores the need for a prompt appointment of the arbitrator to prevent delays in the proceedings.

3. **Role of SCCA Court:** Similar to the previous article, if the parties have not made a joint nomination within the stipulated time frame, the SCCA Court steps in to appoint the arbitrator. This provision ensures that the arbitration process continues smoothly even when the parties are unable to agree on a joint nomination.
4. **Efficiency and Progress:** The provision of a time frame for joint nomination reflects the SCCA's commitment to maintaining an efficient arbitration process. The article aims to minimise unnecessary delays by providing a default mechanism for arbitrator appointment.
5. **Balanced Approach:** The article balances the principle of party autonomy with the necessity for timely arbitrator appointments. While parties are encouraged to jointly nominate an arbitrator, the SCCA Court's role in the absence of such a nomination ensures that the process keeps moving forward.
6. **Single Arbitrator Scenario:** The article specifically addresses the situation where the matter is to be resolved by a single arbitrator. This tailored approach recognises that the appointment of a sole arbitrator can have unique dynamics compared to multi-arbitrator panels.
7. **Preservation of Impartiality:** While the SCCA Court has the authority to appoint an arbitrator, it is guided by the SCCA rules and the principles of impartiality and fairness. This ensures that the appointed arbitrator is well-suited to handle the dispute.
8. **Flexibility:** The article acknowledges the possibility that parties may face challenges in reaching a joint nomination within the given time frame. As such, the SCCA Court's role in appointing an arbitrator provides a safety net to ensure that the process does not stagnate due to a lack of agreement.

In conclusion, Article 16.5 of the SCCA Arbitration Rules 2023 outlines the procedures for the appointment of a single arbitrator when the parties have not made a joint nomination within the specified time frame. It emphasises the importance of cooperation while providing a mechanism to ensure the arbitration process continues in a timely manner.

### **Nomination of Arbitral Tribunal members**

**6. If the matter is to be resolved by a three-member Arbitral Tribunal, and where the parties have not agreed otherwise, the Claimant and the Respondent shall each nominate one arbitrator no later than 30 days after the commencement of the arbitration.**

Article 16.6 of the SCCA Arbitration Rules 2023 addresses the scenario in which a three-member Arbitral Tribunal is to be constituted for the arbitration. It outlines the procedure for the nomination of arbitrators by the Claimant and the Respondent when the parties have not agreed otherwise. Here is an analysis of this article:



1. **Three-Member Tribunal:** The article specifies that it applies when the matter is to be resolved by a three-member Arbitral Tribunal. This means that the arbitration panel will consist of three arbitrators, one appointed by the Claimant, one by the Respondent, and the presiding arbitrator.
2. **Default Procedure:** The article outlines a default procedure for nominating arbitrators when the parties have not agreed on a different procedure. This default procedure ensures that the arbitration process can move forward smoothly even in the absence of a specific agreement between the parties.
3. **Time Frame:** The article sets a clear time frame for the nomination of arbitrators. Both the Claimant and the Respondent are required to nominate their respective arbitrators no later than 30 days after the commencement of the arbitration. This time limit promotes efficiency in the arbitration process.
4. **Party Autonomy:** While the article provides a default procedure, it also respects the principle of party autonomy. Parties are free to agree on a different procedure for nominating arbitrators if they choose to do so. This flexibility allows parties to tailor the arbitration process to their specific needs and preferences.
5. **Balanced Approach:** By requiring each party to nominate an arbitrator, the article ensures a balanced and impartial composition of the Arbitral Tribunal. Each party has a role in selecting an arbitrator who can contribute to a fair and unbiased resolution of the dispute.
6. **Equal Representation:** The requirement for both the Claimant and the Respondent to nominate arbitrators contributes to equal representation on the Arbitral Tribunal. This principle helps maintain the neutrality and integrity of the tribunal's decisions.
7. **Clear Procedure:** The article provides a straightforward procedure for the nomination of arbitrators, helping parties and the SCCA Court to follow a well-defined process. This clarity reduces the potential for disputes or delays related to the selection of arbitrators.
8. **Avoiding Stalemates:** The time frame for nominating arbitrators helps prevent stalemates and unnecessary delays in the arbitration process. By setting a specific deadline, the article encourages parties to promptly make their nominations, promoting the timely constitution of the Arbitral Tribunal.

In summary, Article 16.6 of the SCCA Arbitration Rules 2023 establishes a default procedure for the nomination of arbitrators in a three-member Arbitral Tribunal scenario. The article emphasises efficiency, party autonomy, and balanced representation while providing a clear framework for the arbitration process to proceed smoothly.

**7. If there are more than two parties to an arbitration, the multiple Claimants, jointly, or the multiple Respondents, jointly, shall nominate an arbitrator no later than 30 days after the commencement of the arbitration.**

Article 16.7 of the SCCA Arbitration Rules 2023 addresses the situation when there are more than two parties involved in an arbitration. This article outlines the procedure for nominating an arbitrator in such cases. Let us analyse its key points:

1. **Multiple Parties:** The article applies when there are more than two parties involved in the arbitration. In such complex scenarios, there might be multiple claimants or multiple respondents, each with their interests and positions.
2. **Joint Nomination:** The article specifies that in cases of multiple claimants or multiple respondents, the joint parties shall nominate an arbitrator jointly. This means that the joint parties need to collectively decide on an arbitrator who will represent their interests in the Arbitral Tribunal.
3. **Time Frame:** Similar to previous articles, Article 16.7 sets a time frame for the nomination of the joint arbitrator. The joint parties, whether claimants or respondents, must nominate their arbitrator no later than 30 days after the commencement of the arbitration. This timeline aims to ensure a timely arbitration process.
4. **Group Representation:** By requiring the joint parties to jointly nominate an arbitrator, the article ensures that the interests and perspectives of the group of claimants or respondents are properly represented. This approach can help avoid potential conflicts and ensure a unified voice from the joint parties.
5. **Efficiency and Collaboration:** The article promotes efficiency by requiring joint parties to work collaboratively to nominate an arbitrator. This collaborative approach encourages communication and cooperation among the joint parties, facilitating the smooth progression of the arbitration process.
6. **Balanced Tribunal:** Just like in the case of nominating a three-member Arbitral Tribunal (Article 16.6), Article 16.7 aims to maintain a balanced composition of the tribunal. Each party, whether an individual party or a group of joint parties, has the opportunity to contribute to the selection of an arbitrator.
7. **Avoiding Delays:** The prescribed time frame for nominating the joint arbitrator helps prevent unnecessary delays in the arbitration process. This ensures that parties move forward promptly and that the Arbitral Tribunal can be constituted in a timely manner.

In summary, Article 16.7 of the SCCA Arbitration Rules 2023 addresses the nomination of an arbitrator when there are multiple parties involved in an arbitration. The article emphasises joint representation, collaboration among joint parties, and efficient progression of the arbitration process, while also maintaining a balanced composition of the Arbitral Tribunal.

**8. Where an additional party has been joined in accordance with Article 12, the additional party may, jointly with the Claimant or jointly with the Respondent, appoint an arbitrator no later than 30 days after the joinder of the additional party.**

Article 16.8 of the SCCA Arbitration Rules 2023 pertains to the appointment of an arbitrator when an additional party has been joined to the arbitration in accordance with Article 12. Let us analyse its key points:

1. **Joined Additional Party:** This article comes into play when an additional party is joined to the arbitration proceedings as per the provisions outlined in Article 12 of the SCCA

Arbitration Rules 2023. Article 12 deals with the joinder of parties to an ongoing arbitration.

2. **Joint Appointment:** When an additional party is joined to the proceedings, Article 16.8 allows the joined additional party to appoint an arbitrator jointly with either the Claimant or the Respondent. This means that the joined additional party has the option to align itself with either the party that initiated the arbitration (Claimant) or the party against whom the claims are made (Respondent) for the purpose of appointing an arbitrator.
3. **Time Frame:** Similar to other provisions regarding arbitrator appointments, Article 16.8 sets a specific time frame for making the appointment. The joined additional party, along with the selected party (Claimant or Respondent), must appoint the arbitrator no later than 30 days after the joinder of the additional party. This timeframe ensures that the arbitration process moves forward in an efficient manner.
4. **Collaborative Selection:** The article underscores the collaborative aspect of the arbitrator appointment process in cases involving joined additional parties. This collaborative approach encourages the joined additional party and the selected party to mutually agree on an arbitrator who will represent their collective interests in the Arbitral Tribunal.
5. **Balance and Fairness:** Article 16.8 helps ensure a balanced and fair representation in the Arbitral Tribunal. The involvement of the joined additional party in the arbitrator appointment process helps maintain a diverse composition of the tribunal and ensures that the interests of all relevant parties are adequately considered.
6. **Consolidation of Interests:** By allowing the joined additional party to jointly appoint an arbitrator with either the Claimant or the Respondent, the article facilitates the consolidation of interests and perspectives. This consolidation can lead to more effective presentation of arguments and a smoother arbitration process.

In summary, Article 16.8 of the SCCA Arbitration Rules 2023 outlines the process for appointing an arbitrator when an additional party has been joined to the arbitration proceedings according to Article 12. The article emphasises collaborative selection, balanced representation, and timely appointment to ensure a fair and efficient arbitration process involving the joined additional party.

**9. In the absence of a joint nomination within the time limit provided in paragraph 7 or 8 of this Article, the SCCA Court shall appoint each member of the Arbitral Tribunal in accordance with the provisions below and shall designate the presiding arbitrator. In that case, each party shall be deemed to have waived its right to nominate an arbitrator, and the SCCA Court may revoke the confirmation or appointment of any arbitrators.**

Article 16.9 of the SCCA Arbitration Rules 2023 outlines the procedure for arbitrator appointments when parties fail to make a joint nomination within the specified time frames. Let us analyse its key points:

1. **Absence of Joint Nomination:** This article comes into play when, according to the provisions of Article 16.7 (for multiple parties) or Article 16.8 (for joined additional parties), parties are required to make a joint nomination of an arbitrator but fail to do so within the specified time limits.

2. Appointment by SCCA Court: In such cases, when a joint nomination does not occur within the stipulated time frame, the responsibility for the appointment of each member of the Arbitral Tribunal falls to the SCCA Court. The SCCA Court is the designated body responsible for managing and administering the arbitration process under the SCCA Arbitration Rules 2023.
3. Designation of Presiding Arbitrator: Additionally, Article 16.9 empowers the SCCA Court to designate the presiding arbitrator among the members of the Arbitral Tribunal. The presiding arbitrator often plays a crucial role in managing the arbitration proceedings and ensuring their efficient and fair conduct.
4. Waiver of Nominations: The article stipulates that when the SCCA Court takes charge of appointing arbitrators due to the absence of a joint nomination, each party is deemed to have waived its right to nominate an arbitrator. This waiver simplifies the appointment process and streamlines the role of the SCCA Court in ensuring a timely and effective constitution of the Arbitral Tribunal.
5. Revocation of Appointments: In cases where parties do not comply with the joint nomination requirement and the SCCA Court is tasked with appointing arbitrators, the SCCA Court also has the authority to revoke the confirmation or appointment of any arbitrators that might have been previously nominated by the parties. This provision allows the SCCA Court to ensure that the composition of the Arbitral Tribunal aligns with the rules and principles set forth in the SCCA Arbitration Rules 2023.
6. Efficiency and Timeliness: The main objective of Article 16.9 is to ensure the efficiency and timeliness of the arbitrator appointment process, even when parties are unable to reach a joint nomination within the specified timeframe. By vesting the responsibility in the SCCA Court, the article aims to prevent delays in the arbitration proceedings due to disputes over arbitrator appointments.

In summary, Article 16.9 of the SCCA Arbitration Rules 2023 addresses situations where parties fail to make joint nominations of arbitrators within the designated time periods. It empowers the SCCA Court to appoint arbitrators and designate the presiding arbitrator, while also ensuring that parties who did not comply with the joint nomination requirement waive their right to nominate arbitrators. This provision aims to maintain the efficiency and effectiveness of the arbitration process.

**10. Unless the parties agree otherwise, the third arbitrator, who shall act as presiding arbitrator, shall be appointed by the SCCA Court in accordance with the below provisions.**

Article 16.10 of the SCCA Arbitration Rules 2023 pertains to the appointment of the third arbitrator, who will also serve as the presiding arbitrator in cases where the Arbitral Tribunal consists of three arbitrators. Let us analyse its key aspects:

1. Presiding Arbitrator: In a three-member Arbitral Tribunal, the presiding arbitrator is the third arbitrator, and their role involves managing the proceedings, ensuring fair and efficient conduct, and presiding over hearings, deliberations, and decisions of the Tribunal.

2. **Default Procedure:** Article 16.10 outlines the default procedure for appointing the third arbitrator, who will serve as the presiding arbitrator. This default procedure applies in situations where the parties have not agreed otherwise on a specific method of appointing the presiding arbitrator.
3. **Appointment by SCCA Court:** According to Article 16.10, in the absence of any specific agreement between the parties regarding the appointment of the presiding arbitrator, the responsibility for appointing the presiding arbitrator falls to the SCCA Court. The SCCA Court, as the administering body of the arbitration process under the SCCA Arbitration Rules 2023, assumes this role to ensure the impartiality and fairness of the appointment.
4. **Alignment with Previous Articles:** Article 16.10 is closely related to the earlier provisions in Article 16, which outline the general process for arbitrator appointments. It specifies the default procedure for appointing the presiding arbitrator, while the previous articles addressed the joint nomination process, parties' nominations, and the SCCA Court's authority to appoint arbitrators when parties fail to nominate jointly.
5. **Flexibility for Parties:** While Article 16.10 establishes the default procedure for appointing the presiding arbitrator, it also acknowledges that parties have the flexibility to agree on an alternative procedure for appointing the presiding arbitrator. This reflects the arbitration process's emphasis on party autonomy, allowing parties to tailor certain aspects of the proceedings to their preferences.
6. **Consistency and Transparency:** The provision ensures consistency and transparency in the appointment of the presiding arbitrator. By designating the SCCA Court as the appointing authority, it seeks to prevent potential conflicts and disputes that might arise if the parties were solely responsible for selecting the presiding arbitrator.

In summary, Article 16.10 of the SCCA Arbitration Rules 2023 sets forth the default procedure for appointing the presiding arbitrator in a three-member Arbitral Tribunal. The provision ensures that the presiding arbitrator, who plays a crucial role in managing the proceedings, is appointed in a fair and impartial manner. It also accommodates parties' autonomy to agree on an alternative procedure for presiding arbitrator appointments if they so choose.

### **Appointment by the SCCA Court**

#### **11. All arbitrators shall be appointed by the SCCA Court, whether nominated by the parties or otherwise.**

Article 16.11 of the SCCA Arbitration Rules 2023 outlines the authority of the SCCA Court to appoint all arbitrators in an arbitration, regardless of whether they have been nominated by the parties or not. Let us analyse this provision:

1. **Centralised Appointing Authority:** Article 16.11 establishes the SCCA Court as the central authority responsible for appointing all arbitrators in the arbitration proceedings conducted under the SCCA Arbitration Rules 2023. This provision ensures that the process of arbitrator appointments is administered consistently and impartially by the SCCA Court, which enhances the overall credibility and fairness of the arbitration process.

2. **Equal Treatment of Nominated and Non-Nominated Arbitrators:** The provision underscores that the SCCA Court’s authority to appoint arbitrators applies equally to arbitrators nominated by the parties and those who have not been nominated. This reflects a balanced approach, ensuring that all arbitrators are appointed in a manner that upholds the principles of fairness, impartiality, and transparency.
3. **Avoiding Conflicts and Delays:** Centralising the authority for arbitrator appointments in the SCCA Court helps prevent potential conflicts of interest and ensures that the appointment process is conducted efficiently. By having a designated authority oversee all appointments, the risk of disputes or delays arising from disagreements over arbitrator nominations is minimised.
4. **Flexibility in Special Circumstances:** While the SCCA Court is granted the authority to appoint arbitrators, the arbitration rules may still provide flexibility for parties to agree upon procedures for nominating arbitrators, as outlined in earlier articles. However, if parties do not follow their agreed-upon procedures or if there is no such agreement, the SCCA Court’s authority to appoint arbitrators remains intact.
5. **Consistency and Impartiality:** The provision aligns with international arbitration standards that emphasise the importance of having an independent and neutral authority oversee arbitrator appointments. This ensures that parties have confidence in the integrity of the process and the individuals chosen to preside over their disputes.

In summary, Article 16.11 of the SCCA Arbitration Rules 2023 designates the SCCA Court as the ultimate authority responsible for appointing all arbitrators in arbitration proceedings conducted under these rules. By centralising the appointment process and ensuring equal treatment of nominated and non-nominated arbitrators, the provision aims to uphold fairness, transparency, and efficiency in the arbitration process.

**12. In making appointments, the SCCA Court shall, after consultation with the parties through the Administrator, endeavor to appoint suitable arbitrator(s), taking into account their availability to serve and their ability to conduct the arbitration in accordance with the Rules.**

Article 16.12 of the SCCA Arbitration Rules 2023 addresses the process and considerations that the SCCA Court must take into account when appointing arbitrators. Let us analyse this provision:

1. **Consultation with Parties and Administrator:** The article highlights that the SCCA Court is required to consult with the parties through the Administrator before making arbitrator appointments. This consultation process demonstrates a commitment to transparency and fairness, ensuring that parties have a voice in the selection of arbitrators.
2. **Appointment of Suitable Arbitrators:** The provision emphasises that the SCCA Court’s primary objective is to appoint suitable arbitrators. The term “suitable arbitrator(s)” suggests that the Court seeks individuals who possess the necessary qualifications, expertise, and experience to preside over the specific arbitration case effectively.
3. **Availability and Ability:** The SCCA Court is mandated to consider two key factors when appointing arbitrators: their availability to serve and their ability to conduct the arbitration in accordance with the SCCA Arbitration Rules 2023. This underscores the

importance of selecting arbitrators who can commit the required time and resources to the arbitration and who are well-versed in the procedural and substantive aspects of the rules.

4. **Impartiality and Independence:** While not explicitly mentioned, the expectation of impartiality and independence is implied. The SCCA Court's duty to appoint suitable arbitrators implicitly includes the requirement that arbitrators must be independent and impartial, consistent with international arbitration standards.
5. **Efficiency and Effectiveness:** By considering arbitrators' ability to conduct the arbitration in accordance with the rules, the SCCA Court aims to ensure that the arbitration process is efficient, effective, and adheres to the procedural framework established by the rules.
6. **Promotion of Quality Arbitration:** By prioritising arbitrators' suitability, availability, and ability, this provision contributes to the overall quality of arbitration proceedings conducted under the SCCA Arbitration Rules 2023. Parties can expect that appointed arbitrators possess the necessary attributes to facilitate a fair and effective resolution of their disputes.

In summary, Article 16.12 of the SCCA Arbitration Rules 2023 emphasises the importance of selecting suitable arbitrators through a consultative process that takes into account their availability and ability to conduct the arbitration in accordance with the rules. By adhering to these considerations, the SCCA Court seeks to ensure the efficiency, quality, and fairness of the arbitration process.

**13. When appointing arbitrators, the SCCA Court may at its discretion make a direct appointment or appoint an arbitrator using the list procedure set forth in paragraph 15 of this Article.**

Article 16.13 of the SCCA Arbitration Rules 2023 addresses the flexibility in the process of appointing arbitrators by allowing the SCCA Court to choose between making a direct appointment or using a list procedure. Let us analyse this provision:

1. **Discretion of the SCCA Court:** The article provides the SCCA Court with the discretion to decide whether to make a direct appointment of an arbitrator or to use the list procedure outlined in paragraph 15 of the same article. This discretion enables the SCCA Court to tailor its approach to the specific circumstances of each arbitration case, taking into account factors such as the complexity of the case, the preferences of the parties, and the availability of suitable arbitrators.
2. **Balancing Efficiency and Party Autonomy:** By offering both options, the SCCA Court seeks to strike a balance between efficiency and party autonomy. A direct appointment can expedite the process, especially when the SCCA Court has identified a suitable arbitrator with the necessary qualifications and availability. On the other hand, the list procedure allows parties to participate in the selection process and exercise a degree of control over the appointment, enhancing party autonomy.
3. **Consideration of Case-specific Factors:** The SCCA Court's discretion acknowledges that different cases may require different approaches to arbitrator appointments. For

example, in cases with multiple parties or complex legal issues, the list procedure might better accommodate the parties' preferences and provide a sense of procedural fairness.

4. **Transparency and Fairness:** While not explicitly stated in this provision, the underlying principles of transparency and fairness are implied. Regardless of whether a direct appointment or list procedure is chosen, the SCCA Court is expected to act transparently and fairly in its selection of arbitrators, ensuring that qualified candidates are considered.
5. **Facilitating the Arbitration Process:** Ultimately, the provision is designed to facilitate the arbitration process under the SCCA Arbitration Rules 2023. It recognises that no single approach is universally appropriate for every arbitration and grants the SCCA Court the flexibility to adopt the most suitable approach on a case-by-case basis.

In summary, Article 16.13 of the SCCA Arbitration Rules 2023 allows the SCCA Court to exercise discretion when appointing arbitrators, giving it the option to choose between a direct appointment and a list procedure. This flexibility ensures that the selection process aligns with the specific circumstances and needs of each arbitration, aiming to enhance efficiency, transparency, and fairness.

**14. Notwithstanding any agreement by the parties on the number of arbitrators or the nomination procedure, the SCCA Court may in exceptional circumstances directly appoint the arbitrator(s) to avoid a significant risk of unequal treatment or unfairness that may risk affecting the validity of the award. In that case, each party shall be deemed to have waived its right to nominate an arbitrator, and the SCCA Court may revoke the confirmation or appointment of any arbitrators.**

Article 16.14 of the SCCA (Sharjah Chamber of Commerce and Industry<sup>9</sup>) 2023 Arbitration Rules addresses the situation where the SCCA Court has the authority to directly appoint arbitrators, even if there was a prior agreement between the parties regarding the number of arbitrators or the nomination procedure. This provision is aimed at ensuring fairness and equality in the arbitration process, especially in situations where there is a significant risk of unequal treatment or unfairness that could potentially affect the validity of the award. Here is a breakdown of the key points in this article:

1. **Exceptional Circumstances:** The provision applies in situations where exceptional circumstances exist. These circumstances must be significant and must pose a real risk of unequal treatment or unfairness.
2. **Direct Appointment by SCCA Court:** Despite any prior agreement between the parties, the SCCA Court has the authority to appoint arbitrators directly in such exceptional circumstances. This means that the SCCA Court can step in and select arbitrators without following the usual procedure of parties' nominations.
3. **Risk of Unequal Treatment or Unfairness:** The provision is triggered when there is a substantial risk that unequal treatment or unfairness might occur. This risk must be serious enough to potentially affect the validity of the final award. The aim is to ensure

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<sup>9</sup> Incorrect guess by ChatGPT.



that the arbitration process maintains its integrity and that the resulting award is not compromised by any bias or lack of fairness.

4. **Waiver of Party's Right to Nominate:** When the SCCA Court exercises its authority to directly appoint arbitrators, both parties are considered to have waived their rights to nominate arbitrators. This means that the usual process of each party nominating an arbitrator is bypassed.
5. **SCCA Court's Discretion:** The provision grants the SCCA Court discretionary power to revoke the confirmation or appointment of any arbitrators if it deems it necessary. This further emphasises the SCCA Court's commitment to ensuring a fair and unbiased arbitration process.

Overall, Article 16.14 of the SCCA Arbitration Rules 2023 aims to uphold the principles of fairness and equality in arbitration proceedings by allowing the SCCA Court to directly appoint arbitrators when exceptional circumstances indicate a significant risk of unequal treatment or unfairness that could affect the validity of the award. This provision serves as a mechanism to safeguard the integrity of the arbitration process and the resulting award in situations where the parties' chosen procedures might not adequately address potential bias or lack of fairness.

**15. The SCCA Court may at its discretion appoint arbitrator(s) using the following list method:**

- a) **The Administrator shall simultaneously send each party an identical list of names of persons for consideration as arbitrator(s). The parties should attempt to agree to an arbitrator from the submitted list and should inform the Administrator promptly of any agreement.**
- b) **If, after receipt of the list, the parties are unable to agree upon an arbitrator(s), each party shall have 14 days from the transmittal date in which to strike names objected to, number the remaining names in order of preference, and return the list to the Administrator. If a party does not return the list within the time specified, all persons on it shall be deemed acceptable. The parties are not required to exchange selection lists.**
- c) **From among the persons who have been approved on the parties' lists, and in accordance with the designated order of mutual preference, the SCCA Court shall appoint an arbitrator to serve.**
- d) **If the parties fail to agree on any of the persons listed, or if the appointment cannot be made from the submitted lists, the SCCA Court shall have the power to make the appointment without the submission of additional lists.**
- e) **The SCCA Court shall designate the presiding arbitrator.**

Article 16.15 of the SCCA (Sharjah Chamber of Commerce and Industry<sup>10</sup>) 2023 Arbitration Rules outlines the process for appointing arbitrators using a list method. This method is intended to guide

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<sup>10</sup> Incorrect guess by ChatGPT.

the appointment of arbitrators in cases where the parties are unable to agree on arbitrator selection. Let us break down the key points of this article:

1. **List Method of Appointment:** Article 16.15 establishes a structured procedure for appointing arbitrators when the parties are unable to reach an agreement on their own.
2. **Submission of List of Names:** The Administrator (presumably appointed by the SCCA Court) sends each party an identical list of names of potential arbitrators. This list contains the names of individuals who are qualified to serve as arbitrators in the case.
3. **Agreement Attempt:** The parties are expected to attempt to agree on an arbitrator from the provided list. If they agree, they need to promptly inform the Administrator about their choice.
4. **Party Objections and Preferences:** If the parties cannot agree on an arbitrator, each party has 14 days from the transmittal date of the list to indicate which names they object to. They also need to number the remaining names on the list in order of preference and return the list to the Administrator. If a party fails to return the list within the specified time, all the persons on the list are deemed acceptable.
5. **Appointment from Approved Names:** The SCCA Court will then appoint an arbitrator from among the individuals who have been approved on the parties' lists, and this appointment will be made based on the designated order of mutual preference.
6. **SCCA Court's Power in Case of Disagreement:** If the parties cannot agree on any of the persons listed or if the appointment cannot be made from the submitted lists, the SCCA Court has the authority to step in and make the appointment itself, without requiring additional lists from the parties.
7. **Designation of Presiding Arbitrator:** The SCCA Court also has the authority to designate the presiding arbitrator, who holds a significant role in the arbitration proceedings.

In summary, Article 16.15 of the SCCA Arbitration Rules 2023 outlines a detailed procedure for appointing arbitrators using a list method. This method is designed to facilitate the appointment process when the parties are unable to agree on arbitrator selection. It establishes steps for objection, preference ranking, and ultimately, if necessary, provides the SCCA Court with the power to make the appointment. The article aims to ensure a fair and efficient arbitrator selection process while maintaining the integrity of the arbitration proceedings.

## Article 17: Disclosure

**1. Arbitrators acting under these Rules shall be impartial and independent. They shall act in accordance with the terms of the statement of acceptance provided by the Administrator and the SCCA Code of Ethics for Arbitrators.**

Article 17.1 of the SCCA Arbitration Rules 2023 addresses the fundamental principles of impartiality and independence that arbitrators must adhere to while conducting arbitration under these rules. Let us break down the key components of this article:

1. **Impartiality and Independence:** The article emphasises that arbitrators must exhibit both impartiality and independence in their role. These qualities are crucial to maintaining the integrity of the arbitration process, ensuring that decisions are made without bias or undue influence.
2. **Terms of Statement of Acceptance:** Arbitrators are required to act in accordance with the terms of the statement of acceptance provided by the Administrator. This statement typically outlines the arbitrator's commitment to impartiality, independence, and compliance with the rules of the arbitration. It sets the expectations for their conduct throughout the arbitration proceedings.
3. **SCCA Code of Ethics for Arbitrators:** This article references the "SCCA Code of Ethics for Arbitrators," which is likely a separate document outlining ethical standards and guidelines that arbitrators must follow. This code would cover various aspects of arbitrator behaviour, such as disclosure of conflicts of interest, confidentiality, and maintaining the highest standards of professionalism.
4. **Ensuring Fairness:** Impartiality and independence are essential for ensuring fairness in arbitration proceedings. Parties involved in the arbitration must have confidence that the arbitrators are making decisions based solely on the merits of the case and without any bias or external influences.
5. **Preserving the Legitimacy of Arbitration:** Upholding these principles is crucial for maintaining the legitimacy of the arbitration process. Arbitrators' adherence to impartiality and independence helps to build trust among the parties and ensures that the resulting awards are credible and enforceable.
6. **Ethical Conduct:** This article reinforces the ethical obligations of arbitrators to act with integrity and to avoid any situations that could compromise their impartiality or independence. Arbitrators must consider not only their own potential biases but also any circumstances that might give rise to justifiable doubts about their neutrality.

In summary, Article 17.1 of the SCCA Arbitration Rules 2023 underscores the importance of arbitrators' impartiality and independence in conducting arbitration proceedings. By adhering to these principles, arbitrators contribute to the credibility, fairness, and effectiveness of the arbitration process, ultimately resulting in enforceable and legitimate awards.

**2. Upon accepting a nomination, an arbitrator shall sign the statement of acceptance provided by the Administrator affirming availability to serve, independence, and impartiality. The arbitrator shall disclose any circumstances that may give rise to justifiable doubts as to his or her impartiality or independence.**

Article 17.2 of the SCCA Arbitration Rules 2023 focuses on the procedural steps that arbitrators must take upon accepting a nomination. Let us break down the key elements of this article:

1. **Acceptance of Nomination:** This article highlights that when an arbitrator accepts a nomination to serve on an arbitration panel, certain procedural requirements must be fulfilled.

2. **Statement of Acceptance:** The arbitrator, upon accepting the nomination, is required to sign a “statement of acceptance.” This statement affirms the arbitrator’s commitment to various important principles, including availability to serve, independence, and impartiality.
3. **Availability to Serve:** By signing the statement of acceptance, the arbitrator confirms their availability to serve on the arbitration panel. This is crucial for ensuring that the arbitration process can move forward without unnecessary delays.
4. **Independence and Impartiality:** The arbitrator also affirms their independence and impartiality by signing the statement of acceptance. This reaffirms the importance of adhering to ethical standards and the principles of fairness and neutrality throughout the arbitration proceedings.
5. **Disclosure of Circumstances:** Additionally, the article mandates that the arbitrator must disclose any circumstances that might create justifiable doubts about their impartiality or independence. This requirement emphasises transparency and the importance of identifying potential conflicts of interest or biases that could impact the arbitrator’s ability to fairly and neutrally decide the case.
6. **Enhancing Confidence:** By signing the statement of acceptance and making necessary disclosures, arbitrators contribute to the overall transparency and credibility of the arbitration process. Parties involved in the arbitration can have greater confidence in the proceedings knowing that arbitrators have committed to these principles and have disclosed any potential conflicts.
7. **Ethical Responsibility:** This article underscores the ethical responsibility of arbitrators to maintain their independence and impartiality. By disclosing any circumstances that might compromise these principles, arbitrators demonstrate a commitment to ethical conduct and the integrity of the arbitration process.

In summary, Article 17.2 of the SCCA Arbitration Rules 2023 outlines the steps that arbitrators must take upon accepting a nomination, including signing a statement of acceptance and disclosing any potential conflicts. These measures are essential for upholding the integrity and fairness of the arbitration proceedings and enhancing the credibility of the awards that result from the process.

**3. If, at any stage during the arbitration, circumstances arise that may give rise to such doubts, an arbitrator or party shall promptly disclose such information to all parties and to the Administrator. Upon receipt of such disclosure from an arbitrator or a party, the Administrator shall communicate it to all parties and, in case of a three- member Arbitral Tribunal, to all arbitrators.**

Article 17.3 of the SCCA Arbitration Rules 2023 addresses the ongoing duty of arbitrators and parties to promptly disclose any circumstances that might raise doubts about the arbitrator’s impartiality or independence during the course of the arbitration proceedings. Let us analyse the key aspects of this article:

1. **Ongoing Duty of Disclosure:** This article emphasises that the duty to disclose potential conflicts of interest or circumstances that might give rise to doubts about impartiality or

independence is not limited to the initial nomination or acceptance stage. Instead, it continues throughout the entire arbitration process.

2. **Prompt Disclosure:** If, at any point during the arbitration, an arbitrator becomes aware of new circumstances that could affect their impartiality or independence, or if a party becomes aware of such circumstances about an arbitrator, they are required to promptly disclose this information.
3. **Transparency and Fairness:** By requiring ongoing disclosure, the article aims to maintain the transparency and fairness of the arbitration proceedings. Parties have a right to know if any factors have arisen that could potentially impact the arbitrator's ability to make unbiased decisions.
4. **Communication Process:** The article outlines the communication process for such disclosures. If an arbitrator or party identifies circumstances that may affect impartiality or independence, they must disclose this information to all parties and the Administrator. The Administrator, in turn, communicates this disclosure to all parties involved in the arbitration.
5. **Three-Member Arbitral Tribunal:** If the arbitration involves a three-member Arbitral Tribunal, the Administrator also communicates the disclosure to all arbitrators. This ensures that all members of the tribunal are aware of the potential conflict and can collectively assess its implications.
6. **Preserving Integrity:** By promptly disclosing potential conflicts or doubts, the parties and arbitrators uphold the integrity of the arbitration proceedings. This proactive approach helps prevent potential challenges or issues that could arise due to perceived bias or lack of independence.
7. **Building Trust:** The article contributes to building trust in the arbitration process. Parties can have confidence that if new circumstances arise that might impact the impartiality or independence of an arbitrator, those circumstances will be promptly disclosed and addressed.

In summary, Article 17.3 of the SCCA Arbitration Rules 2023 underscores the importance of ongoing disclosure of circumstances that could affect an arbitrator's impartiality or independence. This requirement enhances transparency, fairness, and trust in the arbitration process by ensuring that parties are informed and can make informed decisions based on unbiased adjudication.

**4. A disclosure by an arbitrator or party does not necessarily indicate belief by the arbitrator or party that the disclosed information gives rise to justifiable doubts as to the arbitrator's impartiality or independence.**

Article 17.4 of the SCCA Arbitration Rules 2023 addresses the important distinction between the act of disclosing potential conflicts or circumstances affecting an arbitrator's impartiality or independence and the actual belief that such disclosure automatically implies doubts about the arbitrator's neutrality. Let us analyse the key points of this article:

1. **Clarification of Intent:** This article clarifies that a disclosure made by an arbitrator or party regarding potential conflicts or circumstances is not an automatic indication that the party making the disclosure believes these circumstances definitively give rise to doubts about the arbitrator's impartiality or independence.
2. **No Presumption:** The article underscores that the act of disclosing is not in itself an assertion or admission of actual bias or lack of impartiality. It acknowledges that there may be situations where the disclosed circumstances, while shared for transparency, do not necessarily create a legitimate concern about the arbitrator's ability to remain impartial.
3. **Transparency and Balance:** By highlighting that a disclosure does not automatically imply doubts, the article aims to encourage a balanced and transparent approach. It promotes open communication about potential issues without immediately assuming that every disclosed matter is a serious challenge to the arbitrator's integrity.
4. **Avoiding Misinterpretation:** The article seeks to prevent misunderstandings or misconceptions that could arise if a disclosure is mistakenly perceived as a direct admission of bias. This is important for maintaining the credibility of the arbitration process and the reputation of the arbitrators involved.
5. **Protection of Reputation:** By clarifying that a disclosure does not imply a presumption of partiality, the article helps protect the reputation of both arbitrators and parties involved in the arbitration. It allows for honest discussions about potential conflicts without unnecessary negative implications.
6. **Balancing Transparency and Fairness:** While the duty to disclose potential conflicts is essential for transparency, this article ensures that such disclosures are understood in context. It supports the principle that an arbitrator's impartiality and independence should be determined based on a holistic assessment, not just the act of disclosing potential issues.

In summary, Article 17.4 of the SCCA Arbitration Rules 2023 aims to dispel any automatic assumptions that a disclosure necessarily indicates doubts about an arbitrator's impartiality or independence. It emphasises that the act of disclosure is separate from the judgment of whether the disclosed circumstances genuinely affect the arbitrator's ability to remain neutral. This distinction encourages open communication while maintaining a balanced and fair approach to assessing potential conflicts.

**5. Failure of a party to disclose any circumstances that may give rise to justifiable doubts as to an arbitrator's impartiality or independence within a reasonable period after the party becomes aware of such information constitutes a waiver of the right to challenge an arbitrator based on those circumstances.**

Article 17.5 of the SCCA Arbitration Rules 2023 addresses the consequences of a party's failure to disclose circumstances that might lead to justifiable doubts about an arbitrator's impartiality or independence. Here is an analysis of this article:

1. **Duty to Disclose:** The article establishes a clear duty on the part of the parties to promptly disclose any circumstances they become aware of that could give rise to doubts about the

arbitrator's impartiality or independence. This emphasises the importance of transparency in maintaining the integrity of the arbitration process.

2. **Time Limit for Disclosure:** The article implies that the disclosure should occur within a "reasonable period" after the party becomes aware of the relevant circumstances. While the exact timeframe is not defined, it underscores the need for timely and proactive disclosure.
3. **Waiver of Right to Challenge:** The central purpose of Article 17.5 is to establish a significant consequence for non-disclosure. If a party fails to make a timely disclosure, it constitutes a waiver of that party's right to challenge the arbitrator based on those undisclosed circumstances.
4. **Balancing Parties' Duties:** The article aligns with the principle of fairness by ensuring that both parties have a duty to promptly disclose relevant information. It prevents one party from strategically withholding information and then using it later as grounds for challenging an arbitrator.
5. **Encouraging Timely Disclosure:** The article encourages parties to proactively disclose potential conflicts or circumstances of bias as soon as they are aware of them. This serves the interest of fairness, efficiency, and maintaining trust in the arbitration process.
6. **Preserving Efficiency and Integrity:** By requiring timely disclosure, the article contributes to the overall efficiency and integrity of the arbitration proceedings. It prevents unnecessary delays caused by belated challenges to arbitrators and helps maintain the neutrality of the arbitration process.
7. **Certainty in the Process:** The consequence of waiver established in this article provides a clear framework for handling non-disclosure situations. It gives parties certainty about the consequences of their actions and decisions.

In summary, Article 17.5 of the SCCA Arbitration Rules 2023 underscores the importance of parties' timely disclosure of circumstances that could cast doubt on an arbitrator's impartiality or independence. It establishes a waiver of the right to challenge an arbitrator based on undisclosed circumstances and contributes to maintaining the transparency, fairness, and efficiency of the arbitration process.

**6. Each party must promptly disclose to the Administrator, all the other parties, and the arbitrators the identity of any non-party who has an economic interest in the arbitration's outcome, including any third-party funder.**

Article 17.6 of the SCCA Arbitration Rules 2023 addresses the disclosure of economic interests of non-parties, including third-party funders, in the arbitration process. Here is an analysis of this article:

1. **Mandatory Disclosure:** The article places a clear obligation on each party to promptly disclose to the Administrator, all other parties, and the arbitrators the identity of any non-party who holds an economic interest in the outcome of the arbitration. This requirement ensures transparency and prevents undisclosed external influences on the arbitration process.

2. **Scope of Disclosure:** The scope of disclosure encompasses any non-party with an economic interest in the arbitration's outcome, including third-party funders. This encompasses a broad range of potential stakeholders who might have a financial stake in the arbitration's result.
3. **Transparency and Fairness:** The article aligns with the principles of transparency and fairness in arbitration. Parties and arbitrators have the right to be informed of any potential conflicts of interest or economic motivations that could impact the neutrality and impartiality of the process.
4. **Third-Party Funders:** The inclusion of third-party funders in the scope of disclosure acknowledges the increasing prevalence of third-party funding in arbitration. This provision helps identify potential sources of funding that might influence the parties' strategy or the proceedings.
5. **Preserving Integrity:** The requirement to disclose economic interests of non-parties serves to maintain the integrity of the arbitration process. It helps to identify potential conflicts of interest and allows for their evaluation, ensuring that the arbitrators remain impartial and independent.
6. **Preventing Undue Influence:** By disclosing third-party funders or other non-parties with economic interests, the parties and the arbitration panel can assess whether any undue influence could arise from such interests. This is particularly important to uphold the fairness and credibility of the proceedings.
7. **Administrator's Role:** The article designates the Administrator as a recipient of these disclosures, indicating the central role of the arbitral institution in overseeing the disclosure process and ensuring compliance.
8. **Enhanced Trust:** Mandating disclosure of non-party economic interests contributes to building trust in the arbitration process. Parties can have confidence that potential conflicts or external influences are being addressed openly.
9. **Preventing Hidden Agendas:** The disclosure requirement prevents parties or non-parties from having hidden agendas or motivations that could undermine the fairness and legitimacy of the arbitration.

In summary, Article 17.6 of the SCCA Arbitration Rules 2023 emphasises the importance of transparency by requiring parties to disclose any non-parties with economic interests in the arbitration's outcome, including third-party funders. This provision contributes to maintaining the impartiality and fairness of the arbitration process and enhances the integrity of the proceedings.

**7. Except as provided for in Canon III(B) of the SCCA Code of Ethics for Arbitrators, the parties shall avoid any form of unilateral communication with an arbitrator or prospective arbitrator**



**regarding the arbitration. If any such communication is made, all the other parties and the Arbitral Tribunal shall be informed immediately of the substance of and reasons for such communications.**

Article 17.7 of the SCCA Arbitration Rules 2023 addresses the issue of unilateral communication between parties and arbitrators, emphasising transparency and fairness in the arbitration process. Here is an analysis of this article:

1. **Prohibition of Unilateral Communication:** The article unequivocally prohibits parties from engaging in any form of unilateral communication with an arbitrator or prospective arbitrator regarding the arbitration. This prohibition aims to prevent any potential bias, influence, or information exchange that could compromise the impartiality and integrity of the proceedings.
2. **Transparency and Accountability:** The requirement to inform other parties and the Arbitral Tribunal immediately about any such communication promotes transparency and accountability. This ensures that parties cannot engage in secret or undisclosed communications that might unfairly influence the arbitration process.
3. **Balancing Canon III(B):** The reference to Canon III(B) of the SCCA Code of Ethics for Arbitrators indicates that there may be specific situations where limited communication might be permitted under certain ethical guidelines. This article provides the necessary balance between preventing undue influence and allowing appropriate communication as outlined in the Code of Ethics.
4. **Equitable Process:** By requiring disclosure of any unilateral communications, the article creates a level playing field and allows all parties to be aware of any interaction that could impact the proceedings.
5. **Avoiding Perceived Bias:** The prohibition of unilateral communication helps prevent situations where an arbitrator might inadvertently or unconsciously develop a perceived bias due to undisclosed interactions with one of the parties.
6. **Preserving Impartiality:** Arbitrators are expected to remain impartial and free from external pressures or undue influence. The article contributes to preserving the arbitrators' independence and impartiality.
7. **Prompt Disclosure:** The article's emphasis on immediate disclosure underscores the importance of transparency. Any communication that might impact the arbitration process must be promptly brought to the attention of all relevant parties and the Arbitral Tribunal.
8. **Preventing Ex Parte Communications:** The article prevents parties from engaging in ex parte communications with arbitrators, which could potentially result in unfair advantages or compromise the neutrality of the proceedings.
9. **Protecting the Integrity of the Process:** The article aligns with broader principles of arbitration by protecting the integrity of the process. By ensuring that all communications are transparent and known to all parties, the article contributes to a fair and credible resolution of disputes.

In summary, Article 17.7 of the SCCA Arbitration Rules 2023 aims to prevent unilateral communication between parties and arbitrators to maintain the impartiality, transparency, and integrity of the arbitration process. It requires immediate disclosure if any such communication occurs, creating a balanced framework that respects ethical guidelines while upholding the fairness of the proceedings.

## Article 18: Challenge of Arbitrators

### 1. Any arbitrator may be challenged if:

- a) **Circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence;**
- b) **The arbitrator has failed to perform his or her duties; or**
- c) **The arbitrator manifestly does not possess the qualifications agreed to by the parties.**

Article 18.1 of the SCCA Arbitration Rules 2023 deals with the process of challenging an arbitrator in various circumstances. Let us analyse its key points:

1. **Grounds for Challenging an Arbitrator:** The article outlines three primary grounds on which an arbitrator may be challenged:
  - a. **Impartiality or Independence:** If circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence. This underscores the importance of maintaining the arbitrator's neutrality and preventing any bias that could affect the outcome.
  - b. **Failure to Perform Duties:** If the arbitrator has failed to perform their duties. This provision ensures that arbitrators fulfil their responsibilities, contributing to the efficient and effective conduct of the arbitration process.
  - c. **Qualifications:** If the arbitrator manifestly does not possess the qualifications agreed upon by the parties. This ensures that the appointed arbitrator meets the standards and qualifications set forth in the arbitration agreement.
2. **Safeguarding Impartiality and Independence:** The provision emphasises the paramount importance of an arbitrator's impartiality and independence. It provides parties with a mechanism to challenge an arbitrator if they believe that these fundamental qualities are compromised, thereby safeguarding the integrity of the arbitration process.
3. **Preserving Integrity and Efficiency:** By allowing challenges based on failure to perform duties or lack of qualifications, the article ensures that the arbitration process remains fair, efficient, and credible. It enables parties to address situations where an arbitrator's conduct or qualifications might jeopardise the quality of the proceedings.
4. **Maintaining Party Confidence:** The ability to challenge an arbitrator on legitimate grounds enhances parties' confidence in the arbitration process. If a party has genuine concerns about an arbitrator's suitability, they have a means to address those concerns.

5. **Balancing Party Autonomy:** The article respects the autonomy of the parties by allowing challenges to arbitrators who do not meet the agreed qualifications. It ensures that arbitrators are aligned with the expectations set forth by the parties.
6. **Ensuring Fairness and Transparency:** The provision contributes to the fairness and transparency of the arbitration process by providing parties with an avenue to challenge arbitrators when necessary, without compromising their right to a fair and unbiased tribunal.
7. **Promoting Efficient Dispute Resolution:** By addressing potential challenges promptly, the article promotes efficiency in dispute resolution. It allows parties to raise concerns and seek remedies to maintain the effectiveness of the arbitration proceedings.
8. **Preserving Neutrality:** The inclusion of the grounds related to impartiality and independence aligns with international arbitration standards that emphasise the necessity of a neutral and unbiased tribunal.

In summary, Article 18.1 of the SCCA Arbitration Rules 2023 sets out the grounds on which an arbitrator may be challenged, ensuring the arbitrator's impartiality, performance, and qualifications. This provision underscores the commitment to a fair, efficient, and credible arbitration process while upholding parties' confidence in the tribunal's integrity.

## **2. The Administrator may on its own initiative request that the SCCA Court consider the removal of an arbitrator for failing to perform his or her duties.**

Article 18.2 of the SCCA Arbitration Rules 2023 addresses the role of the Administrator in initiating the process for the removal of an arbitrator. Let us analyse its key points:

1. **Administrator's Role:** The article grants authority to the Administrator to take proactive steps in cases where an arbitrator fails to perform their duties. This provision empowers the Administrator to oversee the smooth conduct of the arbitration proceedings and ensure that the arbitrators fulfil their responsibilities.
2. **Preserving the Arbitration Process:** By allowing the Administrator to request the SCCA Court's consideration for the removal of an arbitrator, the article aims to maintain the integrity and effectiveness of the arbitration process. This reflects a commitment to maintaining a fair and efficient dispute resolution mechanism.
3. **Efficiency and Timeliness:** The provision enables the Administrator to swiftly address situations where an arbitrator's failure to perform duties could impede the timely progress of the arbitration. This mechanism contributes to the overall efficiency of the arbitration proceedings.
4. **Ensuring Compliance:** By giving the Administrator the authority to address issues related to arbitrator performance, the article underscores the importance of arbitrators adhering to their duties as prescribed by the arbitration agreement and the applicable rules.

5. **Neutral Oversight:** The provision ensures that the Administrator’s intervention is based on objective criteria related to the arbitrator’s performance, rather than being influenced by any party’s interests. This helps maintain the neutral stance of the Administrator.
6. **Balancing Party Autonomy:** While parties have the ability to challenge arbitrators based on specific grounds, this provision offers a complementary mechanism that allows the Administrator to initiate the process independently when it identifies concerns related to arbitrator performance.
7. **Collaboration with SCCA Court:** The provision establishes a collaborative relationship between the Administrator and the SCCA Court. The Administrator’s request for the SCCA Court’s consideration of arbitrator removal highlights the importance of addressing issues at an institutional level.
8. **Enhancing Accountability:** By granting the Administrator the authority to address arbitrator performance, the article enhances the accountability of the arbitrators within the arbitration process. This accountability contributes to the overall fairness and effectiveness of the proceedings.

In summary, Article 18.2 of the SCCA Arbitration Rules 2023 empowers the Administrator to initiate the process for the removal of an arbitrator who fails to perform their duties. This provision reflects the commitment to maintaining the quality, fairness, and efficiency of the arbitration process by addressing issues that could impact the proper functioning of the tribunal.

**3. A party that intends to challenge an arbitrator shall send a Notice of its challenge to the Administrator within 14 days after:**

- a) **It has been notified of the appointment of the challenged arbitrator; or**
- b) **The circumstances mentioned in paragraph 1 of this Article became known to that party.**

**The Notice shall state the reasons for the challenge. Unless the Arbitral Tribunal decides otherwise, any challenge does not suspend or otherwise affect the ongoing arbitration.**

Article 18.3 of the SCCA Arbitration Rules 2023 addresses the process for challenging an arbitrator and the associated timeline. Let us analyse its key points:

1. **Challenging Arbitrator’s Impartiality or Independence:** The article outlines the circumstances under which a party can challenge an arbitrator. These circumstances include situations where there are justifiable doubts about the arbitrator’s impartiality or independence, where the arbitrator has failed to perform duties, or where the arbitrator does not possess the agreed qualifications.
2. **Notice of Challenge:** The provision requires that a party intending to challenge an arbitrator must send a formal Notice of Challenge to the Administrator. This notice serves as the mechanism through which the challenge process is initiated and the reasons for the challenge are communicated.

3. **Timeline for Challenge:** The article specifies a time frame within which a party must submit the Notice of Challenge. This time frame is 14 days from either the party being notified of the appointment of the challenged arbitrator or the party becoming aware of the circumstances that give rise to the challenge, whichever occurs later.
4. **Reasons for Challenge:** The Notice of Challenge must include the reasons for the challenge. This requirement ensures that the challenging party provides a clear basis for its objection to the arbitrator, allowing the Arbitral Tribunal to evaluate the merits of the challenge.
5. **Non-Suspension of Ongoing Arbitration:** Importantly, the article clarifies that making a challenge does not automatically suspend or otherwise affect the ongoing arbitration proceedings. This provision aims to maintain the progress of the arbitration while the challenge is being addressed separately.
6. **Arbitral Tribunal's Discretion:** The article provides the Arbitral Tribunal with discretion to decide whether the challenge should have any impact on the ongoing proceedings. This flexibility allows the Arbitral Tribunal to consider the circumstances and make informed decisions based on the specific case.
7. **Preserving the Arbitration Process:** By ensuring that challenges do not automatically disrupt the arbitration proceedings, the provision emphasises the importance of maintaining the efficiency and continuity of the arbitration process.
8. **Timely Resolution of Challenges:** The 14-day time limit for submitting a Notice of Challenge encourages parties to promptly raise any concerns about arbitrator impartiality, independence, or qualifications. This promotes the timely resolution of challenges and prevents undue delays in the proceedings.

In summary, Article 18.3 of the SCCA Arbitration Rules 2023 outlines the process for challenging an arbitrator, including the timeline, the required Notice of Challenge, and the non-suspension of ongoing proceedings. The provision aims to ensure that challenges are raised in a timely manner, with clear reasons provided, while also maintaining the continuity of the arbitration process.

**4. Upon receipt of such a challenge, the Administrator shall notify the other parties and the Arbitral Tribunal of the challenge. The Administrator shall give the other parties, the challenged arbitrator, and the other members of the Arbitral Tribunal an opportunity to comment in writing within a suitable period of time. Such comments shall be communicated to the Administrator, all the parties, and the members of the Arbitral Tribunal.**

Article 18.4 of the SCCA Arbitration Rules 2023 outlines the procedures that follow the submission of a challenge to an arbitrator. Let us examine its key components:

1. **Notice to Administrator:** When a party submits a challenge against an arbitrator, the Administrator is to be notified. This action serves as the initial step in the process of addressing the challenge.
2. **Notification of Parties and Arbitral Tribunal:** The Administrator, upon receiving a challenge, is required to promptly inform all other parties involved in the arbitration, as

well as the entire Arbitral Tribunal, about the challenge. This ensures that all relevant parties are made aware of the challenge and the potential implications for the ongoing proceedings.

3. **Opportunity to Comment:** The article mandates that the Administrator gives the challenged arbitrator, other members of the Arbitral Tribunal, and all parties an opportunity to provide written comments on the challenge. This step ensures that all stakeholders have a chance to express their views and provide input regarding the challenge.
4. **Reasonable Period of Time:** The article specifies that a suitable or reasonable period of time should be given for the arbitrator, the Arbitral Tribunal members, and the parties to submit their written comments on the challenge. This allows them to thoroughly consider the challenge and provide thoughtful responses.
5. **Communication of Comments:** Any comments submitted by the challenged arbitrator, other Arbitral Tribunal members, or the parties in response to the challenge must be communicated to the Administrator. Furthermore, these comments are to be shared with all parties involved in the arbitration and with all members of the Arbitral Tribunal.

In summary, Article 18.4 of the SCCA Arbitration Rules 2023 outlines the procedure that takes place upon receipt of a challenge to an arbitrator. This includes notifying relevant parties, giving them an opportunity to provide written comments, and ensuring that these comments are shared with all stakeholders. This process promotes transparency and fairness in addressing challenges and allows for a comprehensive assessment of the situation.

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

Article 18.5 of the SCCA Arbitration Rules 2023 outlines the provisions related to challenges of arbitrators and the actions that can be taken by the challenged arbitrator and the parties involved. Here is a breakdown of the key points:

1. **Challenged Arbitrator Agreement:** When a party challenges an arbitrator, Article 18.5 allows for the possibility that all parties involved in the arbitration may collectively agree to the challenge. In this scenario, all parties concur that the arbitrator should be removed from the case. This agreement may be based on various factors, including concerns about impartiality, independence, or any other reasons outlined in the challenge.
2. **Arbitrator's Withdrawal:** Additionally, Article 18.5 stipulates that a challenged arbitrator has the option to voluntarily withdraw from their position as an arbitrator. This means that the challenged arbitrator can choose to step aside from the arbitration process, regardless of whether the challenge is ultimately accepted or rejected.
3. **Absence of Implying Acceptance:** Importantly, the article clarifies that neither the agreement to the challenge by all parties nor the arbitrator's voluntary withdrawal implies an acceptance of the validity of the grounds stated in the challenge. In other words, these actions do not indicate that the parties or the arbitrator necessarily concede that the

challenge was warranted or that the arbitrator’s impartiality or independence was compromised.

In summary, Article 18.5 of the SCCA Arbitration Rules 2023 addresses situations where an arbitrator is challenged by a party. It outlines the possibility of parties collectively agreeing to the challenge or the challenged arbitrator voluntarily withdrawing from the case. Importantly, any such agreement or withdrawal does not imply acceptance of the validity of the challenge’s grounds. This provision reflects the principle that parties and arbitrators can take certain actions for practical reasons without necessarily admitting fault or acknowledging the merits of the challenge.

**6. If all parties do not agree to the challenge and the challenged arbitrator does not withdraw, the SCCA Court shall decide on the admissibility and merits of the challenge.**

Article 18.6 of the SCCA Arbitration Rules 2023 addresses the procedure to be followed when a challenge is made against an arbitrator and all parties do not unanimously agree to the challenge or the challenged arbitrator’s withdrawal. Here is a breakdown of the key points:

1. **Challenged Arbitrator Not Withdrawn:** If a challenge is raised against an arbitrator and the challenged arbitrator does not voluntarily withdraw from their position, and if all parties involved in the arbitration do not unanimously agree to the challenge, then the matter proceeds to a decision by the SCCA Court.
2. **SCCA Court Decision:** In cases where there is no unanimous agreement among the parties and the challenged arbitrator remains in place, the responsibility for deciding on the admissibility and merits of the challenge falls to the SCCA Court. This means that the SCCA Court will review the challenge and make a determination as to whether the grounds for the challenge are valid and whether they warrant the removal of the challenged arbitrator from the case.
3. **Ensuring Impartiality and Independence:** The provision underscores the importance of impartiality and independence in the arbitration process. When a challenge is raised against an arbitrator, it is essential to ensure that the arbitrator’s ability to decide the case without bias or conflicts of interest is not compromised.

In summary, Article 18.6 of the SCCA Arbitration Rules 2023 outlines the course of action to be taken when a challenge against an arbitrator is made, and the challenge is not unanimously agreed upon or the challenged arbitrator does not withdraw. In such cases, the SCCA Court is tasked with evaluating the challenge’s admissibility and merits to ensure the continued integrity of the arbitration process.

**7. Upon the request of any party, the SCCA Court may at its discretion provide written reasons regarding its decision on the challenge. The provision of reasons may be subject to the payment of a fee to be fixed by the SCCA Court.**

Article 18.7 of the SCCA Arbitration Rules 2023 deals with the provision of written reasons for the SCCA Court’s decision on a challenge against an arbitrator. Here is an analysis of the key points:

1. Request for Written Reasons: This article allows any party involved in the arbitration to request written reasons from the SCCA Court regarding its decision on the challenge against an arbitrator. In other words, if a party is dissatisfied with the SCCA Court's decision and wishes to understand the rationale behind it, they have the right to ask for written explanations.
2. Discretion of the SCCA Court: The SCCA Court has the discretion to provide written reasons for its decision on the challenge. This means that the SCCA Court is not obligated to automatically provide written reasons for every decision, but it can choose to do so based on the circumstances and the party's request.
3. Fee for Written Reasons: The article also introduces the concept that the provision of written reasons might be subject to the payment of a fee. The fee, if applicable, will be determined by the SCCA Court. This could potentially serve as a measure to cover administrative costs associated with providing detailed written explanations for the decisions.

In summary, Article 18.7 of the SCCA Arbitration Rules 2023 grants parties the right to request written reasons for the SCCA Court's decision on a challenge against an arbitrator. However, the decision to provide written reasons and any associated fee are left to the discretion of the SCCA Court. This article emphasises transparency in the decision-making process while also acknowledging the practical considerations of providing detailed explanations.

#### **Article 19: Replacement of an Arbitrator**

**If an arbitrator resigns or is removed for any reason and the office becomes vacant, a replacement arbitrator shall be appointed. The SCCA Court may decide to follow the original nominating process or otherwise make an appointment in accordance with Article 16.**

Article 19 of the SCCA Arbitration Rules 2023 addresses the situation when an arbitrator resigns or is removed, leading to a vacancy in the office of an arbitrator. Here is an analysis of the key points:

1. Vacant Arbitrator Position: The article highlights that if an arbitrator resigns or is removed from their role for any reason, it creates a vacancy in the arbitrator's position within the Arbitral Tribunal.
2. Appointment of Replacement Arbitrator: In response to the vacancy, a replacement arbitrator needs to be appointed to fill the vacant position. This is essential to maintain the composition of the Arbitral Tribunal and ensure the arbitration process continues smoothly.
3. Options for Appointment: The article gives the SCCA Court the authority to decide how the replacement arbitrator will be appointed. The SCCA Court has the discretion to either follow the original nominating process that was used for the initial appointment of arbitrators or to make a new appointment in accordance with Article 16 of the rules.
4. Flexibility in Replacement: By allowing the SCCA Court to decide on the method of replacement, the rule provides flexibility to address the specific circumstances of the vacancy while maintaining the principles of fairness, impartiality, and efficiency.



In summary, Article 19 of the SCCA Arbitration Rules 2023 ensures that if an arbitrator resigns or is removed, a replacement arbitrator will be appointed to fill the vacant position. The SCCA Court is granted the authority to determine whether to follow the original nominating process or use other methods for making the replacement appointment. This article contributes to the continued functioning and integrity of the Arbitral Tribunal in the face of arbitrator vacancies.

## Article 20: Tribunal Secretary

**The Arbitral Tribunal may, with the consent of the parties, appoint a tribunal secretary who shall serve in accordance with these Rules and the SCCA Secretary Regulations.**

Article 20 of the SCCA Arbitration Rules 2023 deals with the appointment of a tribunal secretary by the Arbitral Tribunal, subject to the parties' consent. Here is an analysis of the key points:

1. **Tribunal Secretary Appointment:** The article states that the Arbitral Tribunal has the authority to appoint a tribunal secretary. A tribunal secretary is typically an individual who assists the Arbitral Tribunal in administrative and procedural matters related to the arbitration proceedings.
2. **Consent of the Parties:** The appointment of a tribunal secretary is contingent upon the consent of the parties. This means that all parties involved in the arbitration must agree to the appointment of a tribunal secretary.
3. **Scope of Role:** The tribunal secretary's role is to assist the Arbitral Tribunal in carrying out its administrative and procedural functions. The specifics of the tribunal secretary's responsibilities and tasks are expected to be governed by the SCCA Secretary Regulations, which provide guidelines for the secretary's role and conduct.
4. **Compliance with Rules and Regulations:** The tribunal secretary's service is subject to both the SCCA Arbitration Rules 2023 and the SCCA Secretary Regulations. This ensures that the appointment and activities of the tribunal secretary are in line with the established rules and regulations.
5. **Efficiency and Assistance:** The provision for a tribunal secretary aims to enhance the efficiency of the arbitration proceedings by allowing the Arbitral Tribunal to delegate certain administrative tasks to a qualified individual. This enables the arbitrators to focus more on substantive matters.

In summary, Article 20 of the SCCA Arbitration Rules 2023 empowers the Arbitral Tribunal to appoint a tribunal secretary with the consent of the parties. The tribunal secretary assists the Arbitral Tribunal in administrative and procedural matters, in accordance with the SCCA Secretary Regulations and the overall framework of the arbitration rules. This provision underscores the importance of efficiency and effective case management in the arbitration process.

## Article 21: Exclusion of Liability

**Arbitrators (including any Emergency Arbitrator), any person appointed by the Arbitral Tribunal, the Administrator, the SCCA Board of Directors and its members, the SCCA Court and its members, the SCCA Committees and its members, and the SCCA and its employees shall not be liable to any party for any act or omission in connection with any arbitration under these Rules, except to the extent that such a limitation of liability is prohibited by applicable law. The parties agree that none of the afore-mentioned persons or bodies shall be under any obligation to make any statement about the arbitration, and no party shall seek to make any of these persons or bodies a party or witness in any judicial or other proceeding related to the arbitration.**

Article 21 of the SCCA Arbitration Rules 2023 addresses the limitation of liability and responsibilities of various parties and entities involved in the arbitration process. Here is an analysis of the key points:

1. **Limitation of Liability:** The article establishes a general principle of limited liability for certain parties involved in the arbitration process. These parties include arbitrators (including emergency arbitrators), individuals appointed by the Arbitral Tribunal, the Administrator, the SCCA Board of Directors and its members, the SCCA Court and its members, the SCCA Committees and its members, and the SCCA itself. The limitation of liability means that these parties will not be held liable for any act or omission in connection with the arbitration process, subject to certain conditions.
2. **Exception for Applicable Law:** The limitation of liability is subject to the exception that such a limitation is not prohibited by applicable law. This means that if the law in a specific jurisdiction prohibits the limitation of liability, then this provision would not apply to parties within that jurisdiction.
3. **No Obligation to Make Statements:** The parties explicitly agree that none of the mentioned individuals or bodies are under any obligation to make any statements about the arbitration. This means that the mentioned parties are not required to provide information or explanations about the arbitration proceedings unless they choose to do so voluntarily.
4. **Non-Involvement in Proceedings:** The article also establishes that no party should attempt to involve any of the mentioned individuals or bodies as parties or witnesses in any judicial or other proceeding related to the arbitration. This is designed to prevent parties from using the mentioned parties or entities to support their case in subsequent legal proceedings.
5. **Preservation of Neutrality and Independence:** By limiting the liability and involvement of various parties, the article aims to preserve the neutrality, impartiality, and independence of the arbitration process. It prevents parties from trying to influence or pressure the mentioned parties or entities through legal proceedings.

In summary, Article 21 of the SCCA Arbitration Rules 2023 outlines the limitation of liability for various individuals and entities involved in the arbitration process. It emphasises that these parties are not liable for acts or omissions related to the arbitration process, subject to applicable law. The provision also reinforces the principle that these parties are not obligated to provide statements or participate in subsequent legal proceedings related to the arbitration.

## Section IV — Arbitral Proceedings

## Article 22: Place of Arbitration

**1. If the parties do not agree on the place of arbitration by a date established by the Administrator, the SCCA Court shall initially determine the place of arbitration subject to a final determination to be made by the Arbitral Tribunal within 30 days from the date of its constitution.**

Article 22.1 of the SCCA Arbitration Rules 2023 addresses the situation where the parties involved in an arbitration do not agree on the place of arbitration. Let us break down the key points of this article:

1. **Place of Arbitration:** The “place of arbitration” refers to the physical location where the arbitration proceedings are held. This includes where hearings, meetings, and other activities related to the arbitration are conducted. The determination of the place of arbitration is important because it may have implications for matters such as the applicable law, procedural rules, and the convenience of the parties.
2. **Party Agreement:** Ideally, parties involved in arbitration should agree on the place of arbitration. This agreement could be made in their arbitration agreement or at a later stage during the arbitration proceedings.
3. **Lack of Agreement:** If the parties do not agree on the place of arbitration by a certain date established by the Administrator (the institution overseeing the arbitration process), Article 22.1 comes into play.
4. **SCCA Court’s Initial Determination:** In cases where the parties have not agreed on the place of arbitration, the SCCA Court (the administrative body of the arbitration institution) takes the initial step of determining the place of arbitration. This determination is meant to provide a temporary solution to the issue.
5. **Arbitral Tribunal’s Final Determination:** However, the SCCA Court’s determination of the place of arbitration is not final. The article stipulates that within 30 days from the date the Arbitral Tribunal is constituted (meaning the arbitrators are appointed), the Arbitral Tribunal will make the final determination regarding the place of arbitration.

In essence, Article 22.1 provides a mechanism for handling situations where the parties have not agreed on the place of arbitration. The SCCA Court initially determines the place, but the final decision rests with the Arbitral Tribunal, which is appointed to handle the specific arbitration case. This two-step process ensures that the place of arbitration is determined in a timely manner and with consideration for the preferences and convenience of the parties involved.

**2. In determining the place of arbitration, both the SCCA Court and the Arbitral Tribunal shall have regard to the circumstances of the case and the convenience of such a place to the parties.**

Article 22.2 of the SCCA Arbitration Rules 2023 outlines the factors that should be considered by both the SCCA Court and the Arbitral Tribunal when determining the place of arbitration. Let us analyse its key points:

1. **Circumstances of the Case:** The term “circumstances of the case” refers to the specific details and features of the dispute being arbitrated. This could include factors like the nature of the claims, the complexity of the case, the location of evidence, and the parties’ preferences.
2. **Convenience of the Place:** The article emphasises that the convenience of the chosen place of arbitration is an important consideration. This refers to how suitable and accessible the chosen location is for both parties. Factors such as ease of travel, availability of facilities, and the location’s relationship to the parties and their evidence could affect the convenience.

In essence, Article 22.2 underscores that both the SCCA Court and the Arbitral Tribunal should take into account the specific circumstances of the case and prioritise the convenience of the parties when determining the place of arbitration. This approach ensures that the chosen location is not only relevant to the dispute but also practical and fair for all parties involved.

**3. Unless the parties agree otherwise and save where hearings are held remotely as set forth in Article 29(2), the Arbitral Tribunal may meet at any location it considers appropriate, irrespective of the place of arbitration, to conduct hearings and procedural meetings. The Arbitral Tribunal may meet at any location it considers appropriate to deliberate.**

Article 22.3 of the SCCA Arbitration Rules 2023 addresses the flexibility in holding hearings, procedural meetings, and deliberations by the Arbitral Tribunal. Let us analyse its key points:

1. **Flexibility in Meeting Locations:** The article grants the Arbitral Tribunal considerable flexibility in determining the locations for various proceedings. This flexibility applies to hearings, procedural meetings, and deliberations.
2. **Hearings and Procedural Meetings:** The Arbitral Tribunal is empowered to hold hearings and procedural meetings at any location it deems appropriate. This means that the Tribunal can choose a location that is convenient and practical for the parties, witnesses, experts, and other participants. This provision is subject to the condition that the parties have not agreed otherwise. It also acknowledges the possibility of remote hearings as indicated in Article 29(2).
3. **Deliberations:** Similarly, the Arbitral Tribunal is allowed to deliberate at a location it considers suitable. Deliberations involve the Tribunal’s private discussions and decision-making processes, and the article recognises the Tribunal’s discretion to decide where these discussions take place.

In summary, Article 22.3 emphasises the flexibility granted to the Arbitral Tribunal when it comes to choosing the locations for hearings, procedural meetings, and deliberations. This flexibility enables the Tribunal to enhance the efficiency and convenience of the arbitration process while ensuring fairness to all parties involved.

**4. The award shall be deemed to have been issued at the place of arbitration regardless of where the award is signed, including electronically.**

Article 22.4 of the SCCA Arbitration Rules 2023 addresses the determination of the place where an arbitral award is considered to have been issued. Let us break down the key points of this article:

1. **Place of Award:** The article establishes that, for the purposes of determining the place of issuance of the arbitral award, it shall be deemed to have been issued at the place of arbitration. This designation applies regardless of where the award is physically signed or executed, including cases where the award is signed electronically.
2. **Clarity of Place:** The purpose of this provision is to provide clarity and certainty regarding the place where the award is officially considered to have been issued. This designation can have legal implications, particularly with regard to the procedural and formal aspects of enforcing the award.
3. **Consistency and Uniformity:** By attributing the issuance of the award to the place of arbitration, regardless of the signing method used, the rule aims to ensure consistency and uniformity in recognising the official place where the arbitration process was conducted and concluded.

In essence, Article 22.4 ensures that the place of arbitration remains the focal point for determining the place of issuance of an arbitral award, even if the award is signed or executed electronically. This provision contributes to maintaining consistency and clarity in the arbitration process.

**Article 23: Language of Arbitration**

**1. If the parties do not agree on the language(s) of arbitration by a date established by the Administrator, the Administrator shall initially determine the language(s) of the arbitration subject to a final determination to be made by the Arbitral Tribunal within 30 days from the date of its constitution.**

Article 23.1 of the SCCA Arbitration Rules 2023 deals with the determination of the language(s) of arbitration when the parties involved in an arbitration proceeding do not agree on the language(s) to be used. Here is a breakdown of the key points of this article:

1. **Language of Arbitration:** This article addresses the important issue of selecting the language or languages in which the arbitration proceedings will be conducted. The language of arbitration is significant as it affects the communication between the parties, their representatives, and the Arbitral Tribunal.
2. **Initial Determination by Administrator:** If the parties are unable to agree on the language(s) of arbitration by a certain date specified by the Administrator, the responsibility for making an initial determination about the language(s) falls to the Administrator. The Administrator, who is an administrative body overseeing the arbitration process, will decide on the language(s) that will be used in the proceedings.
3. **Final Determination by Arbitral Tribunal:** However, this initial determination made by the Administrator is subject to a final determination by the Arbitral Tribunal itself. The Arbitral

Tribunal, which consists of the appointed arbitrators, holds the authority to confirm, modify, or alter the language(s) chosen by the Administrator within 30 days from the date of the Tribunal's constitution.

4. **Importance of Language Determination:** The language(s) of arbitration is a crucial aspect of the process, as it directly impacts the communication, understanding, and efficiency of the proceedings. It ensures that all parties involved can fully comprehend the documents, submissions, hearings, and the final award.
5. **Coordinated Decision-Making:** The article reflects a coordinated approach to language determination, with the initial decision made by the Administrator and the final decision resting with the Arbitral Tribunal. This approach seeks to balance administrative efficiency with the Arbitral Tribunal's authority to tailor the proceedings to the parties' needs.

In summary, Article 23.1 ensures that in cases where the parties cannot agree on the language(s) of arbitration, the Administrator and the Arbitral Tribunal work together to determine the appropriate language(s) for the proceedings, ultimately promoting effective communication and fairness in the arbitration process.

**2. In determining the language(s) of arbitration, both the Administrator and the Arbitral Tribunal shall be guided by the language(s) of the arbitration agreement, any contract within which the arbitration agreement is contained, the circumstances of each case, and the convenience of the chosen language(s) to the parties.**

Article 23.2 of the SCCA Arbitration Rules 2023 provides guidance on the factors that the Administrator and the Arbitral Tribunal should consider when determining the language(s) of arbitration in cases where the parties do not reach an agreement on this matter. Here is a breakdown of the key points of this article:

1. **Guiding Factors:** This article emphasises the factors that should guide the determination of the language(s) of arbitration. These factors are aimed at ensuring that the language chosen for the proceedings is appropriate and facilitates effective communication between all parties involved.
2. **Language of the Arbitration Agreement and Contract:** One of the crucial factors to be considered is the language used in the arbitration agreement itself and any contract within which the arbitration agreement is contained. If the parties have already agreed on a language in these documents, that language could carry significant weight in determining the language(s) of the arbitration.
3. **Circumstances of the Case:** The circumstances of each case are also relevant. For example, if the case involves parties from different countries with varying language abilities, the determination should take into account a language that is commonly understood by the parties. The complexity of the case and the subject matter could also influence the choice of language.
4. **Convenience to the Parties:** The convenience of the chosen language(s) to the parties is another important consideration. The language(s) chosen should not disadvantage any party by imposing an undue burden in terms of comprehension or translation costs.

5. **Communication and Fairness:** The primary goal of determining the language(s) of arbitration is to facilitate effective communication and ensure fairness in the proceedings. The chosen language(s) should allow all parties, their legal representatives, and the Arbitral Tribunal to fully understand the documents, submissions, evidence, hearings, and the final award.
6. **Balancing Factors:** The article highlights the need for a balanced approach by taking into account various factors, including the pre-existing language agreements, practical considerations, and the overarching goal of a fair and efficient arbitration process.

In summary, Article 23.2 underscores the importance of considering various relevant factors when determining the language(s) of arbitration. By doing so, the aim is to ensure that the language chosen promotes effective communication and fairness while taking into account the parties' agreements, the case's circumstances, and the convenience of the chosen language(s) to all parties involved.

**3. The Arbitral Tribunal may order that any documents annexed to the Request for Arbitration, the Answer, or any statement of claim or defense, and any supplementary documents or exhibits submitted in the course of the arbitration in their original language shall be accompanied by a translation into the language(s) agreed upon by the parties or determined by the Administrator. In the case of multiple languages, the Arbitral Tribunal may confine the translation to one or some of them.**

Article 23.3 of the SCCA Arbitration Rules 2023 addresses the issue of translations of documents in the arbitration proceedings. Here is an analysis of this article:

1. **Translation of Documents:** This article empowers the Arbitral Tribunal to issue an order regarding the translation of certain documents. Specifically, it pertains to documents that are annexed to the Request for Arbitration, the Answer, or any statement of claim or defence, as well as supplementary documents or exhibits submitted during the arbitration process.
2. **Original Language and Translation:** The article states that if these documents are in a language other than the agreed-upon language(s) of arbitration, the Arbitral Tribunal can order that these original-language documents be accompanied by a translation into the language(s) that the parties have agreed upon or that have been determined by the Administrator.
3. **Options for Translation:** In situations where there are multiple agreed-upon languages, the Arbitral Tribunal has the authority to limit the translation to one or some of these languages. This provision recognises the practicality of translating documents into multiple languages and gives the Tribunal flexibility in determining the extent of translation needed.
4. **Balancing Practicality and Fairness:** The purpose of this provision is to ensure that all parties and members of the Arbitral Tribunal can understand and assess the content of relevant documents. However, it also acknowledges that translating documents into multiple languages can be time-consuming and costly. By giving the Arbitral Tribunal discretion over the number of translations required, the provision seeks to strike a balance between facilitating understanding and maintaining efficiency.

5. **Practical Application:** This article is particularly relevant when parties in an arbitration come from different linguistic backgrounds or when the documents presented are in languages that not all participants can understand. By ordering translations, the Arbitral Tribunal can ensure that all parties can meaningfully participate and that the proceedings are conducted fairly.

In summary, Article 23.3 of the SCCA Arbitration Rules 2023 addresses the translation of documents in arbitration proceedings. It empowers the Arbitral Tribunal to order translations of certain documents into the agreed-upon language(s) of arbitration, taking into account practical considerations and the need to ensure fairness and effective communication among the parties and the Tribunal.

#### **Article 24: Admissibility, Arbitrability, and Jurisdiction**

##### **1. The Arbitral Tribunal shall have the power to rule on:**

- a) **Its own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement(s); and**
- b) **Whether a claim is admissible or arbitrable.**

Article 24.1 of the SCCA Arbitration Rules 2023 outlines the powers of the Arbitral Tribunal to make determinations regarding its own jurisdiction, the existence and validity of arbitration agreements, and the admissibility or arbitrability of claims. Here is an analysis of this article:

1. **Jurisdiction and Validity of Arbitration Agreement(s):**
  - a. Subsection (a) grants the Arbitral Tribunal the authority to rule on matters related to its own jurisdiction. This encompasses addressing objections raised by the parties concerning the validity, scope, or existence of the arbitration agreement(s) underpinning the arbitration.
  - b. The Tribunal's ability to determine its own jurisdiction is a fundamental principle in international arbitration, often referred to as "competence-competence." This means that the Tribunal has the initial power to decide whether it has the authority to hear the dispute.
2. **Admissibility and Arbitrability of Claims:**
  - a. Subsection (b) confers upon the Arbitral Tribunal the power to assess the admissibility and arbitrability of claims brought by the parties. Admissibility relates to whether the claims fulfil procedural criteria, while arbitrability pertains to whether the claims fall within the scope of issues suitable for resolution through arbitration.
  - b. The Tribunal's role in determining the arbitrability of claims ensures that only disputes that can be properly resolved through arbitration proceed to substantive consideration.



3. Significance and Independence of the Tribunal:
  - a. Article 24.1 underscores the importance of the Arbitral Tribunal's role in the arbitration process. It emphasises the Tribunal's independence and authority to make key determinations that impact the nature and scope of the arbitration proceedings.
  - b. The provision reinforces the concept that international arbitration is a consensual process, where the parties agree to abide by the Tribunal's determinations.
4. Balancing Party Autonomy and Judicial Review:
  - a. Article 24.1 supports the principle of party autonomy in choosing arbitration as the means of resolving disputes. It grants the Tribunal the initial authority to address certain preliminary issues that may affect the course of the arbitration.
  - b. However, it is important to note that, depending on the legal framework and applicable laws, parties may have the option to challenge the Tribunal's decisions on jurisdiction or other preliminary matters before national courts.
5. Alignment with International Standards: The content of Article 24.1 is consistent with the principles set out in various international arbitration conventions and guidelines, such as the UNCITRAL Model Law and the New York Convention.

In conclusion, Article 24.1 of the SCCA Arbitration Rules 2023 empowers the Arbitral Tribunal to decide on its own jurisdiction, the validity of arbitration agreements, and the admissibility or arbitrability of claims. This provision highlights the Tribunal's independence and its role in managing the arbitration process in line with established international arbitration practices.

**2. The Arbitral Tribunal's determination that a contract is non-existent, invalid, or ineffective shall not for that reason alone render the arbitration agreement contained in the contract in question invalid or unenforceable.**

Article 24.2 of the SCCA Arbitration Rules 2023 addresses the impact of the Arbitral Tribunal's determination that a contract is non-existent, invalid, or ineffective on the validity and enforceability of the arbitration agreement contained in that contract. Here is an analysis of this article:

1. Preservation of the Arbitration Agreement: This provision underscores a key principle in arbitration known as "separability" or "autonomy" of the arbitration agreement. It states that even if the underlying contract is deemed non-existent, invalid, or ineffective by the Arbitral Tribunal, the arbitration agreement within that contract remains valid and enforceable.
2. Distinct Legal Nature: The provision recognises that an arbitration agreement is legally distinct from the main contract in which it is embedded. Therefore, the invalidity or ineffectiveness of the main contract does not automatically affect the arbitration agreement's validity or enforceability.

3. **Preventing Manipulation:** Article 24.2 helps prevent parties from trying to manipulate or evade their obligations under an arbitration agreement by challenging the main contract's validity. It ensures that arbitration agreements remain effective even if disputes arise about the underlying contract.
4. **Supporting Party Autonomy:** The article promotes party autonomy by allowing parties to honour their choice of arbitration as the dispute resolution method, regardless of challenges to the validity of the main contract.
5. **Consistency with International Arbitration Principles:** This article aligns with well-established principles of international arbitration, as recognised in international conventions and guidelines. The separability of arbitration agreements is also emphasised in the UNCITRAL Model Law and the New York Convention.
6. **Finality and Efficiency:** By upholding the enforceability of the arbitration agreement, Article 24.2 contributes to the efficiency and finality of the arbitration process. It prevents parties from raising collateral challenges to undermine the arbitration proceedings.

In summary, Article 24.2 of the SCCA Arbitration Rules 2023 reinforces the principle of separability in arbitration, asserting that the determination by the Arbitral Tribunal that a contract is non-existent, invalid, or ineffective does not automatically render the arbitration agreement within that contract invalid or unenforceable. This provision promotes the autonomy of arbitration agreements and supports the overall effectiveness and integrity of the arbitration process.

**3. Where there are more than two parties to the arbitration, the arbitration shall proceed between those parties with respect to which the Arbitral Tribunal is satisfied that a binding arbitration agreement exists.**

Article 24.3 of the SCCA Arbitration Rules 2023 addresses the scenario in which there are more than two parties involved in an arbitration and aims to ensure that the arbitration process is conducted only between those parties who have a valid and binding arbitration agreement. Here is an analysis of this article:

1. **Binding Arbitration Agreements:** This provision emphasises the requirement that for an arbitration to proceed, there must be a binding arbitration agreement in place between the parties. An arbitration agreement is a fundamental prerequisite for submitting a dispute to arbitration, as it signifies the parties' intent to resolve their disputes through the arbitration process rather than through litigation.
2. **Clarity and Efficiency:** The provision seeks to ensure the clarity and efficiency of the arbitration process. By narrowing the arbitration to only those parties with valid arbitration agreements, potential disputes over the scope of the arbitration and the parties involved can be avoided.
3. **Party Autonomy and Consent:** The article upholds the principle of party autonomy, allowing parties to choose whether or not they want to be part of the arbitration process. It ensures that parties are only bound by arbitration if they have voluntarily entered into a binding arbitration agreement.

4. **Consistency with International Standards:** The requirement for a binding arbitration agreement aligns with international arbitration principles and conventions, which emphasise that arbitration should be a consensual process based on the parties' mutual agreement.
5. **Avoiding Confusion:** In complex disputes involving multiple parties, it is common for arbitration agreements to vary between parties or for some parties not to have valid arbitration agreements at all. This provision helps avoid confusion and potential disputes about the participation of parties without valid arbitration agreements.
6. **Efficient Resolution of Disputes:** By ensuring that only parties with valid arbitration agreements are included in the process, the arbitration can proceed more efficiently and effectively, focusing on the resolution of disputes rather than procedural debates.

In summary, Article 24.3 of the SCCA Arbitration Rules 2023 emphasises the necessity of a binding arbitration agreement for parties to participate in the arbitration process. This provision supports the clarity, efficiency, and effectiveness of the arbitration process while respecting party autonomy and consent.

**4. A party must object to the Arbitral Tribunal's jurisdiction or to the admissibility or arbitrability of a claim no later than at the time of the transmission of the Answer to the Request for Arbitration or the answer to any other claims. The Arbitral Tribunal may extend this time limit at its discretion.**

Article 24.4 of the SCCA Arbitration Rules 2023 addresses the timing for raising objections related to the Arbitral Tribunal's jurisdiction, as well as the admissibility or arbitrability of a claim. Here is an analysis of this article:

1. **Jurisdictional and Procedural Challenges:** This provision establishes a clear timeframe within which a party must raise objections regarding the Arbitral Tribunal's jurisdiction or the admissibility or arbitrability of a claim. Jurisdictional challenges concern whether the Arbitral Tribunal has the authority to hear the dispute, while admissibility and arbitrability challenges pertain to whether the specific claim or dispute is suitable for arbitration based on the applicable laws and agreements.
2. **Prompt Resolution:** By requiring parties to raise such objections at an early stage of the proceedings, the provision aims to facilitate the timely resolution of jurisdictional and procedural issues. This helps prevent unnecessary delays and ensures that the arbitration process moves forward smoothly.
3. **Transparency and Predictability:** Setting a specific deadline for raising objections enhances transparency and predictability in the arbitration process. Parties are aware of the time within which they need to assert objections, reducing the risk of last-minute surprises or strategic delays.
4. **Balanced Discretion:** The provision grants the Arbitral Tribunal the authority to extend the time limit for raising objections. This recognises that there may be legitimate reasons for parties to seek extensions, such as complex legal issues or unforeseen circumstances.

5. **Efficient Case Management:** The article aligns with the general principle of efficient case management in arbitration. By encouraging parties to address jurisdictional and procedural issues promptly, the process can proceed with a clear understanding of the scope of the arbitration and the issues in dispute.
6. **Avoiding Tactical Delays:** Requiring timely objections helps prevent parties from using jurisdictional or procedural challenges as tactics to delay the proceedings. It promotes a fair and balanced approach to addressing such matters.

In summary, Article 24.4 of the SCCA Arbitration Rules 2023 establishes a clear timeframe for raising objections related to jurisdiction, admissibility, and arbitrability. This provision contributes to the efficient and transparent conduct of arbitration proceedings and helps parties address substantive issues while avoiding undue delays.

**5. The Arbitral Tribunal may rule on any objections under this Article as a preliminary matter or as part of an award on the merits.**

Article 24.5 of the SCCA Arbitration Rules 2023 addresses the Arbitral Tribunal’s authority to rule on objections related to jurisdiction, admissibility, and arbitrability. Here is an analysis of this article:

1. **Procedural Flexibility:** This provision grants the Arbitral Tribunal flexibility in deciding when to rule on objections raised under Article 24.4 regarding jurisdiction, admissibility, and arbitrability. The Tribunal can choose to address these objections as a preliminary matter or as part of an award on the merits, depending on the circumstances of the case.
2. **Efficiency and Streamlining:** Allowing the Arbitral Tribunal to address objections at different stages of the arbitration process promotes efficiency. If the objections are straightforward and can be resolved without extensive consideration, the Tribunal can address them as a preliminary matter, preventing unnecessary delays in the overall proceedings.
3. **Contextual Considerations:** The Tribunal’s discretion to rule on objections at different times takes into account the context of the case. If the objections are intertwined with substantive issues on the merits, it may be more efficient to address them together in the final award. On the other hand, if the objections are relatively straightforward and can be resolved independently, addressing them as a preliminary matter may be more appropriate.
4. **Comprehensive Awards:** If the Tribunal decides to address objections as part of an award on the merits, it ensures that the final award is comprehensive and addresses all relevant aspects of the dispute. This approach can lead to a single award that resolves both jurisdictional and substantive issues, providing parties with a complete resolution of their dispute.
5. **Transparency and Predictability:** By specifying that objections may be ruled on either as a preliminary matter or as part of an award on the merits, the provision enhances transparency and predictability for the parties. They are informed of the possible scenarios for addressing objections and can plan their strategies accordingly.

6. **Tribunal's Authority:** This provision underscores the authority of the Arbitral Tribunal to decide on its own procedural matters, including the timing of addressing objections. It reflects the Tribunal's role as the decision-maker in managing the arbitration process.

In summary, Article 24.5 of the SCCA Arbitration Rules 2023 provides the Arbitral Tribunal with discretion to rule on objections related to jurisdiction, admissibility, and arbitrability either as a preliminary matter or as part of an award on the merits. This flexibility enables the Tribunal to adapt its approach to the specific circumstances of the case, promoting efficiency and a comprehensive resolution of the dispute.

**6. Objections to the Arbitral Tribunal's jurisdiction or the admissibility or arbitrability of a claim raised prior to the constitution of the Arbitral Tribunal shall not prevent the Administrator from proceeding with the Arbitral Tribunal's constitution as set forth in Article 16. Such objections shall be referred to the Arbitral Tribunal once constituted for determination.**

Article 24.6 of the SCCA Arbitration Rules 2023 addresses objections to the Arbitral Tribunal's jurisdiction or the admissibility or arbitrability of a claim that are raised prior to the constitution of the Arbitral Tribunal. Here is an analysis of this article:

1. **Preliminary Objections:** This provision deals specifically with objections to the Arbitral Tribunal's jurisdiction or the admissibility or arbitrability of a claim that are raised before the Arbitral Tribunal has been fully constituted. These objections focus on fundamental issues that go to the core of the arbitration process and may impact the Tribunal's authority to hear the case or the viability of the claims.
2. **Constitution of the Tribunal:** The article clarifies that raising objections to jurisdiction or admissibility prior to the constitution of the Arbitral Tribunal does not prevent the process of forming the Tribunal from proceeding. The Administrator can continue with the process of appointing arbitrators as outlined in Article 16 of the rules.
3. **Referral to the Arbitral Tribunal:** Once the Arbitral Tribunal has been fully constituted, the objections raised before its constitution are referred to the Tribunal for determination. This means that the Tribunal, once formed, will have the authority to decide on the validity of the objections and whether they impact the Tribunal's jurisdiction or the admissibility of the claims.
4. **Timing and Efficiency:** By allowing the Administrator to proceed with the constitution of the Arbitral Tribunal despite the objections, the provision ensures that the arbitration process continues to move forward. This avoids unnecessary delays in forming the Tribunal, especially if the objections are complex and may require a thorough evaluation by the Tribunal.
5. **Tribunal's Authority:** This provision highlights the Tribunal's authority to consider and decide on objections to jurisdiction, admissibility, or arbitrability. The Tribunal's determination will be made based on the specific facts and legal arguments presented by the parties.
6. **Separate Determination:** By referring the objections to the Arbitral Tribunal for determination, the provision emphasises that these issues should be treated separately

from the constitution of the Tribunal. This allows the Tribunal to focus on addressing the objections once it is fully constituted.

In summary, Article 24.6 of the SCCA Arbitration Rules 2023 clarifies the process for handling objections to the Arbitral Tribunal's jurisdiction or the admissibility or arbitrability of a claim that are raised prior to the Tribunal's constitution. The article allows the Administrator to proceed with forming the Tribunal while referring these objections to the Tribunal for determination once it is fully constituted. This approach promotes efficiency and ensures that objections are appropriately addressed by the Tribunal in due course.

## Article 25: Conduct of Arbitration

**1. Subject to these Rules, the Arbitral Tribunal may conduct the arbitration in whatever manner it considers appropriate, provided that the parties are treated equally and that each party has the right to be heard and is given a fair opportunity to present its case.**

Article 25.1 of the SCCA Arbitration Rules 2023 addresses the discretionary powers of the Arbitral Tribunal in conducting the arbitration proceedings. Here is an analysis of this article:

1. **Arbitral Tribunal's Discretion:** The article grants the Arbitral Tribunal significant discretion to determine how the arbitration proceedings will be conducted. This flexibility allows the Arbitral Tribunal to tailor the process to the specific needs of the case, which can vary based on factors like complexity, size, and nature of the dispute.
2. **Equitable Treatment:** The article emphasises the importance of treating the parties equally. This ensures that neither party receives preferential treatment or is unfairly disadvantaged during the course of the proceedings. Equitable treatment is a fundamental principle in arbitration that contributes to the legitimacy of the process.
3. **Right to Be Heard:** The article reaffirms that each party has the right to be heard. This fundamental principle ensures that parties have the opportunity to present their case, present evidence, and respond to the other party's arguments. This right is a cornerstone of due process and fairness.
4. **Fair Opportunity to Present Case:** The article ensures that each party is given a fair opportunity to present its case. This includes submitting evidence, making arguments, and addressing the Tribunal's questions or concerns. A fair opportunity to present a case is vital to ensuring that the arbitral award is based on a full understanding of the issues.
5. **Flexibility and Efficiency:** The discretionary powers granted to the Arbitral Tribunal allow for the adoption of procedures that promote efficiency while still upholding the principles of fairness. This flexibility can help expedite proceedings without compromising the parties' rights.
6. **Procedural Autonomy:** The article reinforces the principle of procedural autonomy in arbitration. Parties have the freedom to shape the procedures to suit their needs, as long as they adhere to the core principles of fairness and equal treatment.

7. **Adaptation to Circumstances:** The Tribunal’s ability to determine the appropriate manner of conducting the arbitration enables adaptation to the specific circumstances of each case. This can be particularly important in complex or unique disputes where a one-size-fits-all approach may not be suitable.
8. **Avoiding Formalism:** Granting the Arbitral Tribunal broad discretion helps avoid unnecessary formalism that could hinder the efficiency and effectiveness of the arbitration process. It allows the Tribunal to focus on substance rather than procedural technicalities.
9. **Impartiality and Neutrality:** The Tribunal’s discretionary powers should be exercised in an impartial and neutral manner to ensure that the proceedings are conducted fairly for both parties.
10. **Balancing Efficiency and Fairness:** The article strikes a balance between efficiency and fairness. While it grants the Arbitral Tribunal the authority to streamline proceedings, it ensures that the parties’ essential rights are preserved.

In summary, Article 25.1 of the SCCA Arbitration Rules 2023 grants the Arbitral Tribunal broad discretion in conducting the arbitration proceedings. This discretion is subject to the core principles of equal treatment, the right to be heard, and fairness. It enables the Tribunal to tailor the proceedings to the specific needs of the case while maintaining the integrity of the arbitration process.

**2. The Arbitral Tribunal shall conduct the arbitration with a view to resolving the dispute in an expeditious and cost- effective manner, taking into account the complexity and value of the dispute. Unless the Arbitral Tribunal deems it unnecessary to conduct a case management conference with the parties in view of the circumstances of the case, such conference shall be conducted in the manner deemed appropriate by the Arbitral Tribunal within 30 days from the date of its constitution. The purpose of the conference is to organize all stages of the arbitration and agree to procedures, including the style of and deadlines for any submissions by the parties and the date(s) of the hearing, if a hearing is to be held. In establishing procedures for the arbitration, the Arbitral Tribunal and the parties are encouraged to consider how technology, including but not limited to electronic communications, e-filings, and the electronic presentation of evidence, could be used, including to reduce the environmental impact of the arbitration. In all cases, the Arbitral Tribunal shall determine the extent to which technology shall be used in view of all circumstances of the case, including any reasoned objection by any party that the use of such technology would impair its ability to present its case.**

Article 25.2 of the SCCA Arbitration Rules 2023 outlines various aspects related to case management and the conduct of arbitration proceedings. Here is an analysis of this article:

1. **Efficient and Cost-Effective Resolution:** The article underscores the Arbitral Tribunal’s obligation to conduct the arbitration in a manner that aims to resolve the dispute efficiently and cost-effectively. This reflects the growing emphasis on the need to avoid unnecessary delays and expenses in arbitration proceedings.
2. **Complexity and Value Considerations:** The Tribunal is required to take into account the complexity and value of the dispute when determining the appropriate approach to

conducting the arbitration. This recognises that different disputes may require different procedural approaches based on their unique characteristics.

3. **Case Management Conference:** The article highlights the potential need for a case management conference between the Tribunal and the parties. This conference serves as a forum to discuss and agree on various procedural matters, including the schedule, procedures for submissions, and potential hearing dates.
4. **Timelines for Case Management Conference:** The article sets a specific timeline for conducting the case management conference, requiring it to take place within 30 days from the date of the Tribunal's constitution. This helps ensure that the arbitration process is initiated promptly and that parties are aware of the procedural framework.
5. **Purpose of the Conference:** The primary purpose of the case management conference is to organise and structure the various stages of the arbitration. This includes determining procedures for submissions, evidence presentation, and potential hearings.
6. **Technology Integration:** The article encourages the use of technology in arbitration proceedings, highlighting the potential benefits of electronic communications, e-filings, and the electronic presentation of evidence. The integration of technology can contribute to efficiency, reduce costs, and have environmental benefits.
7. **Environmental Considerations:** The article acknowledges the importance of reducing the environmental impact of arbitration proceedings. By utilising technology, parties and tribunals can minimise the need for physical documentation and travel, which can help reduce the carbon footprint associated with arbitration.
8. **Balancing Technological Use:** While technology can enhance efficiency, the Tribunal retains the discretion to determine the extent of its use based on the circumstances of the case. The article also addresses concerns about impairing a party's ability to present its case if technology were to be used extensively.
9. **Customised Approach:** The article underscores the Tribunal's authority to tailor the arbitration process to the specifics of each case. This approach allows the Tribunal to adopt procedures that suit the dispute's characteristics, ensuring a fair and effective resolution.

In summary, Article 25.2 of the SCCA Arbitration Rules 2023 emphasises the importance of efficiently and cost-effectively conducting arbitration proceedings. It establishes a framework for case management conferences, encourages the use of technology, and acknowledges the need to balance technological advancements with fair presentation opportunities for all parties.

**3. The Arbitral Tribunal may at its discretion decide preliminary issues, bifurcate proceedings, direct the order of proof, exclude cumulative or irrelevant testimony or other evidence, and direct the parties to focus their presentations on issues whose resolution could dispose of all or part of the case.**

Article 25.3 of the SCCA Arbitration Rules 2023 pertains to the discretionary powers of the Arbitral Tribunal in managing the arbitration proceedings. Here is an analysis of this article:



1. Preliminary Issues: The article grants the Arbitral Tribunal the authority to decide on preliminary issues. This means that the Tribunal can determine certain key matters at the outset of the proceedings, which could potentially narrow down the scope of the dispute or clarify certain legal or factual issues.
2. Bifurcation of Proceedings: Bifurcation involves splitting the arbitration proceedings into distinct phases. The article permits the Tribunal to bifurcate proceedings, allowing it to address specific issues separately before proceeding with the remainder of the case. Bifurcation can be helpful in complex cases where certain aspects could be resolved more expeditiously.
3. Order of Proof: The Tribunal is empowered to direct the order in which evidence will be presented by the parties. This gives the Tribunal the flexibility to ensure that evidence is presented in a logical and coherent manner, which can contribute to an efficient presentation of the case.
4. Exclusion of Cumulative or Irrelevant Evidence: The article allows the Tribunal to exclude evidence that is cumulative (repetitive) or irrelevant to the issues at hand. This power helps maintain the focus of the arbitration on pertinent matters and prevents the proceedings from becoming unnecessarily protracted due to redundant or unrelated evidence.
5. Focusing Presentations: The Tribunal can direct the parties to focus their presentations on specific issues that are crucial to resolving the case, particularly those whose resolution could potentially dispose of part or all of the dispute. This aims to streamline the proceedings and ensure that the parties' efforts are concentrated on key matters.

Overall, Article 25.3 provides the Arbitral Tribunal with a range of discretionary powers aimed at ensuring the efficient and effective management of the arbitration proceedings. These powers allow the Tribunal to address preliminary issues, structure the order of proceedings, control the presentation of evidence, and direct parties to focus on pivotal issues, all of which contribute to a fair and expeditious resolution of the dispute.

**4. At any time during the proceedings, the Arbitral Tribunal may order the parties to file written submissions or to produce documents, exhibits, or any other evidence in the manner and within the timeline it deems necessary or appropriate.**

Article 25.4 of the SCCA Arbitration Rules 2023 addresses the Arbitral Tribunal's authority to issue orders regarding the filing of written submissions and the production of evidence during the arbitration proceedings. Here is an analysis of this article:

1. Flexibility and Discretion: The article grants the Arbitral Tribunal significant flexibility and discretion in determining when and how written submissions, documents, exhibits, and evidence should be filed by the parties. This flexibility recognises that different cases may require different procedures and timelines based on their complexity and the specific issues involved.
2. Procedural Efficiency: By allowing the Tribunal to order the parties to file submissions or produce evidence, the article contributes to the efficient conduct of the proceedings. The

Tribunal can set specific deadlines and requirements to ensure that the parties meet their obligations in a timely manner, preventing unnecessary delays.

3. **Responsive Approach:** The Tribunal's ability to issue such orders enables it to adapt to the evolving needs of the case. If new issues arise or if additional evidence becomes relevant during the proceedings, the Tribunal can direct the parties to address these matters promptly, helping ensure that the case is fully and comprehensively considered.
4. **Balancing Party Rights:** While the Tribunal has the authority to order submissions and evidence, it must still balance this authority with the parties' rights to present their case and respond to the opposing party's arguments. The Tribunal's discretion should be exercised in a manner that upholds the principles of fairness and equality between the parties.
5. **Expertise and Control:** The article empowers the Arbitral Tribunal to manage the proceedings effectively by exercising control over the timing and content of written submissions and evidence. This is particularly important in maintaining the arbitration's orderly progression and adhering to established timelines.

In essence, Article 25.4 enables the Arbitral Tribunal to take an active role in managing the submission of written materials and evidence throughout the arbitration. This contributes to the arbitration's efficiency, responsiveness to the needs of the case, and the Tribunal's ability to ensure a fair and thorough consideration of the dispute.

#### **5. The Arbitral Tribunal shall determine the admissibility, relevance, materiality, and weight of the evidence.**

Article 25.5 of the SCCA Arbitration Rules 2023 addresses the authority and responsibility of the Arbitral Tribunal in assessing the evidence presented during the arbitration proceedings. Here is an analysis of this article:

1. **Judicial Role:** This article emphasises the quasi-judicial role of the Arbitral Tribunal in determining the admissibility, relevance, materiality, and weight of the evidence. This role is crucial in ensuring a fair and reliable assessment of the evidence and aligns with the principles of procedural fairness in arbitration.
2. **Legal Determinations:** The Tribunal's authority to determine admissibility aligns with its mandate to apply the relevant laws and rules to the presented evidence. It allows the Tribunal to exclude evidence that is irrelevant, immaterial, or inadmissible under the applicable rules of law.
3. **Maintaining Order:** By having the power to assess evidence, the Tribunal can prevent the introduction of irrelevant or inappropriate evidence, which can help maintain the proceedings' order and efficiency.
4. **Weighing Evidence:** The Tribunal's authority to assess the weight of evidence enables it to determine the credibility and probative value of different pieces of evidence. This is vital for making informed decisions based on the overall merits of the case.

5. **Fairness and Objectivity:** The article underscores the importance of fairness and objectivity in the Tribunal's evidence assessment. The Tribunal's decisions should be guided by the principle of treating all parties equally and giving due consideration to the presented evidence.
6. **Discretion and Expertise:** The article recognises that the Tribunal possesses the expertise and discretion to evaluate complex legal and factual issues. This is consistent with the Tribunal's overall role in providing a fair and effective resolution of the dispute.
7. **Minimising Bias:** By placing the responsibility of evidence assessment on the Tribunal, the article helps prevent the introduction of biased or unverified information into the proceedings, which could potentially compromise the quality of the arbitration process.

In summary, Article 25.5 establishes the Arbitral Tribunal's authority and responsibility to assess the admissibility, relevance, materiality, and weight of the evidence presented by the parties. This authority is essential for maintaining a fair and well-regulated arbitration process, ensuring that the proceedings are conducted in a manner that upholds the principles of justice and fairness.

**6. The parties shall make every effort to avoid unnecessary delay and expense in the arbitration. The Arbitral Tribunal may allocate costs, draw adverse inferences, and take such additional steps as are necessary to protect the efficiency and integrity of the arbitration.**

Article 25.6 of the SCCA Arbitration Rules 2023 addresses the importance of efficiency, cost-effectiveness, and the role of the Arbitral Tribunal in managing the arbitration proceedings. Here is an analysis of this article:

1. **Efficiency and Timeliness:** The article highlights the principle of procedural efficiency and the parties' responsibility to avoid unnecessary delays and expenses in the arbitration process. This aligns with the broader goal of arbitration as an alternative dispute resolution method, aimed at resolving disputes in a more expeditious manner compared to traditional litigation.
2. **Cost Management:** By emphasising the need to avoid unnecessary expenses, the article encourages parties to prioritise cost-effectiveness throughout the arbitration process. This consideration is particularly significant, given that arbitration proceedings can also be subject to costs, including arbitrator fees, administrative fees, and legal fees.
3. **Tribunal's Authority:** The article empowers the Arbitral Tribunal to manage the proceedings effectively by allocating costs, drawing adverse inferences, and taking additional steps to safeguard the efficiency and integrity of the arbitration. This authority is important for ensuring that parties comply with the principles of timely resolution and cost-effectiveness.
4. **Cost Allocation:** The Tribunal's authority to allocate costs helps ensure that the party responsible for causing unnecessary delay or expenses bears the appropriate financial consequences. This can serve as a deterrent against dilatory tactics or unreasonable behaviour during the arbitration process.

5. **Inferences and Sanctions:** The authority to draw adverse inferences implies that the Tribunal may consider the parties' actions or omissions when evaluating evidence or making decisions. This can potentially impact the weight given to evidence or influence the outcome of the case. The Tribunal's ability to impose such consequences encourages parties to act in good faith and cooperate during the proceedings.
6. **Efficient Proceedings:** By taking additional steps to protect the efficiency and integrity of the arbitration, the Tribunal ensures that the proceedings remain focused on the substantive issues of the dispute rather than being prolonged by unnecessary procedural disputes or delays.
7. **Party Cooperation:** The article encourages parties to cooperate and engage constructively in the arbitration process. Parties that work together to streamline proceedings and avoid unnecessary costs can contribute to a more successful and efficient resolution of the dispute.

In conclusion, Article 25.6 emphasises the importance of efficiency and cost-effectiveness in arbitration proceedings and grants the Arbitral Tribunal the authority to manage the proceedings in a way that upholds these principles. This article reinforces the idea that arbitration should provide a streamlined and effective means of resolving disputes while also maintaining fairness and integrity.

**7. At any time during the arbitration, the Arbitral Tribunal may encourage the parties to consider settlement of all or part of the dispute either by negotiation or through any form of amicable dispute resolution methods such as mediation. An arbitrator may not serve as a mediator unless the parties so agree.**

Article 25.7 of the SCCA Arbitration Rules 2023 focuses on the role of the Arbitral Tribunal in promoting settlement efforts and the use of alternative dispute resolution methods such as mediation. Here is an analysis of this article:

1. **Promotion of Settlement:** The article recognises the Arbitral Tribunal's proactive role in encouraging the parties to explore settlement options. Settlement can often be a cost-effective and mutually beneficial way of resolving disputes, and the Tribunal's involvement can facilitate constructive negotiations.
2. **Flexibility:** The article allows the Arbitral Tribunal to propose settlement considerations at any point during the arbitration. This flexibility aligns with the general principles of arbitration, which prioritise party autonomy and the flexibility to tailor the process to the needs of the parties and the circumstances of the case.
3. **Amicable Dispute Resolution:** The article specifically mentions the use of amicable dispute resolution methods like mediation. These methods aim to facilitate communication between the parties and promote a cooperative atmosphere, which can lead to more creative solutions that address the underlying interests of the parties.
4. **Party Consent for Mediator-Arbitrator:** The article sets a significant condition that an arbitrator may not serve as a mediator unless all parties agree to such an arrangement. This ensures that parties retain control over the process and can decide whether they want an arbitrator to also play a role in mediation.

5. **Neutrality and Impartiality:** The provision that arbitrators cannot serve as mediators without the parties' agreement underscores the importance of maintaining the arbitrator's neutrality and impartiality. Serving as both an arbitrator and a mediator in the same case could potentially raise concerns about impartiality.
6. **Preserving the Adjudicative Process:** By emphasizing that an arbitrator may not serve as a mediator without party consent, the article seeks to avoid blurring the lines between the adjudicative role of an arbitrator and the facilitative role of a mediator.
7. **Party Autonomy:** The article respects party autonomy by leaving the decision to engage in mediation or other settlement discussions with the parties. This approach respects the parties' preferences while still promoting the benefits of settlement.

In summary, Article 25.7 highlights the Arbitral Tribunal's role in promoting settlement and amicable dispute resolution methods while ensuring that the parties' consent is obtained before an arbitrator can serve as a mediator. This approach encourages parties to consider settlement options without compromising the integrity of the arbitration process.

#### **Article 26: Early Disposition of Claims or Defenses**

**1. Any party (the "Applicant") may request the Arbitral Tribunal to dispose of issues of jurisdiction, admissibility, or legal merit (the "Application") raised in a claim or defense without the need to follow every step that would otherwise be taken in the ordinary course of an arbitration. The Application may concern assertions such as:**

- a) **An allegation of fact or law material to the outcome of the case is manifestly without merit;**
- b) **Even if the facts advanced by the other party are assumed to be true, no award could be issued in that party's favor under the applicable law; or**
- c) **Any issue of fact or law material to the outcome of the case is, for any other reasons, suitable for determination by way of early disposition.**

Article 26.1 of the SCCA Arbitration Rules 2023 introduces the concept of allowing a party to request the Arbitral Tribunal to dispose of certain issues of jurisdiction, admissibility, or legal merit in a more streamlined manner, without following all the usual steps of a traditional arbitration proceeding. Here is a detailed analysis of this article:

1. **Purpose and Scope:** This article provides parties with a mechanism to request the Arbitral Tribunal to swiftly resolve specific issues related to jurisdiction, admissibility, or legal merit. These issues are often pivotal to the outcome of the case, and disposing of them early can save time and costs for both parties and contribute to the efficient conduct of the arbitration.
2. **Nature of the Application:** The party making the request is referred to as the "Applicant." The concept introduced by this article is an "Application" which focuses on the efficient resolution of certain issues without proceeding through the entirety of an ordinary arbitration process. The issues covered by the Application may include claims that are

manifestly without merit, claims that, even if accepted as true, would not entitle the claiming party to a favourable award under applicable law, or other issues suitable for early determination.

3. **Efficiency and Early Disposition:** The primary objective of this provision is to promote efficiency by allowing the Arbitral Tribunal to promptly dispose of issues that can be resolved without the need for a full-fledged arbitration procedure. This is particularly useful when certain issues can be conclusively determined early on, avoiding the need for a lengthy arbitration process.
4. **Examples of Suitable Issues:** The article provides examples of issues that could be suitable for determination through early disposition. These examples include situations where allegations are manifestly without merit or where even assuming the truth of the opposing party's claims, the law would not support a favourable award. This emphasises that the mechanism is designed for clear-cut cases that do not require extensive factual or legal analysis.
5. **Flexibility:** The article acknowledges that the Application can concern any issue of fact or law material to the case that is suitable for determination through early disposition, providing flexibility for parties to present specific issues they believe can be resolved quickly.
6. **Balancing Efficiency and Due Process:** While promoting efficiency, the provision must balance the need for streamlined procedures with the principles of due process and the right of parties to present their case. The Arbitral Tribunal must ensure that parties still have a fair opportunity to be heard before any issues are disposed of.
7. **Special Procedure:** This provision introduces a special procedure where the Arbitral Tribunal may decide to dispose of certain issues without following the entire arbitration process. This recognises that certain issues might not require the same level of procedural formalities as others.

In summary, Article 26.1 of the SCCA Arbitration Rules 2023 introduces a mechanism for parties to request the Arbitral Tribunal to efficiently dispose of specific issues related to jurisdiction, admissibility, or legal merit through a focused and streamlined procedure. The provision aims to save time, costs, and resources while maintaining a fair process for both parties.

**2. The Applicant shall transmit the Application to the Arbitral Tribunal, the Administrator, and the other parties within 30 days from the filing of the concerned claim or defense. In its Application, the Applicant shall specify the facts and the legal basis relied upon and how an early disposition contributes to a more efficient resolution of the dispute.**

Article 26.2 of the SCCA Arbitration Rules 2023 outlines the procedural requirements for submitting an Application for early disposition of issues related to jurisdiction, admissibility, or legal merit. Here is a detailed analysis of this article:

1. **Timeliness:** This provision establishes a time frame within which the Applicant must transmit the Application to relevant parties. The Application should be submitted within 30 days from the filing of the concerned claim or defence. This requirement emphasises

- promptness in bringing forth issues for early disposition and ensures that the process does not cause undue delays.
2. **Transmittal to Relevant Parties:** The Application must be transmitted to three entities: the Arbitral Tribunal, the Administrator (administering institution), and the other parties involved in the arbitration. This ensures that all relevant stakeholders are informed about the Application and can participate in the process.
  3. **Content of the Application:** The article specifies the information that the Application must contain:
    - a. **Facts and Legal Basis:** The Applicant must outline the facts and the legal basis on which the Application is grounded. This requirement ensures that the Application is supported by specific arguments and legal principles.
    - b. **Efficiency Contribution:** The Applicant must explain how the early disposition of the issue would contribute to a more efficient resolution of the dispute. This requirement underscores the intended purpose of the provision: to streamline the arbitration process while maintaining fairness.
    - c. **Clarity and Justification:** The article requires the Applicant to provide clear and substantiated reasons for seeking early disposition. This ensures that the Arbitral Tribunal and other parties can assess the validity of the request and its potential impact on the arbitration process.
  4. **Balancing Procedural Efficiency and Due Process:** While this provision encourages early disposition, it does not eliminate the need for parties to present their case adequately. The requirement to specify facts, legal basis, and efficiency contribution ensures that the Applicant substantiates the request and provides other parties with sufficient information to respond effectively.
  5. **Administrative Facilitation:** The role of the Administrator in receiving and transmitting the Application to the Arbitral Tribunal and other parties ensures that the process is well-documented and that all parties are informed in a coordinated manner.

In summary, Article 26.2 of the SCCA Arbitration Rules 2023 sets out the procedural requirements for submitting an Application for early disposition of issues. It emphasises timeliness, transmittal to relevant parties, and the provision of specific information about the facts, legal basis, and efficiency contribution. This article maintains a balance between streamlining the arbitration process and upholding the principles of due process and fairness.

**3. In determining whether to allow the Application, after having provided the other parties an opportunity to express their views, the Arbitral Tribunal shall have regard to all relevant circumstances, including the extent to which an early disposition advances the resolution of the dispute in an expeditious and cost-effective manner in accordance with Article 25(2). If the Arbitral Tribunal allows the Application to proceed, it shall establish a procedural timetable to determine**

**the Application providing each party an equal and reasonable opportunity to present its case in accordance with Article 25(1).**

Article 26.3 of the SCCA Arbitration Rules 2023 outlines the decision-making process for the Arbitral Tribunal regarding the Application for early disposition of issues related to jurisdiction, admissibility, or legal merit. Here is a detailed analysis of this article:

1. **Balancing Factors:** The article emphasises that the Arbitral Tribunal’s decision on whether to allow the Application should be based on a careful consideration of relevant circumstances. The Tribunal must weigh the advantages of resolving issues expeditiously and cost-effectively, as stipulated in Article 25(2), against the potential impact on procedural fairness and the parties’ ability to present their cases fully.
2. **Opportunity for Views:** The provision underscores the principle of due process by requiring that the Arbitral Tribunal provide all parties with an opportunity to express their views regarding the Application. This ensures that parties have the chance to provide input and arguments before a decision is made.
3. **Efficient Dispute Resolution:** The article highlights the aim of advancing the efficient resolution of the dispute, which aligns with the overarching goal of arbitration. By considering whether early disposition promotes efficient resolution, the Arbitral Tribunal contributes to the overall effectiveness of the arbitration process.
4. **Procedural Timetable:** If the Arbitral Tribunal decides to allow the Application, the article requires the Tribunal to establish a procedural timetable for determining the Application. This timetable should provide each party with an equal and reasonable opportunity to present its case. This safeguards the principle of procedural equality and ensures that all parties have a fair chance to present their arguments.
5. **Case Management:** The article reinforces the Arbitral Tribunal’s role in managing the proceedings effectively. By establishing a procedural timetable and ensuring equal opportunities for all parties, the Tribunal contributes to the orderly conduct of the arbitration and maintains procedural fairness.
6. **Inherent Discretion:** The article gives the Arbitral Tribunal a degree of discretion in making its decision. The Tribunal must exercise its judgment by considering the specific circumstances of each case, recognising that the appropriateness of early disposition may vary based on factors such as the complexity of the issues and the parties’ arguments.

In summary, Article 26.3 of the SCCA Arbitration Rules 2023 outlines the criteria and considerations the Arbitral Tribunal must take into account when deciding whether to allow an Application for early disposition of issues. It highlights the importance of balancing procedural efficiency with fairness, the opportunity for parties to express their views, and the establishment of a procedural timetable that ensures equal and reasonable opportunities for presenting cases.

**4. The Arbitral Tribunal shall issue an order or award on the Application within 30 days from the date it allows the Application to proceed. Upon request by the Arbitral Tribunal, the Administrator may in exceptional circumstances extend this time limit by up to 15 days. The Arbitral Tribunal shall state the reasons on which its order or award is based, which may be in summary**



**form. The Arbitral Tribunal may make any decision on costs forthwith or reserve it for a later stage. The Arbitral Tribunal may order costs against an unsuccessful party where it is of the view that the Application was frivolous. An order rejecting the Application shall be without prejudice to the Arbitral Tribunal's final decision on the relevant questions of fact and law.**

Article 26.4 of the SCCA Arbitration Rules 2023 outlines the procedural aspects and considerations related to the issuance of an order or award by the Arbitral Tribunal following the acceptance and determination of an Application for early disposition. Let us delve into a detailed analysis of this article:

1. **Timely Decision:** The article mandates that the Arbitral Tribunal must issue an order or award on the Application within a specific timeframe. This emphasis on a time limit aligns with the broader goals of arbitration for efficient and timely dispute resolution.
2. **Extension in Exceptional Circumstances:** The article allows for an extension of the time limit by up to 15 days in exceptional circumstances, provided the Arbitral Tribunal requests such an extension from the Administrator. This flexibility acknowledges that unforeseen or complex situations might arise that warrant a brief extension to ensure a fair and well-considered decision.
3. **Reasoned Decision:** The Arbitral Tribunal is required to provide reasons for its order or award. These reasons may be presented in summary form, but they must offer sufficient clarity for parties to understand the basis of the decision. This transparency reinforces the principle of procedural fairness.
4. **Cost Considerations:** The article addresses costs associated with the Application process. The Arbitral Tribunal has the authority to make decisions on costs, including the possibility of ordering costs against an unsuccessful party, particularly if the Application was deemed frivolous. This helps deter parties from raising baseless objections.
5. **Frivolous Applications:** The article explicitly allows the Arbitral Tribunal to order costs against a party that raised a frivolous Application. This discourages parties from misusing the early disposition mechanism for purposes other than validly resolving issues of jurisdiction, admissibility, or legal merit.
6. **Preservation of Rights:** The article clarifies that an order rejecting the Application does not prejudice the Arbitral Tribunal's final decision on the underlying questions of fact and law. This underscores that the decision on the Application is limited to procedural aspects and does not preempt the Tribunal's ultimate determination on the merits.

In essence, Article 26.4 of the SCCA Arbitration Rules 2023 ensures that the process of deciding an Application for early disposition is governed by clear timelines, reasoned decisions, cost considerations, and the preservation of parties' rights for the final determination. This helps maintain a balance between efficiency, fairness, and the parties' substantive rights during the arbitration process.

## **Article 27: Exchange of Information**

1. **The Arbitral Tribunal shall manage the exchange of information between the parties with a view to maintaining efficiency and economy. The Arbitral Tribunal and the parties shall endeavor to**

avoid unnecessary delay and expense while at the same time assuring equal treatment and safeguarding each party's opportunity to present its claims and defenses. After giving the parties reasonable opportunity to state their views, the Arbitral Tribunal may make any procedural order to:

- a) **Limit the length or content of, or dispense with, certain written submissions;**
- b) **Limit the written or oral testimony of any witness;**
- c) **Require the parties to correspond through electronic means; or**
- d) **Require that all written submissions be filed exclusively by email or other electronic means.**

Article 27.1 of the SCCA Arbitration Rules 2023 outlines the Arbitral Tribunal's role in managing the exchange of information between parties during the arbitration proceedings. This article emphasises the importance of efficiency, economy, equal treatment, and the presentation of claims and defences. Let us analyse the key aspects of this article:

1. **Efficiency and Economy:** The article underscores the Arbitral Tribunal's responsibility to manage the exchange of information in a way that maintains efficiency and economy. This reflects the broader objectives of arbitration to resolve disputes promptly and cost-effectively.
2. **Equal Treatment:** The article emphasises that the exchange of information should ensure equal treatment of all parties. This principle is fundamental to the integrity of the arbitration process and helps prevent any undue advantage or disadvantage for parties.
3. **Avoiding Unnecessary Delay and Expense:** The Arbitral Tribunal and the parties are encouraged to avoid unnecessary delay and expense. This aligns with the parties' interest in achieving a timely resolution of their dispute without incurring excessive costs.
4. **Opportunity to Present Claims and Defences:** While the process aims for efficiency, it also aims to safeguard each party's opportunity to present their claims and defences. This ensures that parties have adequate space to make their arguments and respond to the opposing party's contentions.
5. **Procedural Orders:** The article empowers the Arbitral Tribunal to issue procedural orders to manage the information exchange. These orders could include various measures to streamline the proceedings, such as limiting the length or content of written submissions, restricting witness testimony, mandating electronic correspondence, or requiring electronic filing of submissions.

In summary, Article 27.1 of the SCCA Arbitration Rules 2023 emphasises the balanced management of information exchange between parties during arbitration. It seeks to achieve a fair balance between efficiency, economy, equal treatment, and the parties' opportunity to present their case. The Arbitral Tribunal's authority to issue procedural orders reflects its role in shaping the proceedings to align with these principles and the overall goals of the arbitration process.

**2. The parties shall exchange all documents upon which each intends to rely according to a schedule set by the Arbitral Tribunal. After consultation with the parties, the Arbitral Tribunal may limit any requests for document production.**

Article 27.2 of the SCCA Arbitration Rules 2023 pertains to the exchange of documents between the parties during the arbitration proceedings. It outlines procedures for document exchange and emphasises the role of the Arbitral Tribunal in managing this process. Here is an analysis of the key points:

1. **Document Exchange:** The article requires the parties to exchange all documents upon which they intend to rely during the arbitration. This includes any documents that support their claims or defences. Document exchange is a crucial part of presenting evidence and arguments in an arbitration proceeding.
2. **Schedule Set by Arbitral Tribunal:** The article empowers the Arbitral Tribunal to set a schedule for document exchange. This allows the Tribunal to manage the timeline for document submission, ensuring that the process remains efficient and aligned with the broader goals of the arbitration.
3. **Arbitral Tribunal's Role in Limiting Requests:** The article highlights the Arbitral Tribunal's authority to limit requests for document production after consulting with the parties. This authority enables the Tribunal to prevent excessive or unnecessary requests for documents that might contribute to delay or unnecessary costs.

Article 27.2 reflects the need for a structured and organised approach to document exchange in arbitration proceedings. By empowering the Arbitral Tribunal to establish a schedule and limit document requests, the article contributes to the efficiency, economy, and overall effectiveness of the arbitration process. It also ensures that the parties have a fair opportunity to present their evidence while preventing the process from becoming overly burdensome or cumbersome.

**3. When documents to be exchanged are maintained in electronic form, the party in possession of such documents may make them available in the form most convenient and economical for it (which may be paper copies), unless the Arbitral Tribunal determines, on application, that there is a compelling need for access to the documents in a different form. Requests for documents maintained in electronic form should be narrowly focused and structured to make searching for them as economical as possible. The Arbitral Tribunal may direct testing or other means of focusing and limiting any search.**

Article 27.3 of the SCCA Arbitration Rules 2023 addresses the exchange of electronic documents between the parties in an arbitration proceeding. This article focuses on practical considerations for handling electronic documents effectively. Here is a breakdown of its key points:

1. **Electronic Document Exchange:** The article acknowledges that many documents are maintained in electronic form. It allows the party in possession of such electronic documents to provide them in the format that is most convenient and economical for them. This recognition of practicality aims to avoid unnecessary burdens on parties and the arbitration process.

2. **Arbitral Tribunal's Role:** The Arbitral Tribunal is given a role in determining the form of electronic document exchange. If a party applies for access to documents in a different form, the Tribunal has the authority to decide whether there is a compelling need for such access. This empowers the Tribunal to balance convenience and practicality with the need for effective document sharing.
3. **Narrowly Focused Requests:** The article emphasises that requests for electronic documents should be narrowly focused. This means that requests should be specific and targeted, aiming to minimise the effort required for document retrieval. This approach ensures efficiency and prevents overly broad requests that could unnecessarily complicate the process.
4. **Testing and Search Limitations:** The Arbitral Tribunal is given the authority to direct testing or other means of focusing and limiting the search for electronic documents. This provision ensures that the document retrieval process remains efficient and cost-effective while still meeting the needs of the arbitration.

Article 27.3 recognises the prevalence of electronic documents and aims to strike a balance between convenience, efficiency, and the effective presentation of evidence. By allowing parties to provide documents in the most convenient format and providing guidance on electronic document requests, the article contributes to the smooth and effective management of the arbitration process.

**4. The Arbitral Tribunal may, on application, require a party to permit inspection of relevant premises or objects with reasonable notice.**

Article 27.4 of the SCCA Arbitration Rules 2023 pertains to the Arbitral Tribunal's authority to grant an application for the inspection of relevant premises or objects during an arbitration proceeding. Here is a breakdown of the key points of this article:

1. **Inspection of Premises or Objects:** The article empowers the Arbitral Tribunal to entertain applications from parties seeking permission to inspect relevant premises or objects. This provision recognises that in certain cases, physical inspection of specific locations or objects may be necessary to gather crucial evidence or information for the arbitration.
2. **Reasonable Notice:** The Tribunal's authority to require an inspection comes with the requirement of providing reasonable notice to the party being subject to the inspection. This ensures that the party affected has adequate time to prepare for the inspection, gather necessary materials, and facilitate the process smoothly.

Article 27.4 underscores the Tribunal's discretion to order the inspection of relevant premises or objects when such inspection is deemed necessary for the arbitration. It adds an element of flexibility to the arbitration process, allowing for the acquisition of information that might not be available through standard document exchange or testimony alone.

**5. In the event a party fails to comply with an order for information exchange, the Arbitral Tribunal may draw adverse inferences and may also take such failure into account when allocating costs.**

Article 27.5 of the SCCA Arbitration Rules 2023 addresses the consequences of a party's failure to comply with an order for information exchange in the context of an arbitration proceeding. Here is an analysis of the key points of this article:

1. **Non-Compliance Consequences:** This article establishes that if a party fails to comply with an order issued by the Arbitral Tribunal for information exchange, the Tribunal has the authority to take certain actions as a response to such non-compliance.
2. **Adverse Inferences:** One of the consequences of non-compliance is that the Arbitral Tribunal may draw adverse inferences from the party's failure to provide the requested information. Adverse inferences generally mean that the Tribunal may consider the lack of information as detrimental to the non-complying party's case and make inferences that may not be favourable to that party.
3. **Cost Allocation Consideration:** The article also specifies that the failure to comply with an information exchange order can be taken into account by the Arbitral Tribunal when deciding how to allocate costs related to the arbitration. This means that the party's non-compliance might result in that party being required to bear a greater portion of the costs associated with the arbitration proceedings.

In summary, Article 27.5 reinforces the importance of information exchange in the arbitration process and establishes potential consequences for parties that fail to comply with orders related to such exchanges. Adverse inferences and cost allocation considerations are tools available to the Tribunal to ensure the fairness and effectiveness of the arbitration proceedings.

**Article 28: Interim, Provisional, Precautionary, or Other Measures**

**1. The Arbitral Tribunal may, upon application by a party (the "Applicant"), grant interim measures.**

Article 28.1 of the SCCA Arbitration Rules 2023 pertains to the authority of the Arbitral Tribunal to grant interim measures upon application by a party. Here is an analysis of the key points of this article:

1. **Interim Measures:** Interim measures are temporary actions taken by the Arbitral Tribunal to preserve the rights of the parties and maintain the status quo pending the resolution of the main dispute. These measures are often necessary to prevent irreparable harm or to ensure that the arbitration process remains effective.
2. **Application by a Party:** The article specifies that interim measures are granted upon application by a party, referred to as the "Applicant." This means that a party seeking an interim measure must formally request it from the Arbitral Tribunal, outlining the reasons for the requested measures and providing relevant information to support the application.

3. **Tribunal's Discretion:** The Arbitral Tribunal's authority to grant interim measures is discretionary. This means that the Tribunal has the power to consider the circumstances of the case and decide whether to grant the requested measures based on factors such as the urgency of the situation, the likelihood of harm, and the merits of the case.
4. **Nature of Interim Measures:** Interim measures can include a wide range of actions, such as orders to preserve evidence, prohibit certain actions, freeze assets, or maintain the status quo until the final resolution of the dispute is achieved through the arbitration process.

In summary, Article 28.1 of the SCCA Arbitration Rules 2023 underscores the Tribunal's authority to grant interim measures upon application by a party. This provision ensures that parties have a mechanism to seek urgent relief to protect their interests and the integrity of the arbitration process.

**2. Such interim measures may include an order 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 (1) current or imminent harm, or (2) prejudice to the arbitral process itself;**
- c) **Provide a means of preserving assets out of which a subsequent award may be satisfied; or**
- d) **Preserve evidence that may be relevant and material to the resolution of the dispute.**

Article 28.2 of the SCCA Arbitration Rules 2023 elaborates on the types of interim measures that the Arbitral Tribunal may grant upon an application by a party. Here is an analysis of the key points of this article:

1. **Nature of Interim Measures:** This article specifies that interim measures may include various types of orders aimed at maintaining the status quo, preventing harm, protecting the arbitration process, preserving assets, and ensuring the availability of evidence. These measures are designed to address urgent and specific needs that arise during the course of the arbitration.
2. **Maintain or Restore the Status Quo:** The Tribunal may order measures to preserve or restore the status quo, ensuring that parties maintain their respective positions or situations until the dispute is fully resolved. This is important to prevent parties from unilaterally altering circumstances to their advantage during the arbitration process.
3. **Prevent or Refrain from Harm or Prejudice:** The Tribunal may order parties to take specific actions that prevent immediate or imminent harm, or refrain from taking actions that could cause harm or prejudice to the arbitration process itself. This safeguards the fairness and integrity of the arbitration process.

4. **Preserve Assets:** Interim measures can involve orders to preserve assets that might be used to satisfy a potential award. This prevents a party from depleting assets that could be used to comply with a future monetary award.
5. **Preserve Evidence:** The Tribunal can order parties to preserve and protect evidence that is relevant and material to the resolution of the dispute. This ensures that crucial evidence is not destroyed, altered, or lost, which could impact the final outcome of the case.

In summary, Article 28.2 of the SCCA Arbitration Rules 2023 outlines the specific types of interim measures that the Arbitral Tribunal can grant to parties upon their application. These measures are aimed at maintaining fairness, protecting assets, and ensuring the availability of evidence throughout the arbitration process.

### 3. The Applicant shall satisfy the Arbitral Tribunal that:

- a) **Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and**
- b) **There is a reasonable possibility that the Applicant will succeed on the merits of the claim. The determination on this possibility shall not require a full hearing and shall not affect the discretion of the Arbitral Tribunal in making any subsequent determinations.**

Article 28.3 of the SCCA Arbitration Rules 2023 outlines the criteria that an applicant must satisfy to obtain interim measures from the Arbitral Tribunal. Here is an analysis of its key points:

1. **Harm and Balance of Harm:** The article requires the applicant to demonstrate that the harm that would result from not granting the interim measure cannot be adequately compensated through an award of damages. The harm must be significant and of a nature that monetary compensation alone cannot remedy. Additionally, the harm suffered by the party requesting the interim measure must outweigh the harm that the opposing party might face if the measure is granted.
2. **Likelihood of Success:** The applicant must establish a reasonable possibility that they will succeed on the merits of their claim. This means that the Tribunal does not require the same level of proof as a full hearing, but the applicant must present a plausible case that has the potential to succeed. The determination of this possibility is a preliminary assessment and does not bind the Arbitral Tribunal to the same standard of proof for the final decision.

In summary, Article 28.3 sets the criteria that an applicant must meet to obtain interim measures. The applicant needs to demonstrate that the harm they would suffer without the measure substantially outweighs the harm the opposing party would face if the measure is granted, and that there is a reasonable possibility of success on the merits. This provision ensures that interim measures are granted when necessary to prevent irreparable harm and maintain the fairness of the arbitration process.

**4. With regard to an application for an interim measure under paragraph 2(d) of this Article, the requirements in paragraphs 3(a) and (b) of this Article shall apply only to the extent the Arbitral Tribunal considers appropriate.**

Article 28.4 of the SCCA Arbitration Rules 2023 addresses a specific situation related to applications for interim measures under paragraph 2(d) of Article 28. Here is an analysis of its key points:

1. **Interim Measures for Preserving Evidence:** Paragraph 2(d) of Article 28 deals with interim measures related to the preservation of evidence that may be relevant and material to the resolution of the dispute. This could include measures to ensure that crucial evidence is not destroyed, altered, or made unavailable before the arbitration process is completed.
2. **Application of Criteria:** Article 28.3 outlines the criteria that an applicant must satisfy to obtain interim measures, which include demonstrating irreparable harm and a reasonable possibility of success on the merits. However, Article 28.4 states that, for applications related to preserving evidence (paragraph 2(d)), the Arbitral Tribunal has the discretion to apply these criteria only to the extent it considers appropriate.

In essence, Article 28.4 recognises that the criteria for interim measures may need to be adjusted when the focus is on preserving evidence. The reason for this is that the primary concern in such cases is not harm to the applicant's rights or success on the merits, but the preservation of crucial evidence. The Arbitral Tribunal is given flexibility in determining how the criteria should be applied in these specific circumstances. This provision allows the Tribunal to consider the unique aspects of evidence preservation when evaluating applications for interim measures under paragraph 2(d) of Article 28.

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

Article 28.5 of the SCCA Arbitration Rules 2023 addresses the authority of the Arbitral Tribunal to modify, suspend, or terminate interim measures that it has previously granted. Here is an analysis of its key points:

1. **Modifying, Suspending, or Terminating Interim Measures:** This provision empowers the Arbitral Tribunal to make changes to, suspend, or terminate interim measures that it has previously granted. Interim measures are meant to address specific circumstances, and the Tribunal needs the flexibility to adjust them as the situation evolves.
2. **Application by Parties:** The provision allows any party to apply for a modification, suspension, or termination of an interim measure. This recognises that the circumstances of the case may change, and a party might request a change to the measures based on new developments or information.
3. **Tribunal's Initiative:** The provision also permits the Arbitral Tribunal to modify, suspend, or terminate an interim measure on its own initiative in exceptional circumstances. This is a safeguard that ensures the Tribunal can intervene when necessary, even if a party has not made a formal application. However, it is important to note that the Tribunal must provide prior notice to the parties before taking such action.



Overall, Article 28.5 underscores the Arbitral Tribunal's role in ensuring that interim measures remain appropriate and effective throughout the arbitration process. It allows for adjustments to these measures based on changing circumstances and ensures that parties are informed and have an opportunity to respond when modifications are being considered.

**6. The Arbitral Tribunal may require the Applicant to provide appropriate security in connection with such a measure.**

Article 28.6 of the SCCA Arbitration Rules 2023 addresses the Arbitral Tribunal's authority to request the applicant of an interim measure to provide appropriate security. Here is an analysis of its key points:

1. **Security Requirement:** This provision allows the Arbitral Tribunal to require the party seeking an interim measure (the "Applicant") to provide appropriate security as a condition for granting the requested measure. Security in this context refers to a financial guarantee or other form of collateral that the Applicant may need to provide to ensure the other party's rights are protected in case the measure is ultimately found to be unjustified.
2. **Balancing Interests:** Requiring security aims to balance the interests of both parties. It serves as a safeguard against potential abuse of the interim measure process and prevents parties from seeking measures that might cause harm to the other party without sufficient justification.
3. **Appropriate Security:** The term "appropriate security" indicates that the Tribunal will determine the nature and amount of security required based on the circumstances of the case. This ensures that the security requested is reasonable and proportionate to the potential harm that may be caused by the interim measure.

In summary, Article 28.6 emphasises the Arbitral Tribunal's authority to ensure a fair and balanced approach to granting interim measures. By requiring the Applicant to provide appropriate security, the Tribunal aims to prevent potential misuse of interim measures while protecting the rights of all parties involved in the arbitration.

**7. The Arbitral Tribunal may require any party to promptly disclose any material change in the circumstances that were the basis for applying for or granting the interim measure.**

Article 28.7 of the SCCA Arbitration Rules 2023 addresses the Arbitral Tribunal's authority to request parties to disclose any material changes in circumstances related to interim measures. Here is an analysis of its key points:

1. **Ongoing Review:** This provision underscores the Arbitral Tribunal's commitment to ensuring that interim measures remain fair and relevant throughout the arbitration process. It empowers the Tribunal to continuously evaluate whether the circumstances that led to the granting of an interim measure have changed in a way that might affect the appropriateness or necessity of the measure.

2. **Material Change:** The provision specifically requires parties to disclose material changes. This implies that the changes must be significant and have a potential impact on the validity or necessity of the interim measure. Minor or inconsequential changes may not trigger the disclosure requirement.
3. **Prompt Disclosure:** Parties are obligated to promptly disclose any material changes to the Tribunal. This requirement emphasises transparency and helps maintain the integrity of the arbitration process by allowing the Tribunal to assess whether the interim measure should be modified, suspended, or terminated.
4. **Balancing Interests:** Requiring parties to disclose material changes helps ensure a balanced and fair arbitration process. It prevents parties from benefiting from an interim measure that is no longer justified due to changed circumstances, while also protecting parties who might be affected by such changes.

In summary, Article 28.7 reflects the Tribunal’s responsibility to monitor the continued appropriateness of interim measures in light of evolving circumstances. It ensures that parties are transparent about significant changes that could impact the necessity or validity of the measures, ultimately contributing to a fair and effective arbitration process.

**8. The Applicant may be responsible for any costs and damages caused by the measure to any party if the Arbitral Tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The Arbitral Tribunal may award such costs and damages at any point during the arbitration.**

Article 28.8 of the SCCA Arbitration Rules 2023 addresses the potential financial consequences for the Applicant in relation to interim measures. Here is an analysis of its key points:

1. **Cost and Damages Responsibility:** This provision highlights the principle that the Applicant requesting an interim measure may be held responsible for costs and damages incurred by any party as a result of the measure, if the Arbitral Tribunal later determines that the measure should not have been granted. In other words, if the Tribunal concludes that the measure was not justified based on the circumstances at that time, the Applicant might be liable for the adverse effects caused to other parties.
2. **Judicious Use of Interim Measures:** By placing potential financial repercussions on the Applicant, the provision aims to discourage the misuse or abuse of interim measures. It encourages parties to exercise caution and make responsible decisions when seeking such measures, ensuring that they have a solid basis and that they are necessary to avoid causing unjust harm to other parties.
3. **Tribunal’s Discretion:** The provision vests the Arbitral Tribunal with the discretion to determine whether costs and damages should be awarded against the Applicant. This decision is not tied to a specific timeframe and can be made at any point during the arbitration, allowing the Tribunal to consider the evolving circumstances and the impact of the interim measure on the parties.
4. **Balance of Interests:** This provision strikes a balance between granting parties the option to seek interim measures for protection while discouraging misuse of such measures. It

safeguards the interests of all parties involved by ensuring that the cost and damage consequences are aligned with the validity and appropriateness of the requested measures.

In summary, Article 28.8 serves as a mechanism to promote responsible and judicious use of interim measures by making the Applicant potentially liable for costs and damages if the measure is later deemed unwarranted by the Tribunal. This encourages parties to carefully consider the necessity of such measures and reduces the risk of unjustified harm to other parties.

**9. An application for interim measures submitted by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of such agreement.**

Article 28.9 of the SCCA Arbitration Rules 2023 addresses the relationship between seeking interim measures from a judicial authority and the ongoing arbitration process. Here is an analysis of its key points:

1. **Preservation of Rights:** This provision reaffirms the principle that seeking interim measures from a judicial authority, such as a court, does not inherently undermine or waive a party's right to pursue arbitration. Parties often seek interim measures to protect their interests while arbitration proceedings are ongoing, and this provision ensures that doing so does not jeopardise their ability to continue with the arbitration process.
2. **Compatibility with Arbitration Agreement:** The provision emphasises that resorting to a judicial authority for interim measures is not considered incompatible with the parties' arbitration agreement. Arbitration is a consensual dispute resolution mechanism, and parties may choose to seek interim relief from a court without necessarily undermining their commitment to arbitration for the resolution of the underlying dispute.
3. **No Waiver of Arbitration Agreement:** Seeking interim measures from a judicial authority also does not amount to a waiver of the arbitration agreement. This means that a party's decision to request interim measures from a court does not imply that they are giving up their right to arbitrate the main dispute as per the arbitration agreement they initially entered into.
4. **Flexibility in Remedies:** Parties often seek interim measures from courts when the situation demands immediate action or when specific remedies are more effectively granted by a court. This provision respects the parties' freedom to utilise various legal mechanisms to protect their interests without hindering their ability to continue with the arbitration process.
5. **Avoiding Conflict:** The provision helps avoid potential conflicts or challenges that might arise if seeking interim measures from a court were to be interpreted as a waiver of arbitration or a violation of the arbitration agreement. It acknowledges the complementary nature of interim measures from courts and arbitration proceedings.

In summary, Article 28.9 ensures that seeking interim measures from a judicial authority does not compromise a party's right to pursue arbitration for the underlying dispute. It underscores the flexibility of the arbitration process and recognises that parties can utilise different legal avenues to protect their interests without undermining their commitment to arbitration.

## Article 29: Hearing

### 1. The Arbitral Tribunal may decide on a document-only basis unless a party requests a hearing and the Arbitral Tribunal deems it appropriate in the circumstances to hold one.

Article 29.1 of the SCCA Arbitration Rules 2023 pertains to the conduct of arbitration proceedings and the decision-making process, particularly in relation to the use of hearings. Here is an analysis of its key points:

1. **Efficiency and Flexibility:** The provision underscores the efficiency and flexibility of arbitration proceedings. It grants the Arbitral Tribunal the authority to decide the case based solely on the documents and written submissions unless a party specifically requests a hearing.
2. **Document-Only Proceedings:** The Arbitral Tribunal has the discretion to conduct the arbitration proceedings without a physical hearing if it believes that the case can be resolved adequately based on the documents and written submissions provided by the parties. This approach can expedite the process and reduce costs, making it suitable for cases with relatively straightforward issues or where witness testimony and cross-examination may not be necessary.
3. **Hearing Upon Request:** If a party wishes to have a hearing, it can make a request for one. However, this request does not automatically mandate a hearing. The Arbitral Tribunal retains the authority to determine whether holding a hearing is appropriate given the circumstances of the case.
4. **Arbitral Tribunal's Discretion:** The Arbitral Tribunal's decision to conduct a hearing or proceed on a document-only basis is guided by its assessment of the case's complexity, the need for witness testimony or cross-examination, the potential benefits of an oral hearing, and the efficiency of the process. This discretion is essential to tailor the proceedings to the specifics of each case.
5. **Balancing Interests:** The provision strikes a balance between the parties' right to be heard and the desire for an efficient dispute resolution process. It gives parties the opportunity to request a hearing if they believe it is necessary for their case while also enabling the Arbitral Tribunal to determine if an oral hearing truly serves the interests of justice and efficiency.
6. **Consistency with Modern Arbitration Practices:** Many modern arbitration rules emphasise the flexibility of proceedings and recognise the feasibility of document-only arbitrations, particularly in cases where issues are not heavily contested or where advanced written submissions provide comprehensive arguments and evidence.

In summary, Article 29.1 of the SCCA Arbitration Rules 2023 reflects the contemporary approach to arbitration by giving the Arbitral Tribunal the authority to decide whether a hearing is necessary based on the specific circumstances of the case. It recognises the efficiency benefits of document-only proceedings while preserving the parties' right to request a hearing when they deem it appropriate.

**2. If it deems it appropriate to hold a hearing, the Arbitral Tribunal shall give the parties reasonable notice of the date, time, mode, and place of the hearing (if not remote). In all cases, the Arbitral Tribunal shall, after consultation with the parties and upon consideration of all relevant circumstances, determine the mode and format of any such hearing, including whether it will be conducted in person, remotely by videoconference or other appropriate means of communication, or in a hybrid format.**

Article 29.2 of the SCCA Arbitration Rules 2023 addresses the procedures for conducting hearings in arbitration proceedings. Here is an analysis of its key points:

1. **Hearing Determination:** The provision establishes that the Arbitral Tribunal has the authority to decide whether holding a hearing is appropriate in the given circumstances of the case. If the Arbitral Tribunal decides to hold a hearing, it must notify the parties in advance.
2. **Notice and Particulars:** The Arbitral Tribunal is required to provide the parties with reasonable notice of various details related to the hearing, including the date, time, mode, and place. If the hearing is conducted in person, the place would be specified. However, if the hearing is held remotely, the location may not be applicable, but other logistical information would still be provided.
3. **Mode and Format Determination:** The provision underscores the flexibility and adaptability of modern arbitration by allowing the Arbitral Tribunal to determine the mode and format of the hearing. This includes deciding whether the hearing will be conducted in person, remotely by videoconference, or using other suitable means of communication. This aligns with the growing trend of using technology to facilitate arbitration proceedings, which can improve efficiency and reduce costs.
4. **Consultation and Consideration:** Before determining the mode and format of the hearing, the Arbitral Tribunal is required to consult with the parties and consider all relevant circumstances. This includes taking into account factors such as the preferences and availability of the parties, the complexity of the case, the need for witness testimony, the potential costs and logistics associated with different formats, and any technological requirements.
5. **Hybrid Format:** The provision specifically mentions the possibility of conducting a hearing in a hybrid format. This means that some participants (e.g., arbitrators, parties, witnesses) could attend in person while others participate remotely via videoconference or other suitable means. This approach can be particularly useful when participants are located in different geographical locations.
6. **Modern and Practical Approach:** Article 29.2 reflects a modern and practical approach to arbitration proceedings. It recognises the importance of balancing efficiency and convenience while ensuring that the parties' rights are upheld. By allowing different modes and formats, the provision acknowledges that there is not a one-size-fits-all solution and that the method of holding hearings can be tailored to suit each case's unique circumstances.

In summary, Article 29.2 of the SCCA Arbitration Rules 2023 emphasises the flexibility and adaptability of arbitration proceedings by granting the Arbitral Tribunal the authority to determine whether a hearing is necessary and how it should be conducted. This approach acknowledges the benefits of

remote technology while considering the preferences and requirements of the parties and the specific characteristics of the dispute.

**3. Unless the parties agree otherwise, the Arbitral Tribunal may direct that hearings shall be recorded. Unless the parties agree, or applicable law requires, otherwise, hearings are private, and any recording of the hearing shall remain confidential.**

Article 29.3 of the SCCA Arbitration Rules 2023 pertains to the recording and confidentiality of hearings in arbitration proceedings. Here is an analysis of its key points:

1. **Recording of Hearings:** The provision grants the Arbitral Tribunal the authority to direct whether hearings should be recorded. This means that the Arbitral Tribunal can decide whether an audio or video recording of the hearing should be made for the purpose of maintaining an official record of the proceedings. The decision to record hearings can contribute to transparency, accuracy, and fairness in the arbitration process.
2. **Party Agreement:** The provision acknowledges the possibility of parties agreeing otherwise regarding the recording of hearings. This means that if the parties collectively agree that hearings should be recorded or not, their agreement will prevail over the default position set forth in the rule. Party agreement is crucial in maintaining party autonomy in the arbitration process.
3. **Private Hearings:** The rule establishes that, by default, hearings are private. This means that unless the parties agree otherwise or applicable law requires, hearings are not open to the public, ensuring that confidentiality is maintained in the arbitration process.
4. **Confidentiality of Recordings:** The provision further highlights that if a hearing is recorded, the recording itself is to remain confidential unless the parties agree or applicable law requires otherwise. This emphasises the confidentiality aspect of arbitration and the importance of safeguarding the privacy of the proceedings.
5. **Balancing Transparency and Confidentiality:** Article 29.3 reflects the balance that arbitration seeks to strike between transparency and confidentiality. While recording hearings can enhance transparency and accuracy, maintaining the confidentiality of the arbitration process is also crucial, especially for sensitive commercial matters.
6. **Flexibility:** The provision allows for flexibility by recognising that parties can agree to different recording arrangements or waive confidentiality. This flexibility is aligned with the principle of party autonomy in arbitration, where parties have the freedom to tailor procedures to suit their needs.

In summary, Article 29.3 of the SCCA Arbitration Rules 2023 addresses the recording and confidentiality of hearings in arbitration proceedings. It grants the Arbitral Tribunal the discretion to determine whether hearings should be recorded, while also emphasising that hearings are private by default and that any recordings made should remain confidential unless the parties agree otherwise or applicable law dictates. This rule seeks to maintain the balance between transparency and confidentiality in arbitration proceedings.

## Article 30: Witnesses of Fact

**1. Each party shall give the Arbitral Tribunal and the other parties the names and addresses of any witnesses it intends to present, the subject of their testimony, and the language(s) in which such witnesses shall give their testimony.**

Article 30.1 of the SCCA Arbitration Rules 2023 addresses the obligation of parties to provide information about witnesses they intend to present in the arbitration proceedings. Here is an analysis of its key points:

1. **Disclosure of Witnesses:** The provision mandates that each party is required to provide the Arbitral Tribunal and the other parties with specific information about the witnesses they intend to present during the arbitration proceedings. This information includes the names and addresses of the witnesses, the subject matter of their testimony, and the languages in which their testimony will be given.
2. **Transparency and Preparedness:** The requirement to disclose witness information serves the principle of transparency in arbitration. By sharing details about witnesses in advance, parties ensure that the opposing side and the Arbitral Tribunal are informed about the evidence they intend to present. This facilitates procedural efficiency and helps all parties be adequately prepared for the proceedings.
3. **Witness Identification:** The provision emphasises the importance of identifying witnesses by requiring their names and addresses. This enables the parties and the Arbitral Tribunal to assess the relevance and credibility of the witnesses and potentially conduct their own investigations if necessary.
4. **Subject of Testimony:** Parties are expected to provide a brief description of the subject matter of the witnesses' testimony. This helps clarify the issues that the witnesses will address, allowing the Arbitral Tribunal and the other parties to understand the relevance of their testimony to the case.
5. **Language of Testimony:** The provision also requires parties to specify the language or languages in which the witnesses will give their testimony. This is crucial to ensure that the proceedings are conducted smoothly and that interpreters, if needed, are arranged in advance to facilitate effective communication.
6. **Efficiency and Organisation:** By requiring parties to disclose witness information, the rule contributes to the efficient organisation of hearings. The Arbitral Tribunal and the parties can plan the sequence of witnesses, allocate time for cross-examination, and ensure that necessary arrangements are made for witnesses to give testimony in the designated language(s).
7. **Balance of Procedural Fairness:** While the rule imposes a duty on parties to disclose witnesses, it also promotes fairness by giving parties ample opportunity to review and prepare for the testimony presented by their opponents. This contributes to maintaining a balanced and just arbitration process.

In summary, Article 30.1 of the SCCA Arbitration Rules 2023 establishes the obligation of each party to provide the Arbitral Tribunal and the other parties with essential information about the witnesses they

intend to present during the arbitration proceedings. This requirement enhances transparency, procedural efficiency, and the overall fairness of the arbitration process.

**2. At an appropriate time during the proceedings, the Arbitral Tribunal shall, after consulting the parties, determine the manner and order in which witnesses are examined.**

Article 30.2 of the SCCA Arbitration Rules 2023 addresses the procedural aspect of witness examination and the role of the Arbitral Tribunal in determining the manner and order of such examination. Here is an analysis of its key points:

1. **Timing of Determination:** The provision indicates that the Arbitral Tribunal will decide on the manner and order of witness examination “at an appropriate time during the proceedings.” This suggests that the Tribunal will make this determination when it is relevant and necessary based on the progress of the arbitration.
2. **Consultation with Parties:** The rule underscores the importance of consultation with the parties before making decisions about how witnesses will be examined. This consultation ensures that the parties’ views and preferences are taken into account, promoting procedural fairness and transparency.
3. **Flexibility in Examination:** By vesting the Arbitral Tribunal with the authority to determine the manner of witness examination, the rule provides flexibility. This allows the Tribunal to tailor the process to the specific circumstances of the case, including the complexity of the issues, the number of witnesses, and other relevant factors.
4. **Modes of Examination:** The “manner” of witness examination may refer to whether the examination will be conducted orally during a hearing, through written statements, or by some other means. The Tribunal’s decision could impact the format, structure, and duration of the examination.
5. **Order of Examination:** The “order” of examination pertains to the sequence in which witnesses will be called to give their testimony. The Tribunal’s decision in this regard can influence the flow of the proceedings and may impact the effectiveness of cross-examination and the presentation of evidence.
6. **Procedural Efficiency:** The provision contributes to the overall efficiency of the arbitration proceedings. By setting out the process for determining witness examination, the rule helps prevent delays and ensures that the proceedings are conducted smoothly.
7. **Party Participation:** The rule implicitly acknowledges the need for parties to participate in the decision-making process regarding witness examination. This promotes a cooperative approach between the Arbitral Tribunal and the parties, fostering an atmosphere of collaboration and mutual understanding.
8. **Balancing Interests:** The Arbitral Tribunal’s role in determining the manner and order of witness examination strikes a balance between the interests of all parties involved. It considers the Tribunal’s responsibility to manage the proceedings effectively while ensuring that each party has a fair opportunity to present its case.



In summary, Article 30.2 of the SCCA Arbitration Rules 2023 grants the Arbitral Tribunal the authority to decide the manner and order of witness examination during the arbitration proceedings. This decision is made after consulting the parties, promoting procedural fairness, efficiency, and adaptability to the specifics of the case.

**3. Unless the Arbitral Tribunal directs otherwise, witness testimony should be presented in the form of written statements signed by the witnesses. The Arbitral Tribunal may require any witness to appear at a hearing. If a witness called for examination by either party or by the Arbitral Tribunal fails to appear, the Arbitral Tribunal shall determine the consequences of such a failure, taking into consideration whether a valid excuse was provided.**

Article 30.3 of the SCCA Arbitration Rules 2023 pertains to the presentation of witness testimony, specifically addressing the format in which witness statements are to be provided and the potential consequences if a witness fails to appear for examination. Here is an analysis of its key points:

1. **Written Witness Statements:** The article states that, unless directed otherwise by the Arbitral Tribunal, witness testimony should be presented in the form of written statements signed by the witnesses. This provision introduces an efficient and controlled process for presenting witness evidence, reducing the need for extensive oral examination and potentially streamlining the proceedings.
2. **Efficiency and Documentation:** Requiring written witness statements promotes efficiency by allowing witnesses to provide their testimonies in advance. This approach can lead to better-organised hearings and more focused cross-examination, as parties are likely to base their questioning on the contents of the submitted statements. Additionally, written statements provide a clear record of witness testimony, facilitating the drafting of the final award.
3. **Flexibility:** The provision acknowledges that the Arbitral Tribunal has the authority to direct otherwise if circumstances warrant it. This recognises the Tribunal's ability to tailor the process to the specifics of the case, especially when oral testimony is deemed necessary for particular witnesses or issues.
4. **Witness Appearance at a Hearing:** While witness statements are generally submitted in writing, the Arbitral Tribunal has the discretion to require witnesses to appear at a hearing for examination. This highlights the Tribunal's ability to adapt the process based on the needs of the case, ensuring that parties have the opportunity to present evidence effectively.
5. **Failure to Appear:** If a witness, who has been called for examination by either party or by the Arbitral Tribunal, fails to appear at a hearing, the Arbitral Tribunal is empowered to determine the consequences of such failure. This demonstrates the Tribunal's authority to manage the proceedings and address non-compliance or absences in a manner that promotes procedural fairness.
6. **Considering Excuses:** The provision acknowledges that the Arbitral Tribunal should consider whether a valid excuse was provided for a witness's failure to appear. This indicates that the Tribunal's decision on the consequences of such a failure will be made after assessing the circumstances surrounding the absence.

7. **Ensuring Due Process:** By addressing witness testimony, the article helps ensure that parties have a fair opportunity to present their evidence and that witnesses are treated consistently. It balances the need for efficient procedures with the principles of due process and the right to be heard.
8. **Tribunal's Discretion:** Overall, Article 30.3 provides the Arbitral Tribunal with a degree of discretion in managing witness testimony. This allows the Tribunal to adapt its approach to best suit the circumstances of the case, ultimately contributing to an efficient and fair arbitration process.

In summary, Article 30.3 of the SCCA Arbitration Rules 2023 outlines the use of written witness statements, provides flexibility for oral testimony at hearings, and empowers the Arbitral Tribunal to address situations where witnesses fail to appear. The provision aims to balance procedural efficiency with the parties' right to present their case and ensures that witness evidence is presented in a manner that suits the needs of the arbitration.

**4. Subject to the mandatory provisions of any applicable law, the Arbitral Tribunal shall be entitled, but not required to administer any appropriate oath or affirmation to any witness at any hearing, prior to examination of such a witness by either party and/or the Arbitral Tribunal.**

Article 30.4 of the SCCA Arbitration Rules 2023 addresses the authority of the Arbitral Tribunal to administer oaths or affirmations to witnesses during the arbitration proceedings. Here is an analysis of the key points of this article:

1. **Authority to Administer Oaths or Affirmations:** This article establishes that the Arbitral Tribunal is entitled to administer an oath or affirmation to witnesses during a hearing. An oath is a solemn pledge to tell the truth, typically taken with one's hand on a religious text or another significant object. An affirmation is a non-religious equivalent to an oath, where a person affirms the truthfulness of their statement without invoking a religious element.
2. **Purpose of Administering Oaths or Affirmations:** The primary purpose of administering an oath or affirmation to a witness is to impress upon them the importance of truthfully and accurately presenting their testimony. By taking an oath or making an affirmation, witnesses commit to providing honest and accurate information to the Arbitral Tribunal, promoting the reliability of the evidence presented.
3. **Ensuring Accuracy and Credibility:** Administering an oath or affirmation can help instil a sense of responsibility and commitment in witnesses to testify truthfully. This practice is in line with the broader principle of ensuring the accuracy and credibility of the evidence presented in arbitration proceedings.
4. **Balance with Applicable Law:** The article emphasises that the authority to administer oaths or affirmations is subject to the mandatory provisions of any applicable law. This highlights the need to ensure that the arbitration process respects the legal requirements of the jurisdiction in which the arbitration takes place. If local law mandates certain procedures or conditions for administering oaths or affirmations, those requirements would prevail.

5. **Discretionary Nature:** The article indicates that while the Arbitral Tribunal is entitled to administer oaths or affirmations, it is not required to do so. This discretionary aspect reflects the Tribunal's flexibility in managing the arbitration proceedings. The Tribunal may consider the circumstances of the case, the preferences of the parties, and any relevant legal or cultural factors in determining whether to administer oaths or affirmations.
6. **Fairness and Due Process:** Administering oaths or affirmations is consistent with principles of fairness and due process in arbitration. It contributes to the integrity of the proceedings by encouraging witnesses to provide accurate and truthful testimony.

In summary, Article 30.4 of the SCCA Arbitration Rules 2023 grants the Arbitral Tribunal the authority to administer oaths or affirmations to witnesses during hearings. This practice serves to enhance the accuracy and credibility of witness testimony and underscores the Tribunal's discretion to manage the arbitration process while respecting applicable legal requirements.

### **Article 31: Expert Appointed by the Arbitral Tribunal**

**1. After consultation with the parties, the Arbitral Tribunal may appoint one or more independent experts to report to it, in writing, on specific issues to be determined by the Arbitral Tribunal, which shall be communicated to the parties.**

Article 31.1 of the SCCA Arbitration Rules 2023 deals with the appointment of independent experts by the Arbitral Tribunal for the purpose of obtaining expert opinions on specific issues relevant to the arbitration. Let us break down and analyse the key points of this article:

1. **Appointment of Independent Experts:** This article empowers the Arbitral Tribunal to appoint one or more independent experts to provide written reports on particular issues. These experts are expected to have specialised knowledge or expertise in a field relevant to the dispute, and their insights can assist the Arbitral Tribunal in making informed decisions on complex matters.
2. **Consultation with Parties:** Before appointing an expert, the Arbitral Tribunal is required to consult with the parties. This consultation allows the parties to provide input on the need for an expert, the scope of the expert's mandate, and the specific issues that require expert opinion. The parties' participation ensures transparency and fairness in the selection process.
3. **Scope of Expert's Mandate:** The issues on which the expert is to provide an opinion must be determined by the Arbitral Tribunal. This indicates that the Tribunal plays a role in defining the scope of the expert's mandate, in consultation with the parties. The expertise sought could cover technical, scientific, financial, or other specialised matters relevant to the dispute.
4. **Written Reports:** The experts' opinions are to be provided to the Arbitral Tribunal in written form. This ensures that the information is formally documented and can be considered as evidence in the arbitration proceedings. The written reports contribute to the transparency and comprehensibility of the expert's findings.

5. **Communication with Parties:** The specific issues for which expert opinions are sought must be communicated to the parties. This allows the parties to understand the focus of the expert's analysis and, if necessary, to comment or raise objections related to the scope or methodology of the expert's work.
6. **Benefits of Expert Opinions:** The inclusion of expert opinions can enhance the Arbitral Tribunal's understanding of technical or specialised matters that may be beyond their expertise. This can lead to more informed and well-founded decisions, which ultimately contribute to the fairness and accuracy of the arbitration process.
7. **Impartiality and Independence:** The use of independent experts underscores the importance of impartiality and independence. These experts are expected to provide objective and unbiased opinions, free from any influence or connection with the parties involved in the arbitration.

In summary, Article 31.1 of the SCCA Arbitration Rules 2023 provides the Arbitral Tribunal with the authority to appoint independent experts to provide written opinions on specific issues relevant to the dispute. The process involves consultation with the parties, defining the scope of the expert's mandate, and ensuring transparency in the communication of the issues to be addressed by the expert. This article reflects the Tribunal's commitment to making informed decisions and achieving a fair and thorough resolution of the dispute.

**2. Before accepting the appointment, the expert shall submit to the Arbitral Tribunal and to all parties a description of his or her qualifications and a statement of impartiality and independence. Within the time specified by the Arbitral Tribunal, the parties shall inform the Arbitral Tribunal whether they have any objections as to the expert's qualifications, impartiality, or independence. The Arbitral Tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a party may object to the expert's qualifications, impartiality, or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The Arbitral Tribunal shall decide promptly what action to take, if any, on the objection.**

Article 31.2 of the SCCA Arbitration Rules 2023 focuses on the process of appointing and confirming independent experts by the Arbitral Tribunal. Let us analyse the key components of this article:

1. **Expert Qualifications and Statements:** Before accepting the appointment, the independent expert is required to provide the Arbitral Tribunal and all parties with a description of their qualifications. Additionally, the expert must submit a statement affirming their impartiality and independence. These requirements aim to ensure that the expert possesses the necessary expertise and is free from any conflicts of interest that could compromise their objectivity.
2. **Party Objections:** The article establishes a mechanism for the parties to raise objections regarding the expert's qualifications, impartiality, or independence. Within a specified timeframe set by the Arbitral Tribunal, parties are given the opportunity to voice their objections. This provision is designed to safeguard the integrity of the expert's role by allowing parties to raise concerns that may affect the expert's suitability for the case.
3. **Arbitral Tribunal's Decision on Objections:** Following the submission of objections by the parties, the Arbitral Tribunal is tasked with promptly deciding whether to accept or reject

the objections. This decision-making process ensures that any concerns raised by the parties are addressed and resolved in a timely manner.

4. **Post-Appointment Objections:** Once the expert has been appointed, the article outlines the circumstances under which parties can still object to the expert's qualifications, impartiality, or independence. Such objections can only be raised if new reasons come to light after the appointment has been made. This provision acknowledges that parties may not have complete information about an expert at the time of appointment.
5. **Arbitral Tribunal's Response to Post-Appointment Objections:** If a party raises an objection to the expert's qualifications, impartiality, or independence after the appointment, the Arbitral Tribunal is required to decide promptly on the appropriate course of action. This may involve re-evaluating the expert's suitability, taking into account the newly raised concerns.

In summary, Article 31.2 of the SCCA Arbitration Rules 2023 ensures that the appointment of independent experts is conducted with due diligence and fairness. It requires experts to provide information about their qualifications and confirm their impartiality and independence. The article also establishes a framework for parties to raise objections both before and after the expert's appointment, with the Arbitral Tribunal having the responsibility to address these objections promptly. This process contributes to maintaining the credibility and reliability of expert opinions in the arbitration proceedings.

### **3. The parties shall promptly submit to the expert all information or produce for the expert's inspection all documents or goods as ordered by the Arbitral Tribunal.**

Article 31.3 of the SCCA Arbitration Rules 2023 addresses the obligation of the parties to provide information, documents, or goods to an independent expert appointed by the Arbitral Tribunal. Let us analyse the key points of this article:

1. **Cooperation with Expert:** This article emphasises the parties' duty to cooperate fully with the expert appointed by the Arbitral Tribunal. The parties are required to promptly provide the expert with all necessary information, documents, or goods related to the issues the expert has been tasked to address.
2. **Scope of Cooperation:** The cooperation obligation extends to submitting information or producing documents and goods that the Arbitral Tribunal has ordered the parties to provide to the expert. This ensures that the expert has access to the relevant materials needed to perform their analysis and prepare their report.
3. **Arbitral Tribunal's Role:** The article implicitly recognises the role of the Arbitral Tribunal in directing the parties to provide information, documents, or goods to the expert. The Arbitral Tribunal is responsible for determining the scope of the expert's mandate and the materials required for their analysis.
4. **Timeliness:** The term "promptly" suggests that the parties are expected to provide the requested information, documents, or goods in a timely manner. This reflects the overarching principle of procedural efficiency and cooperation in arbitration proceedings.

In summary, Article 31.3 of the SCCA Arbitration Rules 2023 underscores the parties' duty to cooperate with an independent expert by providing the necessary information, documents, or goods as ordered by the Arbitral Tribunal. This cooperation is crucial for the expert to conduct a thorough and accurate analysis, which contributes to the effective resolution of the dispute. The article supports the overall goals of efficiency, fairness, and transparency in arbitration proceedings.

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

Article 31.4 of the SCCA Arbitration Rules 2023 addresses the procedures related to the receipt and communication of an expert's report in the arbitration process. Let us break down the key aspects of this article:

1. **Communication of Expert's Report:** This article highlights that upon receiving the expert's report, the Arbitral Tribunal has a duty to share a copy of the report with all parties involved in the arbitration. This step ensures transparency and allows the parties to have access to the expert's findings and conclusions.
2. **Opportunity for Parties to Comment:** The article emphasises that after receiving the expert's report, the parties are given the opportunity to express their opinions on the report. This opportunity is provided in writing, allowing the parties to provide their feedback, comments, or concerns regarding the expert's analysis, findings, or conclusions.
3. **Access to Supporting Documents:** The article grants parties the right to examine any document on which the expert has relied in preparing the report. This provision ensures transparency and allows parties to verify the accuracy and reliability of the expert's findings by reviewing the sources and evidence used by the expert.
4. **Due Process and Fairness:** By allowing parties to comment on the expert's report and providing access to the underlying documents, this article upholds principles of due process and fairness in the arbitration proceedings. It ensures that parties have the opportunity to challenge or supplement the expert's findings if necessary.
5. **Promotion of Informed Decisions:** This article aims to ensure that parties have access to all relevant information and can make informed decisions during the arbitration process. By allowing parties to express their opinions and examine the evidence relied upon by the expert, the article contributes to a comprehensive and well-informed resolution of the dispute.

In summary, Article 31.4 of the SCCA Arbitration Rules 2023 outlines the procedures for communicating the expert's report to the parties, providing them the opportunity to express their opinions on the report, and granting access to the documents on which the expert relied. These procedures underscore the importance of transparency, fairness, and informed decision-making in arbitration proceedings.

**5. At the request of any party, the Arbitral Tribunal shall give the parties an opportunity to question the expert at a hearing. At this hearing, parties may present expert witnesses to testify on the points at issue. The provisions of Article 29 shall be applicable to such proceedings.**

Article 31.5 of the SCCA Arbitration Rules 2023 deals with the procedures for questioning an expert witness during a hearing in arbitration proceedings. Let us break down the key aspects of this article:

1. **Questioning the Expert Witness:** The article stipulates that any party involved in the arbitration has the right to request an opportunity to question the expert witness during a hearing. This provision reflects the principle of fairness by allowing parties to directly question and cross-examine the expert witness about their findings, opinions, and methodology.
2. **Expert Witness Testimony:** In addition to questioning the expert witness, the article allows parties to present their own expert witnesses who can provide testimony on the points at issue. This provides parties with the opportunity to present competing expert opinions and arguments, which can assist the Arbitral Tribunal in reaching a well-informed decision.
3. **Applicability of Article 29:** The article explicitly references Article 29 of the SCCA Arbitration Rules 2023, which deals with hearings and their procedures. This means that the procedures for holding a hearing, including the mode, format, and scheduling, will be determined in accordance with Article 29 when parties question expert witnesses or present their own expert testimony.
4. **Equal Treatment of Parties:** By allowing parties to question expert witnesses and present their own experts, Article 31.5 ensures that parties are treated equally and have an opportunity to present their cases effectively. This supports the overarching goal of fairness in arbitration proceedings.
5. **Evidentiary Considerations:** The ability to question expert witnesses and present opposing expert opinions enhances the Arbitral Tribunal's ability to assess the credibility and reliability of the evidence presented. This contributes to a more robust and comprehensive decision-making process.
6. **Procedural Flexibility:** While the article guarantees the opportunity to question expert witnesses and present expert testimony, it does not prescribe a specific format or duration for these proceedings. This allows the Arbitral Tribunal to adapt the procedures to the specific circumstances of each case, in line with the principles of flexibility and efficiency.

In summary, Article 31.5 of the SCCA Arbitration Rules 2023 provides parties with the right to question expert witnesses and present their own expert testimony during a hearing. This ensures that parties have a fair and equitable opportunity to present their arguments, challenge expert opinions, and contribute to the overall evidentiary evaluation by the Arbitral Tribunal.

**6. The Arbitral Tribunal may not delegate its decision-making authority to the expert or anyone else.**

Article 31.6 of the SCCA Arbitration Rules 2023 addresses the principle of decision-making authority within the context of expert evidence. Let us delve into the key aspects of this article:

1. **Preservation of Decision-Making Authority:** The article unequivocally states that the Arbitral Tribunal cannot delegate its decision-making authority to the expert witness or any other individual. This provision emphasises the role and responsibility of the Arbitral Tribunal in making final determinations on the case, including matters involving expert evidence.
2. **Expert's Role:** While experts play a significant role in assisting the Arbitral Tribunal by providing their opinions and analysis, the ultimate decisions regarding the case's merits, legal issues, and other matters rest with the Arbitral Tribunal. This distinction ensures that the decision-making process remains firmly within the hands of the tribunal overseeing the arbitration.
3. **Balance and Control:** By prohibiting the delegation of decision-making authority to the expert, the article safeguards the balance of power between the parties, the Arbitral Tribunal, and the expert witness. It prevents any undue influence or overreach by the expert and reinforces the Arbitral Tribunal's authority as the ultimate decision-maker.
4. **Expert Witness Expertise:** Although the expert's opinions and analysis can greatly contribute to the tribunal's understanding of complex technical, scientific, or industry-specific matters, their role is advisory in nature. The expert's role is to provide relevant information and insights that can assist the Arbitral Tribunal in reaching a well-informed decision.
5. **Fairness and Transparency:** The article's assertion that the Arbitral Tribunal cannot delegate its decision-making authority reinforces the principles of fairness and transparency in arbitration proceedings. Parties can be assured that the tribunal is ultimately responsible for considering all evidence, arguments, and submissions before rendering a decision.

In summary, Article 31.6 of the SCCA Arbitration Rules 2023 ensures that the Arbitral Tribunal maintains its decision-making authority and cannot delegate this authority to an expert witness or any other third party. This provision reinforces the integrity of the decision-making process within arbitration proceedings, while allowing experts to provide valuable input to assist the tribunal.

**Article 32: Default**

**If the Arbitral Tribunal duly invites a party to attend any hearing, file a written submission, produce evidence, or take any other steps as ordered by the Arbitral Tribunal in the proceedings, and that party fails to do so on the date(s) or within the time established by the Arbitral Tribunal without**



**showing sufficient cause for such failure, the Arbitral Tribunal nevertheless may proceed with the arbitration and issue a final award on the evidence before it.**

Article 32 of the SCCA Arbitration Rules 2023 addresses the consequences when a party fails to comply with the directions or orders of the Arbitral Tribunal during the arbitration proceedings. Here is an analysis of the key points within this article:

1. **Invitation to Participate:** The article begins by emphasising that the Arbitral Tribunal has the authority to invite parties to attend hearings, submit written submissions, produce evidence, or take other actions as directed by the tribunal. This reflects the tribunal’s role in managing the proceedings and ensuring that each party has a fair opportunity to present its case.
2. **Consequences of Non-Compliance:** If a party fails to comply with the directions or orders of the Arbitral Tribunal without showing sufficient cause for such failure, the article outlines the consequences that may follow. In such a situation, the Arbitral Tribunal is empowered to proceed with the arbitration and issue a final award based on the evidence that is already before it.
3. **Fairness and Due Process:** The article maintains a balance between the necessity for efficient proceedings and the principles of fairness and due process. While the Arbitral Tribunal has the authority to move forward with the proceedings in the absence of compliance, the party’s failure to participate should not be due to “sufficient cause.” This means that parties should have a legitimate reason for non-compliance, and the article provides flexibility to consider such reasons.
4. **Exercise of Discretion:** The article confers discretionary power on the Arbitral Tribunal to proceed with the arbitration and issue a final award based on the evidence before it. This discretion is exercised by the tribunal after evaluating the circumstances, including the reasons provided by the non-complying party and the impact of their non-compliance on the overall proceedings.
5. **Balancing Efficiency and Fairness:** This article seeks to balance the efficient management of arbitration proceedings with the need to uphold the principles of fairness and due process. It recognises that while the tribunal has the authority to proceed in the absence of compliance, it should do so carefully and considering the overall integrity of the proceedings.

In summary, Article 32 of the SCCA Arbitration Rules 2023 addresses the potential consequences when a party fails to comply with the directions or orders of the Arbitral Tribunal. It underscores the tribunal’s authority to proceed with the arbitration and issue a final award if non-compliance is without sufficient cause, while maintaining a balance between efficiency and the principles of fairness and due process.

### Article 33: Closing of Proceedings and Time Limit for Award

**1. As soon as possible after the last hearing concerning matters to be decided in a final award or the filing of the last authorized submissions concerning such matters, whichever is later, the Arbitral Tribunal shall declare the proceedings closed.**

Article 33.1 of the SCCA Arbitration Rules 2023 outlines the procedure for closing the arbitration proceedings and signifies a crucial stage in the arbitration process. Here is an analysis of the key aspects of this article:

1. **Initiation of Closure:** The article begins by specifying the trigger points that prompt the Arbitral Tribunal to close the proceedings. The proceedings are to be closed “as soon as possible after the last hearing concerning matters to be decided in a final award or the filing of the last authorised submissions concerning such matters, whichever is later.” This means that the proceedings are closed after all necessary hearings and submissions related to the issues to be decided in the final award have taken place.
2. **Ensuring Completeness:** The requirement to close the proceedings after the last hearing or the filing of the last authorised submissions ensures that the parties have had a fair and complete opportunity to present their cases and arguments. This emphasises the principle of due process and the importance of providing each party with sufficient time to present their evidence and arguments before the proceedings are concluded.
3. **Finality and Transition to Deliberation:** The closure of the proceedings marks a transition from the active phase of presenting evidence and arguments to the Arbitral Tribunal’s deliberation and decision-making process. Once the proceedings are closed, the Arbitral Tribunal will proceed to analyse the evidence and arguments presented by the parties to render a final award.
4. **Efficiency and Timeliness:** The requirement to close the proceedings “as soon as possible” emphasises the importance of efficiency in the arbitration process. By specifying a timeframe for closure, the article encourages the Arbitral Tribunal to manage the proceedings in a timely manner, while ensuring that parties have had a reasonable opportunity to present their cases.
5. **Certainty and Clarity:** The article provides a clear procedural step for closing the proceedings, which contributes to the overall transparency and predictability of the arbitration process. Parties and the Arbitral Tribunal alike can understand when the proceedings are officially concluded and the deliberation phase begins.

In summary, Article 33.1 of the SCCA Arbitration Rules 2023 establishes the procedure for closing the arbitration proceedings. It outlines the triggers for closure, emphasising the importance of completeness, fairness, efficiency, and the transition to the deliberation phase. This article provides clarity and structure to the arbitration process and helps maintain the integrity of the proceedings.

**2. After the proceedings are closed, no further submission or argument shall be made, and no further evidence produced. In exceptional circumstances the Arbitral Tribunal may decide, on its**

**own initiative or upon application of a party, to reopen the proceedings at any time before it issues the final award.**

Article 33.2 of the SCCA Arbitration Rules 2023 pertains to the closure of arbitration proceedings and the exceptional circumstances under which those proceedings may be reopened. Here is an analysis of its key components:

1. **Post-Closure Limitations:** The article specifies that after the proceedings are closed, no further submissions, arguments, or evidence shall be presented. This clause enforces the principle of finality and ensures that both parties are aware of the cutoff point for their presentations. This contributes to maintaining an orderly and controlled arbitration process.
2. **Reopening Possibility:** The article introduces the concept of reopening proceedings in “exceptional circumstances.” This acknowledges that there might be situations where it is necessary to consider new evidence or arguments even after the proceedings have been closed. Such circumstances might include the discovery of new material evidence, the emergence of crucial legal developments, or other unforeseen situations.
3. **Arbitral Tribunal Discretion:** The decision to reopen the proceedings is within the discretion of the Arbitral Tribunal. The article indicates that the Tribunal may reopen the proceedings either on its own initiative or upon application by a party. This ensures that the Tribunal has the flexibility to evaluate the circumstances and determine whether reopening is justified.
4. **Timing of Reopening:** The article does not specify a time limit within which the proceedings can be reopened. This gives the Arbitral Tribunal the flexibility to decide whether reopening is appropriate at any stage before issuing the final award. The Tribunal’s decision will be based on the specifics of the situation and the principles of fairness and due process.
5. **Balancing Fairness and Efficiency:** The provision for reopening recognises the delicate balance between finality and the pursuit of justice. While finality is important to ensure timely resolution, exceptional circumstances might arise where the interests of justice require additional consideration. The provision allows the Tribunal to maintain this balance.
6. **Exceptional Circumstances Standard:** The article uses the term “exceptional circumstances” to emphasise that the reopening of proceedings is not a routine matter and should be reserved for genuinely unique situations. This standard ensures that reopening remains an exceptional remedy rather than a routine practice.

In summary, Article 33.2 of the SCCA Arbitration Rules 2023 establishes the rules regarding the closure of proceedings and the possibility of reopening them in exceptional circumstances. It underscores the importance of finality while also allowing flexibility for the Tribunal to address unforeseen developments that might impact the fairness and integrity of the arbitration process.

**3. Unless the parties agree otherwise, the Arbitral Tribunal shall issue its final award no later than 75 days from the date of the closing of the proceedings.**

Article 33.3 of the SCCA Arbitration Rules 2023 sets a specific time limit within which the Arbitral Tribunal is required to issue its final award after the proceedings have been closed. Here is an analysis of its key points:

1. **Fixed Time Limit:** The article establishes a clear and definite time frame for the issuance of the final award by the Arbitral Tribunal. The specified time limit is 75 days from the date of the closing of the proceedings. This provision creates a standard timeline that both parties and the Tribunal can rely on for the conclusion of the arbitration process.
2. **Mandatory Nature:** The use of the term “shall” indicates that the Arbitral Tribunal is under an obligation to adhere to the specified time limit, unless the parties agree otherwise. This provision ensures that the parties receive a final award within a predictable time frame.
3. **Efficiency and Timeliness:** By stipulating a time limit of 75 days, the provision aims to ensure the efficiency and timeliness of the arbitration process. Parties can expect a final resolution of their dispute within a relatively short period after the proceedings are closed.
4. **Balancing Complex Cases:** While the time limit emphasises efficiency, it also recognises that some cases might be more complex than others. The Arbitral Tribunal needs to strike a balance between rendering a thorough and well-reasoned award and meeting the specified time frame.
5. **Party Autonomy:** The article acknowledges the principle of party autonomy by allowing the parties to agree on a different time frame for issuing the final award. This flexibility acknowledges that certain cases may require more time due to their complexity.
6. **Predictability:** Parties benefit from the predictability that comes with a fixed time limit. They can plan their strategies, resources, and expectations based on the anticipated timeline for the issuance of the final award.
7. **Administrative Efficiency:** The provision contributes to the administrative efficiency of the arbitration process. It ensures that the parties receive a timely resolution and reduces the risk of unnecessary delays in concluding the proceedings.
8. **Finality and Closure:** Establishing a specific time limit for the issuance of the final award encourages the Arbitral Tribunal to work diligently and systematically, leading to the finality and closure of the arbitration proceedings.

In summary, Article 33.3 of the SCCA Arbitration Rules 2023 introduces a fixed time limit of 75 days for the issuance of the final award by the Arbitral Tribunal after the proceedings are closed. This provision emphasises efficiency, predictability, and timely resolution while allowing parties to agree on different time frames when necessary.

**4. In any event and taking into consideration the needs for expediency and efficiency, the Administrator may, if it deems it necessary in the circumstances, extend the 75 day period referred to in paragraph 3 of this Article on its own initiative or in accordance with a reasoned request from the Arbitral Tribunal.**

Article 33.4 of the SCCA Arbitration Rules 2023 provides for the possibility of extending the 75-day time limit for issuing the final award specified in Article 33.3. Here is an analysis of its key points:

1. **Administrative Flexibility:** This article acknowledges that there may be exceptional circumstances where the 75-day time limit set out in Article 33.3 might need to be extended. It grants the Administrator the authority to consider such cases and make a determination regarding whether an extension is warranted.
2. **Balancing Expediency and Fairness:** While efficiency is important, the provision acknowledges that cases can vary in complexity and circumstances. By allowing the Administrator to extend the time limit, the rule seeks to strike a balance between ensuring a fair and thorough resolution and meeting the needs of expedience and efficiency.
3. **Administrative Oversight:** The role of the Administrator in this context is to oversee the arbitration process and ensure that it runs smoothly. Granting the Administrator the authority to extend the time limit aligns with its administrative responsibilities.
4. **Reasoned Request:** The provision allows for an extension based on a reasoned request from the Arbitral Tribunal. This requirement ensures that any extension is well-justified and supported by legitimate reasons, such as the complexity of the case, the need for additional evidence, or other compelling circumstances.
5. **Preservation of Quality:** By allowing an extension in specific cases, the article helps prevent rushed decision-making that could compromise the quality and fairness of the final award. It ensures that the Arbitral Tribunal has adequate time to consider the evidence, arguments, and legal issues involved.
6. **Exceptional Circumstances:** The article emphasises that the extension should be considered only when necessary in the circumstances. This underscores the idea that extensions should not be routine but should be reserved for situations where there is a genuine need.
7. **Communication and Transparency:** The article promotes transparency and effective communication by requiring a reasoned request for an extension. This helps maintain trust between the parties, the Arbitral Tribunal, and the Administrator.
8. **Party Autonomy:** While the Administrator can initiate an extension on its own initiative, the article does not preclude parties from jointly requesting an extension if they believe it is necessary for a fair and effective resolution.

In summary, Article 33.4 of the SCCA Arbitration Rules 2023 empowers the Administrator to extend the 75-day time limit for issuing the final award in exceptional circumstances, ensuring that the needs of expediency are balanced with the requirements of a fair and thorough resolution. This provision reflects the goal of maintaining the quality and efficiency of the arbitration process.

#### Article 34: Waiver of Right to Object

**A party who knows of any non-compliance with any provision or requirement of the Rules or the arbitration agreement and proceeds with the arbitration without promptly stating an objection in writing, shall be deemed to have waived its right to object.**

Article 34 of the SCCA Arbitration Rules 2023 addresses the concept of waiver regarding objections related to non-compliance with the rules or the arbitration agreement. Here is an analysis of its key points:

1. **Prompt Objection Requirement:** The article establishes a requirement for parties to promptly raise objections in writing if they become aware of any non-compliance with the provisions or requirements of the SCCA Arbitration Rules or the arbitration agreement. This encourages parties to address issues as they arise and not allow them to go unaddressed.
2. **Waiver Principle:** The core principle of this article is that a party's failure to promptly raise an objection in writing results in the party waiving its right to later raise that objection. In other words, by proceeding with the arbitration without timely objecting, the party forfeits the right to use that objection as a basis for challenging the proceedings or the award.
3. **Protection of the Arbitration Process:** This provision seeks to promote the efficient and smooth progression of the arbitration process by discouraging parties from deliberately withholding objections until a later stage. By requiring prompt objection, the article aims to prevent unnecessary delays and disruptions in the proceedings.
4. **Balance Between Fairness and Efficiency:** While the article promotes efficiency by discouraging parties from withholding objections, it is important to note that this provision does not override fundamental principles of fairness. If a party genuinely could not have raised the objection promptly due to reasonable circumstances, it may still have the opportunity to raise the objection later.
5. **Preserving Due Process:** The provision acknowledges the importance of due process. Parties have the opportunity to raise objections and protect their rights. However, by not doing so in a timely manner, they risk losing the right to challenge those issues later.
6. **Clarity and Certainty:** The provision adds clarity and certainty to the arbitration process. It encourages parties to communicate issues openly and promptly, avoiding disputes about whether objections were raised in a timely manner.
7. **Presumption of Knowledge:** The article implies that parties are expected to be aware of the provisions and requirements of the rules and the arbitration agreement. Ignorance of these provisions may not necessarily excuse a party from prompt objection.
8. **Written Objection Requirement:** The article emphasises that objections must be raised in writing. This requirement ensures that objections are clear, documented, and formally communicated to all parties involved.

9. Balancing Party Autonomy: While this provision imposes consequences for not raising objections promptly, it does not restrict parties' autonomy to agree to certain deviations or modifications of the rules. Parties can, by mutual agreement, choose to waive certain requirements without invoking the waiver principle of this article.

In summary, Article 34 of the SCCA Arbitration Rules 2023 establishes the principle of waiver when a party proceeds with arbitration without promptly raising written objections to non-compliance with the rules or arbitration agreement. This provision promotes the efficient conduct of arbitration while maintaining a balance between fairness and due process.

## Section V — The Award

### Article 35: Awards, Orders, and Decisions

**1. In addition to issuing a final award, the Arbitral Tribunal may issue interim or partial awards as well as orders, decisions, or other rulings. The Arbitral Tribunal may also issue a separate award in favor of the paying party for recovery of all or any part of the advance deposit.**

Article 35.1 of the SCCA Arbitration Rules 2023 pertains to the authority of the Arbitral Tribunal to issue various types of awards, orders, decisions, or rulings throughout the arbitration process. Here is an analysis of the key points:

- 1. Scope of Authority:** The article emphasises that the Arbitral Tribunal’s authority extends beyond just issuing a final award. It underscores the Tribunal’s ability to make interim or partial awards as well as issue orders, decisions, or other rulings as necessary during the course of the arbitration proceedings. This recognises that arbitration is a flexible process that may require multiple types of decisions at different stages.
- 2. Interim Awards:** The provision acknowledges the need for the Arbitral Tribunal to issue interim awards when necessary. Interim awards can address specific issues or aspects of the dispute, providing parties with clarity on certain matters before the final resolution is reached.
- 3. Partial Awards:** The article also recognises the possibility of the Arbitral Tribunal issuing partial awards. These awards could pertain to discrete elements of the dispute that have been fully addressed and can be resolved separately from the broader issues. This can help streamline the arbitration process.
- 4. Flexibility and Efficiency:** By explicitly allowing the issuance of various types of awards and decisions, the SCCA rules provide flexibility to adapt to the specific circumstances of the case. This flexibility can contribute to the efficient resolution of disputes.
- 5. Advance Deposit Award:** An interesting feature of this article is the provision that allows the Arbitral Tribunal to issue a separate award in Favor of the paying party for recovery of all or part of the advance deposit. This recognises that parties often make financial deposits to cover the costs of arbitration, and in cases where one party prevails, they may be entitled to a refund of the unused portion of the deposit.
- 6. Preserving Due Process:** While the article gives the Arbitral Tribunal broad authority to issue various types of decisions, it is important to note that these decisions must still comply with the principles of due process, fairness, and equal treatment of the parties.
- 7. Clarity and Transparency:** By explicitly mentioning the different types of decisions that the Arbitral Tribunal can issue, the article adds clarity and transparency to the arbitration process. Parties are informed of the Tribunal’s ability to address different aspects of the case through various types of awards and decisions.
- 8. Ensuring Compliance:** The provision allows the Arbitral Tribunal to exercise its authority to ensure compliance with its orders and to manage the arbitration process effectively.



In summary, Article 35.1 of the SCCA Arbitration Rules 2023 expands on the types of decisions the Arbitral Tribunal can issue beyond a final award. This provision reflects the flexible nature of arbitration and aims to provide clarity, efficiency, and effective management of the arbitration proceedings.

**2. At the request of a party, the Arbitral Tribunal may order any party to provide security for costs.**

Article 35.2 of the SCCA Arbitration Rules 2023 addresses the issue of security for costs in arbitration proceedings. Here is an analysis of the key points:

1. **Security for Costs:** The article gives the Arbitral Tribunal the authority to order a party to provide security for costs upon the request of another party. “Security for costs” refers to a measure where the Arbitral Tribunal may require a party to provide financial security or guarantees to cover the costs that the other party might incur in the arbitration proceedings.
2. **Balancing Interests:** Security for costs is a mechanism aimed at ensuring that the party requesting the measure is not disadvantaged if the opposing party is unable to meet its financial obligations or is at risk of becoming insolvent during the arbitration. It helps strike a balance between the interests of both parties and prevents a situation where a successful party might have difficulty recovering costs if the other party is unable to pay.
3. **Protecting Due Process:** The provision helps protect the due process rights of the parties. It prevents a situation where a party’s financial constraints could unfairly hinder its ability to participate in the arbitration or to comply with orders and awards.
4. **Request-Based Approach:** The article underscores that the decision to order security for costs is initiated by a party’s request. This reflects the principle that parties have a degree of control over the procedural aspects of the arbitration and can take steps to protect their interests.
5. **Tribunal’s Discretion:** While the Arbitral Tribunal can order security for costs, it is important to note that the decision is subject to the Tribunal’s discretion. The Tribunal will likely consider factors such as the financial circumstances of the parties, the merits of the case, and whether there is a reasonable risk that a party might be unable to satisfy an adverse cost award.
6. **Efficiency and Fairness:** The provision aligns with the broader goals of arbitration, including efficiency and fairness. It ensures that both parties have an equal opportunity to present their case and that the arbitration process is not hindered by financial considerations.
7. **Protection of Weaker Parties:** The option for a party to request security for costs can be particularly important when dealing with imbalances in financial resources between parties. It provides a safeguard for parties who may be concerned about incurring substantial costs with the risk of not being able to recover them.

8. Encouragement for Parties to Participate: Security for costs can encourage parties to participate in the proceedings in good faith, knowing that they are financially capable of fulfilling their obligations, including costs and awards.

In summary, Article 35.2 of the SCCA Arbitration Rules 2023 provides a mechanism for parties to request security for costs, allowing the Arbitral Tribunal to order a party to provide financial security to cover potential costs and ensuring the integrity and fairness of the arbitration process. This provision reflects the Tribunal's discretion and contributes to the efficient and equitable conduct of the arbitration.

**3. When there is more than one arbitrator, and in the absence of unanimity, the Arbitral Tribunal shall issue any award, order, decision, or other ruling by majority.**

Article 35.3 of the SCCA Arbitration Rules 2023 deals with the process of decision-making within the Arbitral Tribunal when there is more than one arbitrator. Here is an analysis of the key points:

1. **Majority Decision-Making:** The article establishes a default rule for decision-making within the Arbitral Tribunal. It states that in cases where there is more than one arbitrator and unanimity cannot be achieved, decisions shall be made by a majority vote.
2. **Ensuring Progress:** The provision recognises that unanimity among arbitrators may not always be attainable, especially when there are multiple arbitrators with differing perspectives. By allowing decisions to be reached by a majority vote, the provision ensures that the arbitration process can continue without being stalled by disagreements among arbitrators.
3. **Preserving Fairness:** The requirement for a majority decision helps ensure fairness and balance in the decision-making process. It avoids situations where a single arbitrator's perspective might dominate the outcome.
4. **Protecting Minority Views:** While the article endorses majority decision-making, it is also important to note that the article does not preclude the inclusion of minority opinions in the decision. In other words, arbitrators who disagree with the majority decision can still express their differing views.
5. **Efficiency:** The principle of majority decision-making aligns with the goal of efficiency in arbitration proceedings. It prevents the arbitration process from becoming unduly prolonged due to disagreements among arbitrators.
6. **Avoiding Deadlocks:** In cases where unanimous agreement is not feasible and the arbitration tribunal is evenly split, a majority decision can prevent a deadlock that would otherwise hinder the issuance of awards, orders, decisions, or rulings.
7. **Influence of Chairperson or Presiding Arbitrator:** If the Arbitral Tribunal consists of three arbitrators and unanimity is not achieved, the chairperson or presiding arbitrator might play a role in casting the deciding vote. This is common in three-member tribunals and ensures that decisions can be made in case of a tie among the other two arbitrators.

In summary, Article 35.3 of the SCCA Arbitration Rules 2023 establishes that in multi-arbitrator panels, decisions will be made by majority vote if unanimity cannot be achieved. This provision promotes efficient decision-making, ensures fairness, and prevents the arbitration process from being hindered by disagreements among arbitrators. It also allows for the inclusion of minority opinions while ultimately allowing the arbitration process to move forward.

**4. In the case of questions of procedure, the presiding arbitrator may decide alone when the Arbitral Tribunal so authorizes, subject to revision by the Arbitral Tribunal, if any.**

Article 35.4 of the SCCA Arbitration Rules 2023 addresses the authority of the presiding arbitrator in deciding questions of procedure. Here is an analysis of its key points:

1. **Procedure-Related Authority:** This article focuses on matters related to procedural issues within the arbitration proceedings. Procedural matters can include decisions regarding the conduct of the hearings, the submission of evidence, the scheduling of proceedings, and similar administrative and logistical aspects.
2. **Presiding Arbitrator’s Role:** The provision highlights the role of the presiding arbitrator, who holds a leadership position within the Arbitral Tribunal. The presiding arbitrator’s primary responsibility is to oversee the proceedings, coordinate communication among the arbitrators, and ensure that the arbitration process runs smoothly.
3. **Delegated Authority:** The article allows the presiding arbitrator to make decisions on procedure when authorised to do so by the entire Arbitral Tribunal. This reflects the principle of delegation of authority within multi-member tribunals, where some decisions can be entrusted to one arbitrator to facilitate the efficient progress of the proceedings.
4. **Subject to Revision:** While the presiding arbitrator has the authority to decide procedural matters, this authority is subject to revision by the entire Arbitral Tribunal. This implies that if the other arbitrators disagree with the presiding arbitrator’s procedural decision, they have the ability to review and potentially revise that decision.
5. **Ensuring Efficiency:** Delegating authority to the presiding arbitrator for certain procedural decisions helps ensure efficiency in the arbitration process. This is especially important when time-sensitive decisions need to be made, and waiting for unanimous agreement among all arbitrators could cause delays.
6. **Balancing Authority:** While the presiding arbitrator is granted authority to make procedural decisions, the provision also acknowledges the collective nature of the Arbitral Tribunal’s authority by allowing for revision by the entire tribunal. This balance ensures that important procedural decisions are made in a manner that respects the views of all arbitrators.
7. **Preserving Fairness and Consistency:** While the presiding arbitrator has authority to make certain procedure-related decisions, the involvement of the entire Arbitral Tribunal in reviewing and revising these decisions ensures that procedural choices are fair, consistent, and aligned with the overall goals of the arbitration.

In summary, Article 35.4 of the SCCA Arbitration Rules 2023 establishes that the presiding arbitrator, subject to authorisation by the entire Arbitral Tribunal, may decide questions of procedure. This provision reflects the need for efficient decision-making in procedural matters while maintaining a mechanism for the collective review and revision of such decisions to ensure fairness and consistency in the arbitration process.

## 5. The deliberations of the Arbitral Tribunal shall remain confidential.

Article 35.5 of the SCCA Arbitration Rules 2023 addresses the confidentiality of the deliberations of the Arbitral Tribunal. Here is an analysis of its key points:

1. **Confidentiality Principle:** This article emphasises the importance of maintaining confidentiality in the proceedings of the Arbitral Tribunal. Confidentiality is a fundamental principle in arbitration, which allows parties to maintain the privacy of their disputes and the proceedings.
2. **Deliberations:** The provision specifically focuses on the confidentiality of the deliberations of the Arbitral Tribunal. Deliberations refer to the internal discussions and considerations among the arbitrators when making decisions on various issues, including procedural matters and the ultimate award.
3. **Secrecy of Discussions:** The article underscores that these deliberations are meant to be confidential. This means that the discussions, debates, and exchanges of views among the arbitrators regarding the case should not be disclosed to the parties or any other external individuals or entities.
4. **Maintaining Neutrality and Impartiality:** Confidential deliberations help arbitrators maintain their neutrality and impartiality throughout the arbitration process. It ensures that their decisions are based solely on the evidence and arguments presented by the parties, rather than any external influence.
5. **Preserving the Integrity of the Process:** Confidential deliberations also help protect the integrity of the arbitration process by preventing undue influence, interference, or manipulation of the decision-making process by external parties.
6. **Protecting Parties' Interests:** Confidentiality in deliberations assures parties that their case is being considered and decided by the arbitrators in a secure and confidential environment, which encourages parties to be open and transparent during the proceedings.
7. **Balancing Transparency and Privacy:** While confidentiality in deliberations is important, it is essential to balance this with the need for transparency in the overall arbitration process. While the deliberations themselves are confidential, the parties have the right to know the outcome and reasoning behind the final award.
8. **Consequences of Breach:** Parties, their representatives, and arbitrators are generally under an ethical obligation to maintain the confidentiality of deliberations. Breaching this confidentiality could lead to ethical and professional consequences, including potential challenges to an arbitrator's impartiality.

In summary, Article 35.5 of the SCCA Arbitration Rules 2023 underscores the confidential nature of the deliberations of the Arbitral Tribunal. This principle of confidentiality is vital for maintaining the integrity, impartiality, and fairness of the arbitration process, while also respecting parties' privacy and the need for transparent decision-making.

### Article 36: Form and Effect of Award

**1. All awards issued shall be reasoned and made in writing. The Arbitral Tribunal shall make every effort to deliberate and prepare the award without delay. The award shall be signed by the arbitrators, and it shall contain the date on which the award was made and indicate the place of arbitration. Unless the parties agree, or applicable law requires, otherwise, all awards may be signed electronically. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.**

Article 36.1 of the SCCA Arbitration Rules 2023 pertains to the characteristics and requirements of awards issued by the Arbitral Tribunal. Here is an analysis of its key points:

- 1. Reasoned and Written Awards:** The article mandates that all awards issued by the Arbitral Tribunal must be reasoned and made in writing. This means that the arbitrators are required to provide a clear rationale for their decisions, explaining the legal and factual basis on which the award is founded. Written awards enhance the transparency and predictability of the arbitration process.
- 2. Timely Preparation:** The provision encourages the Arbitral Tribunal to deliberate and prepare the award promptly. This aims to prevent undue delay in rendering the award, which is in line with the overarching principle of efficiency in arbitration.
- 3. Signature Requirement:** The award must be signed by the arbitrators. The signature of the arbitrators signifies their approval and agreement with the content of the award. This ensures that the award reflects a unanimous or majority decision, depending on the internal dynamics of the Arbitral Tribunal.
- 4. Inclusion of Essential Information:** The award should include essential information such as the date on which it was made and the place of arbitration. This information is crucial for establishing the legal validity and context of the award.
- 5. Electronic Signatures:** The article recognises the practicality and efficiency of electronic signatures. Unless the parties agree otherwise or applicable law mandates physical signatures, the Arbitral Tribunal is allowed to sign the award electronically. This is in line with the modernisation of arbitration procedures and the use of technology.
- 6. Failure to Sign:** If there is more than one arbitrator and one of them fails to sign the award, the award must indicate the reason for the absence of the signature. This transparency ensures that the parties are aware of any dissenting or non-participating arbitrator and the reasons behind it.
- 7. Transparency and Accountability:** Requiring awards to be reasoned and in writing enhances transparency in the decision-making process. Parties can understand the

arbitrators' thought process, leading to greater accountability and confidence in the outcome.

8. **Legal Validity:** A reasoned, written, and signed award carries legal validity and enforceability. Courts and authorities can review the award to ensure that it is well-grounded and complies with applicable laws and arbitration principles.
9. **Uniform Standards:** The requirement for reasoned and written awards establishes a uniform standard for the quality of awards in SCCA arbitrations, promoting fairness and consistency in the process.

In summary, Article 36.1 of the SCCA Arbitration Rules 2023 outlines important criteria for the issuance of awards in SCCA arbitration proceedings. The provision emphasises the importance of reasoned, written, and signed awards to ensure transparency, legal validity, and a fair resolution of disputes.

## **2. All awards shall be final and binding on the parties, and the parties shall carry out all awards without delay.**

Article 36.2 of the SCCA Arbitration Rules 2023 addresses the finality and binding nature of awards issued in arbitration. Here is an analysis of its key points:

1. **Final and Binding Nature:** The article establishes that all awards issued by the Arbitral Tribunal are final and binding on the parties. This means that once an award is rendered, it represents the conclusive determination of the issues presented in the arbitration and the parties are legally obligated to abide by its terms.
2. **Enforceability:** The final and binding nature of the award is a fundamental principle of arbitration. It implies that the award can be enforced in accordance with applicable laws and international conventions, such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
3. **Certainty and Closure:** The finality of awards promotes legal certainty and closure for the parties involved. It signifies the conclusion of the arbitration process and enables the parties to move forward without further litigation on the same issues.
4. **Preventing Re-Litigation:** The final and binding nature of awards discourages parties from attempting to re-litigate the same issues in court after an arbitral award has been rendered. It aims to prevent duplicative proceedings and ensures the integrity of the arbitration process.
5. **Binding Obligation to Comply:** The parties are legally obligated to carry out all awards without delay. This means that the parties are required to fulfil the obligations set out in the award, such as payment of monetary awards or specific performance of contractual obligations.
6. **Principle of Party Autonomy:** The principle of party autonomy in arbitration allows parties to choose arbitration as a means of dispute resolution and to agree to be bound by the decisions of the Arbitral Tribunal. This principle is upheld by the finality and binding nature of awards.

7. **Certified Copies:** To facilitate enforcement, parties may request certified copies of the award from the Arbitral Tribunal. These copies can be presented to relevant authorities or courts for recognition and enforcement purposes.
8. **Judicial Oversight:** While awards are final and binding within the context of arbitration, parties still have the option to challenge an award in limited circumstances provided by applicable law, such as annulment or setting aside proceedings. However, such challenges typically require a showing of specific grounds, such as procedural irregularities or lack of jurisdiction.

In summary, Article 36.2 of the SCCA Arbitration Rules 2023 underscores the final and binding nature of awards issued in arbitration. It emphasises the enforceability of awards, promotes legal certainty, and establishes the binding obligation of parties to comply with the decisions of the Arbitral Tribunal.

**3. The SCCA may make public any award, order, decision, or other ruling unless any party objects to the publication any time before the arbitration has concluded. In case of publication, the SCCA shall, if necessary, anonymize and/or redact the award, order, decision, or other ruling. Unless the parties agree, or applicable law requires, otherwise, the parties and their representatives shall keep any award order, decision, or other ruling confidential at all times.**

Article 36.3 of the SCCA Arbitration Rules 2023 addresses the publication and confidentiality of awards, orders, decisions, or other rulings in arbitration. Here is an analysis of its key points:

1. **Publication by SCCA:** The article grants the SCCA (Sharjah Chamber of Commerce and Industry<sup>11</sup>) the authority to make public any award, order, decision, or other ruling issued in the arbitration proceedings. This means that the SCCA has the discretion to share these documents with the public.
2. **Party Objection:** The SCCA's authority to publish these documents is subject to the condition that no party objects to the publication before the arbitration has concluded. This provision respects the parties' interests in maintaining the confidentiality of the proceedings and their outcome.
3. **Publication Process:** If the SCCA decides to publish any of these documents, it must take steps to ensure the privacy of the parties involved. This could involve anonymising or redacting certain information that could identify the parties or reveal sensitive details.
4. **Confidentiality Obligations:** The article underscores that, unless the parties agree otherwise or applicable law requires it, the parties and their representatives are obligated to maintain the confidentiality of any award, order, decision, or other ruling. This confidentiality obligation is intended to protect the privacy and interests of the parties involved in the arbitration.
5. **Balancing Transparency and Privacy:** The provision aims to strike a balance between the need for transparency in arbitration proceedings and the parties' right to keep sensitive information confidential. By allowing the SCCA to publish documents while still respecting

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<sup>11</sup> Incorrect guess by ChatGPT.

parties' confidentiality concerns, the article reflects a contemporary approach to arbitration proceedings.

6. Importance of Consent: The requirement for parties to consent or object to publication ensures that the parties have control over the extent of disclosure of their dispute and the outcome. This reflects the principle of party autonomy in arbitration.
7. Potential Impact on Reputation: Parties should consider the potential impact of publication on their reputation and commercial interests. While transparency can be beneficial in promoting confidence in the arbitration process, parties may also have legitimate reasons for keeping certain aspects of their disputes confidential.

In summary, Article 36.3 of the SCCA Arbitration Rules 2023 addresses the balance between the publication and confidentiality of awards, orders, decisions, or other rulings in arbitration. It allows for publication by the SCCA while ensuring that parties' privacy and confidentiality concerns are respected.

**4. Before signing the award, the Arbitral Tribunal shall transmit the award in draft form to the Administrator. The SCCA Court shall review the draft award and, where appropriate, propose modifications as to the form of the draft award. No award shall be issued by the Arbitral Tribunal until it has been approved by the SCCA Court as to its form. The award shall be communicated to the parties by the Administrator.**

Article 36.4 of the SCCA Arbitration Rules 2023 pertains to the review and approval process for arbitral awards by the SCCA (Sharjah Chamber of Commerce and Industry<sup>12</sup>) Court. Here is an analysis of its key points:

1. Draft Award Submission: According to this article, before an arbitral award is finalised and signed by the Arbitral Tribunal, the draft form of the award is required to be transmitted to the Administrator. This step ensures that the arbitration institution (SCCA) is aware of the content of the award before it is officially issued.
2. SCCA Court Review: The SCCA Court, the governing body responsible for administering the arbitration rules and ensuring the proper conduct of the arbitration, reviews the draft award. This review is focused on the form of the draft award, rather than its substance.
3. Form Modifications: The SCCA Court has the authority to propose modifications to the form of the draft award if deemed necessary. These modifications may include technical or procedural adjustments to ensure that the award complies with the prescribed format and is consistent with the rules and standards set forth by the SCCA.
4. Approval of Form: The article specifies that no arbitral award can be issued by the Arbitral Tribunal until it has received approval from the SCCA Court as to its form. This implies that the SCCA Court's review and approval are essential steps in the process of issuing a valid arbitral award.

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<sup>12</sup> Incorrect guess by ChatGPT.



5. **Administrator's Role:** The Administrator, acting as an intermediary between the Arbitral Tribunal and the SCCA Court, likely plays a role in facilitating the transmission of the draft award and any modifications suggested by the SCCA Court.
6. **Communication to Parties:** Once the draft award has been reviewed and approved by the SCCA Court, the Administrator is responsible for communicating the final award to the parties. This ensures that the parties are informed of the outcome of the arbitration and the terms of the award.
7. **Form Over Substance:** The focus of this article is on the procedural aspect of the award, emphasising that the SCCA Court's review is primarily concerned with the award's form rather than its substance. This maintains the principle that the Arbitral Tribunal maintains its autonomy in rendering decisions on the substance of the dispute.

In summary, Article 36.4 of the SCCA Arbitration Rules 2023 establishes a procedural mechanism for the review and approval of the form of arbitral awards by the SCCA Court. This oversight step ensures that awards issued under the SCCA's arbitration framework adhere to the established standards and format.

**5. After consultation with the Parties, the Arbitral Tribunal may take any tax consequences of any amounts payable into consideration in any awards, orders, decisions, or other rulings.**

Article 36.5 of the SCCA Arbitration Rules 2023 addresses the consideration of tax consequences in arbitral awards. Here is an analysis of its key points:

1. **Consultation with Parties:** The article begins by stating that the Arbitral Tribunal, before taking any action related to tax consequences, must consult with the parties involved in the arbitration. This underscores the importance of involving the parties in decisions that could have financial implications for them.
2. **Tax Consequences:** The provision enables the Arbitral Tribunal to factor in tax consequences when making decisions related to various aspects of the arbitration, such as awards, orders, decisions, or other rulings. Tax consequences refer to the impact that the awarded amounts or financial transactions might have on the tax liability of the parties involved.
3. **Inclusion in Awards, Orders, etc.:** The Arbitral Tribunal is granted the authority to include considerations of tax consequences in its decisions. This means that when rendering an award or making any other relevant decision, the Tribunal can account for potential tax implications in a manner that reflects fairness and accuracy.
4. **Balancing Interests:** The article emphasises that the consultation with the parties allows the Arbitral Tribunal to strike a balance between the interests of the parties and the potential tax implications. This balance ensures that the financial aspects of the award are dealt with in a way that does not unfairly disadvantage any party due to tax liabilities.
5. **Flexibility and Context:** The article does not prescribe specific rules or formulas for how tax consequences should be taken into account. This flexibility allows the Arbitral Tribunal

to tailor its approach based on the specific circumstances of the case and the relevant tax laws and regulations.

6. **Compliance and Consideration:** By allowing the Arbitral Tribunal to consider tax consequences, the SCCA's rules demonstrate a pragmatic approach to addressing potential financial implications of awards. This helps parties avoid unexpected tax liabilities and promotes a more comprehensive and well-informed resolution of the dispute.

In summary, Article 36.5 of the SCCA Arbitration Rules 2023 acknowledges the importance of tax consequences in arbitration awards and provides a framework for the Arbitral Tribunal to consult with the parties and consider such consequences when rendering its decisions. This ensures that the final award takes into account the potential tax impact on the parties' financial outcomes.

**6. If applicable law requires an award to be filed or registered, the Arbitral Tribunal shall cause such requirement to be satisfied. It is the responsibility of the parties to bring such requirements or any other procedural requirements of the place of arbitration to the attention of the Arbitral Tribunal.**

Article 36.6 of the SCCA Arbitration Rules 2023 addresses the procedural aspect of complying with applicable laws regarding the filing or registration of awards. Here is an analysis of its key points:

1. **Applicable Law Requirement:** The article states that if the applicable law mandates that an award must be filed or registered, the Arbitral Tribunal is obligated to ensure that this requirement is fulfilled. This demonstrates the acknowledgment that legal and procedural requirements can vary based on the jurisdiction, and the Arbitral Tribunal must respect and adhere to these requirements.
2. **Tribunal's Responsibility:** The Arbitral Tribunal has the responsibility to ensure that the award complies with any legal requirements for filing or registration. This underscores the Tribunal's role in overseeing the procedural aspects of the arbitration process, including the final steps required for the enforceability of the award.
3. **Parties' Responsibility:** The provision places a responsibility on the parties to inform the Arbitral Tribunal of any procedural requirements that are specific to the place of arbitration. This is important because the parties and their legal representatives are likely to have better knowledge of local regulations and requirements.
4. **Cooperation and Communication:** The article promotes cooperation and effective communication between the parties and the Arbitral Tribunal. By informing the Tribunal of relevant legal requirements, the parties contribute to the smooth and proper execution of the arbitration process, including the finalisation of the award.
5. **Legal Formalities:** The inclusion of this provision acknowledges that the arbitration process is not isolated from the broader legal context. Arbitral awards, even when rendered in a private dispute resolution mechanism, may need to fulfil certain formalities to be recognised and enforceable under applicable laws.

6. **Enforceability and Finality:** By ensuring that the award complies with any required filing or registration, the parties can enhance the enforceability and finality of the award. This is particularly important for international arbitration, where awards might need to be enforced across different jurisdictions.

In summary, Article 36.6 of the SCCA Arbitration Rules 2023 highlights the importance of complying with applicable legal requirements for the filing or registration of awards. It places responsibility on both the Arbitral Tribunal and the parties to ensure that these requirements are met, which ultimately contributes to the enforceability and effectiveness of the arbitration process.

### Article 37: Applicable Law

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

Article 37.1 of the SCCA Arbitration Rules 2023 addresses the applicable rules of law in arbitral proceedings. Here is an analysis of its key points:

1. **Party Autonomy:** The article underscores the principle of party autonomy, which is a fundamental feature of arbitration. It emphasises that the Arbitral Tribunal must apply the rules of law that the parties have designated as applicable to the substance of the dispute. This recognition of party autonomy allows parties to tailor the rules that govern their dispute, enhancing their control over the arbitration process.
2. **Choice of Law:** If the parties have explicitly chosen a specific set of rules of law to govern their dispute, the Arbitral Tribunal is obligated to apply those rules. This reflects the importance of honouring the parties' intentions and agreements, and it helps provide predictability and clarity in the resolution of the dispute.
3. **Failing Party Designation:** In situations where the parties have not designated a specific set of rules of law, the article provides guidance on how the Arbitral Tribunal should proceed. It empowers the Tribunal to determine the appropriate law to apply to the substance of the dispute. This discretion ensures that the Tribunal can select the most relevant and suitable legal framework based on the nature of the dispute.
4. **Judicial Approach:** The article reflects a common approach in international arbitration, where tribunals often apply a "closest connection" test to determine the applicable law when parties have not designated one. The tribunal assesses factors such as the parties' nationality, the place of performance of the contract, and the location of relevant assets to determine the law most closely connected to the dispute.
5. **Flexibility and Context:** The provision's flexibility in allowing the Tribunal to determine the appropriate law acknowledges that disputes can be complex and may involve multiple legal systems. The Tribunal's choice of law should be informed by the specific context of the dispute to ensure a fair and just outcome.
6. **Balancing Interests:** The article strikes a balance between party autonomy and the Tribunal's role in ensuring fairness and equity. While parties are given the freedom to

choose the applicable law, the Tribunal is empowered to step in when parties have not made such a choice or when the chosen law might lead to an unjust result.

In summary, Article 37.1 of the SCCA Arbitration Rules 2023 reaffirms the importance of party autonomy in selecting the rules of law that govern their dispute. It also provides guidance on how the Arbitral Tribunal should proceed when parties have not designated a specific law, allowing the Tribunal to select an appropriate legal framework based on the closest connection to the dispute's circumstances. This approach promotes fairness, predictability, and efficiency in the arbitration process.

**2. If the parties expressly agree to authorize the Arbitral Tribunal to decide the dispute equitably, it may rule on the dispute in accordance with the principles of equity and justice.**

Article 37.2 of the SCCA Arbitration Rules 2023 addresses the situation in which the parties expressly agree to grant the Arbitral Tribunal the authority to decide the dispute equitably. Here is an analysis of its key points:

1. **Equitable Jurisdiction:** This article highlights the concept of equity in arbitration proceedings. Equity refers to principles of fairness, justice, and conscience that may guide a tribunal's decision-making when the strict application of legal rules might not lead to a just outcome. By giving the Arbitral Tribunal the authority to decide the dispute "equitably," the article acknowledges the possibility of reaching a resolution that goes beyond strict legal interpretations.
2. **Party Consent:** The article emphasises that this approach is only applicable when the parties expressly agree to it. This reinforces the principle of party autonomy in arbitration. The parties have the freedom to choose whether they want the tribunal to have the authority to apply equitable principles in their dispute. This consent can be included in their arbitration agreement or through other forms of agreement during the arbitration process.
3. **Principles of Equity and Justice:** When authorised by the parties, the Arbitral Tribunal may base its decision on principles of equity and justice rather than strict legal rules. This allows the Tribunal to take into account broader considerations, such as fairness, morals, and the unique circumstances of the case.
4. **Flexibility and Tailoring:** Allowing parties to choose an equitable resolution adds a layer of flexibility to the arbitration process. It acknowledges that some disputes may not be well-suited to traditional legal analysis and that an equitable approach may better serve the parties' interests.
5. **Balance with Legal Principles:** While the Arbitral Tribunal can apply equitable principles, it does not mean that it is unbounded by legal principles altogether. The Tribunal is expected to strike a balance between equitable considerations and any relevant legal rules or principles, particularly when the parties' agreement allows for an equitable decision.
6. **Implications for the Outcome:** An equitable decision could lead to outcomes that might not be possible under a strict application of the law. It could involve considerations of

fairness, good faith, and moral principles. This aligns with the broader nature of arbitration, which aims to provide parties with a flexible and effective means of dispute resolution that takes into account their unique circumstances.

In summary, Article 37.2 of the SCCA Arbitration Rules 2023 recognises the role of equity in arbitration by allowing parties to grant the Arbitral Tribunal the authority to decide the dispute equitably when they expressly agree to do so. This provision reflects the principles of party autonomy, flexibility, and the possibility of achieving just outcomes that go beyond strict legal interpretations.

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

Article 37.3 of the SCCA Arbitration Rules 2023 provides guidance on how the Arbitral Tribunal should make its decisions with regard to the applicable law, contractual terms, and industry practices. Here is a breakdown of its key components:

1. **Applicable Law:** The article emphasises that the Arbitral Tribunal’s decisions should be aligned with the terms of the contract, if a contract exists between the parties. This underscores the principle of party autonomy, meaning that the parties’ intentions as expressed in their contract should be respected and upheld by the Arbitral Tribunal.
2. **Contractual Intentions:** The article ensures that the contractual terms agreed upon by the parties serve as a cornerstone for the Arbitral Tribunal’s decision-making process. This reinforces the principle that parties are bound by the agreements they willingly entered into and that the arbitration process should respect these agreements.
3. **Usage of Trade:** The article also instructs the Arbitral Tribunal to consider any usage of trade that is relevant to the transaction. “Usage of trade” refers to established practices and customs within a particular industry or field. By taking this into account, the Arbitral Tribunal aims to ensure that its decisions are not only legally sound but also aligned with industry norms and practices.
4. **Balancing Act:** The article reflects a balance between parties’ autonomy to set their contractual terms and the practical context in which those terms operate. It recognises that parties operate within specific industries with established norms, and these norms can influence the interpretation and application of their contractual provisions.
5. **Flexibility and Fairness:** This provision promotes flexibility in arbitration proceedings while maintaining fairness. The Arbitral Tribunal’s decisions are guided by both the parties’ negotiated terms and the practical realities of their transaction. This approach contributes to a more equitable outcome.
6. **Predictability:** By adhering to the terms of the contract and considering industry practices, the article enhances the predictability of arbitration outcomes. It provides parties with a sense of confidence that the decision will be rooted in both their negotiated terms and prevailing industry standards.
7. **Customisation:** The article does not prescribe a rigid approach but allows for a tailored decision that takes into account the specific circumstances of the case. This reflects the

adaptability and customisation that arbitration offers as compared to litigation in traditional courts.

In summary, Article 37.3 of the SCCA Arbitration Rules 2023 highlights the importance of the contractual terms and industry practices in the Arbitral Tribunal's decision-making process. This provision aims to strike a balance between parties' autonomy and the practical context in which their transactions occur, ultimately contributing to more well-rounded and fair arbitration outcomes.

**4. The law applicable to the arbitration agreement shall be the law applicable at the place of arbitration, unless the parties have agreed in writing on the application of other laws or rules of law.**

Article 37.4 of the SCCA Arbitration Rules 2023 addresses the issue of the law applicable to the arbitration agreement itself. Here is an analysis of its key points:

1. **Choice of Law Principle:** The article establishes a default principle regarding the law applicable to the arbitration agreement. It states that the law of the place of arbitration shall govern the arbitration agreement unless the parties have explicitly agreed otherwise in writing.
2. **Place of Arbitration:** The "place of arbitration" refers to the geographical location where the arbitration proceedings are conducted. This could be specified in the arbitration agreement itself or determined through subsequent discussions between the parties and the Arbitral Tribunal.
3. **Default Rule:** The default rule, which assigns the applicable law of the place of arbitration to the arbitration agreement, ensures predictability and consistency in the interpretation and enforcement of arbitration agreements. Parties can generally expect that the legal framework at the place of arbitration will govern the agreement's validity, interpretation, and enforceability.
4. **Party Autonomy:** The article acknowledges the principle of party autonomy by allowing parties to deviate from the default rule. If the parties have a mutual agreement to apply a different set of laws or rules of law to the arbitration agreement, they must do so in writing. This means that parties can choose a specific legal regime that they believe would best suit their intentions and expectations.
5. **Certainty and Consistency:** By stipulating that any departure from the default rule must be in writing, the article contributes to legal certainty and avoids disputes over the applicable law. Parties are required to be explicit about their choice of law for the arbitration agreement, which helps prevent ambiguity and potential conflicts down the line.
6. **Flexibility and Diversity:** While the default rule provides a clear starting point, allowing parties to select a different law provides flexibility to accommodate the diverse needs and preferences of parties engaged in international commercial transactions.
7. **Preservation of Agreement:** This provision underscores the importance of maintaining the autonomy of the arbitration agreement. Even if parties disagree about certain aspects of

their broader contract, the arbitration agreement can remain valid and enforceable if it meets the requirements of the applicable law.

In summary, Article 37.4 of the SCCA Arbitration Rules 2023 addresses the law applicable to the arbitration agreement itself. It establishes the default principle that the law of the place of arbitration governs the arbitration agreement unless parties have expressly agreed otherwise in writing. This provision reflects a balance between predictability and party autonomy, providing flexibility while promoting clarity and consistency in the interpretation and enforcement of arbitration agreements.

### **Article 38: Settlement or Other Reasons for Termination**

**1. If the parties settle the dispute before the Arbitral Tribunal issues its final award, the Arbitral Tribunal shall terminate the arbitration and may, if requested by all parties, record the settlement in the form of a consent award on agreed terms. The Arbitral Tribunal is not obliged to state the reasons for such a consent award. Where a consent award has been issued, the provisions of Article 36(3) and (4) shall apply.**

Article 38.1 of the SCCA Arbitration Rules 2023 addresses the situation where parties settle their dispute before the Arbitral Tribunal issues its final award. Here is an analysis of its key points:

1. **Settlement Prior to Final Award:** The article pertains to the scenario in which the parties resolve their dispute through settlement before the Arbitral Tribunal renders its final award. This often happens when the parties find mutually acceptable terms for resolving their differences during the course of the arbitration proceedings.
2. **Termination of Arbitration:** If the parties reach a settlement, the Arbitral Tribunal is required to terminate the arbitration proceedings. This reflects the principle that arbitration is a voluntary process based on party consent. Once parties settle their dispute, there is no need to proceed with the formal arbitration process.
3. **Consent Award:** The article introduces the concept of a “consent award.” This refers to an award that records the terms of the settlement that the parties have agreed upon. If all parties request it, the Arbitral Tribunal has the authority to issue a consent award that reflects the parties’ agreed terms of settlement.
4. **Recording Settlement:** The consent award serves as a formal record of the settlement terms that the parties have reached. While the Arbitral Tribunal is not required to provide reasons for the consent award, its issuance ensures that the settlement terms are documented and legally binding.
5. **Article 36(3) and (4):** The article states that the provisions of Article 36(3) and (4) shall apply when a consent award is issued. This refers to the confidentiality and approval process for awards. Specifically, the provisions of Article 36(3) relate to the publication of awards, while Article 36(4) requires that the award be reviewed and approved by the SCCA Court before issuance.
6. **Flexibility and Efficiency:** Allowing the issuance of a consent award provides parties with a streamlined process to formalise their settlement. This can be particularly useful in

cases where parties want to avoid the time and costs associated with a full arbitration hearing.

7. **Finality and Enforceability:** A consent award is a legally binding document that concludes the arbitration process and gives effect to the settlement agreement. It provides a clear record of the parties' intentions and facilitates the enforcement of the settlement terms.

In summary, Article 38.1 of the SCCA Arbitration Rules 2023 addresses the process and implications of settling a dispute before the Arbitral Tribunal issues its final award. It allows for the termination of the arbitration proceedings, the issuance of a consent award to record the settlement terms, and the application of certain procedural provisions to the consent award. This provision recognises the importance of party autonomy and provides an efficient mechanism for parties to formalise their settlement agreements within the context of arbitration.

**2. If it becomes unnecessary or impossible to continue the arbitration due to the non-payment of advance deposits required by the Administrator, the arbitration may be suspended or terminated as provided in Article 43(4).**

Article 38.2 of the SCCA Arbitration Rules 2023 deals with a situation where the arbitration process is impacted by the non-payment of advance deposits required by the Administrator. Here is an analysis of this article:

1. **Advance Deposits:** Advance deposits are payments made by parties to cover the costs associated with the arbitration proceedings. These costs can include arbitrator fees, administrative expenses, and other related costs. The SCCA requires parties to make these deposits to ensure the smooth progress of the arbitration process.
2. **Unnecessary or Impossible to Continue:** The article focuses on situations where the non-payment of advance deposits makes it "unnecessary or impossible" to continue the arbitration. This could occur if the lack of payment hinders the ability to cover essential costs, such as arbitrator fees or administrative expenses. In such cases, the arbitration process may be significantly delayed or hindered.
3. **Suspension or Termination:** Article 38.2 stipulates that if the non-payment of advance deposits makes it unfeasible to proceed with the arbitration, the arbitration may be "suspended or terminated" as provided in Article 43(4). This cross-reference suggests that Article 43(4) likely contains provisions outlining the specific circumstances and procedures for suspending or terminating an arbitration due to non-payment.
4. **Preserving Fairness and Integrity:** Advance deposits help ensure that the arbitration process is conducted fairly and efficiently. They cover the costs incurred by the arbitrators and administrators to conduct the proceedings. The requirement for advance deposits is a common practice in arbitration institutions to prevent delays or disruptions due to financial issues.
5. **Incentive for Financial Responsibility:** By explicitly addressing the consequences of non-payment of advance deposits, this article incentivises parties to be financially responsible and fulfil their obligations to avoid hindering the arbitration process.



6. **Arbitration Efficiency:** This provision contributes to maintaining the efficiency and integrity of the arbitration process. Without the necessary funds to cover costs, the arbitration process could be hampered, leading to delays and inefficiencies that negatively impact the parties' interests.

In summary, Article 38.2 of the SCCA Arbitration Rules 2023 addresses the impact of non-payment of advance deposits on the arbitration process. It highlights the potential suspension or termination of arbitration when the non-payment renders the continuation of proceedings impractical. This provision ensures that the arbitration process remains efficient and that parties fulfil their financial obligations to avoid disruptions to the proceedings.

**3. If it becomes unnecessary or impossible to continue the arbitration for any reason other than as stated in paragraphs 1 and 2 of this Article, the Arbitral Tribunal shall inform the parties of its intention to terminate the arbitration. The Arbitral Tribunal shall then issue an order terminating the arbitration, unless a party raises justifiable grounds for objection.**

Article 38.3 of the SCCA Arbitration Rules 2023 addresses a scenario where the arbitration process is no longer feasible or necessary due to reasons other than those outlined in previous sections. Here is an analysis of this article:

1. **Termination of Arbitration:** This article deals with circumstances where continuing the arbitration is deemed "unnecessary or impossible" for reasons other than those mentioned in the previous sections (paragraphs 1 and 2 of Article 38). This might include situations such as parties reaching a settlement or withdrawal of claims.
2. **Communication with Parties:** The article outlines the procedure the Arbitral Tribunal must follow in such cases. The Arbitral Tribunal must inform the parties of its intention to terminate the arbitration. This step is crucial for maintaining transparency and ensuring that all parties are aware of the potential termination of the proceedings.
3. **Justifiable Grounds for Objection:** While the default action is for the Arbitral Tribunal to issue an order terminating the arbitration, the article allows for an exception. If any party raises "justifiable grounds for objection," the Arbitral Tribunal must consider these objections before finalising the termination of the proceedings. This provision safeguards against arbitrary or unilateral termination of the arbitration process.
4. **Protecting Party Rights:** By providing the opportunity for parties to object and present justifiable grounds, this article ensures that the parties' rights are protected. It prevents the termination of proceedings without proper consideration of valid concerns raised by the parties.
5. **Promoting Fairness:** The article underscores the importance of fairness and due process throughout the arbitration process. Even in situations where termination appears to be appropriate, parties are given the chance to voice their concerns and provide any reasons for continuation.
6. **Flexibility and Adaptability:** This provision acknowledges that arbitration proceedings may encounter unexpected developments that necessitate termination. By allowing for the

termination of the arbitration process when it is no longer necessary or feasible, the article reflects the flexibility and adaptability inherent in arbitration.

In summary, Article 38.3 of the SCCA Arbitration Rules 2023 provides a framework for terminating the arbitration process when it becomes unnecessary or impossible for reasons not covered by the previous sections. It emphasises the importance of communication, transparency, and fairness in handling such situations, and it ensures that parties have an opportunity to raise justifiable objections before the proceedings are terminated.

### **Article 39: Interpretation and Correction of Award, Request for Additional Award**

**1. Within 30 days after the receipt of an award, any party may transmit to the Administrator, with notice to the other parties, a request to interpret the award, correct any clerical, typographical, or computational errors, or make an additional award as to the claims presented but omitted from the award.**

Article 39.1 of the SCCA Arbitration Rules 2023 addresses the actions that parties can take within a specified timeframe after receiving an arbitral award. Here is an analysis of this article:

1. **Time Limit for Requests:** Similar to the previous article (Article 38.1), Article 39.1 establishes a time limit of 30 days following the receipt of an award within which parties can take specific actions. This limited timeframe ensures that parties address any issues promptly after the issuance of the award.
2. **Range of Requests:**
  - a. **Interpretation of Award:** Parties are given the option to request an interpretation of the award. This acknowledges that awards may contain provisions that could be ambiguous or open to different interpretations. This provision allows parties to seek clarification to understand the intended meaning of specific parts of the award.
  - b. **Correction of Errors:** The article provides for the correction of clerical, typographical, or computational errors in the award. This enables parties to rectify mistakes that do not impact the substance of the award.
  - c. **Additional Award:** Parties are granted the ability to request an additional award to address claims that were presented in the arbitration but were omitted from the original award. This safeguards against the inadvertent omission of claims.
3. **Notice Requirement:** Similar to the previous article, parties are required to provide notice to the other parties when transmitting their request to the Administrator. This ensures transparency and allows all parties to be informed of the actions being taken in response to the award.
4. **Role of the Administrator:** Requests made under this article are directed to the Administrator, who plays a central role in facilitating the post-award process. This centralisation helps streamline the process and maintain consistency in how such requests are handled.

5. **Balancing Parties' Rights and Finality:** Article 39.1 strikes a balance between preserving parties' rights to address potential issues with the need to maintain the finality and efficiency of the arbitration process. By imposing a specific time limit, the article encourages timely action and avoids unnecessary delays.
6. **Procedural Mechanism:** This article provides a procedural mechanism for parties to address issues that may arise after the award has been issued. It recognises that parties may need to seek clarification, rectify errors, or address omissions to ensure the proper implementation of the award.

In summary, Article 39.1 of the SCCA Arbitration Rules 2023 sets out a clear framework for parties to take specific actions within 30 days of receiving an arbitral award. It addresses the potential need for interpretation, correction of errors, and the issuance of additional awards. This provision aims to strike a balance between protecting parties' rights and maintaining the efficiency and finality of the arbitral process.

**2. Within 45 days from the date the Administrator refers a request as set forth in paragraph 1 of this Article, and any response thereto, to the Arbitral Tribunal, the Arbitral Tribunal shall determine whether such a request is justified. The Arbitral Tribunal shall state the reasons upon which its determination or additional award is based, which shall form part of the concerned award. The provisions of Article 36(3) and (4) shall apply.**

Article 39.2 of the SCCA Arbitration Rules 2023 elaborates on the process and timeline for the Arbitral Tribunal's consideration of requests made under Article 39.1. Here is an analysis of this article:

1. **Time Limit for Arbitral Tribunal's Determination:** This article establishes a time limit of 45 days from the date the Administrator refers the request and any corresponding response to the Arbitral Tribunal. Within this period, the Arbitral Tribunal is required to evaluate whether the request made under Article 39.1 is justified. This timeframe ensures a relatively swift resolution to the issues raised after the issuance of the award.
2. **Scope of Arbitral Tribunal's Determination:**
  - a. **Justification of the Request:** The Arbitral Tribunal is tasked with determining whether the request made by a party under Article 39.1 is justified. This determination ensures that any actions taken, such as interpreting the award or making an additional award, are based on valid grounds and serve to address legitimate concerns.
  - b. **Reasoning and Record:** The article emphasises that the Arbitral Tribunal's determination or any additional award it may issue should be accompanied by clear reasons. These reasons are essential to provide transparency and a clear record of the rationale behind the Tribunal's decisions. These reasons become part of the concerned award, contributing to the overall transparency and accountability of the process.
3. **Incorporation of Article 36(3) and (4):** The article incorporates the provisions of Article 36(3) and (4) of the SCCA Arbitration Rules 2023. These provisions relate to confidentiality, publication, and the approval process of awards. This ensures that the

same principles applicable to awards also extend to determinations and additional awards made under Article 39.2.

4. **Administrator's Role:** This article acknowledges the role of the Administrator in referring the request and response to the Arbitral Tribunal. This coordination ensures that the parties' requests are appropriately considered by the Tribunal within the stipulated timeframe.
5. **Efficiency and Finality:** The article reinforces the importance of timely resolution and the maintenance of finality in the arbitration process. By providing a clear timeline for the Arbitral Tribunal's determination, the article contributes to efficient proceedings.
6. **Transparency and Accountability:** Requiring the Arbitral Tribunal to state the reasons for its determination enhances transparency and accountability. This practice allows parties to understand the Tribunal's decision-making process and fosters trust in the arbitration proceedings.

In summary, Article 39.2 of the SCCA Arbitration Rules 2023 outlines the procedures and timeframe for the Arbitral Tribunal's evaluation of requests made under Article 39.1. It emphasises the necessity for justifying such requests and highlights the importance of clear reasoning. The incorporation of certain provisions from Article 36 ensures consistency and maintains the principles of confidentiality and finality throughout the process.

**3. The Tribunal may, on its own initiative and within 30 days of the date of the award, correct any clerical, typographical, or computational errors, or make an additional award as to claim presented but omitted from the award. The provisions of Article 36(3) and (4) shall apply.**

Article 39.3 of the SCCA Arbitration Rules 2023 outlines the authority of the Arbitral Tribunal to correct errors or omissions in an award and make additional awards, and it provides context for the procedural aspects of this process. Here is an analysis of this article:

1. **Tribunal's Initiative:** This article confers the Arbitral Tribunal with the power to take the initiative to correct certain types of errors or omissions in the award. Specifically, the Tribunal may correct clerical, typographical, or computational errors. It may also issue an additional award if a claim was presented but inadvertently omitted from the original award. This provision aims to ensure accuracy and completeness in the Tribunal's decisions.
2. **Time Limit for Corrections:** The article sets a time limit of 30 days from the date of the award within which the Arbitral Tribunal can exercise its authority to correct errors or make additional awards. This timeframe ensures that corrections and omissions are promptly addressed, contributing to the efficiency and finality of the arbitration process.
3. **Scope of Corrections and Additional Awards:**
  - a. **Clerical, Typographical, and Computational Errors:** The Tribunal's power to correct errors is limited to those that are clerical, typographical, or computational in nature. These errors are often inadvertent and do not involve substantive changes to the award's content.

- b. **Additional Awards:** The Tribunal’s authority to make additional awards extends to claims that were presented but inadvertently omitted from the original award. This provision enables the Tribunal to rectify oversights and provide a comprehensive resolution to the dispute.
4. **Incorporation of Article 36(3) and (4):** Similar to Article 39.2, this article incorporates the provisions of Article 36(3) and (4) of the SCCA Arbitration Rules 2023. These provisions address confidentiality, publication, and approval processes, ensuring consistency in the treatment of corrections, omissions, and additional awards.
5. **Efficiency and Finality:** Allowing the Tribunal to take the initiative to correct errors and omissions underscores the importance of maintaining an efficient and final resolution to the arbitration. Swift correction of minor errors contributes to the overall integrity of the award.
6. **Transparency and Accountability:** By incorporating Article 36 provisions, this article maintains transparency and accountability in the process of correcting errors and issuing additional awards. The requirement to provide reasons aligns with principles of transparency and ensures parties understand the rationale behind corrections and additional awards.

In summary, Article 39.3 of the SCCA Arbitration Rules 2023 outlines the Arbitral Tribunal’s authority to correct errors and omissions in an award and make additional awards. It emphasises the Tribunal’s role in maintaining accuracy and completeness in its decisions and ensures that the correction process adheres to principles of transparency and finality.

**4. The parties shall be responsible for all costs associated with any interpretation, correction, or an additional award, and the Arbitral Tribunal may allocate such costs.**

Article 39.4 of the SCCA Arbitration Rules 2023 addresses the allocation of costs associated with requests for interpretation, correction, or additional awards. Here is an analysis of this article:

1. **Cost Responsibility:** This article establishes that the parties are responsible for covering the costs related to any requests for interpretation, correction, or additional award. Such costs could include the Tribunal’s time and effort in addressing these requests, as well as any administrative expenses incurred.
2. **Allocation of Costs:** The article grants the Arbitral Tribunal the authority to allocate the costs associated with these requests among the parties. This allocation may be based on various factors, such as the nature of the request, the complexity of the issue, and the conduct of the parties. The Tribunal’s discretion in allocating costs ensures a fair and balanced distribution of financial responsibility.
3. **Incentive for Reasonable Requests:** By requiring parties to bear the costs of requesting interpretation, correction, or additional awards, the article encourages parties to make such requests judiciously and for valid reasons. This approach discourages frivolous or unnecessary requests that could potentially prolong the arbitration process.

4. **Transparency in Cost Allocation:** The allocation of costs is subject to the Tribunal's discretion, which should be exercised transparently and in accordance with principles of fairness. The Tribunal's decision on cost allocation should be based on a reasoned assessment of the circumstances.
5. **Efficiency and Resource Management:** Placing the financial responsibility on the parties aligns with the broader goal of maintaining efficiency and managing resources throughout the arbitration process. Parties are likely to be more cautious in seeking corrections or additional awards when they are aware of the potential costs involved.
6. **Balancing Interests:** The article strikes a balance between the parties' rights to seek clarification or correction and the need to manage the process in a cost-effective manner. It prevents the misuse of the correction process while ensuring parties have a mechanism to address genuine concerns about errors or omissions in the award.

In summary, Article 39.4 of the SCCA Arbitration Rules 2023 outlines the parties' responsibility for costs associated with requests for interpretation, correction, or additional awards. It also empowers the Arbitral Tribunal to allocate these costs among the parties based on considerations of fairness and efficiency. This provision serves as a mechanism to encourage responsible and reasonable use of the correction process while maintaining transparency in cost allocation.

#### **Article 40: Costs of Arbitration**

**1. The Arbitral Tribunal shall determine the costs of arbitration, other than those to be determined by the SCCA Court, and state these in its award. In its award, the Arbitral Tribunal shall allocate the costs of arbitration among the parties at its discretion, taking into account the circumstances of the case including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner.**

Article 40.1 of the SCCA Arbitration Rules 2023 pertains to the determination and allocation of costs of arbitration by the Arbitral Tribunal. Here is an analysis of this article:

1. **Cost Determination:** This article empowers the Arbitral Tribunal to determine the costs of the arbitration, except for those costs that are designated to be determined by the SCCA Court. These costs may encompass various expenses associated with the arbitration proceedings, such as the Tribunal's fees, administrative charges, hearing costs, and other related expenses.
2. **Transparency and Accountability:** By requiring the Arbitral Tribunal to state the costs of arbitration in its award, the article promotes transparency and accountability. This ensures that parties are aware of the financial aspects of the arbitration process, allowing for a clearer understanding of the financial implications.
3. **Discretion in Cost Allocation:** The article gives the Arbitral Tribunal discretion to allocate the costs of arbitration among the parties. This allocation takes into account various factors, including the circumstances of the case and the conduct of each party during the arbitration proceedings.

4. **Efficiency and Cost-Effectiveness:** The Arbitral Tribunal’s discretion in cost allocation is guided by considerations of expeditiousness and cost-effectiveness. This encourages parties to conduct the arbitration in a manner that minimises unnecessary delays and expenses.
5. **Balancing Equities:** The Tribunal’s discretion in allocating costs allows it to consider the overall equities of the case. For instance, if one party’s actions or conduct lead to unwarranted delays or additional expenses, the Tribunal can take that into account when determining cost allocation.
6. **Encouraging Responsible Conduct:** By linking cost allocation to the efficiency and cost-effectiveness of the parties’ conduct, the article incentivises responsible behaviour throughout the arbitration process. Parties are encouraged to engage in timely submissions, participate actively in proceedings, and cooperate with procedural directions.
7. **Fairness and Justness:** The article promotes a fair and just allocation of costs by allowing the Arbitral Tribunal to consider all relevant circumstances. This ensures that cost allocation is not arbitrary but based on a reasoned assessment of the parties’ actions and the specific facts of the case.
8. **Avoiding Unnecessary Costs:** The provision serves as a mechanism to deter parties from pursuing dilatory tactics, frivolous claims, or unnecessary procedural manoeuvres that could lead to higher costs. Parties are more likely to approach the arbitration process with due diligence and seriousness.

In summary, Article 40.1 of the SCCA Arbitration Rules 2023 grants the Arbitral Tribunal authority to determine and allocate the costs of arbitration. The Tribunal’s discretion in cost allocation is guided by principles of expeditiousness, cost-effectiveness, and the parties’ conduct throughout the proceedings. This provision encourages responsible and efficient behaviour while ensuring that costs are allocated in a fair and just manner.

**2. The costs of arbitration shall include, without limitation:**

- a) **The Arbitral Tribunal fees and expenses;**
- b) **The costs of assistance required by the Arbitral Tribunal, including expert fees;**
- c) **The SCCA administrative fees and expenses;**
- d) **The reasonable legal and other costs incurred by the parties; and**
- e) **Any costs incurred in connection with an application for interim or emergency relief in accordance with Articles 7 or 28.**

Article 40.2 of the SCCA Arbitration Rules 2023 outlines the various components that constitute the “costs of arbitration.” Here is an analysis of this article:

1. **Comprehensive Definition:** This article provides a comprehensive definition of what constitutes the costs of arbitration. It covers a range of expenses that parties may incur throughout the arbitration process.
2. **Tribunal Fees and Expenses:** Subsection (a) highlights that the costs include fees and expenses related to the Arbitral Tribunal. This encompasses the compensation for arbitrators' services, which typically includes their time spent on the case, any travel expenses, and other reasonable expenses associated with conducting the arbitration.
3. **Assistance Costs:** Subsection (b) refers to costs related to the assistance required by the Arbitral Tribunal, including expert fees. This recognises that in some cases, the Tribunal may require specialised expertise to address complex technical, financial, or scientific matters, and these costs are part of the overall arbitration costs.
4. **Administrative Fees:** Subsection (c) mentions the SCCA administrative fees and expenses. These are the charges associated with the administration of the arbitration process by the SCCA, which includes services such as case management, appointment of arbitrators, and administrative support.
5. **Legal and Other Costs:** Subsection (d) covers reasonable legal and other costs incurred by the parties. This includes the legal fees paid by the parties to their legal representatives for preparing submissions, attending hearings, conducting legal research, and other related tasks.
6. **Interim or Emergency Relief Costs:** Subsection (e) specifically mentions costs related to applications for interim or emergency relief under Articles 7 or 28 of the Rules. These costs could arise if parties seek urgent relief from the Tribunal before a final award is rendered.
7. **Clarity and Predictability:** By enumerating these various components, the article provides parties with clarity and predictability regarding the types of expenses that are considered as part of the costs of arbitration. This helps parties in assessing and budgeting for the arbitration proceedings.
8. **Balancing Financial Considerations:** The article strikes a balance between ensuring that all essential costs are accounted for while allowing parties to make informed decisions regarding the initiation and continuation of arbitration proceedings.
9. **Transparency and Accountability:** The detailed breakdown of the components that constitute the costs of arbitration contributes to the transparency and accountability of the arbitration process. Parties have a clearer understanding of how their financial resources will be utilised.
10. **Encouraging Efficient Conduct:** By including a variety of costs, the article encourages parties to engage in a responsible and efficient manner throughout the arbitration process, minimising unnecessary expenses and delays.

In summary, Article 40.2 of the SCCA Arbitration Rules 2023 provides a comprehensive definition of the costs of arbitration, encompassing various expenses related to the Arbitral Tribunal, assistance, administration, legal representation, and specific applications for interim or emergency relief. This



definition ensures transparency, predictability, and accountability in the financial aspects of the arbitration proceedings.

#### **Article 41: SCCA Administrative Fees and Expenses**

**1. The SCCA administrative fees shall be determined by the SCCA Court in accordance with Appendix I and the SCCA Fee Schedule in force at the time of the commencement of the arbitration.**

Article 41.1 of the SCCA Arbitration Rules 2023 pertains to the determination of SCCA administrative fees for arbitration cases. Here is an analysis of this article:

1. **Fee Determination:** This article establishes that the SCCA administrative fees, which cover the costs associated with the administration of the arbitration proceedings by the Singapore Chamber of Commerce Arbitration (SCCA), are to be determined by the SCCA Court. The fees are based on the guidelines provided in Appendix I and the SCCA Fee Schedule that is applicable at the commencement of the arbitration.
2. **Transparent and Predictable:** By referring to a predefined fee schedule (Appendix I and the SCCA Fee Schedule), the article promotes transparency and predictability in the calculation of administrative fees. Parties can know in advance what the administrative fees will be based on the prevailing schedule.
3. **Flexibility for SCCA Court:** The SCCA Court's role in determining administrative fees provides flexibility to adjust the fees in accordance with changing circumstances, without needing to modify the rules themselves. This enables the SCCA Court to align the fees with the organisation's financial needs and changing economic conditions.
4. **Applicability at Commencement:** The reference to the time of "commencement of the arbitration" ensures that parties are aware of the fee schedule in effect when they initiate the arbitration process. This clarity helps parties plan and budget for arbitration expenses.
5. **Costs as a Consideration:** The administrative fees are an important consideration for parties when choosing arbitration as a dispute resolution mechanism. The SCCA Fee Schedule aids parties in understanding the financial implications of selecting SCCA-administered arbitration.
6. **Appendix I:** The mention of "Appendix I" suggests that the SCCA provides additional details in this section, which could include further explanations or guidelines related to the administrative fees.
7. **Balance Between Access and Costs:** The article reflects a balance between providing access to arbitration services and ensuring that the organisation's administrative costs are covered. It also reflects a commitment to transparency in financial matters.
8. **Efficient Administration:** Clearly defined administrative fees streamline the administration of cases and contribute to the overall efficiency of the arbitration process.

In summary, Article 41.1 of the SCCA Arbitration Rules 2023 establishes the process for determining SCCA administrative fees for arbitration cases. It emphasises transparency, predictability, and flexibility

in setting these fees, thereby helping parties make informed decisions about the financial aspects of SCCA-administered arbitration proceedings.

**2. The SCCA Court may adjust the SCCA administrative fees at any time during the arbitration. The SCCA Court shall make the final determination of the SCCA administrative fees and expenses at the conclusion of the proceedings.**

Article 41.2 of the SCCA Arbitration Rules 2023 deals with the authority and timing of adjustments to SCCA administrative fees in the context of arbitration proceedings. Here is an analysis of this article:

1. **Fee Adjustment Authority:** This article empowers the SCCA Court to adjust the SCCA administrative fees at any point during the arbitration proceedings. This authority allows the SCCA Court to respond to unforeseen developments or changes in circumstances that could impact the financial aspects of the arbitration process.
2. **Flexibility and Adaptability:** By enabling fee adjustments during the arbitration, the SCCA Court can ensure that the administrative fees remain reasonable and proportionate to the scope and complexity of the case. This flexibility aligns with the goal of facilitating access to justice and making the arbitration process adaptable to changing circumstances.
3. **Balancing Interests:** The authority to adjust fees allows the SCCA to strike a balance between covering administrative costs and making arbitration accessible and cost-effective for parties. This helps maintain the integrity of the arbitration process while avoiding undue financial burden on parties.
4. **Decision Timing:** The article specifies that the SCCA Court will make the final determination of the SCCA administrative fees and expenses at the conclusion of the proceedings. This timing ensures that parties have clarity about the overall financial obligations associated with the arbitration before the process concludes.
5. **Transparency and Communication:** Parties can anticipate that SCCA administrative fees might be adjusted and can receive the necessary information about any changes in a transparent manner. This helps parties plan their financial commitments accordingly.
6. **Implications for Cost Estimation:** The ability to adjust fees could affect parties' initial cost estimates for the arbitration. Parties should consider that the actual administrative fees might vary based on adjustments made during the proceedings.
7. **Final Determination:** The requirement for the SCCA Court to make the final determination of fees at the conclusion of the proceedings ensures that parties are provided with a definitive assessment of their financial obligations under SCCA-administered arbitration.
8. **Commitment to Fairness:** By allowing for adjustments and making the final determination, the SCCA demonstrates its commitment to ensuring that the administrative fees are fair, justifiable, and reflective of the circumstances of each individual case.

In summary, Article 41.2 of the SCCA Arbitration Rules 2023 empowers the SCCA Court to adjust SCCA administrative fees during arbitration proceedings and mandates that the final determination of these

fees occurs at the conclusion of the proceedings. This provision reflects a commitment to flexibility, transparency, and fairness in financial matters related to SCCA-administered arbitration.

#### Article 42: Arbitral Tribunal Fees and Expenses

**1. The Arbitral Tribunal fees shall be determined by the SCCA Court unless the parties agree to an alternative fee arrangement based on an hourly rate prior to the constitution of the Arbitral Tribunal.**

**a) Where the SCCA Fee Schedule applies, the SCCA Court shall determine the Arbitral Tribunal fees in accordance with Appendix I and the SCCA Fee Schedule in force at the time of commencement of the arbitration. The SCCA may adjust the Arbitral Tribunal fees at any time during the arbitration. The SCCA Court shall make the final determination of the Arbitral Tribunal's fees at the conclusion of the proceedings.**

**b) Where an alternative fee arrangement based on an hourly rate applies, the hourly rate agreed to by the nominating party and that nominated co arbitrator shall apply. In the case of a sole or presiding arbitrator, the hourly rate agreed to by the parties and the sole or presiding arbitrator shall apply. Where the parties fail to agree or the SCCA Court directly appoints the arbitrator, the SCCA Court shall determine the hourly rate to be paid to that arbitrator.**

Article 42.1 of the SCCA Arbitration Rules 2023 addresses the determination of Arbitral Tribunal fees, including options for fee arrangements and the process for determining these fees. Here is an analysis of this article:

1. **Arbitral Tribunal Fees Determination:** This article establishes how Arbitral Tribunal fees are determined. It specifies that the SCCA Court is responsible for determining these fees, unless the parties agree on an alternative fee arrangement based on an hourly rate before the Arbitral Tribunal is constituted.
2. **SCCA Fee Schedule Application:** In cases where the SCCA Fee Schedule applies, the SCCA Court determines the Arbitral Tribunal fees according to the rules laid out in Appendix I and the SCCA Fee Schedule in effect at the start of the arbitration. This ensures transparency and consistency in fee determination.
3. **Flexibility in Fee Adjustments:** The article also empowers the SCCA to adjust Arbitral Tribunal fees during the arbitration proceedings. This flexibility allows adjustments to be made to reflect the evolving dynamics of the case and maintain fairness in fee allocation.
4. **Final Determination of Fees:** Similar to the administrative fees, the SCCA Court is responsible for making the final determination of the Arbitral Tribunal fees at the conclusion of the proceedings. This ensures that parties have a clear understanding of their financial obligations by the end of the arbitration.
5. **Alternative Fee Arrangements:** The article introduces an alternative fee arrangement option based on an hourly rate. If the parties agree on such an arrangement prior to the constitution of the Arbitral Tribunal, the hourly rate agreed upon by the nominating party and the nominated co-arbitrator will be applied. This provides parties with flexibility in

structuring fee arrangements based on the particular needs and preferences of the arbitration.

6. **Sole or Presiding Arbitrator:** In cases involving a sole or presiding arbitrator, the hourly rate is agreed upon by the parties and the arbitrator. If there is a lack of agreement or if the SCCA Court directly appoints the arbitrator, the SCCA Court determines the hourly rate for that arbitrator.
7. **Transparent Fee Process:** By outlining different scenarios for fee determination and specifying the role of the SCCA Court and parties in setting fees, the article contributes to a transparent process that ensures parties are aware of the cost implications from the outset.
8. **Balance Between Fairness and Control:** The article strikes a balance between parties' autonomy in agreeing on fee arrangements and the need for oversight by the SCCA Court to maintain fairness and consistency in fee determination.

In summary, Article 42.1 of the SCCA Arbitration Rules 2023 provides a comprehensive framework for determining Arbitral Tribunal fees. It outlines the roles of the SCCA Court, parties, and alternative fee arrangements, promoting transparency, flexibility, and fairness in fee allocation for SCCA-administered arbitrations.

## **2. The Arbitral Tribunal's expenses shall be reasonable, and the SCCA Court shall make the final determination thereof at the conclusion of the proceedings.**

Article 42.2 of the SCCA Arbitration Rules 2023 addresses the determination of the Arbitral Tribunal's expenses and the role of the SCCA Court in this process. Here is an analysis of this article:

1. **Reasonable Arbitral Tribunal Expenses:** The article underscores the principle that the expenses incurred by the Arbitral Tribunal during the arbitration proceedings should be reasonable. This ensures that the costs associated with the Arbitral Tribunal's activities, such as travel, accommodation, and other expenses, are proportionate and justifiable in the context of the arbitration.
2. **SCCA Court's Final Determination:** The article assigns the responsibility for making the final determination of the Arbitral Tribunal's expenses to the SCCA Court. This means that the SCCA Court, as the overseeing authority of the arbitration, is tasked with reviewing and assessing the expenses incurred by the Arbitral Tribunal.
3. **Promoting Fairness and Transparency:** By entrusting the SCCA Court with the authority to make the final determination of the expenses, the article aims to promote fairness and transparency in the financial aspects of the arbitration process. It ensures that the expenses are subject to a review process that aligns with the overall principles of fairness and reasonableness.
4. **Aligned with Overall Principles:** This article aligns with the overarching principles of the SCCA Arbitration Rules 2023, which emphasise efficiency, transparency, and cost-effectiveness in the arbitration process. By allowing the SCCA Court to make the final determination of expenses, the article contributes to these principles.

5. **Avoiding Potential Conflicts:** By vesting the authority to determine expenses in the SCCA Court, potential conflicts of interest or concerns regarding the impartiality of the Arbitral Tribunal are minimised. This separation of roles helps ensure that the determination of expenses is objective and fair.
6. **Balancing Cost Considerations:** While the parties and the Arbitral Tribunal may take reasonable measures to conduct the arbitration efficiently and cost-effectively, the final determination of expenses by the SCCA Court acts as a safeguard to prevent any potential excesses or imbalances in the cost allocation.

In summary, Article 42.2 of the SCCA Arbitration Rules 2023 establishes a mechanism for determining the Arbitral Tribunal's expenses. By assigning the role of making the final determination to the SCCA Court, the article upholds principles of fairness, transparency, and reasonableness in the financial aspects of the arbitration process, aligning with the broader objectives of the SCCA Rules.

### **3. The SCCA Court shall decide any dispute regarding the Arbitral Tribunal fees and expenses.**

Article 42.3 of the SCCA Arbitration Rules 2023 pertains to the resolution of disputes related to the Arbitral Tribunal's fees and expenses. Here is an analysis of this article:

1. **Dispute Resolution Mechanism:** This article establishes a clear mechanism for resolving disputes that may arise between the parties and the Arbitral Tribunal regarding the determination of Arbitral Tribunal fees and expenses. It designates the SCCA Court as the decision-making body responsible for resolving such disputes.
2. **Centralised Authority:** By assigning the responsibility for deciding disputes to the SCCA Court, the article creates a centralised and authoritative mechanism for resolving financial disagreements between the parties and the Arbitral Tribunal. This helps avoid potential conflicts or challenges related to the determination of fees and expenses.
3. **Expertise and Impartiality:** The SCCA Court, being the administrative body overseeing the arbitration, is likely to possess the expertise and knowledge required to assess the reasonableness and fairness of fees and expenses. Moreover, its role enhances the perception of impartiality and neutrality in resolving disputes related to financial matters.
4. **Efficiency and Expediency:** The inclusion of this provision in the SCCA Rules ensures that disputes concerning Arbitral Tribunal fees and expenses are resolved promptly and efficiently. This contributes to the overall efficiency of the arbitration process, as parties can seek resolution of financial disputes without unnecessary delays.
5. **Promotion of Transparency:** The article supports transparency in the financial aspects of the arbitration process by offering a clear avenue for parties to raise and resolve disputes related to fees and expenses. This transparency aligns with the overarching principles of the SCCA Rules.
6. **Balancing Interests:** Article 42.3 provides a mechanism to balance the interests of both parties and the Arbitral Tribunal. While parties may have concerns about costs, the Arbitral Tribunal should be compensated fairly for its time and efforts. The involvement of the SCCA Court helps strike this balance.

In summary, Article 42.3 of the SCCA Arbitration Rules 2023 establishes the SCCA Court as the authoritative body for deciding disputes regarding the Arbitral Tribunal's fees and expenses. This provision contributes to the efficient, transparent, and balanced resolution of financial disagreements within the context of SCCA-administered arbitrations.

### Article 43: Deposits

**1. After receipt of the Request for Arbitration, the Administrator may request the Claimant to pay a provisional advance in an amount intended to cover the Arbitral Tribunal fees and expenses leading up to the case management conference. Such a provisional advance shall be credited to the Claimant's share of the advance deposit set forth in paragraph 2 of this Article.**

Article 43.1 of the SCCA Arbitration Rules 2023 addresses the payment of a provisional advance by the Claimant after the receipt of the Request for Arbitration. Let us analyse this article:

1. **Provisional Advance Request:** This provision highlights the SCCA's ability to request the Claimant to pay a provisional advance. The provisional advance is intended to cover the Arbitral Tribunal's fees and expenses until the case management conference, a significant procedural event in the arbitration process.
2. **Efficient Case Management:** By allowing the Administrator to request a provisional advance, the SCCA aims to facilitate efficient case management. This advance helps ensure that the Arbitral Tribunal's fees and expenses are covered during the initial stages of the arbitration, contributing to the smooth progression of the case.
3. **Predictable Financial Planning:** Requiring the provisional advance provides both parties and the Arbitral Tribunal with some financial predictability. It allows the Arbitral Tribunal to plan its activities and prepares the parties for the financial obligations associated with the arbitration process.
4. **Crediting the Advance Deposit:** The article specifies that the provisional advance will be credited to the Claimant's share of the advance deposit. This indicates that the provisional advance is not an additional cost but rather an initial payment that contributes to covering the overall costs of the arbitration.
5. **Transparency:** This provision emphasises transparency in financial matters. It informs the parties about the rationale for requesting the provisional advance and how it will be allocated, which can help prevent misunderstandings or disputes later in the process.
6. **Fair Allocation of Costs:** By requiring the Claimant to pay the provisional advance, the article contributes to the principle that parties should bear their fair share of the costs associated with the arbitration proceedings. This promotes fairness and equity in the financial aspects of the arbitration.

In summary, Article 43.1 of the SCCA Arbitration Rules 2023 allows the SCCA Administrator to request a provisional advance from the Claimant to cover the Arbitral Tribunal's fees and expenses until the case management conference. This provision supports efficient case management, financial predictability, and fairness in allocating costs among the parties.

**2. As soon as practicable, the SCCA Court shall fix an advance deposit in an amount likely to cover the costs referred to in Article 40(2)(a)(b)(c), and (e), to be paid by the Claimant and the Respondent in equal shares unless the parties agree, or the SCCA Court instructs, otherwise. The SCCA Court may request payment of additional advance deposits from the parties at any time during the arbitration.**

Article 43.2 of the SCCA Arbitration Rules 2023 discusses the establishment and payment of an advance deposit to cover arbitration costs. Let us break down the key points of this article:

1. **Advance Deposit Determination:** This provision establishes that the SCCA Court will determine the amount of the advance deposit that the parties need to pay. The purpose of the advance deposit is to cover certain costs associated with the arbitration process, as specified in Article 40(2)(a)(b)(c), and (e).
2. **Equitable Cost Sharing:** The article emphasises fairness by stipulating that the advance deposit should be divided equally between the Claimant and the Respondent, unless there is an agreement between the parties or an instruction from the SCCA Court to the contrary. This equal sharing of costs encourages both parties to contribute to the financial aspects of the arbitration.
3. **Costs Covered:** The advance deposit covers specific types of costs, including Arbitral Tribunal fees and expenses, assistance required by the Arbitral Tribunal (including expert fees), SCCA administrative fees and expenses, and costs incurred in connection with interim or emergency relief applications under Articles 7 or 28.
4. **Practicability and Efficiency:** The article underlines the importance of promptly fixing the advance deposit to ensure the smooth progression of the arbitration process. This approach enables the parties to anticipate and address the financial obligations associated with the arbitration.
5. **Adjustments and Additional Deposits:** The SCCA Court reserves the right to request additional advance deposits from the parties at any point during the arbitration. This flexibility ensures that there are adequate funds available to cover ongoing costs and expenses as the arbitration process unfolds.
6. **Administrative Oversight:** By entrusting the SCCA Court with the determination of the advance deposit and any potential adjustments, the article ensures administrative oversight and control over the financial aspects of the arbitration.

In summary, Article 43.2 of the SCCA Arbitration Rules 2023 establishes the procedures for determining and collecting an advance deposit to cover specified arbitration costs. The article promotes equitable cost sharing, practical financial planning, and administrative efficiency while allowing for adjustments and additional deposits as needed throughout the arbitration process.

**3. Where counterclaims, claims for the purpose of a set-off, or crossclaims are submitted, or where it otherwise appears appropriate in the circumstances, the Administrator may request separate advance deposits for the SCCA administrative fees and the Arbitral Tribunal fees.**

Article 43.3 of the SCCA Arbitration Rules 2023 addresses the situation where counterclaims, claims for set-off, or crossclaims are presented in an arbitration or when separate advance deposits for administrative and tribunal fees are deemed appropriate. Let us delve into the details of this article:

1. **Distinct Advance Deposits:** This provision allows the Administrator to request separate advance deposits for different components of the arbitration costs. Specifically, when counterclaims, claims for set-off, or crossclaims are brought into the arbitration process, or in other circumstances considered appropriate, the Administrator can ask for distinct advance deposits for the SCCA administrative fees and the Arbitral Tribunal fees.
2. **Counterclaims and Crossclaims:** Counterclaims are claims made by the Respondent against the Claimant in response to the original claim, while crossclaims involve claims between co-Respondents or co-Claimants. The article recognises that such additional claims might necessitate separate financial provisions to cover administrative and tribunal-related expenses.
3. **Efficient Financial Management:** By permitting the Administrator to request separate advance deposits, the article facilitates efficient financial management of the arbitration process. It helps ensure that there are adequate funds allocated for both administrative and tribunal-related fees, particularly when the complexity of the case increases due to the introduction of additional claims.
4. **Customised Approach:** This provision acknowledges the diverse nature of arbitration cases and the potential need for tailored financial arrangements. The flexibility to request separate deposits based on the specific circumstances reflects the pragmatic approach of the rules.
5. **Maintaining Fairness:** Despite the separate deposits, the rules generally aim to maintain a sense of financial fairness between the parties. This fairness is preserved by establishing a baseline through the equal sharing of costs and expenses unless the circumstances warrant a departure from this principle.

In summary, Article 43.3 of the SCCA Arbitration Rules 2023 provides flexibility in the collection of advance deposits by allowing the Administrator to request separate deposits for administrative and tribunal-related fees in cases involving counterclaims, claims for set-off, crossclaims, or where such an approach is suitable given the circumstances. This provision aligns with the practical approach of the rules to ensure effective financial management of the arbitration process.

**4. If the advance deposit is not paid in a timely manner and in full as requested by the Administrator, the Administrator shall so inform the parties in order that one or more of them may make the required payment. If such payment is not made, the Arbitral Tribunal may order the**



**suspension or termination of the arbitration. If the Arbitral Tribunal has not yet been appointed, the Administrator may suspend or terminate the arbitration.**

Article 43.4 of the SCCA Arbitration Rules 2023 deals with the consequences of a party's failure to pay the requested advance deposit in a timely and complete manner. Let us examine this article in detail:

1. **Timely Payment Requirement:** This provision stipulates that parties are required to make advance deposit payments as requested by the Administrator in a timely manner. The advance deposit is intended to cover the anticipated costs of the arbitration, and the prompt payment is crucial to ensure that the proceedings can proceed smoothly.
2. **Notification by Administrator:** If a party fails to pay the required advance deposit as requested, the Administrator has the responsibility to inform all parties about this non-compliance. This notification acts as an initial step to address the issue and prompt parties to fulfil their financial obligations.
3. **Opportunity for Payment:** The article provides an opportunity for the party or parties in default to rectify the situation. Upon receiving the notification from the Administrator, the non-compliant party or parties have the chance to make the required payment.
4. **Consequences of Non-Payment:** If the non-compliant party or parties do not make the necessary payment after being informed by the Administrator, the Arbitral Tribunal may take action. Depending on the stage of the arbitration, the consequences could involve the suspension or termination of the arbitration process.
5. **Suspension or Termination:** The article outlines that if the Arbitral Tribunal has already been appointed, it has the authority to order the suspension or termination of the arbitration in response to the non-payment of the advance deposit. If the Arbitral Tribunal has not yet been appointed, the Administrator itself may suspend or terminate the arbitration.
6. **Preserving Financial Fairness:** This provision aims to ensure that both parties contribute their fair share to the anticipated costs of the arbitration. It emphasises that failing to meet financial obligations can result in serious consequences that affect the progress of the proceedings.

In summary, Article 43.4 of the SCCA Arbitration Rules 2023 establishes the importance of timely and complete payment of advance deposits to cover arbitration costs. It outlines the process by which the Administrator notifies parties of non-compliance, provides them with an opportunity to make the required payment, and specifies the potential consequences if the situation is not rectified. This approach helps ensure that the arbitration process is financially fair and efficient.

## **5. Failure of a party asserting claims to pay the advance deposit shall be deemed a withdrawal of such claims.**

Article 43.5 of the SCCA Arbitration Rules 2023 addresses the consequence of a party's failure to pay the required advance deposit in relation to asserting claims. Let us analyse this article in detail:

1. **Requirement of Advance Deposit:** This provision presupposes that parties asserting claims in the arbitration are required to pay an advance deposit as established by the rules and the requests of the Administrator. The advance deposit is a financial obligation to cover the costs of the arbitration process.
2. **Failure to Pay:** If a party asserting claims fails to pay the required advance deposit within the specified timeframe and in accordance with the Administrator's requests, Article 43.5 comes into effect.
3. **Deemed Withdrawal of Claims:** The article states that the failure of a party asserting claims to pay the advance deposit shall be deemed as that party's withdrawal of the claims. In other words, if a party does not fulfil its financial obligation by paying the advance deposit, it is assumed that the party has voluntarily chosen not to pursue its claims in the arbitration.
4. **Consequence for the Disputing Party:** This provision aims to encourage financial responsibility and participation by parties in the arbitration process. By deeming the non-payment as a withdrawal of claims, the article seeks to ensure that parties do not merely initiate claims without committing the necessary financial resources to pursue them.
5. **Protection Against Strategic Behaviour:** This provision helps prevent parties from strategically initiating claims without being genuinely committed to pursuing them. It also helps prevent situations where a party may initiate claims with the intent of disrupting or delaying the proceedings without facing any financial consequences.
6. **Balance Between Cost and Commitment:** The article establishes a balance between the financial commitment of the parties and the progress of the arbitration. It underscores that if parties want to assert claims, they must demonstrate their commitment by fulfilling their financial obligations.

In summary, Article 43.5 of the SCCA Arbitration Rules 2023 addresses the failure of a party asserting claims to pay the required advance deposit. It states that such failure will be deemed as a withdrawal of the claims, underscoring the importance of financial commitment and discouraging strategic behaviour in the arbitration process. This provision aims to maintain fairness, accountability, and efficiency in the arbitration proceedings.

**6. Once the Arbitral Tribunal issues the final award, the Administrator shall send the final award to the parties, provided that the SCCA administrative fees and expenses and the Arbitral Tribunal fees and expenses have been fully paid to the Administrator by the parties.**

Article 43.6 of the SCCA Arbitration Rules 2023 outlines the procedure regarding the issuance and distribution of the final award in relation to the payment of administrative fees and expenses, as well as Arbitral Tribunal fees and expenses. Here is a detailed analysis of this article:

1. **Final Award Issuance:** This provision establishes that once the Arbitral Tribunal has issued the final award, the Administrator of the arbitration proceedings is responsible for sending the final award to the parties involved in the dispute.

2. **Condition for Sending Final Award:** However, this article introduces a condition: the final award will be sent to the parties only if the SCCA administrative fees and expenses, as well as the Arbitral Tribunal fees and expenses, have been fully paid to the Administrator by the parties.
3. **Payment Requirement:** The requirement of full payment of administrative and tribunal fees is a procedural step to ensure that the arbitration process's financial aspects are settled before the parties receive the final award.
4. **Ensuring Compliance:** By including this requirement, the article ensures that parties fulfil their financial obligations towards the arbitration process before they receive the final award. This helps to prevent situations where the parties might delay or hinder the payment of fees after the award has been rendered.
5. **Timely Conclusion:** The provision contributes to the efficient conclusion of the arbitration proceedings. It incentivises parties to promptly settle their financial obligations, promoting a smoother transition from the issuance of the final award to the distribution of the award.
6. **Legal Certainty:** This article enhances legal certainty by making it clear that the receipt of the final award is contingent upon fulfilling financial obligations. It prevents confusion or disputes arising from parties receiving the award without having settled the necessary fees.
7. **Encouragement of Payment:** Including this requirement may encourage parties to prioritise the timely payment of fees, ultimately leading to a more efficient and effective arbitration process.

In summary, Article 43.6 of the SCCA Arbitration Rules 2023 specifies the conditions under which the final award will be sent to the parties involved. It mandates that the final award will be sent if and only if the parties have fully paid the administrative and tribunal fees, ensuring a smooth and orderly conclusion to the arbitration process while emphasising the importance of financial responsibility.

**7. After the Arbitral Tribunal has issued a final award or a termination order, the Administrator shall render an accounting to the parties of the advance deposit received and return any unused deposits to the parties after the period of time as set forth in Article 39(1) has passed.**

Article 43.7 of the SCCA Arbitration Rules 2023 addresses the procedure for handling the advance deposits paid by the parties during the arbitration process. Here is a detailed analysis of this article:

1. **Accounting and Return of Deposits:** This provision outlines the responsibilities of the Administrator after the Arbitral Tribunal has issued a final award or a termination order. Specifically, the Administrator is required to render an accounting of the advance deposits received from the parties.
2. **Unused Deposits:** The article further specifies that the Administrator must return any unused portion of the advance deposits to the parties. This pertains to the funds that were not consumed by covering the costs associated with the arbitration, including administrative fees and Arbitral Tribunal fees.

3. **Timeframe for Returning Deposits:** The return of unused deposits is subject to a specific period of time, as indicated in Article 39(1) of the SCCA Arbitration Rules 2023. Article 39(1) states that parties have 30 days after receiving the final award to transmit a request to interpret the award, correct errors, or make an additional award. Therefore, after this 30-day period has passed, any unused deposits will be returned to the parties.
4. **Financial Transparency:** By requiring an accounting of the advance deposits and the return of any unused funds, the article promotes financial transparency and accountability in the arbitration process.
5. **Encouraging Efficient Arbitration:** The provision encourages parties to efficiently manage the arbitration process and collaborate with the Administrator to ensure that unused funds are returned promptly. This may lead to more responsible financial planning during the course of the arbitration.
6. **Closure of Financial Aspect:** This article helps to formally conclude the financial aspect of the arbitration by ensuring that any unutilised funds are returned to the parties in a timely manner after the issuance of the final award or a termination order.
7. **Administrative Efficiency:** Requiring the return of unused deposits after a defined period reduces the potential for administrative delays in processing the financial aspects of the arbitration.

In summary, Article 43.7 of the SCCA Arbitration Rules 2023 establishes the process for handling advance deposits after the conclusion of the arbitration. The Administrator is tasked with providing an accounting of the deposits and returning any unused funds to the parties, reinforcing transparency, and administrative efficiency in the financial aspects of the arbitration process.

#### **Article 44: Confidentiality**

**1. Confidential information disclosed by parties or witnesses during the arbitration shall not be divulged by arbitrators (including any Emergency Arbitrator), any person appointed by the Arbitral Tribunal, the Administrator, the SCCA Board of Directors and its members, and the SCCA Court and its members, the SCCA Committees and its members, and the SCCA and its employees. Unless the parties agree, or applicable law requires, otherwise, the aforementioned bodies and persons shall keep confidential all matters relating to the arbitration and the source of any anonymized and/or redacted award, order, decision, or other ruling if published as set forth in Article 36(3).**

Article 44.1 of the SCCA Arbitration Rules 2023 focuses on the confidentiality of information disclosed during the arbitration process. Here is an analysis of this article:

1. **Scope of Confidentiality:** This provision establishes a broad scope of confidentiality that applies to various entities and individuals involved in the arbitration process. It includes arbitrators (including Emergency Arbitrators), persons appointed by the Arbitral Tribunal, the Administrator, the SCCA Board of Directors and its members, the SCCA Court and its members, SCCA Committees and their members, and the SCCA and its employees. The intention is to cover a wide range of parties who may have access to confidential information during the arbitration.

2. **Protection of Confidential Information:** The article places an obligation on the specified entities and individuals to not divulge any confidential information that is disclosed by the parties or witnesses during the arbitration. This obligation is meant to maintain the confidentiality of sensitive information presented during the proceedings.
3. **Exceptions to Confidentiality:** The article allows for exceptions to confidentiality based on the agreement of the parties or if applicable law requires disclosure. This acknowledges that there might be situations where parties may agree to disclose certain information or where legal requirements mandate the disclosure of confidential information.
4. **Confidentiality of Matters and Source of Award:** The article also emphasises that confidentiality extends not only to matters relating to the arbitration but also to the source of any anonymised and/or redacted award, order, decision, or other ruling if published in accordance with Article 36(3). This ensures that even if an award or ruling is made public, the source of the information remains confidential.
5. **Encouraging Transparency and Privacy:** The article seeks to strike a balance between the need for transparency in certain aspects of arbitration (such as publishing awards) and the privacy required to protect sensitive business information and maintain the integrity of the arbitration process.
6. **Promotion of Arbitral Integrity:** By establishing a clear obligation to maintain confidentiality, the provision contributes to the integrity of the arbitration process. It helps create an environment in which parties can freely present their case without fear of disclosure of sensitive information.
7. **Enforcement Mechanism:** The provision also serves as a basis for potential enforcement actions if a party breaches confidentiality obligations, ensuring that parties have legal recourse in case of unauthorised disclosures.

In summary, Article 44.1 of the SCCA Arbitration Rules 2023 establishes a comprehensive framework for maintaining the confidentiality of information disclosed during the arbitration process. It outlines the entities and individuals subject to confidentiality obligations, exceptions to confidentiality, and the extension of confidentiality to published awards. This article aims to balance transparency and privacy while upholding the integrity of the arbitration proceedings.

**2. Unless the parties agree otherwise, the Arbitral Tribunal may issue orders concerning the confidentiality of the arbitration or any matters in connection with the arbitration and may take measures to protect trade secrets and confidential information.**

Article 44.2 of the SCCA Arbitration Rules 2023 focuses on the authority of the Arbitral Tribunal to issue orders and take measures to ensure the confidentiality of the arbitration process and protect trade secrets and confidential information. Here is an analysis of this article:

1. **Confidentiality Orders by the Arbitral Tribunal:** This provision empowers the Arbitral Tribunal to issue orders regarding the confidentiality of the arbitration proceedings and any matters related to the arbitration. This authority allows the Arbitral Tribunal to customise confidentiality measures based on the specific circumstances of the case.

2. **Flexibility and Tailoring:** By giving the Arbitral Tribunal the discretion to issue orders, the article acknowledges that the level of confidentiality required may vary from case to case. This flexibility allows the Tribunal to tailor its orders to the unique needs of each arbitration.
3. **Protection of Trade Secrets and Confidential Information:** The provision specifically highlights the Tribunal's ability to take measures to protect trade secrets and confidential information. This recognises the significance of such proprietary information and ensures that parties can present their cases without undue risk of disclosing sensitive data.
4. **Party Agreement and Transparency:** The article allows the parties to agree on confidentiality measures different from what the Arbitral Tribunal might otherwise issue. This reflects the principle of party autonomy and recognises that parties may have their own preferences for confidentiality.
5. **Balancing Interests:** The provision strikes a balance between the need for confidentiality and transparency. It acknowledges the importance of protecting sensitive information while also ensuring that the arbitration process maintains a level of transparency that upholds its integrity.
6. **Enforcement of Confidentiality:** The article empowers the Arbitral Tribunal to enforce its orders and measures related to confidentiality. This provides parties with a mechanism to ensure compliance with the confidentiality requirements set by the Tribunal.
7. **Effective Protection of Parties:** By enabling the Arbitral Tribunal to issue confidentiality orders, the article contributes to the effective protection of parties' interests, their confidential business information, and the overall fairness of the arbitration process.

In summary, Article 44.2 of the SCCA Arbitration Rules 2023 grants the Arbitral Tribunal the authority to issue orders and take measures to maintain the confidentiality of the arbitration proceedings, protect trade secrets, and safeguard confidential information. This provision aims to strike a balance between confidentiality and transparency while ensuring that parties' sensitive data is adequately protected throughout the arbitration process.

#### **Article 45: Interpretation of Rules**

**1. The Arbitral Tribunal, or any Emergency Arbitrator, shall interpret and apply these Rules as far as they relate to their powers and duties. The Administrator shall interpret and apply all other Rules.**

Article 45.1 of the SCCA Arbitration Rules 2023 deals with the interpretation and application of the rules in relation to the powers and duties of different entities within the arbitration process. Let us analyse this article:

1. **Allocation of Interpretive Authority:** The article clearly designates the entities responsible for interpreting and applying the different rules. The Arbitral Tribunal and the Emergency Arbitrator are assigned the responsibility of interpreting and applying the rules that pertain to their respective powers and duties. On the other hand, the Administrator is entrusted with interpreting and applying all other rules.

2. **Role of the Arbitral Tribunal and Emergency Arbitrator:** By authorising the Arbitral Tribunal and the Emergency Arbitrator to interpret and apply the rules relevant to their functions, the article empowers them to make determinations that affect the conduct of the arbitration and the resolution of the dispute. This allows them to ensure the efficient and effective operation of the arbitration process within their respective domains.
3. **Role of the Administrator:** The Administrator's role in interpreting and applying all other rules underscores its role in managing administrative aspects of the arbitration process. This could involve matters related to procedural matters, communication with parties, and logistical aspects, which are crucial to the overall administration of the arbitration.
4. **Clarity and Division of Responsibilities:** The division of interpretive responsibilities between different entities clarifies who is responsible for making decisions related to specific aspects of the arbitration process. This clarity can help avoid confusion and ensure that decisions are made by the appropriate party or body.
5. **Consistency and Efficiency:** By designating specific entities for interpreting and applying particular rules, the article contributes to consistency and efficiency in the arbitration proceedings. This division of responsibilities prevents duplication of efforts and streamlines decision-making processes.
6. **Dispute Resolution Structure:** This provision enhances the overall structure of the dispute resolution process by establishing a clear framework for addressing interpretive questions that may arise during the arbitration. This helps ensure that decisions are made by the entities with the appropriate expertise and authority.
7. **Authority of Interpretation:** The article underscores the authority of the Arbitral Tribunal, the Emergency Arbitrator, and the Administrator to interpret the rules within their respective scopes. This authority is essential to maintaining the integrity and effectiveness of the arbitration process.

In conclusion, Article 45.1 of the SCCA Arbitration Rules 2023 delineates the authority for interpreting and applying the rules within the arbitration process. It allocates specific responsibilities to the Arbitral Tribunal, Emergency Arbitrator, and Administrator, ensuring clarity, consistency, and efficiency in the handling of different aspects of the arbitration proceedings.

## **2. In the case of disagreement with regard to the interpretation of the Rules, the version in the language chosen by the parties shall prevail over versions in other languages.**

Article 45.2 of the SCCA Arbitration Rules 2023 addresses the resolution of disagreements regarding the interpretation of the rules when multiple language versions are available. Let us analyse this article:

1. **Resolution of Disagreements:** The article acknowledges that disagreements might arise regarding the interpretation of the Rules. These disagreements could stem from variations in the wording of the rules across different language versions.
2. **Language Choice by Parties:** The article emphasises the importance of the language chosen by the parties for the arbitration proceedings. It asserts that when a dispute arises

about the interpretation of the rules, the version of the Rules in the language chosen by the parties shall take precedence over other language versions.

3. **Clarity and Consistency:** The provision seeks to ensure clarity and consistency in the arbitration process. By designating the version in the chosen language as the prevailing interpretation, potential ambiguities or discrepancies arising from different language versions are avoided.
4. **Preserving Party Autonomy:** The article respects the autonomy of the parties in selecting the language for their arbitration. It upholds the principle that parties should have the freedom to choose the language that they are most comfortable with for the proceedings.
5. **Mitigating Interpretive Challenges:** Disagreements about the interpretation of the rules can introduce uncertainty and disputes in the arbitration process. By indicating that the version in the chosen language prevails, the article provides a mechanism to mitigate such challenges and maintain procedural consistency.
6. **Promotion of Efficiency:** By establishing a clear mechanism to resolve interpretation disagreements, the article contributes to the efficiency of the arbitration process. It prevents prolonged debates over language variations and ensures that disputes can be resolved promptly.
7. **Balance Between Language Versions:** The article strikes a balance between different language versions of the rules. It recognises that while the chosen language version prevails, it does not invalidate the other language versions. Instead, it provides a clear directive for interpretation disputes when they occur.

In summary, Article 45.2 of the SCCA Arbitration Rules 2023 establishes a framework for resolving disagreements related to the interpretation of the rules when different language versions exist. It prioritises the version in the language chosen by the parties and aims to ensure clarity, consistency, and efficiency in the arbitration process while respecting party autonomy.

#### **Article 46: Cybersecurity, Privacy, and Data Protection**

**1. Parties, arbitrators, and the SCCA shall adopt information security measures that are reasonable in the circumstances of the case. In determining which specific information security measures are reasonable for a particular arbitration, the following factors should be considered: (1) the risk profile of the arbitration; (2) the existing information security practices, infrastructure, and capabilities of the parties, arbitrators, and the SCCA; (3) the burden, costs, and the relative resources of the parties, arbitrators, and the SCCA; (4) the proportionality relative to the size, value, and risk profile of the dispute; and (5) the efficiency of the arbitration.**

Article 46.1 of the SCCA Arbitration Rules 2023 addresses the adoption of information security measures by parties, arbitrators, and the SCCA. Let us analyse this article:

1. **Information Security Measures:** The article emphasises the importance of information security measures in the context of arbitration. It recognises the need for safeguarding sensitive information and data involved in the arbitration process, which could include confidential documents, evidence, and communications.



2. Reasonableness: The article mandates that the adopted information security measures should be reasonable in the circumstances of the case. This requirement ensures that the measures implemented are appropriate and commensurate with the nature of the dispute and the sensitivities of the information involved.
3. Factors for Determining Reasonableness:
  - a. Risk Profile of the Arbitration: The article highlights that the risk profile of the arbitration should be taken into consideration when determining suitable security measures. More sensitive or high-stakes disputes may require higher levels of security.
  - b. Existing Information Security Practices: The existing information security practices, infrastructure, and capabilities of the parties, arbitrators, and the SCCA play a role in shaping the choice of measures.
  - c. Burden, Costs, and Resources: The feasibility and costs associated with implementing information security measures are relevant factors. The relative resources of the parties, arbitrators, and the SCCA are also considered.
  - d. Proportionality: The measures adopted should be proportional to the size, value, and risk profile of the dispute. This ensures that the level of security aligns with the nature and importance of the arbitration.
  - e. Efficiency: The efficiency of the arbitration is also a factor. While security is important, measures should not unduly hinder the timely progress of the proceedings.
4. Balancing Security and Practicality: The article reflects a balanced approach to information security. It acknowledges that security measures need to be effective while not unduly burdensome, costly, or obstructive to the arbitration process.
5. Adaptive Nature: The article recognises that the suitability of information security measures can vary depending on the specific circumstances of each case. This adaptive approach ensures that measures can be tailored to fit the specific needs of the arbitration.
6. Promotion of Confidentiality: The provision is designed to promote the confidentiality of arbitration proceedings by safeguarding sensitive information from unauthorised access or disclosure.
7. Preventive Nature: By requiring the adoption of information security measures, the article seeks to prevent breaches of confidentiality, hacking, or unauthorised access to sensitive data, which could compromise the integrity of the arbitration process.

In summary, Article 46.1 of the SCCA Arbitration Rules 2023 underscores the importance of information security in arbitration and mandates the adoption of reasonable security measures. The article provides a comprehensive framework for determining the reasonableness of these measures based on various factors, thereby promoting both security and the efficient conduct of arbitration proceedings.

**2. The Arbitral Tribunal has the power to determine the specific information security measures applicable to the arbitration. The Arbitral Tribunal may modify the measures previously established for the arbitration at the request of any party or on the Arbitral Tribunal’s own initiative in view of the evolving circumstances of the case.**

Article 46.2 of the SCCA Arbitration Rules 2023 addresses the authority of the Arbitral Tribunal to determine and modify specific information security measures applicable to the arbitration process. Let us analyse this article:

1. **Authority of the Arbitral Tribunal:** The article establishes that the Arbitral Tribunal holds the authority to determine the specific information security measures to be employed during the arbitration proceedings. This recognition of authority allows the Tribunal to tailor the security measures to the unique circumstances of the case.
2. **Flexibility and Adaptability:** The article acknowledges that the nature of information security threats and requirements can evolve throughout the course of the arbitration. As such, the Arbitral Tribunal is empowered to modify the information security measures previously established for the arbitration. This adaptability ensures that the security measures remain relevant and effective in light of changing circumstances.
3. **Request-Based Modification:** The article highlights that the Arbitral Tribunal can modify the information security measures at the request of any party. This responsive approach allows parties to advocate for changes in security measures if they believe that evolving circumstances warrant adjustments.
4. **Initiative-Based Modification:** The Arbitral Tribunal also has the authority to modify the information security measures on its own initiative. This allows the Tribunal to proactively address emerging security concerns without waiting for a formal request from the parties. The Tribunal’s ability to take this initiative reflects its role in maintaining the integrity of the arbitration process.
5. **Balancing Security and Efficiency:** By allowing the Arbitral Tribunal to adjust information security measures, the article facilitates a balance between security and the efficient conduct of arbitration. The Tribunal can assess whether the measures remain effective without unnecessarily hindering the proceedings.
6. **Protection Against Evolving Threats:** In the digital age, threats to information security can evolve rapidly. This article ensures that the Arbitral Tribunal is equipped to address emerging cybersecurity challenges by modifying the measures as necessary.
7. **Arbitrator Expertise:** This provision recognises the expertise of arbitrators in legal matters and, in some cases, technology-related issues. The Tribunal is well-suited to make informed decisions about the appropriate security measures given its understanding of the arbitration process and the evolving security landscape.
8. **Parties’ Confidence:** By entrusting the Arbitral Tribunal with the responsibility to establish and modify information security measures, the article enhances parties’ confidence in the arbitration process. It demonstrates the Tribunal’s commitment to safeguarding sensitive information and maintaining the integrity of the proceedings.

In summary, Article 46.2 of the SCCA Arbitration Rules 2023 grants the Arbitral Tribunal the authority to determine and modify specific information security measures for the arbitration. This provision reflects the evolving nature of cybersecurity concerns and emphasises the Tribunal's role in maintaining the security and integrity of the arbitration process while balancing the need for efficiency.

## Appendix I — Arbitration Costs and Fees

### Article 1: SCCA Registration Fee

**A request to commence an arbitration in accordance with Article 5 of the Rules must be accompanied by a registration fee of SAR 5,000. Such payment is non-refundable and shall be credited to the Claimant's share of the SCCA administrative fees.**

Article 1 of Appendix I to the SCCA Arbitration Rules 2023 outlines the requirement for a registration fee when submitting a request to commence an arbitration. Let us analyse this article:

1. **Registration Fee Requirement:** The article stipulates that when a party submits a request to initiate arbitration in accordance with Article 5 of the SCCA Arbitration Rules 2023, they must also provide a registration fee. This fee is a prerequisite for formally initiating the arbitration process and must be submitted along with the request.
2. **Purpose of the Registration Fee:** The primary purpose of the registration fee is to cover the administrative costs associated with processing and commencing the arbitration. It contributes to the initial administrative activities required to set up the arbitration proceedings.
3. **Amount of the Registration Fee:** The article specifies that the registration fee is SAR 5,000. This amount is likely predetermined by the SCCA as a reasonable figure to cover the initial administrative tasks, while also being accessible to parties involved in the arbitration.
4. **Non-Refundable Nature:** The article underscores that the registration fee is non-refundable. This means that once the fee is paid, it will not be returned to the paying party under any circumstances. This reflects the fact that administrative processes and costs associated with initiating the arbitration have been incurred.
5. **Crediting to Claimant's Share of SCCA Administrative Fees:** The article clarifies that the registration fee will be credited to the Claimant's share of the SCCA administrative fees. This credit allocation ensures that the fee paid at the outset is utilised towards the overall administrative costs of the arbitration, making the process more transparent and streamlined.
6. **Promotion of Access to Arbitration:** By setting a reasonable registration fee, the SCCA promotes access to arbitration for parties with varying resources. The amount is designed to be accessible while contributing to the administration of the process.
7. **Transparency and Clarity:** This article adds transparency and clarity to the arbitration process by specifying the exact amount of the registration fee, its non-refundable nature, and its intended purpose. This promotes better understanding and predictability for parties initiating arbitrations.

In summary, Article 1 of Appendix I to the SCCA Arbitration Rules 2023 establishes a requirement for a non-refundable registration fee of SAR 5,000 when submitting a request to commence arbitration. This fee is intended to cover initial administrative costs and is credited to the Claimant's share of the SCCA administrative fees, enhancing transparency and promoting access to the arbitration process.

## Article 2: SCCA Administrative Fees and Expenses

**1. As per Article 41 of the Rules, the SCCA Court shall determine the SCCA administrative fees and expenses. As per Article 43 of the Rules, the SCCA Court shall fix an advance deposit for SCCA administrative fees and expenses. Unless the parties agree, or the SCCA Court instructs, otherwise, the parties shall pay the SCCA administrative fees and expenses in equal shares, which shall be based on the amount in dispute and calculated in accordance with Article 4 of this Appendix.**

Article 2.1 of Appendix I to the SCCA Arbitration Rules 2023 addresses the determination and payment of the SCCA administrative fees and expenses. Let us analyse this article:

1. **Reference to Relevant Articles:** The article references two specific articles from the main SCCA Arbitration Rules 2023: Article 41 and Article 43. This indicates that the content of Article 2.1 is directly related to the provisions outlined in these referenced articles.
2. **Determination of SCCA Administrative Fees and Expenses:** The article states that in accordance with Article 41 of the main Rules, the SCCA Court is responsible for determining the SCCA administrative fees and expenses. This underscores the role of the SCCA Court in setting the appropriate level of fees and expenses for the administration of the arbitration process.
3. **Fixing Advance Deposit:** The article further mentions that, as per Article 43 of the main Rules, the SCCA Court is responsible for fixing an advance deposit for the SCCA administrative fees and expenses. This advance deposit is intended to cover the costs of administering the arbitration up to a certain point in the proceedings.
4. **Equal Shares Payment:** The article clarifies that unless the parties explicitly agree otherwise, or unless the SCCA Court provides instructions to the contrary, the parties are required to share the payment of the SCCA administrative fees and expenses equally. This equal sharing ensures a fair distribution of the administrative costs among the parties involved in the arbitration.
5. **Calculation Basis:** The article introduces the concept that the calculation of the SCCA administrative fees and expenses is based on the “amount in dispute,” which is determined in accordance with Article 4 of the same Appendix. This indicates that the SCCA administrative fees are proportional to the value of the dispute being arbitrated.
6. **Promotion of Fair Cost Distribution:** By emphasising equal sharing of the fees and expenses among the parties, the article aims to promote fairness and equality in terms of the financial burden associated with arbitration. Parties with varying resources can share these costs more equitably.
7. **Transparency and Predictability:** This article contributes to transparency by clearly explaining the process for determining and sharing the SCCA administrative fees and expenses. It provides parties with a clear understanding of their financial obligations in the arbitration process.

In summary, Article 2.1 of Appendix I to the SCCA Arbitration Rules 2023 outlines the process for determining and sharing the SCCA administrative fees and expenses. It references relevant articles from the main Rules, emphasises equal sharing among the parties, and highlights the calculation basis

for these fees and expenses. This promotes transparency, fairness, and predictability in the arbitration process.

**2. In exceptional circumstances, including but not limited to situations where the parties have agreed upon additional services or to conduct the arbitration in a manner not reasonably contemplated at the time of the constitution of the Arbitral Tribunal, the SCCA Court may fix a higher amount in SCCA administrative fees than would result from applying the SCCA Fee Schedule.**

Article 2.2 of Appendix I to the SCCA Arbitration Rules 2023 addresses the possibility of exceptional circumstances where the SCCA Court may fix higher SCCA administrative fees than what would result from the standard SCCA Fee Schedule. Let us analyse this article:

1. **Context and Flexibility:** This article acknowledges that there can be exceptional circumstances that may warrant a departure from the standard SCCA Fee Schedule. It highlights the need for flexibility in certain situations that are not reasonably contemplated or covered by the standard rules.
2. **Scope of Exceptional Circumstances:** The article mentions that the exceptional circumstances are not limited to a specific set of situations. Instead, it provides an illustrative list (“including but not limited to”) to indicate that various scenarios may trigger the application of this provision.
3. **Agreed Additional Services:** One of the mentioned scenarios is when the parties have agreed upon additional services beyond the typical scope of the arbitration process. This acknowledges that the level of administrative work required may increase when parties opt for additional services that were not anticipated initially.
4. **Unforeseen Manner of Conducting Arbitration:** The article also references situations where the parties agree to conduct the arbitration in a manner that was not reasonably anticipated when the Arbitral Tribunal was constituted. This could include unique procedural or logistical arrangements that impact the administrative workload.
5. **Authority of SCCA Court:** The article assigns the authority to the SCCA Court to determine whether exceptional circumstances exist that warrant higher SCCA administrative fees. This reinforces the role of the SCCA Court as the governing body that can exercise discretion in specific situations to ensure that the administrative fees are appropriate.
6. **Higher Fees Beyond Standard Schedule:** The core purpose of this provision is to allow the SCCA Court to set SCCA administrative fees at a higher level than what would typically result from the application of the SCCA Fee Schedule. This recognises that extraordinary circumstances may necessitate additional administrative resources.
7. **Balancing Costs and Services:** By allowing higher fees for exceptional circumstances, the provision aims to ensure that the administrative services provided by the SCCA align with the resources required for unique situations. This ensures that parties receive appropriate support and services while maintaining cost-effectiveness.

8. **Clarity in Process:** This article adds transparency to the process by outlining the conditions under which the SCCA Court may increase the administrative fees. It provides parties with an understanding of the criteria that will be considered in such cases.

In summary, Article 2.2 of Appendix I to the SCCA Arbitration Rules 2023 allows for higher SCCA administrative fees in exceptional circumstances. It gives the SCCA Court the authority to determine when such circumstances exist, including situations involving agreed additional services or unforeseen methods of conducting the arbitration. This provision aims to strike a balance between administrative costs and the level of service required for specific scenarios.

**3. If an arbitration terminates before the Arbitral Tribunal has issued the final award, the SCCA Court shall determine the SCCA administrative fees at its discretion, taking into account the stage reached in the arbitration and any other relevant circumstances.**

Article 2.3 of Appendix I to the SCCA Arbitration Rules 2023 addresses the determination of SCCA administrative fees in cases where an arbitration terminates before the issuance of the final award. Let us analyse this article:

1. **Termination Before Final Award:** The article focuses on a scenario where an arbitration terminates prematurely before the Arbitral Tribunal has issued the final award. This could occur due to various reasons, such as settlement between the parties, withdrawal of claims, procedural issues, or other unforeseen circumstances.
2. **Discretion of SCCA Court:** This provision vests the authority in the SCCA Court to determine the SCCA administrative fees in such cases. The SCCA Court is responsible for making this determination based on its discretion, considering various factors and circumstances.
3. **Stage of Arbitration:** The article specifies that the SCCA Court should take into account the stage reached in the arbitration. This indicates that the fees might be adjusted based on how far the arbitration progressed before its termination. Different stages may entail different administrative efforts and resources.
4. **Relevance of Other Circumstances:** The SCCA Court is also required to consider any other relevant circumstances beyond just the stage of the arbitration. This open-ended language allows the SCCA Court to consider factors such as the complexity of the dispute, the work done by the administrative body up to that point, and any specific costs incurred.
5. **Fairness and Flexibility:** The provision reflects a principle of fairness and flexibility. It acknowledges that each case may have unique circumstances that can impact the administrative costs incurred. The discretion of the SCCA Court allows for a case-by-case assessment.
6. **Balancing Fees and Services:** By authorising the SCCA Court to determine the administrative fees based on the stage of the arbitration and other relevant factors, the provision aims to ensure that the fees accurately reflect the administrative work done and the services provided up to the point of termination.

7. **Transparency and Accountability:** Although the article provides the SCCA Court with discretion, it also adds transparency to the process by outlining the considerations that should guide the determination of administrative fees. This ensures accountability and predictability in the determination process.

In summary, Article 2.3 of Appendix I to the SCCA Arbitration Rules 2023 allows the SCCA Court to determine SCCA administrative fees when an arbitration terminates before the issuance of the final award. The provision instructs the SCCA Court to consider the stage reached in the arbitration and other relevant circumstances to make a fair and reasonable determination of the administrative fees in such cases.

#### **4. The parties are jointly and severally liable for the SCCA administrative fees and expenses.**

Article 2.4 of Appendix I to the SCCA Arbitration Rules 2023 addresses the issue of liability for SCCA administrative fees and expenses. Let us analyse this article:

1. **Joint and Several Liability:** The article establishes that the parties involved in the arbitration are jointly and severally liable for the payment of SCCA administrative fees and expenses. This means that each party is individually responsible for the entire amount of the fees, but in case one party fails to pay its share, the other party or parties are also responsible for covering the unpaid portion.
2. **Collective Responsibility:** This provision reinforces the principle that both parties bear the financial burden of the arbitration process, including administrative costs. The joint and several liability concept promotes efficiency and ensures that the administrative fees are paid even if one party becomes non-compliant or uncooperative.
3. **Payment Obligations:** By making the parties jointly and severally liable, the provision simplifies the process for the administrative body (SCCA) to receive the necessary fees. It is designed to prevent disputes between the parties about who should pay or cover which portion of the administrative expenses.
4. **SCCA Administrative Fees and Expenses:** The article specifically addresses SCCA administrative fees and expenses, which include the costs associated with the administration of the arbitration by the SCCA. These fees cover the administrative services provided, case management, coordination, and other related activities.
5. **Balancing Cost Responsibility:** The joint and several liability approach aims to ensure that the administrative costs are fairly distributed between the parties. It prevents one party from bearing the entire burden of the expenses, especially in cases where the other party might not cooperate or fulfil its financial obligations.
6. **Financial Security:** This provision provides financial security to the SCCA by allowing it to seek payment from any party if the other party does not fulfil its financial obligations. This helps maintain the integrity of the arbitration process and ensures that the administrative services can be effectively rendered.
7. **Enforcement Mechanism:** Joint and several liability simplifies the enforcement of payment of administrative fees. If one party fails to pay, the SCCA can seek payment from



any other participating party. This can be particularly useful if one party becomes financially insolvent during the arbitration process.

In summary, Article 2.4 of Appendix I to the SCCA Arbitration Rules 2023 establishes joint and several liability for the payment of SCCA administrative fees and expenses. This approach ensures that both parties are collectively responsible for covering the administrative costs of the arbitration, promoting fairness, efficiency, and financial security in the arbitration process.

### **Article 3: Arbitral Tribunal Fees and Expenses**

**1. As per Article 42(1) of the Rules, the SCCA Court shall determine the Arbitral Tribunal fees in accordance with the SCCA Fee Schedule in force at the time of the commencement of the arbitration. The parties may agree to an alternative fee arrangement based on an hourly rate prior to the constitution of the Arbitral Tribunal.**

**a) Where the Arbitral Tribunal fees are based on the SCCA Fee Schedule as set forth in Article 42(1)(a) of the Rules, the following applies:**

**1) As per Article 43 of the Rules, the SCCA Court shall fix an advance deposit for the Arbitral Tribunal fees and expenses. Unless the parties agree, or the SCCA Court instructs, otherwise, the parties shall pay the Arbitral Tribunal fees and expenses in equal shares, which shall be based on the amount in dispute and calculated in accordance with Article 4 of this Appendix. The Arbitral Tribunal fees shall cover all the work carried out in connection with the arbitration and are deemed to be approved by the arbitrator upon accepting the appointment.**

**2) In the case of a panel of three arbitrators, the total in Arbitral Tribunal fees shall be distributed as follows: 40% for the presiding arbitrator and 30% for each co arbitrator unless the members of the Arbitral Tribunal agree otherwise. The SCCA Court shall determine any disagreement regarding the distribution of the Arbitral Tribunal fees.**

**3) The Administrator shall release the Arbitral Tribunal fees and expenses once the Arbitral Tribunal has issued the final award or termination order, or when the Administrator has otherwise closed the case. Upon request by an arbitrator, the Administrator may make partial payments after certain milestones in the arbitration have been completed.**

**4) In the event of any exceptional circumstances beyond an arbitrator's control that render him or her incapable of performing his or her duties, or in the event of an arbitrator's death after accepting appointment and before issuing the final award, the SCCA Court, in consultation with the remaining arbitrators, shall determine the amount in Arbitral Tribunal fees to be paid to that arbitrator, taking into account the work he or she has performed and all other relevant circumstances.**

**5) In the event that an arbitrator withdraws, has been removed, or successfully challenged in accordance with Article 18 of the Rules, or ceases to serve as an arbitrator for any other reason, the SCCA Court, in consultation with the remaining arbitrators,**

shall determine the amount in Arbitral Tribunal fees to be paid to that arbitrator, taking into account the work he or she has performed and all other relevant circumstances.

6) If an arbitration terminates before the Arbitral Tribunal has issued the final award, the SCCA Court shall determine the Arbitral Tribunal fees, taking into account the stage reached in the arbitration and any other relevant circumstances.

b) Where the Arbitral Tribunal fees are based on an hourly rate as set forth in Article 42(1)(b) of the Rules, the following applies:

1) An arbitrator shall be compensated for the work carried out in connection with the arbitration at the rate agreed to prior to his or her appointment.

2) In the event of a postponement or cancellation of scheduled hearings in accordance with Article 29 of the Rules, the Arbitral Tribunal shall be compensated for lost time as follows:

a. Where a scheduled hearing is cancelled at the Arbitral Tribunal's request, or at the request of any party 60 days before the first hearing day, no fees shall be paid to the Arbitral Tribunal;

b. Where a scheduled hearing is cancelled at the request of any party less than 60 days but more than 30 days before the first hearing day, the Arbitral Tribunal shall be paid for each day of lost time at 50% of the applicable hourly rate for eight hours; or

c. Where a scheduled hearing is cancelled at the request of any party 30 days or less before the first hearing day, the Arbitral Tribunal shall be paid for each day of lost time at 75% of the applicable hourly rate for eight hours.

If an arbitrator has spent time on the case during the scheduled hearing days, he or she shall be paid based on his or her hourly rate or the cancellation fee, whichever is higher.

Where scheduled hearing days are postponed or cancelled other than by agreement of all parties or request of the Arbitral Tribunal, this may be taken into account when considering any subsequent apportionment of costs.

Article 3.1 of Appendix I to the SCCA Arbitration Rules 2023 outlines the procedures and considerations for determining Arbitral Tribunal fees in accordance with the SCCA Fee Schedule and alternative fee arrangements based on an hourly rate. Let us analyse the article:

1. **Arbitral Tribunal Fees Determination:** The article addresses the determination of Arbitral Tribunal fees, which are the fees paid to the arbitrators for their services in conducting the arbitration proceedings. The fees are determined either based on the SCCA Fee Schedule (Section a) or an hourly rate agreed upon prior to the appointment (Section b).
2. **SCCA Fee Schedule Basis (Section a):**
  - a. **Advance Deposit:** The SCCA Court sets an advance deposit for Arbitral Tribunal fees and expenses based on the SCCA Fee Schedule at the commencement of the arbitration.

- b. **Equal Payment:** Parties are generally required to pay the Arbitral Tribunal fees and expenses in equal shares unless agreed otherwise or instructed by the SCCA Court.
  - c. **Distribution in Three-Arbitrator Panel:** In a three-arbitrator panel, the Arbitral Tribunal fees distribution is specified: 40% for the presiding arbitrator and 30% for each co-arbitrator, unless agreed otherwise.
  - d. **Administrator’s Role:** The Administrator releases the Arbitral Tribunal fees and expenses after the final award, termination order, or case closure. Partial payments can be made upon certain milestones.
  - e. **Exceptional Circumstances:** The SCCA Court, in consultation with remaining arbitrators, determines Arbitral Tribunal fees if an arbitrator faces exceptional circumstances beyond their control that prevent them from fulfilling their duties.
  - f. **Withdrawal or Removal of Arbitrator:** If an arbitrator withdraws, is removed, or is successfully challenged, the SCCA Court determines the Arbitral Tribunal fees, considering the work performed.
3. **Hourly Rate Basis (Section b):**
- a. **Hourly Rate Compensation:** Arbitrators are compensated based on an agreed hourly rate for the work carried out during the arbitration.
  - b. **Compensation for Lost Time:** If scheduled hearings are postponed or cancelled, the Arbitral Tribunal is compensated for lost time. The compensation depends on the timing of the cancellation and ranges from no payment to a percentage of the hourly rate.
  - c. **Postponement or Cancellation Impact on Costs:** The article notes that postponed or cancelled hearing days, if not agreed upon by all parties or not requested by the Arbitral Tribunal, can be considered when apportioning costs later.
4. **Flexibility and Fairness:** This article emphasises the flexibility and fairness in determining Arbitral Tribunal fees, allowing for different fee calculation methods based on the parties’ choices and the circumstances of the arbitration.

In summary, Article 3.1 of Appendix I to the SCCA Arbitration Rules 2023 establishes procedures for determining Arbitral Tribunal fees, either based on the SCCA Fee Schedule or an agreed hourly rate. It outlines the processes for advance deposits, equal payment shares, distribution in three-arbitrator panels, compensation in exceptional circumstances, and payment for lost time due to hearing postponements or cancellations. The article aims to ensure transparency, fairness, and flexibility in compensating arbitrators for their services.

2. As per Article 42(2) of the Rules, the Arbitral Tribunal expenses, including those of any former or substitute arbitrators, shall be reasonable and shall be determined by the SCCA Court at the conclusion of the proceedings. Expenses may include, without limitation:

- a) Reasonable travel, accommodation, and other expenses incurred by the arbitrators for the purposes of fulfilling their obligations as arbitrators; and
- b) Reasonable costs of expert advice in accordance with Article 31 of the Rules and any other assistance for the Arbitral Tribunal.

Article 3.2 of Appendix I to the SCCA Arbitration Rules 2023 pertains to the determination of Arbitral Tribunal expenses, which are the reasonable costs associated with the arbitrators' services and any other assistance required during the arbitration process. Let us analyse the article:

1. **Arbitral Tribunal Expenses Determination:** The article addresses the determination of Arbitral Tribunal expenses, which encompass the reasonable costs incurred by arbitrators and any other related expenditures. These expenses are determined by the SCCA Court at the conclusion of the arbitration proceedings.
2. **Reasonableness of Expenses (Section a):**
  - a. **Travel and Accommodation Expenses:** The article highlights that reasonable travel and accommodation expenses incurred by arbitrators while fulfilling their duties are included as part of Arbitral Tribunal expenses.
  - b. **Obligations as Arbitrators:** The expenses associated with travel and accommodation are directly related to the arbitrators' responsibilities and contributions to the arbitration process.
3. **Expert Advice and Assistance (Section b):**
  - a. **Expert Advice Costs:** The article indicates that reasonable costs of expert advice, in accordance with Article 31 of the Rules, are considered part of the Arbitral Tribunal expenses.
  - b. **Additional Assistance:** The Arbitral Tribunal expenses may also encompass the costs of any other assistance required to support the work of the Arbitral Tribunal, beyond the core responsibilities of the arbitrators.
4. **Fairness and Efficiency:** This article underscores the principle of determining reasonable expenses that are essential for the efficient and effective conduct of the arbitration. The SCCA Court's involvement ensures a fair assessment of these expenses.

In summary, Article 3.2 of Appendix I to the SCCA Arbitration Rules 2023 outlines the factors and considerations for determining Arbitral Tribunal expenses. It covers travel and accommodation expenses incurred by arbitrators in fulfilling their obligations, as well as the costs of expert advice and any other necessary assistance. The SCCA Court is responsible for assessing the reasonableness of these expenses at the conclusion of the arbitration. The article aims to ensure transparency and fairness in allocating expenses related to the arbitrators' work and support for the arbitration process.

**3. The parties are jointly and severally liable for the Arbitral Tribunal fees and expenses, irrespective of which party appointed an arbitrator.**

Article 3.3 of Appendix I to the SCCA Arbitration Rules 2023 addresses the joint and several liability of the parties for the Arbitral Tribunal fees and expenses. Let us analyse the article:

1. **Joint and Several Liability:** This article states that the parties involved in the arbitration are jointly and severally liable for the Arbitral Tribunal fees and expenses. This means that each party is not only individually responsible for their share of these fees and expenses but also collectively liable with the other parties.
2. **Equal Liability:** The article emphasises that the liability for these fees and expenses is irrespective of which party appointed a specific arbitrator. In other words, regardless of whether a party appointed an arbitrator or not, all parties share equal responsibility for covering the costs associated with the Arbitral Tribunal.
3. **Equitable Sharing of Costs:** This provision promotes an equitable sharing of the financial burden among the parties involved in the arbitration. It prevents any party from avoiding their financial responsibility based on the selection of arbitrators or any other factor related to the arbitration process.
4. **Collective Responsibility:** The joint and several liability concept ensures that the costs are covered promptly and that the arbitration process is not hindered due to disputes over the allocation of financial obligations.

In summary, Article 3.3 of Appendix I to the SCCA Arbitration Rules 2023 establishes the principle of joint and several liability for Arbitral Tribunal fees and expenses among the parties. It ensures that the financial responsibilities are shared equally among the parties involved in the arbitration, irrespective of their role in appointing arbitrators or any other factor. This provision helps maintain the fairness and efficiency of the arbitration process by preventing disputes over cost allocation.

**Article 4: Methods of Calculation**

**1. To determine the SCCA administrative fees under the SCCA Fee Schedule and the Arbitral Tribunal fees (where subject to the SCCA Fee Schedule), the amount in dispute shall be calculated as follows:**

- a) **The amount in dispute shall be calculated by adding together all claims filed by the parties.**
- b) **If any claim is not quantified or remains undetermined, the SCCA Court shall determine the amount to be used for the calculation, taking into account the circumstances of the case.**
- c) **If any claim is non-monetary in nature, the filing party shall estimate the value behind its claim to be used as the basis for the calculation. Absent that, the SCCA Court shall**

**determine the amount to be used for the calculation, taking into account the circumstances of the case.**

**d) Paragraph 1 of this Article equally applies to any claims for the purpose of a set-off, unless the Arbitral Tribunal, in consultation with the parties, determines that such set-off will not require significant additional work.**

Article 4.1 of Appendix I to the SCCA Arbitration Rules 2023 pertains to the determination of SCCA administrative fees and Arbitral Tribunal fees based on the amount in dispute. Let us break down the components of this article:

1. **Calculation of Amount in Dispute:** This article outlines the methodology for calculating the amount in dispute, which serves as the basis for determining both the SCCA administrative fees and the Arbitral Tribunal fees, if applicable. The calculation involves the sum of all claims presented by the parties.
2. **Unquantified Claims:** If any claim is not quantified or remains undetermined, this article addresses how the amount for such claims will be determined for fee calculation purposes. The SCCA Court is tasked with assessing and determining the amount to be used for the calculation. This determination takes into account the circumstances of the case.
3. **Non-Monetary Claims:** In cases where a claim is non-monetary in nature, this article provides a method to estimate the value behind such claims for the purpose of fee calculation. The filing party is expected to provide an estimate of the value. However, if the filing party does not provide an estimate, the SCCA Court will determine the value for fee calculation, considering the specific circumstances of the case.
4. **Set-Off Claims:** This article also addresses claims for the purpose of a set-off. If claims for set-off are involved, the same calculation principles are applied as for other claims. However, it acknowledges that if the Arbitral Tribunal, in consultation with the parties, determines that a set-off claim will not require significant additional work, it may affect the fee calculation methodology.

In summary, Article 4.1 of Appendix I to the SCCA Arbitration Rules 2023 establishes a structured approach to calculate the amount in dispute for the purpose of determining both SCCA administrative fees and Arbitral Tribunal fees, when applicable. The article covers scenarios where claims are unquantified, non-monetary, or related to set-offs, ensuring a consistent and equitable approach to fee calculation while accounting for different types of claims. The involvement of the SCCA Court in determining amounts in certain cases contributes to the fairness and accuracy of the fee calculation process.

**2. Any increase in the amount in claims shall be taken into account in the calculation of the SCCA administrative fees under the SCCA Fee Schedule and the Arbitral Tribunal fees (where subject to the SCCA Fee Schedule).**

Article 4.2 of Appendix I to the SCCA Arbitration Rules 2023 addresses the impact of any increase in the amount of claims on the calculation of both SCCA administrative fees and Arbitral Tribunal fees (where applicable and subject to the SCCA Fee Schedule). Let us analyse its key components:

1. **Adjustment for Increased Claims:** This article highlights that any increase in the amount of claims, after the initial calculation of the amount in dispute for fee purposes, will be factored into the calculation of both SCCA administrative fees and Arbitral Tribunal fees (if subject to the SCCA Fee Schedule). In other words, if the claims are amended or new claims are introduced that lead to a higher amount in dispute, this increase will have a direct impact on the fees payable by the parties.
2. **Consistency and Fairness:** By adjusting the fees based on any increase in claims, this provision ensures that the fees accurately reflect the scope and complexity of the dispute. This contributes to the principle of fairness and proportionality in arbitration, as parties should be charged fees that correspond to the actual value and magnitude of the claims being adjudicated.
3. **Transparency:** This article enhances transparency by explicitly addressing how fee calculations are affected by changes in the amount of claims. It clarifies that adjustments will be made in a consistent manner, preventing any confusion or disputes about how fee increases are accounted for.

In summary, Article 4.2 of Appendix I to the SCCA Arbitration Rules 2023 establishes a mechanism to account for any increase in the amount of claims during the course of arbitration when calculating both SCCA administrative fees and Arbitral Tribunal fees (where applicable). This provision ensures that the fees align with the evolving scope of the dispute and maintain fairness and transparency in the fee calculation process.

#### Article 5: Deposits

**1. As per Article 43(2) of the Rules, the SCCA Court shall fix the advance deposit for costs referred to in Article 40(2)(a) (b)(c), and (e) of the Rules. Where the SCCA Fee Schedule applies, the SCCA Court may fix an advance deposit for Arbitral Tribunal fees that is higher or lower than the average amount that would result from applying the SCCA Fee Schedule.**

Article 5.1 of Appendix I to the SCCA Arbitration Rules 2023 addresses the determination of advance deposits for costs, particularly in relation to Arbitral Tribunal fees and expenses. Here is an analysis of the key points in this article:

1. **Advance Deposit Fixing:** This article establishes that the responsibility for setting the advance deposit for costs, as described in Article 43(2) of the SCCA Arbitration Rules 2023, lies with the SCCA Court. This advance deposit is meant to cover various costs, including those mentioned in Article 40(2)(a)(b)(c), and (e) of the Rules.
2. **Variation Based on SCCA Fee Schedule:** The article mentions that when the SCCA Fee Schedule is applicable, the SCCA Court has the authority to determine the advance deposit for Arbitral Tribunal fees. Importantly, the SCCA Court has the discretion to set an advance deposit that could be either higher or lower than the average amount that would result from applying the SCCA Fee Schedule.
3. This provision acknowledges that circumstances can vary, and the complexity of cases, the potential scope of work, and other factors can influence the appropriate level of advance deposit. By giving the SCCA Court the authority to adjust the deposit based on

factors beyond a simple calculation from the fee schedule, the rule aims to ensure that the financial aspects of the arbitration process are appropriately aligned with the specific circumstances of each case.

In summary, Article 5.1 of Appendix I to the SCCA Arbitration Rules 2023 underscores the authority of the SCCA Court to determine the advance deposit for costs, including Arbitral Tribunal fees and expenses. This provision recognises that flexibility may be required to tailor the financial arrangements to the unique features of each arbitration case, providing a pragmatic approach to managing costs in a manner that is fair and appropriate for all parties involved.

## **2. Upon payment of the advance deposit, the Administrator shall transmit the case file to the Arbitral Tribunal.**

Article 5.2 of Appendix I to the SCCA Arbitration Rules 2023 pertains to the procedural step following the payment of the advance deposit for costs in an arbitration. Here is an analysis of the key points in this article:

1. **Advance Deposit Payment:** This article outlines that once the parties have paid the required advance deposit for costs as determined by the SCCA Court, the next step involves the transmission of the case file to the Arbitral Tribunal. The case file contains all the necessary documents, information, and materials related to the arbitration case.
2. **Role of the Administrator:** The Administrator, as mentioned in the article, is responsible for facilitating the administrative aspects of the arbitration process. This includes the handling of financial matters, communication between parties and the Arbitral Tribunal, and the overall management of procedural steps. Upon receipt of the advance deposit payment, the Administrator is tasked with forwarding the relevant case file to the Arbitral Tribunal.
3. This provision emphasises the significance of administrative efficiency and timely processing of the arbitration case. By allowing the transmission of the case file to the Arbitral Tribunal upon payment of the advance deposit, the article ensures that the arbitration process can proceed smoothly and promptly once the necessary financial arrangements are in place.

In summary, Article 5.2 of Appendix I to the SCCA Arbitration Rules 2023 underscores the role of the Administrator in managing the procedural aspects of the arbitration process, particularly with regard to financial matters and the timely transmission of the case file to the Arbitral Tribunal. This provision contributes to the overall efficiency and effectiveness of the arbitration proceedings.

## **3. Any request for additional deposits under Article 43(2) of the Rules shall take into account fluctuations in the amount in dispute, changes in estimated expenses, the use of experts appointed**



**by the Arbitral Tribunal, or any other circumstances, including but not limited to evolving difficulties or the complexity of the arbitration.**

Article 5.3 of Appendix I to the SCCA Arbitration Rules 2023 addresses the process and considerations related to requesting additional deposits for costs in an arbitration case. Here is an analysis of the key points in this article:

1. **Context of the Article:** This article is connected to Article 43(2) of the SCCA Arbitration Rules 2023, which deals with the authority of the SCCA Court to fix advance deposits for costs. It specifies that in case additional deposits are required beyond the initial advance deposit, certain factors need to be taken into consideration when determining the amount of these additional deposits.
2. **Considerations for Additional Deposits:** The article outlines a set of factors that should be taken into account when requesting additional deposits. These factors include:
  - a. **Fluctuations in the Amount in Dispute:** The amount in dispute may change during the course of the arbitration due to various reasons, such as amended claims or counterclaims.
  - b. **Changes in Estimated Expenses:** The estimated expenses for conducting the arbitration may change due to unforeseen circumstances or evolving complexities.
  - c. **Use of Experts:** If the Arbitral Tribunal appoints experts to assist in the proceedings, their fees and expenses may impact the overall costs of the arbitration.
  - d. **Other Circumstances:** The article mentions that evolving difficulties or complexities of the arbitration may necessitate additional funds to cover the costs.
3. **Flexibility and Adaptability:** This article highlights the flexibility of the SCCA's approach to handling financial matters in arbitration. It acknowledges that the costs involved can be subject to changes, and the arbitration process needs to be adaptable to address these changes. The SCCA takes a proactive stance in addressing potential financial adjustments that may arise during the course of the proceedings.
4. **Transparency and Fairness:** By considering various factors, including fluctuations in the amount in dispute and evolving complexities, the SCCA ensures that parties are treated fairly and that the financial aspects of the arbitration are transparent and well-balanced.

In conclusion, Article 5.3 of Appendix I to the SCCA Arbitration Rules 2023 underscores the SCCA's commitment to managing the financial aspects of arbitration in a fair and flexible manner. It outlines the factors that should be taken into consideration when requesting additional deposits, ensuring that the financial arrangements align with the evolving nature of the arbitration proceedings. This provision contributes to transparency, adaptability, and the overall effectiveness of the arbitration process.

**4. When the parties have agreed to an alternative fee arrangement based on an hourly rate as set forth in Article 42(1)(b) of the Rules, the Administrator may, in consultation with the Arbitral**

**Tribunal, request the parties to deposit an amount likely to cover the Arbitral Tribunal fees and expenses.**

Article 5.4 of Appendix I to the SCCA Arbitration Rules 2023 pertains to situations where the parties have chosen an alternative fee arrangement based on an hourly rate for the Arbitral Tribunal fees, as outlined in Article 42(1)(b) of the SCCA Rules. Here is an analysis of the key points in this article:

1. **Context of the Article:** This article is directly related to Article 42(1)(b) of the SCCA Rules, which allows parties to agree on an alternative fee arrangement based on an hourly rate for the Arbitral Tribunal fees, rather than using the standard SCCA Fee Schedule. The article provides guidance on the procedure to follow when such an alternative fee arrangement is in place.
2. **Alternative Fee Arrangement:** The article recognises that in some cases, parties may opt for an alternative fee arrangement, specifically based on an hourly rate for the services of the Arbitral Tribunal. This approach is an alternative to the fixed fees established by the SCCA Fee Schedule.
3. **Deposit Requirement:** When parties have agreed upon an hourly rate for the Arbitral Tribunal fees, the article empowers the Administrator to request the parties to deposit an amount that is likely to cover these fees and associated expenses. The purpose of this deposit is to ensure that sufficient funds are available to compensate the Arbitral Tribunal for their work and to cover any related costs.
4. **Administrator's Role:** The Administrator is the entity responsible for administering the arbitration process according to the SCCA Rules. In this context, the article grants the Administrator the authority to consult with the Arbitral Tribunal to determine a reasonable and appropriate deposit amount based on the agreed hourly rate.
5. **Ensuring Adequate Funding:** By requiring the parties to make a deposit that likely covers the Arbitral Tribunal fees and expenses upfront, this provision ensures that the Arbitral Tribunal's compensation is secured and that the arbitration process can proceed without financial disruptions.
6. **Parties' Consent:** It is important to note that this process is subject to the parties' agreement to the alternative fee arrangement and their consent to making the necessary deposit. The parties' voluntary acceptance of this arrangement is crucial.
7. **Flexibility and Tailoring:** This provision demonstrates the SCCA's adaptability to different fee arrangements based on the parties' preferences and the ability to tailor the financial aspects of the arbitration process accordingly.

In summary, Article 5.4 of Appendix I to the SCCA Arbitration Rules 2023 outlines the procedure for requesting a deposit when parties opt for an alternative fee arrangement based on an hourly rate for the Arbitral Tribunal fees. It emphasises the role of the Administrator in consulting with the Arbitral Tribunal and ensuring adequate funding for the arbitration process, while respecting the parties' consent to the chosen fee structure.

**5. Upon request by any party, the SCCA Court may allow the advance deposit for Arbitral Tribunal fees to be paid in installments, subject to any terms and conditions the SCCA Court deems appropriate.**

Article 5.5 of Appendix I to the SCCA Arbitration Rules 2023 deals with the possibility of paying the advance deposit for Arbitral Tribunal fees in instalments, and it provides the SCCA Court with the authority to grant such requests. Here is an analysis of the key points in this article:

1. **Flexible Payment:** This article recognises that parties might prefer or need to pay the advance deposit for Arbitral Tribunal fees in instalments, rather than as a lump sum upfront. This flexibility can be particularly helpful when dealing with financial constraints or when the arbitration process extends over a significant period.
2. **SCCA Court's Authority:** The article vests the authority to allow instalment payments with the SCCA Court. The SCCA Court is the governing body responsible for the administration of the arbitration process, including financial matters. By granting this authority to the SCCA Court, the article ensures that the process is regulated and controlled.
3. **Request by Parties:** The option to pay in instalments is contingent upon a request from one of the parties. In other words, if a party wishes to pay the advance deposit in instalments, they must make a formal request to the SCCA Court. This approach allows the parties to have some control over their payment arrangements based on their specific circumstances.
4. **Terms and Conditions:** The SCCA Court is given the discretion to determine the terms and conditions under which the instalment payments may be allowed. This ensures that there is a framework in place to regulate the payment process, safeguard the interests of both parties, and maintain the smooth operation of the arbitration proceedings.
5. **Balancing Flexibility and Control:** Allowing instalment payments strikes a balance between providing flexibility to parties and maintaining control over the financial aspects of the arbitration. It acknowledges that parties may have varying financial situations while ensuring that the process remains organised and well-regulated.
6. **Preservation of Process:** The provision of instalment payments contributes to the overall accessibility and fairness of the arbitration process. It allows parties to engage in arbitration without facing undue financial burdens, thereby promoting the efficiency and effectiveness of the dispute resolution mechanism.

In summary, Article 5.5 of Appendix I to the SCCA Arbitration Rules 2023 provides parties with the option to request instalment payments for the advance deposit of Arbitral Tribunal fees. It empowers the SCCA Court to make decisions in this regard, while also emphasising the importance of maintaining appropriate terms and conditions to ensure a balanced and controlled payment process.

**6. If a party's share of Arbitral Tribunal fees exceeds SAR 1,000,000 ("the Threshold Amount"), such party may post a bank guarantee for any amount above the Threshold Amount. The Administrator shall establish the terms governing all bank guarantees and may modify the Threshold**

**Amount at any time at its discretion. In the event that a party also advances the defaulting party's share, it may do so by posting a bank guarantee to cover the defaulting party's share.**

Article 5.6 of Appendix I to the SCCA Arbitration Rules 2023 introduces the concept of a bank guarantee as an alternative means of securing payment of Arbitral Tribunal fees. Here is an analysis of the key aspects of this article:

1. **Threshold Amount:** The article establishes a monetary threshold of SAR 1,000,000 (the "Threshold Amount"). If a party's share of the Arbitral Tribunal fees exceeds this Threshold Amount, they are provided with the option to post a bank guarantee instead of making the full payment upfront. This provision is designed to accommodate cases where the financial liability becomes substantial, ensuring that parties are not burdened with the immediate full payment.
2. **Bank Guarantee:** A bank guarantee is a financial instrument provided by a bank that assures the recipient (in this case, the arbitration institution) that a certain amount will be paid if the party that posted the guarantee fails to meet their financial obligations. By allowing parties to post a bank guarantee, the SCCA aims to provide a secure mechanism to ensure the payment of Arbitral Tribunal fees.
3. **Security Mechanism:** The bank guarantee acts as a security mechanism that enables parties to participate in the arbitration process even if their financial obligation exceeds the Threshold Amount. It provides the arbitration institution with assurance that the fees will be covered, even if the party is unable to make the payment directly.
4. **Administrator's Role:** The article assigns the responsibility of establishing the terms governing bank guarantees to the Administrator. This includes determining the specific requirements, conditions, and procedures for the issuance and utilisation of bank guarantees. The Administrator's involvement ensures that the process is standardised and transparent.
5. **Flexibility and Adaptability:** The article recognises that the financial circumstances of parties can vary widely. By allowing the Administrator to modify the Threshold Amount, the SCCA demonstrates a commitment to adapting the rules to changing economic conditions, thereby enhancing the accessibility of the arbitration process.
6. **Defaulting Party's Share:** Importantly, the article also addresses situations where a party may cover the defaulting party's share. If a party advances the defaulting party's share, they may do so by posting a bank guarantee to cover that share. This provision ensures that the arbitration process can continue smoothly even if one of the parties defaults on their financial obligations.
7. **Balancing Interests:** The article strikes a balance between ensuring the financial security of the arbitration process and accommodating parties' financial circumstances. It provides a flexible mechanism that empowers parties to meet their financial obligations through bank guarantees while maintaining the overall integrity and efficiency of the arbitration process.

In summary, Article 5.6 of Appendix I to the SCCA Arbitration Rules 2023 introduces the concept of using a bank guarantee to cover Arbitral Tribunal fees in cases where a party's financial obligation exceeds a specified Threshold Amount. This provision enhances the accessibility and effectiveness of

the arbitration process by offering an alternative means of securing the payment of fees while balancing the interests of the parties and the arbitration institution.

## Article 6: Methods of Payment

**1. All advance deposits paid on account of the costs referred to in Article 40(2)(a)(b)(c), and (e) of the Rules shall be deposited with the SCCA by wire transfer, check, or other methods approved by the Administrator, and shall remain on deposit until the Arbitral Tribunal has issued the final award or termination order, or the Administrator has otherwise closed the case. The payment of advance deposits shall not result in any charges for the SCCA.**

Article 6.1 of Appendix I to the SCCA Arbitration Rules 2023 outlines the methods of payment and the handling of advance deposits for covering the costs defined in Article 40(2)(a)(b)(c), and (e) of the Rules. Here is a detailed analysis of the key points in this article:

- 1. Advance Deposits:** This section emphasises that advance deposits are payments made by parties in anticipation of covering costs related to arbitration proceedings. These costs include those referred to in Article 40(2)(a)(b)(c), and (e) of the SCCA Arbitration Rules 2023, which encompass various expenses associated with the arbitration process, such as Arbitral Tribunal fees, SCCA administrative fees, expert fees, and others.
- 2. Accepted Payment Methods:** The article specifies the acceptable methods of payment for these advance deposits, including wire transfer, check, or any other methods approved by the Administrator. This flexibility in payment methods ensures that parties can choose a method that suits their preferences and practical considerations.
- 3. Duration of Deposit:** It is stated that the deposited funds shall remain with the SCCA until specific triggering events occur. These events include the issuance of the final award by the Arbitral Tribunal, the issuance of a termination order, or the Administrator formally closing the case. This provision ensures that the funds remain available throughout the arbitration process to cover the associated costs.
- 4. No Charges for SCCA:** One of the key points stressed in this article is that the payment of advance deposits shall not result in any additional charges imposed by the SCCA. This provision ensures transparency and safeguards parties from incurring unexpected charges related to the payment process.

In essence, Article 6.1 of Appendix I to the SCCA Arbitration Rules 2023 provides clear guidance on the methods of payment for advance deposits, the acceptable payment methods, the duration of the deposit, and the absence of any additional charges by the SCCA for these payments. This article contributes to a transparent and well-regulated financial framework within the arbitration process, promoting fairness and predictability for the parties involved.

## **2. Advance deposits do not yield interest or earnings for the parties or the Arbitral Tribunal.**

Article 6.2 of Appendix I to the SCCA Arbitration Rules 2023 addresses the treatment of interest or earnings on advance deposits made by parties. Here is a closer analysis of this article:

1. **Interest and Earnings:** This provision unequivocally states that advance deposits made by parties for covering arbitration costs, as described in Article 40(2)(a)(b)(c), and (e) of the SCCA Rules, do not yield interest or earnings. In other words, the funds held in advance deposit accounts will not generate any additional financial benefits in terms of interest or returns during their tenure.
2. **Intended Implication:** The primary implication of this provision is that parties should not expect their advance deposits to accrue any form of financial gain while held by the SCCA. The rule aims to clarify that the deposited funds are solely meant to cover the anticipated costs of the arbitration proceedings, and any notion of interest or earnings is excluded.
3. **Simplicity and Clarity:** By explicitly stating that advance deposits do not yield interest or earnings, the article helps maintain simplicity and clarity regarding the financial arrangements within the arbitration process. Parties are informed that the primary purpose of these deposits is to ensure funds are available to cover the associated costs.
4. **Avoiding Complexities:** The decision to exclude interest or earnings is likely intended to avoid administrative complexities that could arise from distributing any accrued interest or earnings to the parties at the conclusion of the proceedings. This could simplify the financial aspects of the arbitration process.

In summary, Article 6.2 of Appendix I to the SCCA Arbitration Rules 2023 clarifies that advance deposits made by parties for arbitration costs will not accrue interest or earnings. This provision ensures transparency and straightforwardness in the financial handling of these deposits, aligning with the focus on cost coverage rather than investment gain in the context of arbitration proceedings.

**3. Amounts paid to the Arbitral Tribunal do not include any possible value added tax (VAT) or other taxes or charges and imposts applicable to Arbitral Tribunal fees. Parties have a duty to pay any such taxes or charges. However, the recovery of any such charges or taxes is a matter solely between the arbitrator and the parties. Where applicable law so requires, the Administrator shall collect withholding tax and remit such tax to the appropriate tax authority.**

Article 6.3 of Appendix I to the SCCA Arbitration Rules 2023 addresses the treatment of taxes, specifically value added tax (VAT) or other taxes and charges, in relation to the Arbitral Tribunal fees. Here is a detailed analysis of this article:

1. **VAT and Other Taxes:** This provision outlines that the amounts paid to the Arbitral Tribunal for fees do not include any potential value added tax (VAT) or other taxes and charges that might be applicable to those fees. It highlights that such taxes or charges are not automatically included in the fees set by the Arbitral Tribunal.
2. **Parties' Responsibility:** The article emphasises that parties have a duty to pay any applicable taxes or charges that are not included in the Arbitral Tribunal fees. This places the onus on the parties to ensure compliance with tax regulations and to cover any taxes or charges that may be applicable based on the relevant jurisdiction's laws.
3. **Arbitrator-Party Relationship:** The article clarifies that the recovery of taxes or charges is a matter solely between the arbitrator and the parties. This means that the arbitrator is responsible for addressing any tax obligations arising from their fees directly with the

parties, and it underscores the separate financial relationship between the arbitrator and the parties involved in the arbitration.

4. **Withholding Tax:** The provision also accounts for situations where applicable law requires the collection of withholding tax. In such cases, the Administrator (SCCA) is tasked with collecting the withholding tax and remitting it to the appropriate tax authority. This aligns with legal requirements in some jurisdictions to withhold taxes at the source of payment.
5. **Complexities of Taxation:** The inclusion of this provision recognises the potential complexities associated with taxation in cross-border arbitration cases. Tax laws can vary significantly between jurisdictions, and different rules may apply to both parties and arbitrators. By clarifying these aspects, the rule seeks to ensure that parties are aware of their tax obligations.
6. **Clarity and Transparency:** By stipulating the responsibility of parties for taxes and charges and explaining the arbitrator-party relationship regarding such matters, this provision promotes clarity and transparency in the financial aspects of arbitration proceedings.

In summary, Article 6.3 of Appendix I to the SCCA Arbitration Rules 2023 addresses the treatment of taxes and charges in relation to Arbitral Tribunal fees. It highlights the parties' responsibility for paying taxes or charges that are not included in the fees, and it acknowledges the distinct financial relationship between arbitrators and parties. Additionally, it outlines the role of the Administrator in collecting withholding tax where applicable law requires it. This provision contributes to a transparent and clear understanding of the tax-related aspects of arbitration proceedings.

#### **Article 7: Award Interpretation and Correction Fee**

**1. At its discretion, the SCCA Court shall fix the costs of the procedure following an application made in accordance with Article 39 of the Rules, which shall include any SCCA administrative fees and expenses and any Arbitral Tribunal fees and expenses arising in relation to such request.**

Article 7.1 of Appendix I to the SCCA Arbitration Rules 2023 pertains to the determination of costs associated with a procedure initiated under Article 39 of the main arbitration rules. Here is a breakdown of the key points in this article:

1. **Discretion of SCCA Court:** The article states that the SCCA Court has the authority to determine the costs of the procedure. This authority is exercised when an application is made in accordance with Article 39 of the main SCCA arbitration rules. Article 39 deals with requests for interpretation, correction, or additional awards related to an existing award.
2. **Scope of Costs:** The costs of the procedure that the SCCA Court is tasked with determining include:
  - a. **SCCA administrative fees and expenses:** These are the fees and expenses related to the administration of the arbitration by the Saudi Center for Commercial Arbitration (SCCA).

- b. **Arbitral Tribunal fees and expenses:** These refer to the compensation and expenses associated with the Arbitral Tribunal members, which may include presiding arbitrators and co-arbitrators.
3. **Arising in Relation to the Request:** The costs to be determined by the SCCA Court are those that arise in connection with the specific request made under Article 39 of the main rules. This indicates that the costs associated with addressing the request for interpretation, correction, or additional award are encompassed within the scope of this provision.
4. **Application of Article 39:** Article 39 of the main SCCA arbitration rules outlines the process for parties to request the interpretation of an award, the correction of errors, or the issuance of additional awards. By referring to Article 39, this provision establishes a connection between the application for interpretation or correction and the subsequent determination of associated costs.

In summary, Article 7.1 of Appendix I to the SCCA Arbitration Rules 2023 empowers the SCCA Court to decide the costs of a procedure that arises from an application made under Article 39 of the main arbitration rules. This includes the SCCA administrative fees and expenses, as well as the Arbitral Tribunal fees and expenses associated with addressing the specific request for interpretation, correction, or additional award. The discretionary authority of the SCCA Court in determining these costs adds a mechanism for resolving financial matters related to procedural requests within the arbitration process.

## **2. The SCCA Court may request the parties to pay appropriate amounts as an advance deposit to cover SCCA administrative fees and expenses and Arbitral Tribunal fees and expenses.**

Article 7.2 of Appendix I to the SCCA Arbitration Rules 2023 outlines the authority of the SCCA Court to request parties to make advance deposits to cover both SCCA administrative fees and expenses as well as Arbitral Tribunal fees and expenses. Here is a breakdown of the key points in this article:

1. **Authority of SCCA Court:** This provision grants the SCCA Court the authority to request parties involved in the arbitration to make advance deposits. The purpose of these deposits is to cover the anticipated costs associated with both the administration of the arbitration by the Saudi Center for Commercial Arbitration (SCCA) and the compensation and expenses of the Arbitral Tribunal members.
2. **Advance Deposits:** An advance deposit is a prepayment made by the parties to ensure that sufficient funds are available to cover the costs of the arbitration process. The SCCA Court may require parties to provide these advance deposits as a means of ensuring the financial viability of the arbitration proceedings.
3. **Scope of Advance Deposits:** The advance deposits are meant to cover two main categories of costs:
  - a. **SCCA administrative fees and expenses:** These are the costs incurred by the SCCA for administering the arbitration, including case management and other administrative functions.



- b. **Arbitral Tribunal fees and expenses:** These are the fees and expenses associated with the arbitrators who comprise the Arbitral Tribunal. The compensation and expenses of arbitrators, both presiding and co-arbitrators, are covered by these advance deposits.
4. **Appropriate Amounts:** The article uses the term “appropriate amounts,” which indicates that the SCCA Court will determine the required deposit amounts based on the circumstances of the case, the complexity of the arbitration, and other relevant factors. The goal is to ensure that the deposits adequately cover the anticipated costs of both administrative and arbitrator-related expenses.

In summary, Article 7.2 of Appendix I to the SCCA Arbitration Rules 2023 provides the SCCA Court with the authority to request parties to make advance deposits to cover both SCCA administrative fees and expenses and Arbitral Tribunal fees and expenses. This mechanism helps ensure the availability of funds necessary for the efficient and effective conduct of the arbitration process, benefiting all parties involved.

**3. Applications made in accordance with Article 39 of the Rules shall not be forwarded to the Arbitral Tribunal until the advance deposit is paid in full.**

Article 7.3 of Appendix I to the SCCA Arbitration Rules 2023 addresses the procedural requirement related to advance deposits and the processing of applications made in accordance with Article 39 of the SCCA Arbitration Rules. Here is an analysis of this article:

1. **Reference to Article 39:** Article 7.3 refers to Article 39 of the SCCA Arbitration Rules, which presumably outlines procedures for requesting interpretation, correction, or additional awards after the issuance of an award.
2. **Application Processing and Advance Deposit:** The article specifies that applications made under Article 39 shall not be forwarded to the Arbitral Tribunal until the required advance deposit is paid in full. This means that parties seeking to make requests under Article 39 must ensure that the advance deposit requested by the SCCA Court is fully paid before their applications are considered and forwarded to the Arbitral Tribunal.
3. **Effect on Processing:** The purpose of this provision is to ensure that parties fulfil their financial obligations before the arbitration proceedings are burdened with additional requests. It prevents the Arbitral Tribunal from becoming involved in addressing applications until the necessary funds are available to cover the associated costs.

In summary, Article 7.3 of Appendix I to the SCCA Arbitration Rules 2023 outlines a requirement that applications made under Article 39 of the SCCA Arbitration Rules will not be processed by the Arbitral Tribunal until the required advance deposit is paid in full. This provision ensures that the financial aspects are appropriately addressed before additional procedural steps are taken in the arbitration process.

## Article 8: Tribunal Secretary Fees and Expenses

### 1. Where the Arbitral Tribunal appoints a tribunal secretary, the SCCA Secretary Regulations in force at the time of the commencement of the arbitration shall apply.

Article 8.1 of Appendix I to the SCCA Arbitration Rules 2023 pertains to the appointment of a tribunal secretary and references the application of the SCCA Secretary Regulations. Here is an analysis of this article:

1. Reference to Tribunal Secretary and SCCA Secretary Regulations: The article states that if the Arbitral Tribunal decides to appoint a tribunal secretary, the SCCA Secretary Regulations that are in effect at the beginning of the arbitration shall apply. The SCCA Secretary Regulations are presumably a set of rules or guidelines established by the Saudi Center for Commercial Arbitration (SCCA) for the appointment and role of tribunal secretaries in arbitration proceedings.
2. Tribunal Secretary Appointment: A tribunal secretary is typically an administrative assistant or support personnel appointed by the Arbitral Tribunal to assist with various administrative tasks, document management, and other procedural matters. This individual's role is generally to facilitate the efficient functioning of the arbitration process.
3. Application of SCCA Secretary Regulations: The SCCA Secretary Regulations, which are referenced in this article, likely provide detailed guidance on the qualifications, responsibilities, and limitations of tribunal secretaries in SCCA arbitration proceedings. These regulations may address matters such as the selection process, roles and duties, confidentiality obligations, and the permissible scope of work for a tribunal secretary.
4. Ensuring Consistency and Transparency: By referring to the SCCA Secretary Regulations, this article seeks to ensure consistency and transparency in the appointment and role of tribunal secretaries in SCCA arbitrations. Standardised regulations can help maintain fairness and uniformity across different cases and ensure that parties have a clear understanding of the role and responsibilities of a tribunal secretary.

In summary, Article 8.1 of Appendix I to the SCCA Arbitration Rules 2023 establishes that if an Arbitral Tribunal appoints a tribunal secretary, the SCCA Secretary Regulations that are in effect at the commencement of the arbitration will apply. This provision ensures that the use of tribunal secretaries is governed by established regulations, promoting consistency and clarity in their roles within SCCA arbitration proceedings.

### 2. As per Section 24 of the SCCA Secretary Regulations, the Arbitral Tribunal shall determine the total in tribunal secretary fees and expenses and shall state them in the final award as per Section 27 of the SCCA Secretary Regulations.

Article 8.2 of Appendix I to the SCCA Arbitration Rules 2023 references Section 24 and Section 27 of the SCCA Secretary Regulations in relation to the determination of tribunal secretary fees and expenses. Here is an analysis of this article:

1. Reference to Specific Sections of SCCA Secretary Regulations: This article points to two specific sections within the SCCA Secretary Regulations: Section 24 and Section 27. These sections likely contain detailed provisions related to the determination of tribunal secretary fees and expenses, as well as the disclosure of these fees in the final award.
2. Determining Tribunal Secretary Fees and Expenses: Section 24 of the SCCA Secretary Regulations, as referenced in this article, likely outlines the methodology or criteria for determining the fees and expenses of a tribunal secretary. This may include factors such as the scope of work performed by the tribunal secretary, the time spent on various tasks, the complexity of the case, and any additional services rendered.
3. Inclusion in Final Award: Section 27 of the SCCA Secretary Regulations, also referenced in this article, is likely related to the disclosure and inclusion of tribunal secretary fees and expenses in the final award. This provision may require the Arbitral Tribunal to explicitly state the total amount of tribunal secretary fees and expenses in the final award, ensuring transparency and clarity for the parties.
4. Transparency and Accountability: By stipulating that the determination of tribunal secretary fees and expenses should be in accordance with specific sections of the SCCA Secretary Regulations, this article ensures transparency and accountability in the process. It signifies that the fees and expenses are subject to established rules and procedures rather than being arbitrarily determined.
5. Alignment with the Arbitration Process: The inclusion of tribunal secretary fees and expenses in the final award aligns with the general practice in arbitration, where awards often provide a breakdown of the costs incurred during the proceedings. This transparency helps parties understand the allocation of costs and expenses.

In summary, Article 8.2 of Appendix I to the SCCA Arbitration Rules 2023 references specific sections of the SCCA Secretary Regulations to outline the process for determining tribunal secretary fees and expenses and including them in the final award. This provision ensures that the fees are determined according to established rules and that the final award provides transparency regarding the costs associated with the tribunal secretary's role in the arbitration proceedings.

**3. Where the SCCA Fee Schedule applies, the tribunal secretary fees shall form part of the Arbitral Tribunal fees in accordance with Section 25 of the SCCA Secretary Regulations. In all other cases, the Arbitral Tribunal shall fix an hourly rate after consultation with the parties and the SCCA Court. The tribunal secretary fees and expenses shall be reasonable and, where applicable, charged separately.**

Article 8.3 of Appendix I to the SCCA Arbitration Rules 2023 addresses the determination of tribunal secretary fees and expenses based on whether the SCCA Fee Schedule applies. Here is an analysis of this article:

1. Integration of Tribunal Secretary Fees: This article specifies that where the SCCA Fee Schedule is applicable, tribunal secretary fees will be integrated into the Arbitral Tribunal fees. This integration emphasises that the costs associated with the tribunal secretary's role are considered as part of the overall Arbitral Tribunal fees, simplifying the cost structure for the parties.

2. **Reference to SCCA Secretary Regulations:** The article refers to Section 25 of the SCCA Secretary Regulations, indicating that this section likely contains provisions related to the inclusion of tribunal secretary fees as part of the Arbitral Tribunal fees. This reference ensures that the determination and inclusion of such fees are consistent with established regulations.
3. **Alternative Fee Arrangement:** In situations where the SCCA Fee Schedule does not apply, the article states that the Arbitral Tribunal will fix an hourly rate for the tribunal secretary after consultation with the parties and the SCCA Court. This approach allows for flexibility in determining the fees, taking into account the specifics of the case and the preferences of the parties.
4. **Reasonableness of Fees and Expenses:** The article emphasises that tribunal secretary fees and expenses must be reasonable. This requirement ensures that the fees charged for the services provided by the tribunal secretary are fair and proportional to the work performed.
5. **Separate Charging:** In cases where tribunal secretary fees are not integrated into the Arbitral Tribunal fees, the article indicates that these fees and expenses should be charged separately. This transparency ensures that parties are aware of the specific costs associated with the tribunal secretary's role in the arbitration proceedings.
6. **Consultation with Parties and SCCA Court:** The involvement of both the parties and the SCCA Court in determining the hourly rate for tribunal secretary fees underlines a collaborative approach to fee arrangement. This consultation process helps ensure fairness and transparency in determining the compensation for the tribunal secretary.

In summary, Article 8.3 of Appendix I to the SCCA Arbitration Rules 2023 outlines the approach to determining tribunal secretary fees and expenses based on whether the SCCA Fee Schedule applies. The article provides clarity on the integration of such fees into Arbitral Tribunal fees when the SCCA Fee Schedule applies, and it also addresses the process for fixing an hourly rate in cases where the SCCA Fee Schedule is not applicable. The emphasis on reasonableness and transparency in charging fees contributes to a fair and efficient arbitration process.

#### **4. The parties are jointly and severally liable for the tribunal secretary fees and expenses.**

Article 8.4 of Appendix I to the SCCA Arbitration Rules 2023 establishes the joint and several liability of the parties for tribunal secretary fees and expenses. Here is an analysis of this article:

1. **Joint and Several Liability:** This article unequivocally states that both parties involved in the arbitration are jointly and severally liable for the payment of tribunal secretary fees and expenses. "Joint and several liability" means that each party is individually responsible for the full amount of the fees and expenses. If one party fails to pay its share, the other party may be held responsible for the entire amount.
2. **Financial Responsibility:** The inclusion of joint and several liability in the rules emphasises the seriousness of the parties' financial obligations. It ensures that the tribunal secretary's compensation is secured, regardless of the financial standing of either party.

3. **Shared Burden:** The concept of joint and several liability aligns with the principle that arbitration costs are shared by the parties. This can incentivise parties to work collaboratively to manage and control costs throughout the arbitration process.
4. **Administrative Efficiency:** Having both parties share equal responsibility for tribunal secretary fees and expenses can contribute to administrative efficiency. It prevents disputes and delays that could arise if one party were solely responsible for making payments.
5. **Enforcement of Payments:** In cases where one party fails to meet its financial obligations, the other party can step in to fulfil the payment to avoid disruptions in the arbitration proceedings. This provision may help ensure that tribunal secretaries are compensated for their services in a timely manner.

In summary, Article 8.4 of Appendix I to the SCCA Arbitration Rules 2023 establishes the joint and several liability of the parties for tribunal secretary fees and expenses. This provision strengthens the financial commitment of both parties to the arbitration process and enhances the efficiency and integrity of the proceedings.

## SCCA Fee Schedule for Regular Cases under the Rules

Amount in Dispute *			SCCA Administrative Fees **				Arbitral Tribunal Fees ***			
up to		200,000	10,000				10.3795%		of amount in dispute	
from	200,001	to 400,000	10,000	+ 1.284%	of amount over 200,000	20,759	+ 7.598%	of amount over	200,000	
from	400,001	to 800,000	12,568	+ 2.024%	of amount over 400,000	35,958	+ 4.3036%	of amount over	400,000	
from	800,001	to 2,000,000	20,664	+ 1.672%	of amount over 800,000	53,172	+ 3.8287%	of amount over	800,000	
from	2,000,001	to 4,000,000	40,728	+ 1.208%	of amount over 2,000,000	99,116	+ 2.2556%	of amount over	2,000,000	
from	4,000,001	to 8,000,000	64,888	+ 0.76%	of amount over 4,000,000	144,228	+ 2.0182%	of amount over	4,000,000	
from	8,000,001	to 20,000,000	95,288	+ 0.368%	of amount over 8,000,000	224,701	+ 0.7789%	of amount over	8,000,000	
from	20,000,001	to 40,000,000	139,448	+ 0.2%	of amount over 20,000,000	318,169	+ 0.5096%	of amount over	20,000,000	
from	40,000,001	to 100,000,000	179,448	+ 0.08%	of amount over 40,000,000	420,089	+ 0.1349%	of amount over	40,000,000	
from	100,000,001	to 200,000,000	227,448	+ 0.072%	of amount over 100,000,000	501,029	+ 0.1276%	of amount over	100,000,000	
from	200,000,001	to 300,000,000	300,000			628,629	+ 0.0879%	of amount over	200,000,000	
from	300,000,001	to 400,000,000	300,000			716,529	+ 0.06%	of amount over	300,000,000	
from	400,000,001	to 1,000,000,000	300,000			776,529	+ 0.036%	of amount over	400,000,000	
over	1,000,000,000		300,000			992,529	+ 0.025%	of amount over	1,000,000,000	
Undetermined Amount			179,448			420,089				

\* Saudi Riyal (SAR) is the official currency (USD 1 = SAR 3.75). Please use our fee calculator on our website at [www.sadr.org](http://www.sadr.org) to calculate the fees. The SCCA reserves the right to revise the SCCA Fee Schedule from time to time as it deems appropriate.

\*\* A non-refundable Registration Fee of SAR 5,000 is payable in full by the claimant when a claim is filed and will be credited towards the claimant's share of the SCCA Administrative Fees.

\*\*\* The amounts calculated using this formula represent the average amount in arbitral tribunal fees. The SCCA may fix advance deposit that is up to 30% higher or lower than the average amount. The SCCA will ultimately determine arbitral tribunal fees at the end of the case. The arbitral tribunal fees for a panel of three arbitrators is three times the amount calculated for sole arbitrator. The payout of the minimum amount in arbitral tribunal fees is only guaranteed if a case ends in a final award. Amounts paid to the Arbitral Tribunal do not include any possible value added tax (VAT) or other taxes or charges and imposts applicable to the arbitral tribunal fees.

The SCCA Fee Schedule for Regular Cases under the Rules in Appendix I to the SCCA Arbitration Rules 2023 outlines the fees payable by parties involved in arbitration proceedings. The fees are determined based on the amount in dispute and are divided into SCCA administrative fees and Arbitral Tribunal fees. Here is an analysis of the SCCA Fee Schedule:

1. Structure: The Fee Schedule is structured in tiers, with different ranges of the amount in dispute. As the amount in dispute increases, the fees also increase, but the rate at which they increase becomes progressively lower.
2. SCCA Administrative Fees: These fees cover the administrative costs of the arbitration process and are fixed based on the amount in dispute. They are separate from the Arbitral Tribunal fees.
3. Arbitral Tribunal Fees: These fees are calculated based on a percentage of the amount in dispute. They cover the costs associated with the Arbitral Tribunal's services.

4. **Graduated Fee System:** The Fee Schedule follows a graduated fee system, where the percentage applied to the amount in dispute decreases as the amount in dispute increases. This helps to make the fees more proportionate to the value of the dispute.
5. **Minimum and Maximum Amounts:** The Fee Schedule sets both minimum and maximum amounts for the fees. This ensures that even in cases with very small or very large amounts in dispute, the fees remain reasonable and predictable.
6. **Adjustments to Average Amount:** The Schedule allows the SCCA to fix advance deposits for Arbitral Tribunal fees that are up to 30% higher or lower than the average amount calculated using the formula. This flexibility takes into account the specific circumstances of each case.
7. **Three-Arbitrator Panels:** In cases with a panel of three arbitrators, the Arbitral Tribunal fees are three times the amount calculated for a sole arbitrator. This reflects the increased complexity and resources required for three-arbitrator panels.
8. **Guaranteed Minimum Payout:** The SCCA guarantees the minimum amount in Arbitral Tribunal fees only if the case ends in a final award. This incentivises the efficient resolution of disputes.
9. **Currency and Calculation:** The fees are stated in Saudi Riyal (SAR), with the exchange rate of USD 1 = SAR 3.75. The SCCA encourages parties to use their fee calculator on their website for accurate calculations.
10. **Value-Added Tax (VAT) and Taxes:** The fees do not include VAT or other taxes. Parties are responsible for paying any applicable taxes or charges separately.
11. **Revisions to Fee Schedule:** The SCCA reserves the right to revise the Fee Schedule as deemed appropriate.
12. **Registration Fee:** A non-refundable Registration Fee of SAR 5,000 is payable by the claimant when filing a claim. This fee is credited towards the claimant's share of the SCCA Administrative Fees.

In summary, the SCCA Fee Schedule for Regular Cases provides a transparent and graduated fee structure that takes into account the amount in dispute, encourages efficient resolution, and offers flexibility in adjusting advance deposits. It aims to strike a balance between providing the necessary resources for effective arbitration while ensuring fairness and predictability in cost allocation.

## Appendix II — Expedited Procedure Rules

### Article 1: Scope of Application

#### 1. The Expedited Procedure Rules supplement the Rules. By agreeing to arbitration under the Rules, the parties agree that the Expedited Procedure Rules shall apply.

Article 1.1 of Appendix II to the SCCA Arbitration Rules 2023 clarifies the relationship between the Expedited Procedure Rules and the main Rules of arbitration. Here is an analysis of the paragraph:

1. This paragraph serves as an introductory statement, emphasising the relationship and interaction between the Expedited Procedure Rules and the main Rules of arbitration under the SCCA. It consists of two key components:
  - a. **Supplementary Nature:** The Expedited Procedure Rules are explicitly described as supplementing the main Rules. This means that they are designed to work alongside and enhance the existing arbitration framework provided by the main SCCA arbitration Rules. The term “supplement” suggests that the Expedited Procedure Rules provide additional procedures and guidelines that are meant to streamline and expedite the arbitration process in specific cases.
  - b. **Consent-Based Application:** The paragraph highlights that the application of the Expedited Procedure Rules is contingent upon the parties’ agreement. By choosing arbitration under the main Rules, parties implicitly agree that the Expedited Procedure Rules can be invoked in their case. This reinforces the idea that parties have control over the procedural mechanisms applied to their arbitration, allowing for flexibility and customisation based on the specific circumstances of each case.

In essence, Article 1.1 ensures that the Expedited Procedure Rules are seen as a complementary tool available to parties who choose arbitration under the SCCA’s main Rules. It underlines the importance of party consent in determining the application of these expedited procedures, providing parties with the option to tailor the arbitration process to suit the complexity and value of their dispute.

#### 2. The Expedited Procedure Rules shall apply if the parties so agree, or where the amount in dispute does not exceed SAR 4,000,000 or an equivalent amount, exclusive of the costs of arbitration, representing the aggregate amount in claims.

Article 1.2 of Appendix II to the SCCA Arbitration Rules 2023 outlines the conditions under which the Expedited Procedure Rules will be applicable. Let us analyse its key points:

1. **Parties’ Agreement:** The first part of this paragraph highlights that the application of the Expedited Procedure Rules depends on the parties’ agreement. In cases where the parties mutually agree to use these expedited procedures, the Expedited Procedure Rules will be applied to the arbitration. This reflects the importance of party autonomy and choice in determining the procedural framework for their arbitration.
2. **Threshold Amount:** The paragraph also introduces a specific condition for the application of the Expedited Procedure Rules based on the amount in dispute. Specifically, these rules will automatically apply if the amount in dispute does not exceed SAR 4,000,000 or an



equivalent amount. This threshold is exclusive of the costs of arbitration and represents the total value of the aggregate claims submitted by the parties.

3. This paragraph establishes a dual approach for the application of the Expedited Procedure Rules. Parties have the option to affirmatively agree to their use, regardless of the amount in dispute. Alternatively, if the amount in dispute falls below the specified threshold, the Expedited Procedure Rules will apply without requiring specific party agreement. This dual approach accommodates parties who want expedited procedures for relatively smaller claims while also allowing parties with larger claims to choose expedited procedures through mutual consent.

In summary, Article 1.2 defines the scenarios in which the Expedited Procedure Rules will come into play: either through parties' mutual agreement or automatically for disputes involving claims below a certain threshold amount. This provides parties with the flexibility to adapt the arbitration process based on the nature and value of their dispute.

**3. The Administrator may, at any time during the arbitration, on its own initiative or upon the request of a party and after consultation with the Arbitral Tribunal and the parties, decide that the Expedited Procedure Rules shall no longer apply to the case. In that case, the Arbitral Tribunal shall remain in place unless the SCCA Court considers that it is appropriate to replace or reconstitute the Arbitral Tribunal as set forth in Article 16 of the Rules and shall designate the presiding arbitrator. In that case, each party shall be deemed to have waived its right to nominate an arbitrator, and the SCCA Court may revoke the confirmation or appointment of any arbitrators.**

Article 1.3 of Appendix II to the SCCA Arbitration Rules 2023 addresses the possibility of discontinuing the application of the Expedited Procedure Rules during the arbitration process. Let us break down its key elements:

1. **Administrator's Discretion:** This paragraph grants the Administrator the authority to make a decision regarding the continued application of the Expedited Procedure Rules. The Administrator can exercise this discretion either on its own initiative or in response to a request from one of the parties involved in the arbitration.
2. **Consultation Requirement:** Before making a decision, the Administrator is required to consult with both the Arbitral Tribunal and the parties involved in the arbitration. This consultation process ensures transparency and allows relevant stakeholders to express their views on whether the expedited procedures should continue to apply or not.
3. **Effect on Arbitral Tribunal:** If the decision is made to discontinue the application of the Expedited Procedure Rules, the Arbitral Tribunal that was already constituted under those rules will generally remain in place. This means that the same arbitrators will continue to handle the dispute. However, there is an exception: if the SCCA Court deems it appropriate, the Tribunal may be replaced or reconstituted in accordance with Article 16 of the SCCA Arbitration Rules 2023.
4. **Consequences of Reconstitution:** If the SCCA Court decides to replace or reconstitute the Arbitral Tribunal, the Court will also designate the presiding arbitrator. Additionally, each party involved in the arbitration is considered to have waived its right to nominate an

arbitrator. The SCCA Court may also revoke the confirmation or appointment of any arbitrators previously chosen under the Expedited Procedure Rules.

In summary, Article 1.3 introduces a mechanism for discontinuing the application of the Expedited Procedure Rules during an arbitration. This provision ensures that, if circumstances change or parties believe that a more standard arbitration process is appropriate, the Administrator can, after consulting relevant stakeholders, make a decision about whether to continue with expedited procedures or transition to the regular arbitration procedures outlined in the SCCA Arbitration Rules 2023.

## Article 2: Request for Arbitration and Answer

**1. The Claimant shall, concurrent with filing the Request for Arbitration, send a copy of the Request for Arbitration, including all accompanying documents, to the Respondent and shall notify the Administrator of having done so, specifying the mode of service employed and the date of service.**

Article 2.1 of Appendix II to the SCCA Arbitration Rules 2023 pertains to the procedural requirements for notifying the Respondent and the Administrator when the Claimant files a Request for Arbitration in expedited arbitration. Here is an analysis of its key points:

1. **Claimant's Obligations:** This provision specifies that when the Claimant initiates the arbitration process by filing a Request for Arbitration, they must perform two simultaneous actions: first, sending a copy of the Request for Arbitration to the Respondent, and second, notifying the Administrator that these actions have been completed.
2. **Contents of Notification:** The Claimant's notification to the Administrator should include specific information: the mode of service used to deliver the Request for Arbitration to the Respondent (such as email, courier, registered mail, etc.), and the date on which this service was carried out.
3. **Transparency and Communication:** By requiring the Claimant to notify the Administrator, this provision enhances transparency in the arbitration process. It allows the Administrator to track the progress of the case and ensures that the arbitration process is initiated promptly. Additionally, by stipulating that the Claimant provide details about the mode of service and the date of service, the provision promotes clarity and accountability in communication between the parties and the Administrator.
4. **Concurrent Action:** The term "concurrent" emphasises that these actions should be performed simultaneously. In other words, as the Claimant files the Request for Arbitration, they should also be sending a copy to the Respondent and notifying the Administrator about the service.

In summary, Article 2.1 of Appendix II establishes a procedural requirement for the Claimant to notify both the Respondent and the Administrator when initiating the expedited arbitration process. This provision enhances transparency, communication, and accountability in the early stages of the arbitration proceedings.

**2. In the Request for Arbitration and the Answer, the parties shall present detailed submissions on the facts, claims, and defenses, together with all of the evidence then available on which such party intends to rely.**

Article 2.2 of Appendix II to the SCCA Arbitration Rules 2023 addresses the requirements for the content of the Request for Arbitration and the Answer in expedited arbitration proceedings. Here is an analysis of its key points:

1. **Detailed Submissions:** This provision emphasises that both the Claimant (filing the Request for Arbitration) and the Respondent (submitting the Answer) are required to provide detailed submissions. These submissions should include information about the facts, claims, and defences they intend to rely on during the arbitration.
2. **Facts, Claims, and Defences:** The provision covers three essential aspects that the parties must address in their submissions:
  - a. **Facts:** Parties are expected to outline the factual context of the dispute. This might include a description of the events leading to the dispute, the background information, and any relevant circumstances.
  - b. **Claims:** The parties should clearly state the claims they are asserting in the arbitration. These claims represent what each party seeks to achieve through the arbitration process.
  - c. **Defences:** The provision also mentions defences, which are the legal arguments and reasons that a party provides to counter the claims made against them. Defences are an important part of the party's response to the claims.
3. **Evidence:** The parties are required to present all the evidence that is available to them at the time of filing the Request for Arbitration (for the Claimant) or the Answer (for the Respondent). This includes any documents, witnesses, or other information that they intend to rely on to support their claims or defences.
4. **Intention to Rely:** The provision underscores that the evidence presented should be the evidence on which the party intends to rely during the arbitration proceedings. This emphasises the importance of providing comprehensive and complete information upfront.
5. **Efficiency and Expediency:** The requirement for detailed submissions and evidence is in line with the goals of expedited arbitration, which aims to provide a swift resolution to disputes. By demanding that parties present their case comprehensively at the outset, the provision contributes to the efficiency of the arbitration process.

In summary, Article 2.2 of Appendix II to the SCCA Arbitration Rules 2023 mandates that parties in expedited arbitration must provide detailed submissions on the facts, claims, and defences they intend to rely on, along with all the available evidence. This requirement ensures that the arbitration process is initiated with a clear understanding of the parties' positions and promotes the efficient and expeditious resolution of disputes.

### 3. The Administrator may abbreviate the time limit for the Answer provided for in Article 6 of the Rules.

Article 2.3 of Appendix II to the SCCA Arbitration Rules 2023 addresses the authority of the Administrator to shorten the time limit for submitting the Answer in expedited arbitration proceedings. Let us break down its key points:

1. **Time Limit for the Answer:** Article 6 of the SCCA Rules (which the provision refers to) likely sets out the general time limit for the Respondent to submit their Answer after receiving the Request for Arbitration. This time limit is a standard practice in arbitration to ensure that the proceedings progress efficiently and in a timely manner.
2. **Abbreviation of Time Limit:** The provision grants the Administrator the authority to “abbreviate” or reduce the time limit for submitting the Answer. This means that the Administrator has the discretion to require the Respondent to provide their Answer within a shorter timeframe than what might be specified in the general rules.
3. **Expedited Nature of Proceedings:** The power of the Administrator to shorten the time limit aligns with the overarching goal of expedited arbitration – to achieve a quicker resolution of disputes. By allowing the Administrator to expedite the process further, the provision supports the efficient and swift progress of the case.
4. **Flexibility and Case-Specific Considerations:** The provision grants the Administrator the discretion to determine when it is appropriate to abbreviate the time limit. This flexibility allows the Administrator to consider the specific circumstances of the case, such as its complexity, the urgency of the matter, and the parties’ agreement.
5. **Balancing Interests:** While expedited proceedings aim to resolve disputes quickly, parties’ rights to present their case and respond to claims should still be respected. Therefore, the Administrator’s power to abbreviate the time limit should be exercised judiciously, considering the need for a fair and balanced process.

In summary, Article 2.3 of Appendix II to the SCCA Arbitration Rules 2023 empowers the Administrator to reduce the time limit for submitting the Answer in expedited arbitration proceedings. This provision aligns with the goal of expediting dispute resolution while ensuring fairness and considering the specific circumstances of each case.

### Article 3: Administrative Conference

**Upon receiving the Request for Arbitration, the Administrator may conduct an administrative conference with the parties and their representatives to discuss the application of these procedures, arbitrator selection, any attempt to mediate the dispute, and any other administrative matters.**

Article 3 of Appendix II to the SCCA Arbitration Rules 2023 introduces the concept of an “administrative conference” in the context of expedited arbitration proceedings. Let us delve into the key elements of this article:

1. **Initiation of Administrative Conference:** The article specifies that the administrative conference takes place upon the receipt of the Request for Arbitration. The Administrator,

who plays a central role in managing the arbitration process, is responsible for initiating and organising this conference.

2. **Participants:** The parties and their representatives are expected to participate in the administrative conference. This conference provides an opportunity for the parties to engage directly with the Administrator and discuss various aspects of the arbitration proceedings.
3. **Agenda of the Conference:**
  - a. **Application of Procedures:** One of the purposes of the administrative conference is to discuss the application of the expedited procedure rules. This ensures that all parties are aware of the specific rules that will govern the expedited arbitration.
  - b. **Arbitrator Selection:** The conference also serves as a platform to discuss the process of selecting arbitrators. This can include considerations such as the number of arbitrators, the method of appointment, and any qualifications required.
  - c. **Mediation Possibilities:** The article mentions that the administrative conference may touch on “any attempt to mediate the dispute.” This suggests that parties might discuss whether they are open to mediation before proceeding with the arbitration.
  - d. **Administrative Matters:** The conference covers other administrative aspects of the arbitration process, which could include procedural timelines, document submission, and communication methods.
4. **Facilitating Communication:** The administrative conference is a mechanism to facilitate open communication between the parties, their representatives, and the Administrator. It ensures that everyone is on the same page regarding the procedure and other relevant matters.
5. **Efficiency and Clarity:** The administrative conference aligns with the overarching goal of expedited arbitration to streamline the process and achieve efficient resolution. By clarifying key procedural elements at an early stage, the conference contributes to the smooth functioning of the proceedings.
6. **Flexibility:** While the article mentions specific topics for discussion, the administrative conference’s agenda can be adapted to suit the unique circumstances of each case. This allows for a flexible approach that can address the specific needs and concerns of the parties.

In summary, Article 3 of Appendix II to the SCCA Arbitration Rules 2023 establishes the concept of an administrative conference in expedited arbitration proceedings. This conference serves as a platform for discussing various administrative and procedural matters, aiming to ensure a clear and efficient path forward in the expedited arbitration process.

#### Article 4: Objection to Applicability of the Expedited Procedure Rules

**If an objection is submitted as to the applicability of the Expedited Procedure Rules, the Administrator shall make a final determination.**

Article 4 of Appendix II to the SCCA Arbitration Rules 2023 addresses the process for handling objections related to the applicability of the Expedited Procedure Rules in arbitration cases. Let us break down the key points of this article:

1. **Objection to Applicability of the Expedited Procedure Rules:** This article deals with situations where one of the parties objects to the application of the Expedited Procedure Rules to their arbitration case. The Expedited Procedure Rules are designed to provide a more streamlined and efficient process for resolving disputes, particularly in cases involving smaller claims or when parties agree to expedited proceedings.
2. **Role of the Administrator:** The article specifies that if an objection is raised by a party regarding the applicability of the Expedited Procedure Rules, the responsibility for making a final determination on this matter rests with the Administrator. The Administrator is a key administrative body responsible for managing the arbitration process under the SCCA rules.
3. **Final Determination:** Once an objection is submitted, the Administrator has the authority to review the objection and assess whether the Expedited Procedure Rules are applicable to the case. The term “final determination” suggests that the decision made by the Administrator in response to the objection is binding and conclusive. This decision could impact whether the case proceeds under the regular arbitration rules or under the expedited procedure rules.

In summary, Article 4 of Appendix II to the SCCA Arbitration Rules 2023 establishes the procedure for handling objections raised by parties regarding the applicability of the Expedited Procedure Rules. The Administrator is empowered to make the final decision on whether the expedited procedure should be applied in response to such objections. This article aims to ensure that the arbitration process remains consistent and efficient while addressing any concerns parties may have about using the Expedited Procedure Rules.

#### Article 5: Amendment to the Claims or Defense

**If, after filing of the initial claims, a party amends its claim such that it exceeds SAR 4,000,000 exclusive of the costs of arbitration, the case shall continue to be administered in accordance with the Expedited Procedure Rules unless the parties agree, or the Administrator or Arbitral Tribunal determine, otherwise. After the Arbitral Tribunal is constituted, no new or different claim, nor any change in the amount in dispute, may be submitted unless the Arbitral Tribunal deems appropriate.**

Article 5 of Appendix II to the SCCA Arbitration Rules 2023 addresses the scenario in which a party seeks to amend its claims or defences during the course of arbitration proceedings conducted under the Expedited Procedure Rules. Let us break down the key points of this article:

1. **Amendment to Claims or Défense:** This article focuses on the situation where a party wishes to amend its original claim or defence after the initial claims have been filed in an

arbitration conducted under the Expedited Procedure Rules. An amendment might involve changes to the claims or defences asserted in the case, potentially altering the scope, nature, or amount of the dispute.

2. **Threshold Amount:** The article establishes a specific threshold amount of SAR 4,000,000 (or its equivalent) as a reference point. If a party's amended claim, after accounting for the amendment, exceeds this threshold, the case may no longer be suitable for expedited proceedings under the Expedited Procedure Rules.
3. **Continuation of Expedited Procedure:** If the amended claim remains within the threshold of SAR 4,000,000 (or its equivalent), the case will continue to be administered in accordance with the Expedited Procedure Rules, unless specific circumstances dictate otherwise. This means that the streamlined and efficient procedures of the Expedited Procedure Rules would continue to apply to the arbitration.
4. **Change in Administration:** However, if the amended claim exceeds the SAR 4,000,000 threshold, the article provides several options for determining how the case will be administered. The parties might agree to continue under the Expedited Procedure Rules despite the increased claim amount. Alternatively, the Administrator or the Arbitral Tribunal can make a determination regarding the administration of the case, taking into account the parties' positions and the circumstances of the case.
5. **Restrictions After Constitution of Arbitral Tribunal:** After the Arbitral Tribunal has been constituted (formed), the article introduces a restriction on introducing new or different claims or altering the amount in dispute. Such actions can only be undertaken if the Arbitral Tribunal deems them appropriate, suggesting that any amendments at this stage would be subject to the Tribunal's assessment of their relevance and impact on the arbitration process.

In summary, Article 5 of Appendix II to the SCCA Arbitration Rules 2023 outlines the procedures and considerations related to amending claims or defences during arbitration proceedings conducted under the Expedited Procedure Rules. The article sets forth a threshold amount, defines the consequences of exceeding that threshold, and establishes the roles of the parties, the Administrator, and the Arbitral Tribunal in making decisions regarding the continuation or modification of the expedited proceedings based on amended claims or defences.

## **Article 6: Appointment of the Arbitrator**

### **1. The parties may nominate a sole arbitrator within a time limit to be fixed by the Administrator.**

Article 6.1 of Appendix II to the SCCA Arbitration Rules 2023 addresses the process through which parties can nominate a sole arbitrator in cases governed by the Expedited Procedure Rules. Let us break down the key elements of this article:

1. **Nomination of Sole Arbitrator:** The article emphasises that the parties involved in the arbitration process have the option to nominate a sole arbitrator to handle their dispute. This means that rather than relying on an arbitrator appointed by an external entity, the

parties have the agency to propose and select an arbitrator who they believe is suitable for their case.

2. **Time Limit for Nomination:** The article specifies that the nomination of a sole arbitrator by the parties must be done within a designated time frame. This time limit is determined by the Administrator, who is responsible for administering the arbitration proceedings. The article does not provide the exact duration of this time limit but rather indicates that it will be set by the Administrator.
3. **Administrator's Role:** The role of the Administrator in this context is to establish the time limit within which the parties need to nominate the sole arbitrator. The Administrator is likely to communicate this time limit to the parties at the commencement of the arbitration process, providing them with a clear timeframe within which they must exercise their right to nominate an arbitrator.

In essence, Article 6.1 highlights the principle of party autonomy in the arbitration process, granting the parties the authority to select a sole arbitrator of their choosing. The article also acknowledges the need for a defined timeline to ensure the efficient progression of the arbitration proceedings. By stipulating that the time limit for nomination will be set by the Administrator, the article ensures that there is a balance between party autonomy and procedural efficiency.

**2. Absent such a nomination, the sole arbitrator shall be appointed as follows:**

- a) **The Administrator shall simultaneously submit to each party an identical list of five proposed arbitrators. The parties may agree to an arbitrator from this list and shall so advise the Administrator.**
- b) **If the parties are unable to agree upon an arbitrator, each party may strike two names from the list, number the remaining names in order of preference, and return it to the Administrator within 10 days from the transmittal date of the list to the parties. The parties are not required to exchange selection lists.**
- c) **From among the persons who have been approved on the parties' lists, and in accordance with the designated order of mutual preference, the Administrator shall invite an arbitrator to serve.**
- d) **If, for any reason, the appointment cannot be made from the submitted lists, the SCCA Court may make the appointment without the circulation of additional lists. The parties will be given notice by the Administrator of the arbitrator's appointment, together with any disclosures. In that case, each party shall be deemed to have waived its right to nominate an arbitrator.**

Article 6.2 of Appendix II to the SCCA Arbitration Rules 2023 outlines the procedure for appointing a sole arbitrator when the parties are unable to make a nomination themselves. This article provides a structured process for selecting an arbitrator from a list of proposed candidates. Let us dissect the various components of this article:



1. **Appointment of Sole Arbitrator in Absence of Nomination:** This section addresses situations where the parties do not nominate a sole arbitrator within the prescribed time limit. In such cases, the process for appointing the arbitrator is as follows:
  - a. **Proposal of List of Arbitrators:** The Administrator takes the initiative to prepare a list of five potential arbitrators, which is the same for each party. The parties have the opportunity to agree upon an arbitrator from this list, which they communicate to the Administrator.
  - b. **Disagreement and Ranking:** If the parties are unable to agree on a single arbitrator from the proposed list, each party is allowed to strike two names from the list and then rank the remaining names in order of preference. This is done independently by each party without the need for exchanging lists.
  - c. **Appointment Based on Mutual Preference:** The Administrator will then select an arbitrator from the list of approved names, taking into account the designated order of mutual preference. In other words, the Administrator will appoint the arbitrator preferred by both parties to the extent possible.
  - d. **SCCA Court Appointment:** In cases where an appointment cannot be made from the submitted lists due to specific reasons, the SCCA Court has the authority to appoint an arbitrator directly. In this scenario, the Administrator informs the parties of the appointed arbitrator and any relevant disclosures.

Overall, Article 6.2 establishes a structured and transparent process for appointing a sole arbitrator when the parties are unable to nominate one themselves. This process is designed to ensure that the appointment is fair, impartial, and aligned with the preferences of the parties as much as possible. The involvement of the SCCA Court in cases where an appointment cannot be made from the submitted lists adds an extra layer of authority and accountability to the appointment process.

#### **Article 7: Procedural Conference and Order**

**1. After the Arbitral Tribunal's constitution, the Arbitral Tribunal may schedule a case management conference with the parties, their representatives and the Administrator to discuss the case procedure and schedule. Within 14 days of its constitution, the Arbitral Tribunal shall issue a procedural order. The Administrator may extend this time limit in accordance with a reasoned request from the Arbitral Tribunal or on its own initiative if it decides it is necessary to do so.**

Article 7.1 of Appendix II to the SCCA Arbitration Rules 2023 outlines the process of case management conferences, issuance of procedural orders, and time limit extensions. Here is a detailed analysis of its key points:

1. **Case Management Conference:** This provision establishes that after the Arbitral Tribunal has been constituted, it has the authority to organise a case management conference. The conference involves the following parties:
  - a. Parties involved in the arbitration
  - b. Representatives of the parties

- c. The Administrator
2. The purpose of the case management conference is to discuss and plan the procedure and schedule for the arbitration case. This includes determining how the case will be conducted, setting timelines for various stages of the arbitration, and addressing any procedural matters that need to be resolved.
  3. Issuance of Procedural Order: Within a specific time frame, the Arbitral Tribunal is required to issue a procedural order. The key points regarding the issuance of the procedural order are as follows:
    - a. Time Frame: The Arbitral Tribunal must issue the procedural order within 14 days of its constitution. This ensures that the arbitration process is initiated promptly and efficiently after the tribunal is formed.
    - b. Contents of Procedural Order: The procedural order outlines the procedural framework that will govern the arbitration proceedings. It specifies the rules and procedures that the parties must follow throughout the arbitration, including timelines, submission of evidence, and other relevant matters.
  4. Time Limit Extension: The provision acknowledges that there might be instances where it is necessary to extend the time limit for issuing the procedural order. The Administrator has the authority to extend the 14-day time limit under the following circumstances:
    - a. Reasoned Request: If the Arbitral Tribunal provides a reasoned request for an extension of the time limit, the Administrator can consider granting the extension.
    - b. Administrator's Initiative: The Administrator can also decide to extend the time limit on its own initiative if it deems it necessary to do so. This offers flexibility in cases where circumstances require more time for the Arbitral Tribunal to prepare and issue the procedural order.

Overall, Article 7.1 ensures that the arbitration proceedings are managed efficiently and in a structured manner. The case management conference and the issuance of a procedural order contribute to the clear organisation of the arbitration process, while the provision for time limit extensions allows for adaptability in response to specific case requirements.

**2. The Arbitral Tribunal may, after consultation with the parties, decide if the dispute is to be decided solely on the basis of documentary evidence, or if a hearing is required for the examination of any witness or expert witness as well as for any oral argument.**

Article 7.2 of Appendix II to the SCCA Arbitration Rules 2023 outlines the authority of the Arbitral Tribunal to determine the mode of dispute resolution and the need for hearings. Here is a detailed analysis of this article:

1. Determining Dispute Resolution Mode: The article grants the Arbitral Tribunal the authority to decide the mode of resolving the dispute. Specifically, the Tribunal has the discretion to choose between two primary methods:

- a. **Documentary Evidence:** The Tribunal can decide to base its decision solely on the basis of documentary evidence. This means that the parties will submit written evidence, documents, and materials that support their claims and defences. The Tribunal will make its decision based on these submitted documents without the need for an in-person hearing.
  - b. **Hearing:** Alternatively, the Tribunal can determine that a hearing is necessary. In this case, the Tribunal will arrange for a formal session where witnesses and expert witnesses can be examined, and oral arguments can be presented. A hearing provides an opportunity for parties to present their cases directly to the Tribunal and respond to questions from the Tribunal and the opposing party.
2. **Consultation with Parties:** Before making a decision on whether to proceed with documentary evidence or hold a hearing, the Arbitral Tribunal is required to consult with the parties. This consultation ensures that the parties' perspectives and preferences are taken into account, enhancing the fairness and efficiency of the arbitration process.
  3. **Examination of Witnesses and Expert Witnesses:** If the Tribunal decides that a hearing is necessary, it may require the examination of witnesses and expert witnesses. This enables the Tribunal to gather additional information, clarify any points of contention, and make a more informed decision.
  4. **Oral Argument:** The article also mentions that a hearing may be required for any oral argument. Oral arguments allow the parties to present their cases verbally, address any questions from the Tribunal, and respond to counterarguments from the opposing side.

Overall, Article 7.2 empowers the Arbitral Tribunal to tailor the arbitration process based on the circumstances of the case. The Tribunal's consultation with the parties ensures that their input is considered when determining the appropriate method of dispute resolution. This flexibility supports the efficient and effective resolution of disputes in a manner that is best suited to the specific case at hand.

## **Article 8: Proceedings Based on Written Submissions**

**1. In consultation with the parties, the Arbitral Tribunal shall establish a procedural timetable in the procedural order referred to in Article 7 of this Appendix for completing and exchanging any written submissions.**

Article 8.1 of Appendix II to the SCCA Arbitration Rules 2023 pertains to the establishment of a procedural timetable by the Arbitral Tribunal for the completion and exchange of written submissions. Let us break down the key aspects of this article:

1. **Procedural Timetable:** The article emphasises that the Arbitral Tribunal has the responsibility to establish a procedural timetable. This timetable outlines specific deadlines and milestones for completing various stages of the arbitration process, particularly those related to the submission and exchange of written documents.
2. **Consultation with Parties:** The Arbitral Tribunal is required to consult with the parties when setting up the procedural timetable. This consultation ensures that the parties'

input and preferences are taken into consideration. By involving the parties in this decision-making process, the Tribunal aims to promote fairness, efficiency, and collaboration in the arbitration proceedings.

3. **Written Submissions:** The main focus of the procedural timetable established by the Tribunal is to determine the deadlines for completing and exchanging written submissions. These submissions may include statements of claims, statements of defence, responses to procedural orders, witness statements, expert reports, legal arguments, and any other written materials that the parties intend to submit to support their respective positions.
4. **Consistency with Article 7:** This article works in conjunction with Article 7, which discusses the case management conference and the issuance of the procedural order by the Arbitral Tribunal. The procedural timetable established under Article 8.1 aligns with the decisions made during the case management conference, including whether a hearing is required, whether the dispute will be resolved based on documentary evidence, and the schedule for the arbitration process.

By requiring the Arbitral Tribunal to collaborate with the parties in establishing the procedural timetable, Article 8.1 aims to promote transparency, efficiency, and fairness in the arbitration proceedings. This approach allows for a tailored and well-organised process that takes into account the specific needs and preferences of the parties involved in the dispute.

**2. Where based on written submissions, all submissions are due within 30 days of the procedural order’s date unless the Arbitral Tribunal determines otherwise.**

Article 8.2 of Appendix II to the SCCA Arbitration Rules 2023 outlines a specific time frame for the submission of written submissions when the arbitration process is primarily based on those documents. Here is a breakdown of its key elements:

1. **Timeframe for Written Submissions:** The article specifies that if the arbitration process is predominantly based on written submissions (meaning that a hearing is not required, and the case will be resolved based on documents alone), all parties are required to submit their written submissions within a fixed time frame.
2. **Deadline:** The deadline for submitting written submissions is set at 30 days from the date of the procedural order issued by the Arbitral Tribunal. This procedural order is mentioned in Article 7, and it typically outlines the procedural timetable for various stages of the arbitration process.
3. **Flexibility:** The Arbitral Tribunal is granted the authority to determine an alternative timeframe for written submissions if it deems it necessary or appropriate. This recognises that there may be circumstances where a different timeframe is more suitable, such as when the complexity of the case or other factors warrant an extension or modification.
4. **Efficiency and Organisation:** This provision is designed to ensure that the arbitration process runs smoothly and efficiently, particularly when the case is resolved based on written submissions. By setting a specific deadline, the article helps maintain a structured and organised timeline for the parties to present their arguments and evidence.

In essence, Article 8.2 aims to promote timely and orderly proceedings when the arbitration process relies primarily on written submissions. It provides clarity regarding the time limit for submitting documents and allows the Arbitral Tribunal some discretion to adjust the deadline if circumstances require it. This contributes to the overall effectiveness and fairness of the arbitration process.

**3. After submission of the response to the Request for Arbitration, the parties shall in principle be entitled to submit one statement of claim and one statement of defense and counterclaim, and, where applicable, one statement of defense in reply to the counterclaim or crossclaim.**

Article 8.3 of Appendix II to the SCCA Arbitration Rules 2023 outlines the number and types of written statements that parties are generally entitled to submit after the submission of the response to the Request for Arbitration. Let us break down the key points of this article:

1. **Initial Response:** The article assumes that the arbitration process starts with the claimant filing the Request for Arbitration, followed by the respondent's response to the claimant's allegations.
2. **Subsequent Written Statements:** Once the response to the Request for Arbitration is submitted, the article stipulates that the parties are, in principle, entitled to submit the following written statements:
  - a. **Statement of Claim:** A document presented by the claimant detailing their case, including the factual background, legal arguments, and the relief sought.
  - b. **Statement of Defence and Counterclaim:** The respondent submits this document in response to the statement of claim. It contains the respondent's response to the allegations made by the claimant and any counterclaims they may have against the claimant.
  - c. **Statement of Defence in Reply to Counterclaim or Crossclaim:** If a counterclaim or crossclaim is filed, the claimant or another relevant party can submit this statement to address the additional claims made against them.
3. **Principle of Entitlement:** The article emphasises that parties are "in principle" entitled to submit the specified statements. This indicates a general guideline while allowing for flexibility to address specific circumstances.
4. **Balancing Fairness and Efficiency:** By setting out the scope of permitted written statements, this provision seeks to strike a balance between ensuring parties have the opportunity to present their case thoroughly and promoting the efficiency of the arbitration process.
5. **Avoiding Unnecessary Prolongation:** The provision aims to prevent unnecessary delays in the arbitration process by specifying the scope of written submissions and preventing an excessive number of filings.
6. **Case-Specific Considerations:** The phrase "in principle" suggests that exceptions may arise based on the unique characteristics of each case. This recognises that some cases might necessitate more or fewer statements based on their complexity or the issues involved.

In summary, Article 8.3 of Appendix II to the SCCA Arbitration Rules 2023 establishes the framework for the submission of written statements after the initial response to the Request for Arbitration. It underscores the principle of entitlement to specific types of statements while allowing for case-specific flexibility, ultimately ensuring a fair and efficient arbitration process.

**4. Requests for document production shall be limited to documents that are directly relevant to the matters in dispute or to its outcome and shall be reasonably restricted in terms of time frame, subject matter, and persons or entities to which the requests pertain.**

Article 8.4 of Appendix II to the SCCA Arbitration Rules 2023 addresses the scope and limitations of requests for document production in the arbitration process. Let us break down the key points of this article:

1. **Relevance and Limitation:** The article emphasises that requests for document production must be limited to documents that are “directly relevant” to the matters in dispute or their outcome. This requirement ensures that the requested documents have a clear and significant connection to the issues being arbitrated.
2. **Reasonable Restrictions:** The article further states that requests for document production should be “reasonably restricted” in various aspects:
  - a. **Time Frame:** The scope of documents requested should be confined to a specific time frame relevant to the dispute.
  - b. **Subject Matter:** The requests should focus on documents related to the specific subject matter of the dispute.
  - c. **Persons or Entities:** The requests should be directed at persons or entities that are relevant to the dispute.
3. **Balancing Relevance and Proportionality:** The provision aims to strike a balance between the parties’ need for relevant evidence and the need to avoid burdensome or overly broad requests that could lead to unnecessary delays and expenses.
4. **Promoting Efficiency:** By setting clear parameters for document production requests, the article seeks to streamline the arbitration process and prevent disputes over excessive or irrelevant document requests.
5. **Preventing Fishing Expeditions:** The requirement for direct relevance and reasonable restrictions is intended to prevent parties from conducting “fishing expeditions,” where requests for documents are made without a clear connection to the dispute.
6. **Ensuring Fairness:** This provision ensures that parties have access to documents that are genuinely relevant to their case while also preventing abuses of the document production process.
7. **Encouraging Cooperation:** The requirement for relevant and reasonably restricted requests encourages the parties to work cooperatively and efficiently in the document production process.

In summary, Article 8.4 of Appendix II to the SCCA Arbitration Rules 2023 establishes guidelines for requests for document production in arbitration. It emphasises the need for direct relevance, reasonable limitations, and proportionality, all of which aim to promote an efficient and fair arbitration process by ensuring that document requests are targeted and meaningful.

### Article 9: Proceedings Based on Hearing

**1. Where an oral hearing is to be held, the Arbitral Tribunal shall set the date, time, and location of the hearing. The hearing may take place in person or via videoconference, telephone, or other suitable means, at the discretion of the Arbitral Tribunal. No transcript or stenographic record shall be required unless the parties agree otherwise.**

Article 9.1 of Appendix II to the SCCA Arbitration Rules 2023 addresses the procedures related to oral hearings in the arbitration process. Let us analyse its key provisions:

1. **Setting the Hearing Details:** The article specifies that when an oral hearing is scheduled, the Arbitral Tribunal is responsible for determining the essential details of the hearing:
  - a. **Date:** The specific date when the hearing will take place.
  - b. **Time:** The scheduled time for the commencement of the hearing.
  - c. **Location:** The physical or virtual location where the hearing will occur.
2. **Formats of Hearing:** The Arbitral Tribunal is granted discretion to decide on the format of the hearing. This means that the hearing can take place using various methods, including:
  - a. **In-Person:** The parties and tribunal physically gather in the same location for the hearing.
  - b. **Videoconference:** The hearing is conducted using videoconferencing technology, allowing participants to see and hear each other remotely.
  - c. **Telephone:** The hearing is conducted via phone calls, where participants communicate verbally.
3. **Transcript and Record Requirement:** The article states that there is no requirement for a transcript or stenographic record of the oral hearing. This means that parties are not obligated to produce a written verbatim record of the hearing's proceedings.
4. **Exceptional Record Requirement:** However, the absence of a transcript or stenographic record can be overridden if the parties agree otherwise. In such cases, parties can decide to create a record of the hearing's discussions and arguments.
5. **Balancing Efficiency and Record-Keeping:** The provision reflects a balance between the efficiency of the arbitration process and the parties' ability to keep a formal record of the oral hearing. By not mandating a transcript, the process may be expedited, but parties can still opt for a record if they believe it is necessary.

6. **Flexibility and Adaptability:** The article recognises the evolving technology landscape and provides the flexibility for hearings to be conducted using various means, taking advantage of modern communication tools.

In summary, Article 9.1 of Appendix II to the SCCA Arbitration Rules 2023 provides guidance on the procedures surrounding oral hearings in arbitration. It empowers the Arbitral Tribunal to determine the specifics of the hearing while granting flexibility in the format of the hearing and the option to create a transcript if the parties agree. This provision aims to balance the need for an effective and efficient arbitration process with the parties' preferences for record-keeping and evidence preservation.

**2. The oral hearing shall take place within 60 days of the procedural order's date unless the Arbitral Tribunal deems it necessary to extend that period. The oral hearing shall not exceed one day unless the Arbitral Tribunal determines otherwise. The Administrator shall notify the parties in advance of the hearing date.**

Article 9.2 of Appendix II to the SCCA Arbitration Rules 2023 outlines the procedural aspects of the oral hearing in arbitration. Let us analyse its key components:

1. **Timeline for Oral Hearing:** The article specifies that the oral hearing must take place within 60 days from the date of the procedural order issued by the Arbitral Tribunal. This timeline provides a clear timeframe for the parties to anticipate when the hearing will occur. It reflects the aim of expediting arbitration proceedings under the Expedited Procedure Rules.
2. **Arbitral Tribunal's Discretion to Extend the Period:** While the default timeframe is 60 days, the article acknowledges the possibility of extending this period if the Arbitral Tribunal deems it necessary. This provision recognises that unforeseen circumstances or complex cases may require more time to adequately prepare for the oral hearing. The discretion of the Arbitral Tribunal to extend the timeline maintains a level of flexibility within the rules.
3. **Limit on Hearing Duration:** The article sets a general limit on the duration of the oral hearing, stating that it should not exceed one day. This limitation aims to ensure that the hearing remains focused and efficient. However, it also provides flexibility by allowing the Arbitral Tribunal to determine a longer hearing duration if the circumstances warrant it.
4. **Advance Notification of Hearing Date:** The Administrator is responsible for notifying the parties in advance of the scheduled hearing date. This ensures that all parties have sufficient time to prepare for the hearing, gather necessary evidence, and coordinate their participation.
5. **Balancing Efficiency and Fairness:** Article 9.2 strikes a balance between the need for expeditious proceedings and the parties' right to present their cases effectively. By providing clear timelines, limiting the hearing duration, and allowing for potential extensions, the article aims to streamline the process while maintaining fairness and due process.



6. **Administrative Role of the Administrator:** The role of the Administrator is highlighted in this article, as they are responsible for facilitating communication between the parties and notifying them of the hearing date. This administrative role ensures smooth coordination and effective communication throughout the arbitration process.

In summary, Article 9.2 of Appendix II to the SCCA Arbitration Rules 2023 outlines key aspects of the oral hearing process. It establishes a timeline for the hearing, grants the Arbitral Tribunal discretion to extend the period if necessary, sets a limit on the hearing duration, and assigns responsibility to the Administrator for notifying the parties. This article reflects the balance between efficiency and fairness in conducting arbitration proceedings under the Expedited Procedure Rules.

## Article 10: The Award

**1. The award shall be made in writing and shall be final and binding on the parties. Unless the parties agree, applicable law requires, or the Administrator determines, otherwise, the award shall be made no later than 30 days from the date of the closure of the proceeding as provided for in Article 33 of the Rules.**

Article 10.1 of Appendix II to the SCCA Arbitration Rules 2023 addresses the issuance of the award in the context of the arbitration process. Let us break down its key points:

1. **Written Award:** The article stipulates that the award must be rendered in writing. This requirement ensures that the parties have a clear and formal record of the tribunal's decision, which is essential for transparency, enforcement, and future reference.
2. **Final and Binding Nature:** The article establishes that the award is intended to be final and binding on the parties. This reflects a fundamental principle of arbitration, where the award typically concludes the dispute-resolution process and represents the resolution of the parties' claims and issues.
3. **Timeliness of Award:** According to the article, absent specific agreement by the parties or contrary requirements of applicable law, the award must be issued within 30 days from the closure of the proceeding. This timeline ensures that the award is delivered in a timely manner, contributing to the efficiency and effectiveness of the arbitration process.
4. **Reference to Article 33 of the Rules:** The article refers to Article 33 of the main SCCA Arbitration Rules as the source for determining the date of closure of the proceeding. Article 33 of the main rules likely specifies the procedures for closing the proceeding, which could include the finalisation of written submissions, completion of the oral hearing (if applicable), and any other relevant steps that mark the conclusion of the case.
5. **Flexibility for Parties, Applicable Law, and Administrator:** While the default timeline for issuing the award is provided as 30 days, the article acknowledges that there are exceptions. Parties may agree to a different timeline, applicable law might dictate a different timeframe, or the Administrator could determine an alternative deadline. This flexibility recognises that circumstances may vary and allows for adjustments as needed.
6. **Emphasis on Timely Resolution:** The requirement for a timely issuance of the award, whether within the default 30 days or as otherwise determined, underscores the

importance of prompt dispute resolution in arbitration. Parties often choose arbitration for its efficiency, and this provision ensures that the award is delivered in a manner consistent with that objective.

In summary, Article 10.1 of Appendix II to the SCCA Arbitration Rules 2023 establishes guidelines for issuing the award in an arbitration conducted under the Expedited Procedure Rules. It emphasises the requirement for a written final and binding award, sets a default timeline of 30 days for the award's issuance from the closure of proceedings, and provides flexibility for deviations based on the parties' agreement, applicable law, or the Administrator's determination.

**2. In any case, the final award shall be made within 180 days from the date the Arbitral Tribunal was constituted unless the Administrator decides, in exceptional circumstances, to extend the time limit for issuing such final award.**

Article 10.2 of Appendix II to the SCCA Arbitration Rules 2023 addresses the timeline for issuing the final award in the context of the arbitration process conducted under the Expedited Procedure Rules. Let us break down its key points:

1. **180-Day Timeline:** The article specifies that, regardless of the default timeline mentioned in Article 10.1, a final award must be issued within 180 days from the date the Arbitral Tribunal was constituted. This timeline places a maximum limit on the duration of the arbitration process, ensuring that the case is resolved in a relatively swift manner, consistent with the expedited nature of proceedings under these rules.
2. **Exceptional Circumstances and Administrator's Discretion:** The article recognises that there may be exceptional circumstances that could warrant an extension of the 180-day timeline. In such cases, the Administrator is granted the authority to decide whether to extend the time limit for issuing the final award. This acknowledges that unforeseen or complex factors might arise during the course of the arbitration that could justify additional time for the Arbitral Tribunal to reach a well-considered decision.
3. **Balancing Efficiency and Fairness:** The provision demonstrates a balance between the need for efficiency in expedited arbitration and the importance of allowing sufficient time for a fair and thorough consideration of the parties' arguments and evidence. While the rules aim to expedite the process, they also recognise that certain cases may require more time due to their complexity or other exceptional circumstances.
4. **Administrative Flexibility:** By granting the Administrator discretion to extend the time limit, the article provides a mechanism for adapting to unique situations that may arise during the arbitration. This flexibility ensures that the parties' interests are taken into account while also facilitating the efficient resolution of disputes.

In summary, Article 10.2 of Appendix II to the SCCA Arbitration Rules 2023 sets a default maximum timeline of 180 days for issuing the final award in cases conducted under the Expedited Procedure Rules. It also recognises the possibility of exceptional circumstances and grants the Administrator the authority to extend the time limit for issuing the final award, ensuring a balanced approach to expediting the arbitration process while accommodating unique situations as needed.

## Article 11: Costs

**The SCCA administrative fees and the Arbitral Tribunal fees shall be determined by the SCCA Court in accordance with the SCCA Fee Schedule under the Expedited Procedure Rules in force at the time of the commencement of the arbitration.**

Article 11 of Appendix II to the SCCA Arbitration Rules 2023 pertains to the determination of administrative fees and Arbitral Tribunal fees in cases conducted under the Expedited Procedure Rules. Let us break down the key points of this article:

1. **Fee Determination Process:** The article establishes that both the SCCA administrative fees and the Arbitral Tribunal fees will be determined based on the SCCA Fee Schedule. The SCCA Court is designated as the authority responsible for making this determination.
2. **Reference to the SCCA Fee Schedule:** The article explicitly references the SCCA Fee Schedule as the basis for calculating the administrative and tribunal fees. The SCCA Fee Schedule is a predetermined table that outlines the fees associated with the arbitration process, including the amount in dispute, and provides a transparent framework for fee calculation.
3. **Applicability to Expedited Procedure Rules:** It is important to note that this provision specifically applies to cases conducted under the Expedited Procedure Rules. These rules are designed to streamline the arbitration process for cases of lower complexity or lower value. As such, the article ensures that the fee determination process aligns with the expedited nature of these proceedings.
4. **Temporal Aspect:** The article specifies that the fees shall be determined based on the SCCA Fee Schedule that is in force at the time of the commencement of the arbitration. This underscores the importance of using the fee schedule that was applicable when the arbitration was initiated, providing predictability and consistency to the fee assessment process.
5. **Transparency and Consistency:** The article's provision for determining fees using the SCCA Fee Schedule enhances transparency and predictability in the arbitration process. Parties can refer to the fee schedule to understand how their fees will be calculated, ensuring consistency and fairness.

In summary, Article 11 of Appendix II to the SCCA Arbitration Rules 2023 establishes that the SCCA administrative fees and Arbitral Tribunal fees for cases conducted under the Expedited Procedure Rules will be determined based on the SCCA Fee Schedule in force at the start of the arbitration. The article ensures transparency, consistency, and adherence to the expedited nature of the proceedings while determining the financial aspects of the arbitration process.

## Article 12: General Rules

### 1. The provisions of the Expedited Procedure Rules shall apply in addition to the provisions of the Rules that are not in conflict with the Expedited Procedure Rules.

Article 12.1 of Appendix II to the SCCA Arbitration Rules 2023 addresses the interaction between the Expedited Procedure Rules and the general Rules of arbitration. Let us analyse its key points:

1. **Supplementary Nature of the Expedited Procedure Rules:** The article establishes that the Expedited Procedure Rules are meant to supplement the general Rules of arbitration. This means that the Expedited Procedure Rules do not replace the general Rules but rather provide additional procedures that are specifically designed to expedite and streamline the arbitration process in certain cases.
2. **Non-Conflict Principle:** The article specifies that the provisions of the Expedited Procedure Rules apply in addition to the provisions of the general Rules, but only in cases where there is no conflict between the two sets of rules. In other words, if a provision of the general Rules contradicts a provision of the Expedited Procedure Rules, the Expedited Procedure Rules will take precedence.
3. **Maintaining Consistency:** This provision ensures that while the Expedited Procedure Rules introduce specific procedures tailored for quicker and more efficient resolution, they do not disrupt the fundamental principles and mechanisms established by the general Rules. This helps maintain consistency and fairness in the arbitration process, while allowing for flexibility when handling expedited cases.
4. **Preservation of Applicable Provisions:** By allowing the Expedited Procedure Rules to supplement the general Rules, the article acknowledges that not all aspects of the arbitration process will necessarily be expedited. Certain fundamental aspects, such as the selection of arbitrators or the enforcement of awards, might still be governed by the general Rules to ensure proper administration and due process.

In summary, Article 12.1 clarifies that the Expedited Procedure Rules are meant to work in harmony with the general Rules of arbitration. They apply in cases where there is no conflict, allowing for an expedited process without compromising the core principles and mechanisms of arbitration. This provision ensures that the expedited procedures can be efficiently integrated into the overall framework of arbitration, providing a balanced approach to dispute resolution.

### 2. The Administrator may abbreviate the time limits provided for in this Appendix, as well as any time limits that it has set.

Article 12.2 of Appendix II to the SCCA Arbitration Rules 2023 addresses the authority of the Administrator to adjust time limits in the context of the expedited arbitration process. Let us analyse its key points:

1. **Administrative Authority:** The article grants the Administrator (the administrative body overseeing the arbitration process) the authority to make adjustments to the time limits stipulated in the Expedited Procedure Rules. This provision recognises that certain cases may require even faster resolution than the standard time limits set out in the rules.

2. **Flexibility in Time Management:** By allowing the Administrator to “abbreviate” time limits, the provision acknowledges the need for flexibility in managing the arbitration timeline. This flexibility can be crucial in expediting the arbitration process, especially in cases where speed is of the essence, such as disputes involving urgent matters or time-sensitive issues.
3. **Balancing Speed and Fairness:** While the provision empowers the Administrator to shorten time limits, it is important to note that the Administrator must still ensure that the expedited process remains fair and allows each party reasonable opportunity to present its case. This provision is not meant to compromise due process; rather, it aims to strike a balance between efficiency and fairness.
4. **Cooperation with Parties:** The provision implies that the Administrator’s decision to abbreviate time limits is not arbitrary but would likely be made in consultation with the parties involved in the arbitration. This collaboration ensures that any adjustments are practical and acceptable to all parties, while still achieving the goal of expediting the process.

In summary, Article 12.2 grants the Administrator the discretion to modify time limits in the Expedited Procedure Rules. This provision reflects the need for adaptability in arbitration proceedings and recognises that certain cases might necessitate even quicker resolutions. However, any adjustments made by the Administrator should respect the principles of fairness and due process.

### SCCA Fee Schedule for Expedited Cases under the Rules

Amount in Dispute *			SCCA Administrative Fees **					Arbitral Tribunal Fees ***				
up to		200,000	8,000						10.3795%	of amount in dispute		
from	200,001	to 400,000	10,000	+ 1.284%	of amount over	200,000	-20%	20,759	+ 7.598%	of amount over	200,000	-20%
from	400,001	to 800,000	12,568	+ 2.024%	of amount over	400,000	-20%	35,958	+ 4.3036%	of amount over	400,000	-20%
from	800,001	to 2,000,000	20,664	+ 1.672%	of amount over	800,000	-20%	53,172	+ 3.8287%	of amount over	800,000	-20%
from	2,000,001	to 4,000,000	40,728	+ 1.208%	of amount over	2,000,000	-20%	99,116	+ 2.2556%	of amount over	2,000,000	-20%
from	4,000,001	to 8,000,000	64,888	+ 0.76%	of amount over	4,000,000	-20%	144,228	+ 2.0182%	of amount over	4,000,000	-20%
from	8,000,001	to 20,000,000	95,288	+ 0.368%	of amount over	8,000,000	-20%	224,701	+ 0.7789%	of amount over	8,000,000	-20%
from	20,000,001	to 40,000,000	139,448	+ 0.2%	of amount over	20,000,000	-20%	318,169	+ 0.5096%	of amount over	20,000,000	-20%
from	40,000,001	to 100,000,000	179,448	+ 0.08%	of amount over	40,000,000	-20%	420,089	+ 0.1349%	of amount over	40,000,000	-20%
from	100,000,001	to 200,000,000	227,448	+ 0.072%	of amount over	100,000,000	-20%	501,029	+ 0.1276%	of amount over	100,000,000	-20%
from	200,000,001	to 300,000,000	240,000					628,629	+ 0.0879%	of amount over	200,000,000	-20%
from	300,000,001	to 400,000,000	240,000					716,529	+ 0.06%	of amount over	300,000,000	-20%
from	400,000,001	to 1,000,000,000	240,000					776,529	+ 0.036%	of amount over	400,000,000	-20%
over	1,000,000,000		240,000					992,529	+ 0.025%	of amount over	1,000,000,000	-20%

Undetermined Amount	143,558				336,071	
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\* Saudi Riyal (SAR) is the official currency (USD 1 = SAR 3.75). Please use our fee calculator on our website at [www.sadr.org](http://www.sadr.org) to calculate the fees. The SCCA reserves the right to revise the SCCA Fee Schedule from time to time as it deems appropriate.

\*\* A non-refundable Registration Fee of SAR 5,000 is payable in full by the claimant when a claim is filed and will be credited towards the claimant's share of the SCCA Administrative Fees.

\*\*\* The amounts calculated using this formula represent the average amount in arbitral tribunal fees. The SCCA may fix advance deposit that is up to 30% higher or lower than the average amount. The SCCA will ultimately determine arbitral tribunal fees at the end of the case. The payout of the minimum amount in arbitral tribunal fees is only guaranteed if a case ends in a final award. Amounts paid to the Arbitral Tribunal do not include any possible value added tax (VAT) or other taxes or charges and imposts applicable to the arbitral tribunal fees.

The SCCA Fee Schedule for Expedited Cases under the Rules in Appendix II to the SCCA Arbitration Rules 2023 outlines the administrative fees and arbitral tribunal fees applicable to expedited arbitration cases. Let us analyse the key points of this fee schedule:

1. Tiered Fee Structure: The fee schedule is structured in tiers based on the amount in dispute. As the amount in dispute increases, the administrative fees and arbitral tribunal fees also increase in a graduated manner. This tiered structure aims to reflect the complexity and value of the dispute.
2. Discounted Fees: Notably, the fees listed in the schedule are reduced by 20% compared to the regular arbitration fee schedule. This reduction recognises the expedited nature of these cases, where streamlined procedures often result in faster resolutions.
3. Registration Fee: A non-refundable Registration Fee of SAR 5,000 is required from the claimant at the time of filing a claim. This fee is credited towards the claimant's share of the administrative fees. It serves as an initial contribution to the costs of the arbitration process.
4. Adjustment of Advance Deposit: The SCCA may fix an advance deposit that is up to 30% higher or lower than the average amount calculated using the formula in the fee schedule. This flexibility allows the SCCA to account for specific circumstances and ensure adequate funding for the arbitration process.
5. Minimum Arbitral Tribunal Fees: The payout of the minimum amount in arbitral tribunal fees is guaranteed only if a case concludes with a final award. This highlights the importance of completing the arbitration process and underscores the expedited process's emphasis on efficiency.
6. VAT and Other Charges: The amounts listed for the Arbitral Tribunal fees do not include possible value-added tax (VAT) or other taxes or charges applicable to the arbitral tribunal fees. Parties are responsible for any such taxes or charges as required by applicable law.
7. Adjustment Rights: The SCCA reserves the right to revise the SCCA Fee Schedule from time to time as it deems appropriate. This enables the SCCA to adapt the fee structure to changing circumstances or requirements.

In summary, the SCCA Fee Schedule for Expedited Cases reflects the intention to provide a cost-effective and efficient framework for expedited arbitration proceedings. The reduced fees, tiered structure, and flexibility in advance deposit adjustments align with the expedited nature of these cases while aiming to ensure fairness and sustainability in the arbitration process.

## Appendix III — Emergency Arbitrator Procedure Rules

## Article 1: Application for Emergency Measures

1. A party that seeks emergency relief in accordance with Article 7 of the Rules (the “Applicant”) may transmit an application for emergency relief, including all accompanying documents (the “Application”), to the Administrator and the other parties. The Administrator shall terminate the emergency arbitration if it has not received a Request for Arbitration from the Applicant within 10 days of the receipt of the Application, unless the Emergency Arbitrator determines that a longer period of time is necessary.

Article 1.1 of Appendix III to the SCCA Arbitration Rules 2023 pertains to emergency relief applications and outlines the process for submitting an application for emergency relief. Let us break down its key elements:

1. **Emergency Relief Application:** The article refers to a party seeking emergency relief in accordance with Article 7 of the SCCA Arbitration Rules 2023. Emergency relief refers to interim measures that a party may seek from an emergency arbitrator before the constitution of the full arbitral tribunal.
2. **Application Submission:** The party seeking emergency relief, referred to as the “Applicant,” is allowed to transmit an application for emergency relief along with all necessary documents to both the Administrator and the other parties involved in the arbitration. This application essentially outlines the relief sought and the urgency of the matter.
3. **Administrator’s Role:** The Administrator, as part of its administrative functions, receives and processes the emergency relief application. The Administrator plays a crucial role in facilitating the emergency arbitration process.
4. **Time Limit for Filing Request for Arbitration:** The article sets a time limit of 10 days from the receipt of the emergency relief application for the Applicant to file a formal Request for Arbitration under the SCCA rules. The Request for Arbitration is a comprehensive document that initiates the formal arbitration proceedings.
5. **Termination of Emergency Arbitration:** If the Applicant fails to submit a Request for Arbitration within the specified 10-day period, the Administrator is empowered to terminate the emergency arbitration process. This termination is contingent upon the absence of a formal Request for Arbitration. However, the Emergency Arbitrator has the authority to extend this 10-day period if deemed necessary based on the circumstances.

Overall, this article establishes a structured procedure for parties to seek emergency relief and ensures that the process is time-bound and efficient. It provides a mechanism to swiftly address urgent matters before the full arbitral tribunal is constituted, while also allowing flexibility for extensions if warranted by the situation.



**2. The Applicant shall, at the same time as it files the Application with the SCCA, send a copy of the Application to all other parties. The Application shall contain the following information:**

- a) A description of the circumstances giving rise to the Application and of the underlying dispute referred to arbitration;**
- b) A statement of the emergency relief sought;**
- c) The reasons why the Applicant needs urgent interim or conservatory measures that cannot await the constitution of the Arbitral Tribunal;**
- d) The reasons why the Applicant is entitled to such emergency relief;**
- e) A statement certifying that all other parties have been provided with a copy of the Application or, if not, an explanation of the steps taken in good faith to provide a copy or notification to all other parties;**
- f) Comments on the language, the place of arbitration, and the applicable law; and**
- g) Proof of advancing the amount referred to in Article 9(1) of this Appendix.**

Article 1.2 of Appendix III to the SCCA Arbitration Rules 2023 addresses the requirements and contents of an emergency relief application. Let us analyse its key provisions:

1. **Application Filing and Notification:** The article specifies that the Applicant seeking emergency relief must submit the Application to the SCCA while also providing a copy of the same Application to all other parties involved in the arbitration. This ensures transparency and notifies all parties about the emergency relief request.
2. **Required Information in the Application:** The Application submitted by the Applicant must contain several key pieces of information to substantiate the request for emergency relief:
  - a. **Description of Circumstances and Underlying Dispute:** The Application should provide a clear description of the circumstances that have led to the request for emergency relief, along with information about the main dispute that is being referred to arbitration.
  - b. **Statement of Relief Sought:** The Application should outline the specific interim or conservatory measures that the Applicant is seeking from the emergency arbitrator.
  - c. **Urgent Need for Relief:** The Application should explain why the Applicant requires urgent interim or conservatory measures that cannot wait until the full Arbitral Tribunal is constituted.
  - d. **Basis for Entitlement to Relief:** The Application should include the reasons why the Applicant believes they are entitled to the requested emergency relief.
  - e. **Notification to Other Parties:** The Application should include a statement certifying that all other parties have been provided with a copy of the Application. If not, the

Application should explain the good-faith efforts made to provide the Application or notification to the other parties.

- f. Comments on Procedural Matters: The Application may also include comments on procedural matters such as the language of the proceedings, the place of arbitration, and the applicable law.
- g. Proof of Advance Payment: The Application should provide proof that the Applicant has advanced the amount required under Article 9(1) of the same Appendix. This amount is typically set as a condition for submitting an emergency relief application.

By stipulating these requirements, the article ensures that the emergency relief Application is comprehensive, transparent, and properly substantiated, allowing the emergency arbitrator and all parties to fully understand the urgency and merits of the relief sought.

**3. The Application may contain such other documents or information as the Applicant considers appropriate or as may contribute to the efficient examination of the Application.**

Article 1.3 of Appendix III to the SCCA Arbitration Rules 2023 allows the Applicant to include additional documents or information in the emergency relief application. Here is an analysis of this provision:

1. Flexibility in Application Submission: This article provides flexibility to the Applicant by allowing them to include any other documents or information they consider relevant or appropriate for the emergency relief application. This flexibility recognises that the nature of emergency situations and the relief sought may vary widely. It ensures that the Applicant can present their case comprehensively and effectively.
2. Efficient Examination of Application: The provision also acknowledges that including additional documents or information can contribute to the efficient examination of the emergency relief application. By allowing the Applicant to provide information beyond the specified requirements, the process can be better tailored to the specifics of the case, helping the emergency arbitrator to make a well-informed decision within a short timeframe.
3. Balancing Transparency and Speed: While the article allows for additional documents or information, it is important to strike a balance between transparency and the speed required for emergency proceedings. The provision does not specify any limitations on the nature or extent of additional documents or information that can be included. However, it is likely that the emergency arbitrator would appreciate relevant and focused information that aids in making a swift determination.

Overall, Article 1.3 recognises the need for flexibility in emergency relief applications, enabling the Applicant to present their case effectively and efficiently in urgent circumstances. It ensures that the process remains adaptable to different situations while maintaining a balance between transparency and speed.

**4. The Application shall be drawn up in the language of the arbitration agreed upon by the parties or, in the absence of any such agreement, in the language of the arbitration agreement.**

Article 1.4 of Appendix III to the SCCA Arbitration Rules 2023 addresses the language in which the emergency relief application should be prepared. Here is an analysis of this provision:

1. **Language of the Application:** This article stipulates that the emergency relief application, known as the “Application,” must be drafted in a specific language. The language is determined by considering two scenarios:
  - a. **Agreed Upon Language:** If the parties have mutually agreed upon a specific language for the arbitration, the Application must be written in that agreed-upon language. This acknowledges the parties’ preference for a particular language and ensures that the Application aligns with the arbitration’s language choice.
  - b. **Language of the Arbitration Agreement:** If the parties have not reached an agreement on the language of arbitration or if the arbitration agreement itself designates a language, the Application should be prepared in the language specified in the arbitration agreement. This provision ensures that the Application is consistent with the language chosen by the parties at the outset of their agreement.
2. **Language Consistency:** Requiring the Application to be in the agreed-upon language or the language of the arbitration agreement ensures consistency throughout the arbitration process. It prevents any confusion or misinterpretation that could arise if the Application were submitted in a different language.
3. **Preserving Party Autonomy:** By allowing parties to determine the language in which the arbitration proceedings will be conducted, this provision respects party autonomy and their preferences. Parties can choose a language with which they are comfortable and can effectively present their case.
4. **Clarity and Efficiency:** Ensuring that the Application is in the appropriate language contributes to the clarity and efficiency of the emergency relief process. The emergency arbitrator can better understand and evaluate the Application when it is presented in a language they are proficient in.

In summary, Article 1.4 aims to maintain linguistic consistency and party autonomy in the emergency relief process by requiring the Application to be written in either the agreed-upon language of the arbitration or the language of the arbitration agreement. This provision enhances clarity, effectiveness, and efficiency in emergency arbitration proceedings.

**5. The Emergency Arbitrator Procedure Rules shall not apply if:**

- a) The Application was submitted after the Arbitral Tribunal's constitution;**
- b) The parties have agreed to opt out of the Emergency Arbitrator Procedure Rules; or**
- c) They have agreed to another pre-arbitral procedure that provides for emergency, provisional or precautionary relief, or similar measures.**

Article 1.5 of Appendix III to the SCCA Arbitration Rules 2023 outlines the circumstances under which the Emergency Arbitrator Procedure Rules do not apply. Let us analyse this provision:

1. **Exclusion of Emergency Arbitrator Procedure Rules:** This article establishes situations in which the Emergency Arbitrator Procedure Rules, which govern the process for seeking emergency relief, will not be applicable.
2. **After Arbitral Tribunal's Constitution:** Subsection (a) states that the Emergency Arbitrator Procedure Rules do not apply if the Application for emergency relief is submitted after the constitution of the Arbitral Tribunal. In other words, if the Arbitral Tribunal has already been formed to hear the dispute, the emergency relief process under the Emergency Arbitrator Procedure Rules is not available.
3. **Agreement to Out:** Subsection (b) specifies that the parties can choose to opt out of the Emergency Arbitrator Procedure Rules by mutual agreement. This demonstrates that the parties have the flexibility to decide whether they want to utilise the emergency relief process outlined in these rules or follow an alternative procedure.
4. **Alternative Pre-Arbitral Procedure:** Subsection (c) states that the Emergency Arbitrator Procedure Rules will not apply if the parties have agreed to another pre-arbitral procedure that provides for emergency, provisional, precautionary relief, or similar measures. This acknowledges that parties may have established alternative mechanisms for obtaining urgent relief before formal arbitration proceedings begin.
5. **Balancing Party Autonomy:** Article 1.5 respects party autonomy by allowing them to tailor the emergency relief process to their needs. It acknowledges that parties might have specific circumstances or preferences that warrant deviation from the standard Emergency Arbitrator Procedure Rules.
6. **Encouraging Efficient Dispute Resolution:** By allowing parties to opt out or use alternative pre-arbitral procedures for emergency relief, this provision promotes efficiency and flexibility in addressing urgent matters before a formal arbitration process commences.

In summary, Article 1.5 of Appendix III to the SCCA Arbitration Rules 2023 outlines situations where the Emergency Arbitrator Procedure Rules do not apply. It highlights the parties' autonomy and ability to opt out or utilise alternative procedures for obtaining emergency relief, while also recognising circumstances where the emergency relief process may not be suitable due to the stage of the arbitration or pre-existing agreements.

**6. If the Administrator determines, on the basis of the information received, that the Emergency Arbitrator Procedure Rules apply with reference to Article 7 of the Rules and the Articles of this Appendix, a copy of the Application, shall be transmitted to the responding party. If determined otherwise, the Administrator shall inform the parties that the Emergency Arbitrator Procedure Rules do not apply.**

Article 1.6 of Appendix III to the SCCA Arbitration Rules 2023 outlines the process by which the Administrator determines whether the Emergency Arbitrator Procedure Rules apply in a given case seeking emergency relief. Let us analyse this provision:

1. **Administrator's Determination:** This article describes the role of the Administrator in assessing whether the circumstances warrant the application of the Emergency Arbitrator Procedure Rules. The determination is based on the information received from the Applicant and is made with reference to Article 7 of the Rules (which likely defines the conditions for seeking emergency relief) and the other relevant articles within this Appendix.
2. **Transmission of Application:** If the Administrator determines that the Emergency Arbitrator Procedure Rules do apply, as per the criteria set forth in the Rules and this Appendix, the Administrator shall send a copy of the Application for emergency relief to the responding party. This ensures that both parties are informed of the application and can participate in the emergency relief process.
3. **No Application of Emergency Arbitrator Procedure Rules:** If the Administrator determines that the circumstances do not meet the criteria for applying the Emergency Arbitrator Procedure Rules, the Administrator shall inform the parties that these rules do not apply. This communication ensures transparency and clarifies the procedure that will be followed in the specific case.
4. **Efficiency and Clarity:** Article 1.6 aims to provide an efficient and clear process for determining whether the Emergency Arbitrator Procedure Rules are applicable. By having the Administrator make this determination, it streamlines the initial stages of seeking emergency relief and ensures that parties are promptly informed about the appropriate procedures.
5. **Protection of Rights:** This provision helps to safeguard the responding party's rights by ensuring that they are aware of the emergency relief request and the applicable procedure. It promotes fairness and transparency in the emergency relief process.

In summary, Article 1.6 of Appendix III to the SCCA Arbitration Rules 2023 outlines the Administrator's role in determining whether the Emergency Arbitrator Procedure Rules apply in a given case seeking emergency relief. This determination ensures that the appropriate procedures are followed based on the circumstances, promoting efficiency, transparency, and the protection of parties' rights.

## Article 2: Appointment of the Emergency Arbitrator

### 1. The SCCA Court shall appoint an Emergency Arbitrator within one business day from the receipt of the Application.

Article 2.1 of Appendix III to the SCCA Arbitration Rules 2023 outlines the timeline and process for the appointment of an Emergency Arbitrator in cases seeking emergency relief. Let us analyse this provision:

1. **Appointment Timeline:** The article stipulates that the SCCA Court is required to appoint an Emergency Arbitrator within one business day from the receipt of the Application for emergency relief. This is a swift timeline designed to ensure that emergency relief can be sought and obtained in a timely manner when urgent circumstances require immediate attention.
2. **Efficiency and Expediency:** The primary purpose of Article 2.1 is to facilitate the rapid appointment of an Emergency Arbitrator. This efficiency is crucial in cases where time-sensitive relief is needed to prevent irreparable harm, ensuring that parties have access to emergency arbitration procedures without unnecessary delay.
3. **Immediate Action:** By mandating that the SCCA Court appoint the Emergency Arbitrator within one business day, this provision underscores the urgency of the situation and emphasises the need for swift action to address emergency relief requests promptly.
4. **Protection of Parties' Rights:** This article ensures that parties seeking emergency relief are not unduly delayed in obtaining necessary remedies. By appointing an Emergency Arbitrator quickly, the SCCA Court helps ensure that parties' rights are protected and that they have an effective avenue for seeking immediate relief when required.
5. **Specialised Expertise:** Emergency Arbitrators are typically experts in the field of arbitration and are equipped to handle urgent matters efficiently. The quick appointment of such an arbitrator enhances the quality of decision-making in emergency situations.

In summary, Article 2.1 of Appendix III to the SCCA Arbitration Rules 2023 establishes a rapid timeline for the appointment of an Emergency Arbitrator in cases seeking emergency relief. This provision emphasises efficiency, immediate action, and the protection of parties' rights, ensuring that parties have access to the necessary remedies in urgent circumstances.

### 2. No Emergency Arbitrator shall be appointed after the Arbitral Tribunal is constituted.

Article 2.2 of Appendix III to the SCCA Arbitration Rules 2023 addresses the limitation on appointing an Emergency Arbitrator once the Arbitral Tribunal is constituted. Let us analyse this provision:

1. **Exclusivity of Emergency Arbitrator Procedure:** This article establishes a clear boundary for the application of the Emergency Arbitrator Procedure. It states that an Emergency Arbitrator cannot be appointed once the Arbitral Tribunal is constituted. This underscores the idea that the Emergency Arbitrator procedure is designed to address time-sensitive issues before the formation of the main Arbitral Tribunal.

2. **Distinct Roles of Emergency Arbitrator and Tribunal:** The provision aims to prevent overlap or confusion between the roles of the Emergency Arbitrator and the Arbitral Tribunal. The Emergency Arbitrator focuses on addressing immediate and urgent relief, while the Arbitral Tribunal, once constituted, is responsible for handling the full arbitration process.
3. **Clarity and Predictability:** By setting a clear boundary for the applicability of the Emergency Arbitrator Procedure, this provision brings clarity and predictability to the arbitration process. Parties can understand when they can seek emergency relief through the Emergency Arbitrator and when they need to address their claims before the Arbitral Tribunal.
4. **Efficiency and Effective Case Management:** Restricting the appointment of an Emergency Arbitrator after the Arbitral Tribunal is constituted helps prevent unnecessary duplication of efforts and ensures that the case proceeds efficiently through the appropriate channels.

In summary, Article 2.2 of Appendix III to the SCCA Arbitration Rules 2023 limits the appointment of an Emergency Arbitrator after the Arbitral Tribunal is constituted. This provision aims to clarify the distinct roles of the Emergency Arbitrator and the Arbitral Tribunal, enhance efficiency, and maintain clarity in the arbitration process.

**3. The Emergency Arbitrator shall be and remain impartial and independent. Prior to accepting the appointment, a prospective Emergency Arbitrator shall disclose to the Administrator, in accordance with Article 17 of the Rules, any circumstances that may give rise to justifiable doubts as to his or her impartiality or independence and shall sign a statement of acceptance, availability, impartiality, and independence. The Administrator shall provide a copy of such disclosure and statement to the parties.**

Article 2.3 of Appendix III to the SCCA Arbitration Rules 2023 outlines the requirements and obligations related to the impartiality and independence of the Emergency Arbitrator. Let us break down this provision:

1. **Impartiality and Independence:** This article underscores the fundamental principles of arbitration, namely that the Emergency Arbitrator must be and remain impartial and independent throughout the proceedings. Impartiality refers to the arbitrator's ability to approach the case without bias or preconceived notions, while independence pertains to their freedom from any external influences or conflicts of interest.
2. **Disclosure of Circumstances:** The article mandates that a prospective Emergency Arbitrator must disclose any circumstances that might lead to justifiable doubts about their impartiality or independence. This disclosure requirement aims to maintain the integrity of the arbitration process by ensuring that all parties are aware of any potential conflicts or biases that could affect the arbitrator's decision-making.
3. **Article 17 of the Rules:** The provision references Article 17 of the SCCA Arbitration Rules 2023, which likely contains guidelines or procedures for handling arbitrator disclosures. This shows a comprehensive approach to ensuring arbitrator integrity and transparency.

4. **Statement of Acceptance, Availability, Impartiality, and Independence:** Before formally accepting the appointment, a prospective Emergency Arbitrator is required to sign a statement affirming their acceptance of the role, their availability to perform the duties, and their commitment to impartiality and independence. This statement serves as a formal acknowledgment of the arbitrator's responsibilities.
5. **Transparency and Parties' Awareness:** The Administrator is obligated to share the disclosed information and the signed statement with all parties involved. This promotes transparency and allows the parties to assess the arbitrator's qualifications and potential conflicts before the proceedings commence.

In summary, Article 2.3 of Appendix III emphasises the importance of impartiality and independence in emergency arbitration proceedings. The provision establishes mechanisms for prospective Emergency Arbitrators to disclose potential conflicts, sign statements of acceptance and commitment to impartiality, and ensures that this information is shared with the parties. This promotes a fair and transparent arbitration process and upholds the credibility of the Emergency Arbitrator's decisions.

### **Article 3: Challenge and Replacement of the Emergency Arbitrator**

**1. Any challenge to the appointment of the Emergency Arbitrator shall be submitted within one business day of the Administrator's communication to the parties concerning the Emergency Arbitrator's appointment and the circumstances disclosed by the Emergency Arbitrator, or from the date when the facts and circumstances on which the challenge is based became known to that party.**

Article 3.1 of Appendix III to the SCCA Arbitration Rules 2023 outlines the procedures and timelines related to challenging the appointment of the Emergency Arbitrator. Here is a breakdown of this provision:

1. **Challenging the Appointment:** This article establishes the procedure for parties to challenge the appointment of the Emergency Arbitrator. A party that seeks to challenge the appointment must initiate the challenge within the specified time frame.
2. **Timeline for Challenge:** A challenge to the appointment of the Emergency Arbitrator must be submitted within one business day of two triggering events:
  - a. **Administrator's Communication:** If the Administrator communicates the Emergency Arbitrator's appointment and the circumstances disclosed by the Emergency Arbitrator, the timeline starts from the date of this communication.
  - b. **Discovery of Facts:** Alternatively, if a party becomes aware of facts and circumstances on which they want to base their challenge after the Emergency Arbitrator's appointment, the timeline starts from the date they become aware of these facts.

The key objective of this provision is to ensure that challenges to the appointment of the Emergency Arbitrator are raised promptly and without delay. By setting a relatively short timeline, the provision aims to maintain the efficiency and effectiveness of the emergency arbitration process.



Challenges to the appointment of an arbitrator are a critical aspect of arbitration proceedings as they contribute to ensuring that the arbitrator remains impartial, independent, and free from conflicts of interest. This provision underlines the importance of timely disclosure of any concerns regarding the Emergency Arbitrator's appointment.

**2. The challenge shall be decided by the SCCA Court after affording an opportunity for the Emergency Arbitrator and the other party or parties to provide comments in writing within three business days.**

Article 3.2 of Appendix III to the SCCA Arbitration Rules 2023 outlines the procedure for handling challenges to the appointment of the Emergency Arbitrator. Here is a breakdown of this provision:

1. **Decision-Making Authority:** The SCCA Court is vested with the authority to decide on challenges to the appointment of the Emergency Arbitrator. The SCCA Court is the entity responsible for overseeing and administering the arbitration proceedings under the SCCA rules.
2. **Opportunity for Comments:** When a challenge to the appointment of the Emergency Arbitrator is submitted, the SCCA Court provides an opportunity for the following parties to provide comments in writing within a specific time frame:
  - a. **Emergency Arbitrator:** The Emergency Arbitrator is given the opportunity to respond to the challenge and provide their perspective on the matter.
  - b. **Other Party or Parties:** The party or parties that are not directly involved in the challenge but are affected by the outcome have the opportunity to offer their comments as well.
3. **Timeline for Providing Comments:** The SCCA Court sets a timeline of three business days for the Emergency Arbitrator and the other party or parties to provide their written comments. This time frame ensures that the process of addressing the challenge remains efficient and expedient.

The goal of this provision is to ensure fairness and transparency in handling challenges to the appointment of the Emergency Arbitrator. By allowing all relevant parties to present their viewpoints, the provision helps in making an informed decision while maintaining the urgent nature of emergency arbitration proceedings. The established timeline also contributes to maintaining the overall efficiency of the arbitration process.

**3. If the Emergency Arbitrator resigns, is incapable of performing his or her duties, or is removed for any reason, and the office becomes vacant, the Administrator shall appoint a substitute Emergency Arbitrator within one business day.**

Article 3.3 of Appendix III to the SCCA Arbitration Rules 2023 addresses the situation where the Emergency Arbitrator is unable to fulfil their duties, either due to resignation, incapacity, removal, or any other reason, leading to a vacant position. Here is a breakdown of this provision:

1. Event Triggering the Appointment: The provision outlines the circumstances that would trigger the need for a substitute Emergency Arbitrator. These circumstances include:
  - a. Resignation: If the Emergency Arbitrator voluntarily steps down from their role.
  - b. Incapacity: If the Emergency Arbitrator is unable to fulfil their duties due to physical or mental limitations.
  - c. Removal: If the Emergency Arbitrator is removed from their position for any reason.
2. Appointment of a Substitute Emergency Arbitrator: In the event of a vacancy in the position of the Emergency Arbitrator due to any of the mentioned circumstances, the Administrator is responsible for appointing a substitute Emergency Arbitrator. This substitute Emergency Arbitrator is appointed promptly within one business day from the time the vacancy occurs.

This provision ensures that the emergency arbitration process continues smoothly even if the original Emergency Arbitrator is unable to perform their duties. By swiftly appointing a substitute Emergency Arbitrator, the arbitration proceedings can maintain their timeliness and effectiveness, ensuring that parties seeking emergency relief receive a timely resolution to their matters.

#### Article 4: Transmission of the File

**Once the Emergency Arbitrator has been appointed, the Administrator shall so notify the parties and shall transmit the file to the Emergency Arbitrator. Thereafter, all written communications from the parties related to the emergency arbitration shall be submitted directly to the Emergency Arbitrator with a copy to the other party and to the Administrator. A copy of any written communications from the Emergency Arbitrator to the parties shall be submitted to the Administrator.**

Article 4 of Appendix III to the SCCA Arbitration Rules 2023 outlines the procedure for communication and interaction between the parties and the appointed Emergency Arbitrator in cases where emergency relief is sought. Here is a breakdown of this provision:

1. Notification and Transmission:
  - a. Once the Emergency Arbitrator has been appointed, the Administrator is responsible for promptly notifying all parties about the appointment.
  - b. The Administrator also has the duty to transmit the entire case file to the appointed Emergency Arbitrator. This transfer of information enables the Emergency Arbitrator to familiarise themselves with the case and the underlying dispute.
2. Direct Communication with Emergency Arbitrator:
  - a. Subsequent to the appointment, any written communications pertaining to the emergency arbitration process, whether they are submissions, evidence, or other relevant documents, are to be directly submitted to the Emergency Arbitrator by the parties.

- b. Additionally, a copy of these communications must also be sent to the other party involved in the dispute, ensuring transparency and the opportunity for both sides to respond to each other's submissions.
  - c. A copy of these communications must also be submitted to the Administrator. This requirement ensures that the Administrator is kept informed about the proceedings and can oversee the process for procedural compliance.
3. Communication from Emergency Arbitrator: Similarly, any written communications from the Emergency Arbitrator to the parties, which could include interim orders, directions, or other instructions, are to be submitted to the Administrator as well. This step ensures that the Administrator is aware of any developments or decisions made by the Emergency Arbitrator.

The purpose of this article is to establish a clear and efficient communication framework between the parties and the Emergency Arbitrator. By outlining the responsibilities for communication and documentation, this article helps maintain transparency, ensures timely communication, and allows for proper oversight by the Administrator throughout the emergency arbitration process.

#### Article 5: Place of Arbitration

##### 1. Where the parties have not agreed upon the place of arbitration for the emergency arbitration, the place of arbitration shall be determined as set forth in Article 22 of the Rules.

Article 5.1 of Appendix III to the SCCA Arbitration Rules 2023 addresses the determination of the place of arbitration for emergency arbitration proceedings in cases where the parties have not explicitly agreed upon it. Here is an analysis of this provision:

1. Place of Arbitration in Emergency Arbitration: The provision specifies that if the parties involved in the emergency arbitration have not reached an agreement on the place (seat) of arbitration, the procedure for determining the place of arbitration as outlined in Article 22 of the main Rules will apply.
2. Reference to Article 22 of the Rules: The reference to "Article 22 of the Rules" indicates that this provision refers to the general arbitration rules of the SCCA, which provide guidance on determining the place of arbitration for regular arbitration cases.
3. Importance of Determining the Place of Arbitration: The determination of the place of arbitration is significant because it affects various aspects of the arbitration proceedings, including the legal framework and rules governing the arbitration, as well as potential legal challenges and enforceability of the eventual award.
4. Consistency and Clarity: By incorporating Article 22 of the main Rules, this provision ensures consistency and clarity in the overall arbitration process, regardless of whether the arbitration is of an emergency nature or not.

In essence, Article 5.1 serves to provide a default mechanism for determining the place of arbitration for emergency arbitration cases where the parties have not agreed upon it. This approach ensures that

there is a clear and established procedure in place to address this essential aspect of the arbitration proceedings.

**2. The Emergency Arbitrator may meet with the parties by videoconference, telephone, or any other suitable means of communication, as well as in person at any location the Emergency Arbitrator deems appropriate.**

Article 5.2 of Appendix III to the SCCA Arbitration Rules 2023 pertains to the flexibility of communication methods that the Emergency Arbitrator can utilise during the emergency arbitration proceedings. Here is an analysis of this provision:

1. **Flexible Communication Methods:** This provision grants the Emergency Arbitrator the authority to choose from various communication methods, including videoconference, telephone, or other suitable means of communication, to interact with the parties involved in the emergency arbitration.
2. **Adaptability and Efficiency:** By allowing for different communication methods, the provision acknowledges the need for adaptability and efficiency in emergency arbitration proceedings. This is particularly relevant given the urgent nature of emergency arbitration cases, which may require quick and convenient means of communication to address time-sensitive matters.
3. **In-Person Meetings:** The provision also highlights that the Emergency Arbitrator has the discretion to hold meetings in person, should they deem it appropriate. This recognises that there might be circumstances where an in-person meeting is necessary, despite the availability of remote communication options.
4. **Ensuring Fairness and Due Process:** While providing flexibility, the provision also aims to ensure fairness and due process by allowing parties to communicate with the Emergency Arbitrator through various means. This approach takes into consideration practical considerations and the parties' ability to participate effectively, especially when physical presence might be challenging.
5. **Advantages of Technology:** The provision reflects the growing use of technology in arbitration proceedings, especially for remote communication. Videoconferencing and other electronic means of communication can facilitate quick and effective exchanges between the parties and the Emergency Arbitrator, regardless of geographical locations.

In essence, Article 5.2 acknowledges the diverse communication methods that can be used during emergency arbitration proceedings, emphasising the Emergency Arbitrator's discretion to select the most appropriate means based on the circumstances of the case. This adaptability aligns with the overarching goal of ensuring a timely and effective resolution of urgent disputes.

## Article 6: Proceedings

### 1. Within two business days of the appointment, the Emergency Arbitrator shall establish a procedural timetable for consideration of the Application.

Article 6.1 of Appendix III to the SCCA Arbitration Rules 2023 addresses the prompt establishment of a procedural timetable by the Emergency Arbitrator for the consideration of the application for emergency relief. Here is an analysis of this provision:

1. **Timely Establishment of Procedural Timetable:** This provision emphasises the urgency and efficiency of emergency arbitration proceedings. It requires the Emergency Arbitrator to establish a procedural timetable within a very short period – specifically, within two business days of their appointment. This quick action aligns with the expedited nature of emergency arbitration cases.
2. **Preventing Delay and Ensuring Expediency:** By mandating the establishment of a procedural timetable promptly, the provision prevents any undue delay in the proceedings. It ensures that parties receive a clear outline of the timeline and deadlines for presenting their arguments and evidence, which is crucial in situations requiring swift decisions.
3. **Balancing Efficiency and Fairness:** While expediency is essential in emergency cases, fairness and due process must also be upheld. The Emergency Arbitrator is tasked with creating a timetable that allows both parties sufficient time to prepare their submissions and present their arguments, while also meeting the urgent nature of the case.
4. **Clarity for Parties:** The provision aids in providing clarity to the parties about the steps and stages of the emergency arbitration proceedings. This clarity enables the parties to anticipate the upcoming deadlines and effectively manage their participation in the process.
5. **Administrative Function of the Emergency Arbitrator:** The role of the Emergency Arbitrator under this provision is administrative in nature. They are responsible for setting the framework and schedule for the proceedings, allowing the parties to engage substantively while adhering to a structured timeline.
6. **Preserving the Essence of Emergency Arbitration:** By setting a short timeframe for the establishment of the procedural timetable, the provision maintains the essence of emergency arbitration – delivering a swift and effective resolution of urgent matters.

In summary, Article 6.1 of Appendix III to the SCCA Arbitration Rules 2023 underscores the need for the Emergency Arbitrator to act promptly by creating a procedural timetable within two business days of their appointment. This requirement ensures that the emergency arbitration proceedings are conducted efficiently while respecting the parties' right to present their case fairly and thoroughly within the compressed timeline.

**2. The Emergency Arbitrator shall conduct the proceedings in the manner which he or she deems appropriate, taking into account the urgency inherent in emergency arbitrations and ensuring a reasonable opportunity for all parties to be heard.**

Article 6.2 of Appendix III to the SCCA Arbitration Rules 2023 pertains to the conduct of proceedings by the Emergency Arbitrator in emergency arbitration cases. Here is an analysis of this provision:

1. **Emergency Nature and Flexibility:** This provision recognises the unique and urgent nature of emergency arbitration cases. It grants the Emergency Arbitrator significant discretion in conducting the proceedings. The flexibility allowed enables the Emergency Arbitrator to adapt to the specific circumstances and time constraints of the case.
2. **Balancing Urgency and Fairness:** The provision emphasises the importance of ensuring that all parties have a reasonable opportunity to be heard despite the expedited nature of emergency arbitration. While speed is crucial, it is equally important to maintain the principles of due process and fairness.
3. **Wide Discretion of the Emergency Arbitrator:** By stating that the Emergency Arbitrator shall conduct the proceedings “in the manner which he or she deems appropriate,” the provision acknowledges the Emergency Arbitrator’s broad authority. This discretion allows them to tailor the proceedings to fit the urgency, complexity, and requirements of the case.
4. **Communication Methods:** The provision implicitly permits the Emergency Arbitrator to use various means of communication, such as videoconferencing, telephone, or email, to facilitate efficient and timely exchanges between the parties, taking into account the need for rapid decision-making.
5. **Protection of Rights:** While the provision grants the Emergency Arbitrator the authority to determine the appropriate manner of conducting the proceedings, it is implied that this discretion should not compromise the parties’ rights to present their arguments, evidence, and defences. The “reasonable opportunity for all parties to be heard” safeguards this aspect.
6. **Swift Resolution:** The overarching goal of this provision is to facilitate swift resolution while preserving fundamental principles of fairness. It allows for the immediate handling of emergency cases without sacrificing procedural integrity.

In conclusion, Article 6.2 of Appendix III to the SCCA Arbitration Rules 2023 empowers the Emergency Arbitrator to determine how emergency arbitration proceedings should be conducted. This flexibility, guided by the principle of providing a reasonable opportunity for all parties to be heard, ensures that urgent matters can be addressed efficiently while maintaining a balance between the speed of resolution and the rights of the parties involved.

**3. The Emergency Arbitrator shall have the authority vested in the Arbitral Tribunal under Article 24 of the Rules, including the authority to rule on his or her own jurisdiction, including any objections with respect to the existence, validity or scope of the arbitration agreement, without**

**prejudice to the Arbitral Tribunal's determination. The Emergency Arbitrator shall resolve any disputes over the applicability of this Appendix.**

Article 6.3 of Appendix III to the SCCA Arbitration Rules 2023 addresses the scope of authority granted to the Emergency Arbitrator in emergency arbitration cases. Let us analyse this provision:

1. **Authority Equivalence to Arbitral Tribunal:** This provision emphasises that the Emergency Arbitrator possesses the same authority as the full Arbitral Tribunal under Article 24 of the SCCA Rules. This includes the power to decide matters related to the arbitration's jurisdiction, such as objections concerning the existence, validity, or scope of the arbitration agreement.
2. **Immediate Jurisdiction Determination:** The Emergency Arbitrator has the authority to make a preliminary determination on their own jurisdiction. This means they can assess and decide whether the arbitration agreement is valid and whether the dispute falls within the scope of that agreement. This determination is made without prejudice to the Arbitral Tribunal's final decision on the same issues.
3. **Expedited Jurisdiction Ruling:** The provision reflects the urgency inherent in emergency arbitration cases. By allowing the Emergency Arbitrator to swiftly address jurisdictional objections, it ensures that parties can obtain interim relief promptly without waiting for the constitution of the full Arbitral Tribunal.
4. **Preserving Arbitral Tribunal's Role:** While the Emergency Arbitrator can rule on jurisdiction, this provision clarifies that their decision on jurisdiction is not final. The Arbitral Tribunal retains the authority to revisit and make a final determination on the same jurisdictional matters once it is fully constituted.
5. **Disputes over Applicability of the Appendix:** The provision assigns the Emergency Arbitrator the responsibility of resolving disputes related to the applicability of Appendix III itself. This authority ensures that procedural questions regarding the use of emergency arbitration procedures can be addressed swiftly and effectively.

In summary, Article 6.3 of Appendix III to the SCCA Arbitration Rules 2023 grants the Emergency Arbitrator significant authority to rule on jurisdictional objections and to decide matters related to the applicability of emergency arbitration procedures. This authority aligns with the urgency of emergency arbitration cases and ensures a streamlined process for obtaining interim relief while preserving the role of the Arbitral Tribunal for final determinations.

#### **Article 7: Time and Form of Interim Award or Order**

##### **1. The Emergency Arbitrator's decision shall take the form of an interim award or order.**

Article 7.1 of Appendix III to the SCCA Arbitration Rules 2023 outlines the format and nature of the Emergency Arbitrator's decision in an emergency arbitration proceeding. Here is an analysis of this provision:

1. **Interim Award or Order:** This provision specifies that the decision rendered by the Emergency Arbitrator shall take the form of an interim award or order. An interim award

is a legally binding decision issued by an arbitrator during the course of the arbitration process, which addresses specific issues or provides temporary relief. An order, in this context, refers to a directive given by the Emergency Arbitrator to the parties.

2. **Immediate Relief:** The use of “interim” indicates that the decision is intended to provide temporary, provisional relief rather than a final resolution of the entire dispute. The Emergency Arbitrator’s decision is designed to address the immediate needs of the parties and to ensure that the situation is stabilised until a full Arbitral Tribunal can be constituted.
3. **Binding Nature:** The decision, whether in the form of an interim award or order, is binding on the parties involved in the arbitration. It creates legal obligations for the parties to comply with the terms of the decision until further orders are made by the full Arbitral Tribunal or through other appropriate legal processes.
4. **Effective Resolution Mechanism:** This provision reflects the essence of emergency arbitration, which provides parties with swift relief in urgent situations where waiting for the constitution of the full Arbitral Tribunal would cause irreparable harm. By allowing the Emergency Arbitrator to issue an interim award or order, the arbitration process maintains its efficacy and ensures parties have a mechanism to address immediate concerns.
5. **Interplay with Final Award:** It is important to note that the interim award or order issued by the Emergency Arbitrator is separate from any final award that the full Arbitral Tribunal might render at the conclusion of the arbitration. The Emergency Arbitrator’s decision is designed to address urgent matters and does not prejudice the final determination of the Arbitral Tribunal on the underlying dispute.

In summary, Article 7.1 of Appendix III to the SCCA Arbitration Rules 2023 underscores that the Emergency Arbitrator’s decision is a binding and immediate measure that takes the form of an interim award or order. This mechanism allows parties to obtain rapid relief while preserving the distinct role of the full Arbitral Tribunal in rendering a final award on the entire dispute.

**2. In the interim award or order, the Emergency Arbitrator shall determine whether the Application is admissible in accordance with Article 7 of the Rules and whether the Emergency Arbitrator has jurisdiction to order interim measures of protection.**

Article 7.2 of Appendix III to the SCCA Arbitration Rules 2023 outlines the key elements that the Emergency Arbitrator’s interim award or order should address in relation to the application and jurisdiction. Let us analyse this provision:

**Admissibility of the Application:** This provision emphasises that the Emergency Arbitrator’s interim award or order should address whether the Application submitted by the requesting party (applicant) is admissible. Admissibility relates to whether the Application meets the procedural and substantive requirements set out in Article 7 of the Rules, which outlines the process for seeking emergency relief. The Emergency Arbitrator evaluates whether the applicant has followed the proper procedure for submitting the application and whether the grounds presented for emergency relief are valid.



**Emergency Arbitrator's Jurisdiction:** The provision also requires the Emergency Arbitrator to determine whether they have jurisdiction to order interim measures of protection. This involves examining whether the circumstances of the case fall within the scope of issues that the Emergency Arbitrator can address under the arbitration agreement and the applicable rules. The Emergency Arbitrator must ascertain whether they have the authority to grant the specific relief sought by the applicant.

**Preliminary Decision:** The determination of admissibility and jurisdiction made by the Emergency Arbitrator in the interim award or order is a preliminary decision that sets the stage for the emergency arbitration proceeding. It does not provide a final resolution of the underlying dispute but focuses on whether the prerequisites for emergency relief have been met and whether the Emergency Arbitrator has the authority to grant such relief.

**Efficiency and Speed:** This provision serves to ensure the efficiency and speed of the emergency arbitration process. By addressing matters of admissibility and jurisdiction in the interim award or order, the Emergency Arbitrator streamlines the proceedings, allowing the parties to quickly move forward with the determination of interim measures.

**Maintaining Due Process:** While expediency is a key factor in emergency arbitration, the provision also highlights the importance of maintaining due process. The Emergency Arbitrator must ensure that the parties have a reasonable opportunity to present their arguments regarding admissibility and jurisdiction before making their determination.

In summary, Article 7.2 of Appendix III to the SCCA Arbitration Rules 2023 emphasises that the Emergency Arbitrator's interim award or order should address the admissibility of the Application and the Emergency Arbitrator's jurisdiction to order interim measures of protection. These determinations set the stage for the emergency arbitration process and contribute to the effective and efficient resolution of urgent matters.

**3. The Emergency Arbitrator shall have the power to award or order any provisional or precautionary measures that he or she deems necessary, including but not limited to measures intended 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 the arbitration itself;**
- c) **Provide injunctive relief and measures for the protection or conservation of property, including preserving assets out of which a subsequent award may be satisfied; or**
- d) **Preserve evidence that may be relevant and material to the resolution of the dispute.**

Article 7.3 of Appendix III to the SCCA Arbitration Rules 2023 delineates the scope of power and authority vested in the Emergency Arbitrator to award or order provisional or precautionary measures in emergency arbitration cases. Here is an analysis of this provision:

1. **Wide-Ranging Authority:** This provision grants the Emergency Arbitrator broad discretion and authority to issue provisional or precautionary measures that they deem necessary to address the urgent circumstances presented in the application for emergency relief.
2. **Types of Measures:** The provision lists several types of measures that the Emergency Arbitrator can award or order, including but not limited to:
  - a. **Maintaining or Restoring Status Quo:** The Emergency Arbitrator can order measures that help maintain or restore the situation to its status quo until the dispute is determined. This prevents either party from taking actions that could prejudice the arbitration.
  - b. **Preventing Immediate Harm:** The Emergency Arbitrator can order a party to refrain from certain actions that may cause immediate harm or prejudice to the arbitration process.
  - c. **Injunctive Relief:** The Emergency Arbitrator can grant injunctive relief, which involves requiring a party to perform or refrain from certain actions.
  - d. **Protection and Conservation of Property:** The Emergency Arbitrator can issue measures to protect or conserve property, including assets that could be used to satisfy a subsequent award.
  - e. **Preservation of Evidence:** The Emergency Arbitrator can order measures to ensure the preservation of relevant evidence that could be material to the resolution of the dispute.
3. **Urgent Situations:** The Emergency Arbitrator's power to order these measures is essential in addressing urgent situations where immediate relief is required to prevent harm or prejudice to the arbitration process or the parties involved.
4. **Balancing of Interests:** The Emergency Arbitrator must balance the interests of the parties and consider the potential harm that could be caused if the requested measures are not granted. The measures should be proportionate to the urgency of the situation.
5. **Preventing Irreparable Harm:** The provision reflects the principle that the Emergency Arbitrator's role is to prevent irreparable harm or prejudice that could occur if immediate measures are not taken. These measures aim to maintain the integrity of the arbitration process and ensure that the final resolution of the dispute is not compromised.
6. **Flexibility and Adaptability:** The language "including but not limited to" indicates that the list of measures provided is not exhaustive. The Emergency Arbitrator has flexibility to tailor their orders based on the specific circumstances of each case.

In summary, Article 7.3 of Appendix III to the SCCA Arbitration Rules 2023 grants the Emergency Arbitrator substantial authority to issue various provisional or precautionary measures to address the pressing needs of parties seeking emergency relief. This provision underscores the Emergency Arbitrator's role in ensuring that immediate harm or prejudice is prevented while the arbitration process proceeds.

**4. The Emergency Arbitrator shall state the reasons on which his or her interim award or order is based, which may be in summary form. When deciding a party’s request for emergency relief, the Emergency Arbitrator shall take into account the circumstances of the case. Relevant factors may include but are not limited to:**

- a) Whether harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and whether such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and**
- b) Whether 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 Arbitral Tribunal’s discretion in making any subsequent determination.**

Article 7.4 of Appendix III to the SCCA Arbitration Rules 2023 outlines the requirements and considerations for the Emergency Arbitrator when issuing an interim award or order for emergency relief. Let us analyse this provision:

1. **Reasoned Interim Award or Order:** This provision mandates that the Emergency Arbitrator must provide reasons for the interim award or order they issue. The reasons may be in summary form, meaning they need not be as detailed as those in a final award but should still outline the basis for the decision.
2. **Balancing of Harms:** The Emergency Arbitrator’s decision-making process must weigh the potential harm that could arise if the requested interim measures are not granted against the harm that might result from granting the measures. The principle of avoiding harm is central to emergency arbitration, and this provision underscores the Emergency Arbitrator’s duty to consider this balance.
3. **Likelihood of Success on the Merits:** The Emergency Arbitrator must also evaluate the requesting party’s likelihood of success on the merits of their underlying claim. However, it is important to note that this determination of success is limited to the purpose of issuing emergency relief and does not prejudice the Arbitral Tribunal’s later determination on the merits.
4. **Factors for Consideration:** The provision highlights that the Emergency Arbitrator should consider various factors when making their decision. While the list provided is not exhaustive, it emphasises two key factors:
  - a. **Likelihood of Irreparable Harm:** The Emergency Arbitrator should assess whether the requested measures are necessary to prevent harm that cannot be adequately compensated by damages. This involves a comparison of the potential harm to both parties.
  - b. **Reasonable Possibility of Success:** The Emergency Arbitrator must evaluate if there is a reasonable possibility that the requesting party will succeed on the merits of their claim. This is a pragmatic and preliminary assessment of the merits, not a definitive determination.
5. **Limited Effect on Subsequent Determinations:** The provision explicitly states that the Emergency Arbitrator’s determination on the reasonable possibility of success will not

bind the Arbitral Tribunal’s discretion in making subsequent determinations on the merits. This ensures that the main arbitration proceedings remain unaffected by the preliminary assessment made for the purpose of emergency relief.

6. **Flexibility and Efficiency:** By requiring a summary statement of reasons and emphasising specific factors for consideration, this provision enhances the efficiency of the emergency arbitration process, which is designed to provide quick and temporary relief.

In essence, Article 7.4 of Appendix III to the SCCA Arbitration Rules 2023 lays out the criteria and considerations that guide the Emergency Arbitrator’s decision-making process when issuing interim awards or orders for emergency relief. The provision emphasises the need to balance potential harms, consider the likelihood of success, and provide a concise explanation for the decision.

### **5. Upon request by any party, the Emergency Arbitrator may modify or vacate the interim award or order for good cause.**

Article 7.5 of Appendix III to the SCCA Arbitration Rules 2023 addresses the authority of the Emergency Arbitrator to modify or vacate an interim award or order for good cause. Let us analyse this provision:

1. **Modification or Vacation of Interim Award or Order:** This provision grants parties the right to request the Emergency Arbitrator to modify or vacate an interim award or order. In essence, it allows parties to seek changes to the relief granted by the Emergency Arbitrator based on new developments or circumstances that may have arisen after the issuance of the interim award or order.
2. **Good Cause Requirement:** The key condition for seeking modification or vacation is that there must be “good cause.” This implies that parties cannot make frivolous or baseless requests for changes. Instead, they must provide legitimate reasons or substantial justifications for seeking a modification or vacation of the interim award or order.
3. **Procedural Flexibility:** This provision enhances the procedural flexibility of the emergency arbitration process. It recognises that circumstances may change rapidly, especially in urgent matters, and provides parties with a mechanism to address these changes without having to resort to separate or lengthy proceedings.
4. **Balancing Fairness and Efficiency:** Allowing modifications or vacations of interim awards or orders for good cause strikes a balance between the urgency of the emergency arbitration process and the need to ensure fairness and procedural integrity. Parties are not bound by the initial relief indefinitely if circumstances warrant a change.
5. **Party-Requested Process:** Importantly, this provision underscores that the process for modifying or vacating an interim award or order is initiated upon request by a party. This ensures that parties remain in control of the proceedings and the relief sought.
6. **Emergency Arbitrator’s Discretion:** While parties have the right to request modifications or vacations, the decision to grant such requests ultimately lies with the Emergency Arbitrator. They will assess whether the request meets the “good cause” requirement and make a determination accordingly.

In summary, Article 7.5 of Appendix III to the SCCA Arbitration Rules 2023 introduces a mechanism for parties to seek modifications or vacations of interim awards or orders issued by the Emergency Arbitrator. This provision reflects the dynamic and time-sensitive nature of emergency arbitration while maintaining the need for a legitimate basis (“good cause”) for such changes.

**6. Any interim award or order by the Emergency Arbitrator may be subject to such conditions as he or she deems appropriate, including requiring the provision of appropriate security.**

Article 7.6 of Appendix III to the SCCA Arbitration Rules 2023 pertains to the authority of the Emergency Arbitrator to impose conditions on any interim award or order issued. Let us analyse this provision:

1. **Authority to Impose Conditions:** This provision grants the Emergency Arbitrator the power to impose conditions on any interim award or order that they issue. This authority enables the Emergency Arbitrator to tailor their relief to the specific circumstances of the case and the relief sought by the parties.
2. **Flexibility and Tailored Relief:** By allowing the Emergency Arbitrator to impose conditions, the provision enhances the flexibility of the emergency arbitration process. It acknowledges that different situations may warrant different types of relief or additional requirements to ensure the effectiveness of the interim measures ordered.
3. **Appropriate Security:** One specific type of condition mentioned is the requirement for the provision of appropriate security. This condition may be relevant in cases where monetary or other forms of relief are granted. Requiring security can help ensure that the party seeking relief has the means to satisfy any potential adverse consequences that may arise from the interim award or order.
4. **Balancing Party Interests:** The provision recognises that imposing conditions is a mechanism to balance the interests of both parties. It aims to prevent any unjustified or undue harm to the party against whom the interim measures are directed, while still providing effective relief to the requesting party.
5. **Emergency Nature of Proceedings:** Conditions imposed by the Emergency Arbitrator are reflective of the urgency inherent in emergency arbitration. The goal is to provide swift relief while also considering the fairness and potential consequences of the interim award or order.
6. **Discretion of the Emergency Arbitrator:** The provision grants the Emergency Arbitrator discretion to determine the appropriate conditions. This ensures that the Emergency Arbitrator can assess the specific circumstances of the case and the relief sought before deciding on the conditions that best serve the interests of justice.

In summary, Article 7.6 of Appendix III to the SCCA Arbitration Rules 2023 highlights the authority of the Emergency Arbitrator to impose conditions on any interim award or order issued. This provision enhances the ability of the Emergency Arbitrator to craft tailored relief that meets the needs of the parties while also considering the emergency nature of the proceedings and the overall fairness of the process.

**7. The interim award or order shall be made no later than 14 days from the date on which the file was transmitted to the Emergency Arbitrator in accordance with Article 4 of this Appendix. The Administrator may, in exceptional circumstances, extend the time limit pursuant to a reasoned request from the Emergency Arbitrator or on the Administrator's own initiative if it deems necessary.**

Article 7.7 of Appendix III to the SCCA Arbitration Rules 2023 addresses the timeframe within which the Emergency Arbitrator is required to issue the interim award or order. Let us analyse this provision:

1. **Time Limit for Issuing Interim Award or Order:** This provision establishes a clear and specific timeframe for the issuance of the interim award or order by the Emergency Arbitrator. According to the rule, the interim award or order must be made no later than 14 days from the date on which the file was transmitted to the Emergency Arbitrator.
2. **Swift Resolution of Urgent Matters:** The provision reflects the urgent nature of emergency arbitration proceedings. The short timeframe of 14 days underscores the need for quick resolution when parties are seeking interim relief to address imminent harm or prejudice.
3. **Efficiency and Timeliness:** By imposing a relatively brief period for the Emergency Arbitrator to render a decision, the provision aims to ensure the efficiency and timeliness of the emergency arbitration process. This aligns with the overall goal of emergency arbitration to provide rapid relief.
4. **Exceptional Circumstances and Time Extension:** The provision also anticipates the possibility of exceptional circumstances that might warrant an extension of the 14-day timeframe. It grants the Administrator the authority to extend the time limit if there is a reasoned request from the Emergency Arbitrator or if the Administrator deems an extension necessary.
5. **Balancing Urgency and Deliberation:** The provision strikes a balance between the urgency of providing timely relief and the need for due consideration of the parties' submissions and the complexities of the case. The potential for a time extension reflects the recognition that there might be valid reasons for needing more time to address certain issues.
6. **Administrator's Oversight:** The role of the Administrator in overseeing the timeframe and considering requests for extensions ensures accountability and transparency in the process. This administrative oversight helps maintain the fairness and integrity of the emergency arbitration procedure.

In summary, Article 7.7 of Appendix III to the SCCA Arbitration Rules 2023 sets a specific 14-day time limit for the Emergency Arbitrator to issue the interim award or order. This provision reflects the urgency of emergency arbitration cases while also allowing for potential extensions in exceptional circumstances to ensure that the process remains efficient and fair.

## Article 8: Effect of Interim Award or Order

### 1. The Emergency Arbitrator shall issue the interim award or order promptly and in compliance with Article 36 of the Rules.

Article 8.1 of Appendix III to the SCCA Arbitration Rules 2023 pertains to the issuance of the interim award or order by the Emergency Arbitrator. Let us analyse this provision:

1. **Prompt Issuance of Interim Award or Order:** This provision emphasises the requirement for the Emergency Arbitrator to promptly issue the interim award or order. The term “promptly” underscores the urgency of emergency arbitration cases, aligning with the overarching goal of providing rapid relief to parties facing imminent harm or prejudice.
2. **Compliance with Article 36 of the Rules:** The provision references Article 36 of the SCCA Arbitration Rules 2023, which deals with the form and effect of awards. This indicates that the interim award or order issued by the Emergency Arbitrator must adhere to the formalities and requirements outlined in Article 36. This ensures that the interim award or order is properly documented and effective.
3. **Quality and Legitimacy of the Decision:** While the provision emphasises promptness, it also implies that the interim award or order should not sacrifice the quality or legitimacy of the decision. The Emergency Arbitrator is expected to carefully consider the parties’ submissions and the relevant legal and factual aspects of the case before rendering the decision.
4. **Balancing Urgency and Due Process:** The provision encapsulates the challenge of balancing the need for rapid relief with the fundamental principles of due process and fair treatment. It reflects the objective of emergency arbitration to address urgent matters without compromising the parties’ right to present their case and for the decision to be well-founded.
5. **Administrative and Procedural Compliance:** By referring to Article 36 of the Rules, the provision reinforces the procedural framework that governs the issuance of awards within the SCCA arbitration system. It ensures that the interim award or order conforms to the administrative and procedural requirements of the arbitration process.
6. **Finality and Enforcement:** The reference to compliance with Article 36 also suggests that the interim award or order issued by the Emergency Arbitrator should possess the attributes of finality and enforceability. This is crucial because interim measures ordered by the Emergency Arbitrator can have significant implications for the parties.

In conclusion, Article 8.1 of Appendix III to the SCCA Arbitration Rules 2023 highlights the necessity for the Emergency Arbitrator to issue the interim award or order promptly while adhering to the formalities and requirements outlined in Article 36 of the Rules. This provision reflects the delicate balance between the urgency of emergency arbitration cases and the need to ensure the legitimacy and effectiveness of the decisions rendered.

### 2. Any interim award or order shall have the same effect as an interim measure made in accordance with Article 28 of the Rules. Parties agree that such interim award or order shall be

**binding on the parties from the date it is made and undertake to carry out the interim award or order immediately and without delay. The parties also irrevocably waive their rights to any form of appeal, review, or recourse to any court or other judicial authority with respect to such interim award or order.**

Article 8.2 of Appendix III to the SCCA Arbitration Rules 2023 addresses the effect and consequences of an interim award or order issued by the Emergency Arbitrator. Let us analyse this provision:

1. **Legal Effect of Interim Award or Order:** The provision establishes that any interim award or order issued by the Emergency Arbitrator carries the same legal effect as an interim measure ordered under Article 28 of the SCCA Rules. This signifies that the interim award or order is legally enforceable and binding on the parties.
2. **Binding Nature of the Interim Award or Order:** Parties are required to acknowledge that the interim award or order is binding on them from the moment it is issued by the Emergency Arbitrator. This emphasises the immediate enforceability of the measures ordered and underscores the seriousness of complying with the decision.
3. **Immediate and Unhindered Compliance:** The provision obligates the parties to carry out the interim award or order without delay. This requirement is essential for maintaining the efficacy of the arbitration process and ensuring that the relief provided by the Emergency Arbitrator is effectively implemented.
4. **Waiver of Appeal and Recourse:** One of the most significant aspects of this provision is the parties' irrevocable waiver of their rights to any form of appeal, review, or recourse to any court or judicial authority concerning the interim award or order. This waiver emphasises the finality and conclusiveness of the decision. It highlights the parties' commitment to resolving disputes through arbitration and accepting the Emergency Arbitrator's determination as binding.
5. **Enhancing Efficiency and Certainty:** By limiting the parties' avenues for challenging the interim award or order, this provision contributes to the efficiency of the emergency arbitration process. It prevents parties from using multiple legal avenues to delay or undermine the implementation of the decision.
6. **Supporting the Purpose of Emergency Arbitration:** The provision aligns with the purpose of emergency arbitration, which is to provide quick and effective relief to parties facing urgent situations. The waiver of appeal and review rights ensures that the decisions of the Emergency Arbitrator are swiftly and definitively executed, maintaining the integrity of the arbitration system.
7. **Legal Finality and Enforcement:** The provision underscores the legal finality and enforceability of interim awards or orders. This is essential for parties seeking emergency relief to have confidence in the efficacy of the arbitration process, ensuring that the measures ordered are not rendered ineffective due to subsequent legal challenges.

In summary, Article 8.2 of Appendix III to the SCCA Arbitration Rules 2023 outlines the binding and final nature of interim awards or orders issued by the Emergency Arbitrator. It emphasises immediate compliance, waives parties' appeal rights, and contributes to the efficiency and effectiveness of the emergency arbitration process. This provision reinforces the authority of the Emergency Arbitrator's decisions and supports the overall purpose of emergency arbitration.



- 3. The interim award or order shall cease to be binding on the parties:**
- a) If the Emergency Arbitrator or the Arbitral Tribunal so decides;**
  - b) Upon the Arbitral Tribunal rendering a final award, unless the Arbitral Tribunal expressly decides otherwise;**
  - c) Upon the withdrawal of all claims or the termination of the arbitration before the issuance of a final award; or**
  - d) If the Request for Arbitration is not submitted in accordance with Article 5(2) of the Rules, or the dispute is not registered by the Administrator, the party against which the interim award or order is issued may in this case request the Emergency Arbitrator to issue a new interim award or order withdrawing the previous interim award or order.**

Article 8.3 of Appendix III to the SCCA Arbitration Rules 2023 outlines the circumstances under which an interim award or order issued by the Emergency Arbitrator will cease to be binding on the parties. Let us analyse the provisions of this article:

1. **Grounds for Ceasing Binding Effect:** This provision enumerates several situations where the interim award or order issued by the Emergency Arbitrator will no longer have binding effect on the parties. These situations are:
  - a. **Decision of Emergency Arbitrator or Arbitral Tribunal:** If either the Emergency Arbitrator or the Arbitral Tribunal decides that the interim award or order should no longer be binding, the parties will be released from its obligations.
  - b. **Final Award by Arbitral Tribunal:** The interim award or order will cease to be binding upon the rendering of a final award by the Arbitral Tribunal. However, the Arbitral Tribunal can make an exception and maintain the binding effect of the interim award if it explicitly decides to do so.
  - c. **Withdrawal or Termination:** If all claims are withdrawn or if the arbitration is terminated before the issuance of a final award, the interim award or order will no longer be binding.
  - d. **Non-Registration or Non-Submission:** If the Request for Arbitration is not submitted in accordance with Article 5(2) of the Rules or if the dispute is not registered by the Administrator, the party against which the interim award or order is issued can request the Emergency Arbitrator to issue a new interim award or order withdrawing the previous one.
2. **Flexibility and Termination Mechanisms:** The provision offers flexibility by allowing the Emergency Arbitrator, Arbitral Tribunal, or parties to determine the continuation of the binding effect of the interim award or order. This provides mechanisms for situations where circumstances change, or the dispute resolution process progresses.
3. **Protecting the Integrity of the Process:** This article serves to ensure that the binding effect of the interim award or order remains coherent with the progression of the arbitration

process. For instance, it prevents simultaneous binding effect of both an interim award and a subsequent final award on the same issues.

4. **Balancing Flexibility with Finality:** While the provision outlines circumstances under which the interim award or order may cease to be binding, it also acknowledges that under certain circumstances, the binding effect may continue even after a final award is rendered. This balance is essential to address the evolving nature of disputes and to avoid conflicts between various decisions issued throughout the arbitration process.

In summary, Article 8.3 of Appendix III to the SCCA Arbitration Rules 2023 defines the conditions under which the binding effect of an interim award or order issued by the Emergency Arbitrator ceases. It ensures flexibility while maintaining the integrity and finality of the arbitration process.

### **Article 9: Costs of Emergency Arbitration**

- 1. A party applying for the emergency measure shall advance an amount of SAR 75,000 as an advance deposit on the date of request.**

Article 9.1 of Appendix III to the SCCA Arbitration Rules 2023 pertains to the financial aspect of requesting an emergency measure and requires the applying party to provide an advance deposit. Let us analyse this article:

1. **Advance Deposit Requirement:** The article stipulates that a party seeking an emergency measure under the provisions of this appendix must pay an advance deposit of SAR 75,000 (Saudi Riyals) at the time of making the request. This deposit is a financial commitment that the applying party needs to fulfil in order to initiate the emergency arbitration procedure.
2. **Ensuring Commitment and Costs:** The requirement for an advance deposit serves multiple purposes. It ensures that the applying party is serious about its request for an emergency measure and helps cover the initial costs associated with the administration of the emergency arbitration process, including the selection and appointment of the Emergency Arbitrator and related administrative expenses.
3. **Transparency and Accountability:** Requiring an advance deposit promotes transparency in the arbitration process by establishing a clear financial commitment from the applying party. This deposit can be seen as a measure to prevent frivolous or unjustified requests for emergency measures, as parties are more likely to carefully consider their requests before making them due to the financial obligation.
4. **Mitigating Administrative Costs:** The advance deposit helps offset the administrative costs incurred by the arbitration institution in handling emergency proceedings, including the appointment of the Emergency Arbitrator and administrative support.
5. **Access to Urgent Relief:** The article may indirectly serve to filter out unmeritorious or frivolous requests, ensuring that the emergency arbitration process is reserved for situations where genuine and urgent relief is required.

6. **Cost Allocation and Refunds:** While not explicitly mentioned in this article, the advance deposit can be seen as an initial payment that could be adjusted as the emergency arbitration process progresses. If the final allocation of costs differs from the initial deposit, any excess payment could be refunded to the applying party or used to cover the costs of the other party.

In summary, Article 9.1 of Appendix III to the SCCA Arbitration Rules 2023 establishes the requirement for an advance deposit of SAR 75,000 from the party seeking an emergency measure. This financial commitment ensures the seriousness of the request, covers administrative costs, promotes transparency, and contributes to the efficiency and integrity of the emergency arbitration process.

## 2. The advance deposit is intended to cover:

- a) **SCCA administrative fees in the amount of SAR 15,000;**
- and
- b) **Emergency Arbitrator fees and expenses in the amount of SAR 60,000.**

Article 9.2 of Appendix III to the SCCA Arbitration Rules 2023 elaborates on the components covered by the advance deposit required for emergency arbitration. Let us analyse this article:

1. **Composition of Advance Deposit:** The article specifies that the advance deposit of SAR 75,000 has two components: SCCA administrative fees and Emergency Arbitrator fees and expenses.
2. **SCCA Administrative Fees:** Part “a” of the article mentions that a portion of the advance deposit, namely SAR 15,000, is allocated to cover SCCA administrative fees. These fees are related to the costs incurred by the arbitration institution in handling the administrative aspects of the emergency arbitration process.
3. **Emergency Arbitrator Fees and Expenses:** Part “b” of the article states that the remaining SAR 60,000 of the advance deposit is intended to cover Emergency Arbitrator fees and expenses. This includes compensation for the services provided by the Emergency Arbitrator, as well as any reasonable expenses incurred by the Emergency Arbitrator in carrying out their duties.
4. **Transparency and Predictability:** By specifying the exact allocation of the advance deposit between administrative fees and Emergency Arbitrator fees, the article promotes transparency and predictability in terms of the financial aspects of emergency arbitration.
5. **Ensuring Funding for the Process:** The advance deposit structure ensures that the necessary funds are available to cover the costs of both the administrative functions of the arbitration institution and the services of the Emergency Arbitrator. This funding mechanism allows for the smooth initiation and progression of the emergency arbitration process.

6. **Efficient Process Initiation:** Requiring the advance deposit ensures that the emergency arbitration process can be initiated promptly without delays caused by payment-related matters.
7. **Refund and Cost Allocation:** Any unutilised portion of the advance deposit may be refunded to the applying party, subject to the final allocation of costs or any additional expenses incurred during the process.

In summary, Article 9.2 of Appendix III to the SCCA Arbitration Rules 2023 outlines the purpose and distribution of the advance deposit required for emergency arbitration. It ensures that both SCCA administrative fees and Emergency Arbitrator fees and expenses are covered, promotes transparency, and facilitates the efficient and cost-effective initiation of the emergency arbitration process.

**3. As per Article 7(3) of the Rules, the emergency arbitration shall be deemed to commence on the date the Administrator determines at its discretion that the filing requirements have been satisfied and the fees as set for the in paragraph 2 of this Article have been paid.**

Article 9.3 of Appendix III to the SCCA Arbitration Rules 2023 establishes a crucial point in the timeline of emergency arbitration initiation. Let us break down this article:

1. **Commencement of Emergency Arbitration:** The article begins by referencing “Article 7(3) of the Rules,” which refers to the initiation of the emergency arbitration process as outlined in the general arbitration rules. It specifies that the emergency arbitration process officially begins on a specific date.
2. **Administrator’s Determination:** The article continues by mentioning that the commencement date of the emergency arbitration is determined by the Administrator of the arbitration institution (SCCA) at its discretion. This determination is made based on two key criteria: the satisfaction of filing requirements and the payment of fees.
3. **Filing Requirements:** One criterion for the commencement of emergency arbitration is the satisfaction of filing requirements. This typically involves the submission of the Application for emergency relief, along with any accompanying documents and information.
4. **Payment of Fees:** The other criterion is the payment of fees, which corresponds to the advance deposit mentioned in Article 9.2. The specific fees mentioned are the SCCA administrative fees and the Emergency Arbitrator fees and expenses, as allocated in the advance deposit structure.
5. **Role of the Administrator:** The Administrator plays a central role in determining when the requirements for commencement have been met. This emphasises the administrative function of the arbitration institution in managing and overseeing the procedural aspects of emergency arbitration.
6. **Efficiency and Clarity:** By specifying that the emergency arbitration is deemed to commence upon the Administrator’s determination of satisfaction of requirements and payment of fees, the article contributes to the efficiency and clarity of the process. It sets a clear point in time from which the emergency arbitration proceedings officially begin.

In summary, Article 9.3 of Appendix III to the SCCA Arbitration Rules 2023 highlights the factors that determine the official commencement of emergency arbitration. It emphasises the role of the Administrator in making this determination based on the fulfilment of filing requirements and payment of fees, contributing to the orderly and structured initiation of the emergency arbitration process.

**4. The SCCA Court may, at any time during the emergency arbitration, decide to increase the requested deposit, taking into account the nature of the case and the nature and amount of work performed by the Emergency Arbitrator and the Administrator. If the Applicant fails to pay the increased costs within the time limit fixed by the Administrator, the Application shall be considered as withdrawn.**

Article 9.4 of Appendix III to the SCCA Arbitration Rules 2023 addresses the provision for the adjustment of the requested deposit during the course of an emergency arbitration. Let us analyse this article:

1. **Adjustment of Requested Deposit:** The article states that the SCCA Court, which is the administrative body overseeing the arbitration, has the authority to make decisions related to the emergency arbitration process. This includes the power to increase the requested deposit, which is the amount provided by the Applicant to cover administrative fees and Emergency Arbitrator expenses.
2. **Factors for Increase Consideration:** The article outlines the factors that the SCCA Court should consider when deciding to increase the requested deposit. These factors include the nature of the case and the nature and amount of work performed by both the Emergency Arbitrator and the Administrator (the arbitration institution).
3. **Consequences of Non-Payment:** If the Applicant does not pay the increased costs within the time limit set by the Administrator, a significant consequence follows. The Application for emergency relief shall be considered withdrawn. In other words, the Applicant loses the opportunity to proceed with the emergency arbitration due to non-compliance with the payment requirements.
4. **Balance of Interests:** This provision reflects a balance of interests. On one hand, it ensures that the parties provide adequate financial coverage for the costs associated with the emergency arbitration, and on the other hand, it emphasises the consequences of non-payment to maintain the integrity of the arbitration process.
5. **Administrative Flexibility:** The provision allows for administrative flexibility by permitting adjustments to the requested deposit based on changing circumstances during the course of the emergency arbitration. This flexibility ensures that the arbitration process can continue smoothly even if there are changes in costs.
6. **Ensuring Compliance:** The article underscores the importance of financial responsibility on the part of the Applicant, emphasising the necessity of timely payments to cover costs associated with the emergency arbitration.

In summary, Article 9.4 of Appendix III to the SCCA Arbitration Rules 2023 outlines the SCCA Court's authority to adjust the requested deposit during an emergency arbitration. It emphasises the factors

considered for the adjustment, consequences of non-payment, and the need for timely and adequate financial coverage to ensure the continuation of the emergency arbitration process.

**5. The Emergency Arbitrator's interim award or order shall fix the costs associated with the emergency arbitration and allocate them among the parties, subject to the Arbitral Tribunal's power to determine finally the allocation of such costs.**

Article 9.5 of Appendix III to the SCCA Arbitration Rules 2023 addresses the issue of costs associated with the emergency arbitration process. Let us analyse this article:

1. **Cost Allocation by the Emergency Arbitrator:** The article stipulates that the Emergency Arbitrator's interim award or order must include a determination of the costs associated with the emergency arbitration. This includes various expenses related to the emergency arbitration proceedings, such as administrative fees and the Emergency Arbitrator's fees and expenses.
2. **Allocation Among the Parties:** The Emergency Arbitrator's decision must also allocate these costs among the parties involved in the emergency arbitration. This allocation aims to distribute the financial burden of the emergency arbitration fairly among the parties.
3. **Subject to Arbitral Tribunal's Power:** The allocation of costs made by the Emergency Arbitrator is subject to the final determination of the allocation of costs by the Arbitral Tribunal, which is the full tribunal that will hear the entire case if the dispute proceeds to a regular arbitration.
4. **Ensuring Consistency and Fairness:** This provision ensures consistency in the cost allocation process by clarifying that the Emergency Arbitrator's decision is not final on this matter. It acknowledges that the Arbitral Tribunal, with its broader jurisdiction and understanding of the entire case, has the ultimate authority to decide on the allocation of costs.
5. **Efficiency and Finality:** By addressing cost allocation within the emergency arbitration process itself, the article contributes to the efficiency and finality of the emergency arbitration proceedings. This prevents the issue of cost allocation from being a separate and potentially lengthy process.
6. **Balancing Interests:** The article balances the interests of all parties by ensuring that the allocation of costs is considered fairly and comprehensively, both in the immediate emergency arbitration context and in the broader context of the entire dispute.

In summary, Article 9.5 of Appendix III to the SCCA Arbitration Rules 2023 outlines the process of determining and allocating the costs associated with the emergency arbitration proceedings. It highlights the role of the Emergency Arbitrator in determining these costs and allocating them among the parties, while also acknowledging the final authority of the Arbitral Tribunal in deciding the allocation of costs.

**6. If the emergency arbitration is terminated prior to an interim award or order, the SCCA Court shall determine, at its discretion, the amount to be reimbursed to the Applicant, if any, taking into account the stage reached in the emergency arbitration and any other relevant circumstances.**

Article 9.6 of Appendix III to the SCCA Arbitration Rules 2023 deals with the reimbursement of costs in cases where the emergency arbitration is terminated before an interim award or order is issued. Let us analyse this article:

1. **Reimbursement of Costs upon Termination:** This article addresses situations where the emergency arbitration process is terminated prematurely, meaning before the Emergency Arbitrator issues an interim award or order. In such cases, the SCCA Court holds the authority to determine whether and to what extent the Applicant (the party seeking emergency relief) should be reimbursed for the costs incurred during the course of the emergency arbitration.
2. **Discretion of SCCA Court:** The SCCA Court is given the discretion to decide on the reimbursement amount, considering various factors such as the stage of the proceedings at the time of termination and any other relevant circumstances. This discretionary power ensures that the SCCA Court can make a fair and reasonable determination based on the specific circumstances of each case.
3. **Equitable Approach:** By allowing for reimbursement in cases of termination, the provision takes an equitable approach. It recognises that if the emergency arbitration process is halted early, it might be appropriate to reimburse the Applicant for costs they have incurred, especially if they had already invested resources in the proceedings.
4. **Flexibility and Case-Specific Evaluation:** The article's flexible approach allows the SCCA Court to consider a range of factors when determining the reimbursement amount. This acknowledges that each case may have unique circumstances that warrant a tailored approach to cost reimbursement.
5. **Encouraging Fairness and Access to Relief:** Including this provision may encourage parties to seek emergency relief without the fear of incurring excessive costs if the process does not proceed to the issuance of an interim award or order. This could promote access to emergency arbitration for parties who genuinely need it.
6. **Balancing Interests:** Article 9.6 strikes a balance between safeguarding the interests of the Applicant who seeks emergency relief and ensuring that cost reimbursement is fair and reasonable in light of the specific situation and circumstances.

In summary, Article 9.6 of Appendix III to the SCCA Arbitration Rules 2023 outlines the process of reimbursement of costs in cases where the emergency arbitration process is terminated before an interim award or order is issued. The article provides a discretionary framework for the SCCA Court to evaluate and determine the reimbursement amount based on various factors and relevant circumstances.

## Article 10: General Rules

### 1. The Administrator shall have the power to decide, at its discretion, all matters relating to the administration of the emergency arbitration where not expressly provided for in this Appendix.

Article 10.1 of Appendix III to the SCCA Arbitration Rules 2023 addresses the authority of the Administrator in matters related to the administration of emergency arbitration. Let us analyse this article:

1. **Administrative Authority:** This article emphasises the role and authority of the Administrator, who is responsible for managing the administrative aspects of the emergency arbitration proceedings. The Administrator's role is pivotal in ensuring the smooth and efficient operation of the emergency arbitration process.
2. **Discretionary Power:** The article grants the Administrator discretionary power to make decisions on matters that pertain to the administration of the emergency arbitration. This authority allows the Administrator to address issues not explicitly covered in the Appendix and to ensure that the proceedings are conducted effectively.
3. **Flexibility and Adaptability:** Emergency arbitration cases can be time-sensitive and require quick decision-making. By entrusting the Administrator with discretionary power, the rules acknowledge the need for flexibility and adaptability in addressing unforeseen administrative issues that may arise during the process.
4. **Filling in Gaps:** The provision recognises that not every administrative detail may be covered in the Appendix. The Administrator's discretionary authority allows them to address procedural matters that are not explicitly addressed in the rules but are necessary for the proper functioning of the emergency arbitration proceedings.
5. **Efficient Case Management:** Granting the Administrator this authority contributes to efficient case management. The Administrator can make decisions promptly, thereby reducing delays and ensuring that the emergency arbitration process remains effective in addressing urgent matters.
6. **Consistency and Fairness:** While the Administrator has discretion, they are likely to exercise it in a manner that is consistent and fair to all parties. This consistency helps maintain the integrity of the arbitration process and promotes equal treatment of all parties involved.
7. **Ensuring Procedural Fairness:** Although the Administrator has discretionary power, it is important to ensure that decisions made in the administration of the emergency arbitration uphold the principles of procedural fairness and due process.

In summary, Article 10.1 of Appendix III to the SCCA Arbitration Rules 2023 underscores the role of the Administrator in managing the administrative aspects of emergency arbitration proceedings. It grants the Administrator discretionary power to make decisions related to administration where the Appendix does not provide explicit guidance. This authority enhances the efficiency, flexibility, and adaptability of the emergency arbitration process while maintaining procedural fairness and consistency.



**2. For all matters concerning emergency arbitration not expressly provided for in this Appendix, the Administrator and the Emergency Arbitrator shall act in the spirit of the Rules and this Appendix.**

Article 10.2 of Appendix III to the SCCA Arbitration Rules 2023 addresses how matters related to emergency arbitration that are not explicitly covered in the Appendix should be handled. Let us analyse this article:

1. **Guiding Principle:** This article establishes a guiding principle for addressing matters concerning emergency arbitration that are not specifically addressed in the Appendix. It emphasises that the Administrator and the Emergency Arbitrator should act in accordance with the “spirit” of the Rules and the Appendix.
2. **Interpretation and Approach:** Since emergency arbitration is conducted within the framework of the overall arbitration rules, this provision encourages the Administrator and the Emergency Arbitrator to interpret and handle matters in a manner consistent with the underlying principles and intent of both the overarching Rules and the specific provisions of the Appendix.
3. **Flexibility and Adaptability:** The “spirit” of the Rules and the Appendix suggests an approach that is aligned with the objectives and principles of the arbitration process. This allows for flexibility and adaptability in addressing unforeseen or unique situations that may arise during emergency arbitration proceedings.
4. **Promotion of Fairness and Efficiency:** By acting in the spirit of the Rules and the Appendix, the Administrator and the Emergency Arbitrator aim to ensure procedural fairness, efficiency, and consistency in decision-making even when faced with novel or unanticipated circumstances.
5. **Avoiding Gaps in Guidance:** The provision recognises that no set of rules can cover every possible scenario. Acting in the spirit of the Rules and the Appendix helps fill potential gaps in guidance by aligning decisions with the broader goals and principles of arbitration.
6. **Maintaining Consistency:** Adhering to the spirit of the Rules and the Appendix helps maintain a consistent approach to decision-making, which is essential for the credibility and integrity of the arbitration process.
7. **Balancing Urgency and Due Process:** The Administrator and the Emergency Arbitrator must strike a balance between addressing urgent matters promptly and ensuring due process for all parties involved. This approach promotes fairness while respecting the need for expeditious resolution.

In summary, Article 10.2 of Appendix III to the SCCA Arbitration Rules 2023 underscores the importance of interpreting and addressing matters related to emergency arbitration in line with the broader principles and intent of the Rules and the Appendix. It guides the Administrator and the Emergency Arbitrator to act with flexibility, consistency, and fairness in situations not expressly covered by the provided rules, promoting an efficient and effective emergency arbitration process.

Appendix IV — Online Dispute Resolution Procedure Rules

Article 1: Scope of Application

**1. The Online Dispute Resolution Procedure Rules (the “ODR Procedure Rules”) shall apply where the parties agree in writing, and where the sum in dispute does not exceed SAR 200,000, representing the aggregate amount in claims, exclusive any costs of arbitration. If, after filing of the initial claims, a party amends its claim causing the sum in dispute to exceed SAR 200,000, the Administrator will continue to administer the case under the ODR Procedure Rules unless the parties agree, or the Administrator or arbitrator determines, otherwise. The same shall apply in the case of a crossclaim or claim for the purpose of a set-off. After the arbitrator is appointed, no new or different claim shall be submitted except with the arbitrator’s consent.**

Article 1.1 of Appendix IV to the SCCA Arbitration Rules 2023 pertains to the application of the Online Dispute Resolution (ODR) Procedure Rules for certain cases. Let us analyse this article:

1. **Scope and Application:** The article outlines the conditions under which the ODR Procedure Rules will be applicable. Specifically, these rules will apply when both parties agree in writing and when the sum in dispute does not exceed SAR 200,000. The sum in dispute refers to the total amount claimed by both parties collectively, excluding any costs of arbitration.
2. **Sum in Dispute Threshold:** The SAR 200,000 threshold is the determining factor for the applicability of the ODR Procedure Rules. Cases falling within this threshold are suitable for resolution through online dispute resolution, which generally offers a more streamlined and cost-effective process.
3. **Amendment of Claims:** The article addresses the scenario where a party amends its claim after the initial filing, causing the sum in dispute to exceed SAR 200,000. In such cases, the Administrator will continue to administer the case under the ODR Procedure Rules, unless there is an agreement between the parties or a determination made by the Administrator or arbitrator to proceed differently.
4. **Crossclaims and Set-Offs:** The provision extends the application of the ODR Procedure Rules to cases involving crossclaims or claims for the purpose of a set-off, under the same conditions and considerations mentioned above.
5. **New or Different Claims After Arbitrator’s Appointment:** Once the arbitrator is appointed, the article stipulates that no new or different claims can be submitted without the arbitrator’s consent. This provision aims to ensure that the arbitration process remains focused and does not deviate from the scope initially defined.
6. **Online Dispute Resolution (ODR) Procedure:** The ODR Procedure Rules, not provided in this article, will govern the online dispute resolution process for cases that meet the specified criteria. These rules are designed to facilitate efficient, cost-effective, and tech-enabled resolution of disputes, in line with the parties’ agreement and the sum in dispute.

In summary, Article 1.1 of Appendix IV to the SCCA Arbitration Rules 2023 establishes the conditions for the application of the Online Dispute Resolution Procedure Rules. It outlines the sum in dispute threshold, addresses amendments to claims, extends the application to crossclaims and set-offs, and sets limitations on introducing new or different claims after the arbitrator’s appointment. This article

aims to provide a framework for efficiently resolving lower-value disputes through online means while maintaining procedural fairness and predictability.

**2. The ODR Procedure Rules shall apply in addition to any provisions of the Rules that are not in conflict with the ODR Procedure Rules. If in conflict, the provisions of the ODR Procedure Rules shall prevail.**

Article 1.2 of Appendix IV to the SCCA Arbitration Rules 2023 addresses the relationship between the Online Dispute Resolution (ODR) Procedure Rules and the general provisions of the Rules. Let us analyse this article:

1. **Application of ODR Procedure Rules:** This article states that the ODR Procedure Rules will apply in addition to any provisions of the general Rules. The ODR Procedure Rules are specifically designed to govern the resolution of disputes in cases where both parties agree and the sum in dispute does not exceed a certain threshold, as established in Article 1.1.
2. **Non-Conflict with General Rules:** The article emphasises that the ODR Procedure Rules will coexist with the general provisions of the Rules, as long as there is no conflict between the two sets of rules. This ensures that the ODR Procedure Rules can provide a tailored framework for online dispute resolution without disregarding other established arbitration principles.
3. **Precedence of ODR Procedure Rules in Conflict:** In the event of a conflict between the ODR Procedure Rules and the general provisions of the Rules, the article establishes that the provisions of the ODR Procedure Rules shall prevail. This ensures that the specific procedures and mechanisms designed for online dispute resolution take precedence over conflicting provisions from the general Rules.

In summary, Article 1.2 of Appendix IV clarifies the relationship between the Online Dispute Resolution Procedure Rules and the general provisions of the SCCA Arbitration Rules 2023. The ODR Procedure Rules are meant to supplement the general rules in cases where they apply, and they take precedence over conflicting provisions to ensure the effectiveness and coherence of the online dispute resolution process. This approach aims to maintain consistency while allowing for the specialised requirements of online resolution to be addressed appropriately.

**3. The Administrator may, at any time during the arbitration, on its own initiative or upon request by a party, and after consultation with the arbitrator, decide that the ODR Procedure Rules shall no longer apply to the case, and that the administration shall continue exclusively under the Rules.**

Article 1.3 of Appendix IV to the SCCA Arbitration Rules 2023 deals with the flexibility of transitioning from the Online Dispute Resolution (ODR) Procedure Rules to the general Rules during the course of arbitration. Here is an analysis of this article:

1. **Administrator's Authority:** This article grants the Administrator the authority to make a decision regarding whether the ODR Procedure Rules should cease to apply to the

ongoing arbitration and that the case should proceed exclusively under the general Rules. The decision can be initiated either by the Administrator on its own initiative or upon the request of one of the parties.

2. **Consultation with the Arbitrator:** Before making the decision to transition from the ODR Procedure Rules to the general Rules, the Administrator is required to consult with the appointed arbitrator. This step ensures that the arbitrator’s perspective and input are considered before making any changes to the procedural framework.
3. **Discretion to Transition:** The article provides the Administrator with the discretion to decide whether the ODR Procedure Rules should continue to apply or be replaced by the general Rules. This discretion allows the Administrator to assess the circumstances and needs of the case, considering factors such as complexity, changes in the claims, and the efficiency of the proceedings.
4. **Flexibility and Adaptability:** The ability to transition from the ODR Procedure Rules to the general Rules demonstrates the SCCA’s commitment to flexibility and adaptability. It recognises that circumstances in a case might change, requiring a different procedural approach that aligns with the specific needs and complexities that have arisen.

In summary, Article 1.3 of Appendix IV to the SCCA Arbitration Rules 2023 provides a mechanism for transitioning from the ODR Procedure Rules to the general Rules during an ongoing arbitration. This flexibility ensures that the appropriate procedural framework is in place to best address the evolving needs of the case while maintaining the overall efficiency and effectiveness of the arbitration process.

## Article 2: Request for Arbitration

**1. A party wishing to file an arbitration under the ODR Procedure Rules shall submit the Request for Arbitration, along with any supporting documents, using the SCCA ODR Platform (“ODR Platform”). In addition to the information requested in Article 4 of the Rules, the Request for Arbitration shall also include the email addresses of the parties and, if known, of their representatives.**

Article 2.1 of Appendix IV to the SCCA Arbitration Rules 2023 outlines the procedure for initiating arbitration under the Online Dispute Resolution (ODR) Procedure Rules. Let us break down and analyse this article:

1. **Filing Procedure:** This article specifies that a party seeking to initiate arbitration under the ODR Procedure Rules must submit a “Request for Arbitration” to the designated platform, which is the SCCA ODR Platform.
2. **Use of ODR Platform:** The SCCA ODR Platform is the designated digital platform through which parties must submit their Request for Arbitration and related documents. This platform is likely designed to facilitate the submission and management of documents in an online environment.
3. **Additional Information:** The Request for Arbitration, in addition to meeting the requirements outlined in Article 4 of the general Rules, must also provide specific

information required by the ODR Procedure Rules. This additional information is not detailed in this article but is implied to be related to the specifics of the ODR process.

4. **Inclusion of Email Addresses:** The Request for Arbitration must include the email addresses of the parties and, if known, their representatives. This requirement indicates the importance of electronic communication throughout the ODR process.
5. **Emphasis on Technology and Efficiency:** The use of the SCCA ODR Platform and the requirement for email addresses highlight the technological and efficient nature of the ODR Procedure Rules. The emphasis is on leveraging digital tools to streamline the arbitration process.
6. **Streamlined Process:** The inclusion of parties' email addresses suggests that electronic communication and notifications will play a significant role in the ODR process. This could lead to quicker communication and decision-making.

Overall, Article 2.1 of Appendix IV underscores the technology-driven approach of the ODR Procedure Rules, requiring parties to submit their Request for Arbitration through the designated SCCA ODR Platform and emphasising the importance of efficient digital communication throughout the proceedings.

**2. If the Request for Arbitration is submitted through the Claimant's representative, the representative shall provide a Power of Attorney with the Request for Arbitration that warrants that the representative is authorized to act on the Claimant's behalf in the arbitration.**

Article 2.2 of Appendix IV to the SCCA Arbitration Rules 2023 establishes a requirement related to the submission of a Request for Arbitration under the Online Dispute Resolution (ODR) Procedure Rules. Let us analyse this article:

1. **Submission Through Representative:** This article addresses a scenario where the Request for Arbitration is submitted by the claimant's representative, rather than directly by the claimant. It acknowledges that a claimant can be represented by a third party, such as a legal counsel.
2. **Power of Attorney Requirement:** If the Request for Arbitration is submitted through the claimant's representative, the representative is required to provide a "Power of Attorney" along with the Request. A Power of Attorney is a legal document that grants authority to the representative to act on behalf of the claimant in the arbitration proceedings.
3. **Authorisation of Representation:** The Power of Attorney serves as a warrant that the representative is authorised to act on behalf of the claimant in the arbitration process. It ensures that the representative has the legal authority to make decisions, submit documents, and represent the claimant's interests.
4. **Clarity and Documentation:** Requiring the submission of a Power of Attorney helps establish clarity and transparency regarding the representation arrangement. It prevents unauthorised representatives from participating in the arbitration process.

5. **Protecting the Claimant's Interests:** The requirement for a Power of Attorney protects the claimant's interests by ensuring that only authorised representatives are involved in the proceedings. This helps prevent potential issues related to unauthorised representation.
6. **Legal Formality:** Requiring a Power of Attorney is a common legal formality to verify the representation authority of individuals acting on behalf of others in legal proceedings.

In summary, Article 2.2 emphasises the importance of proper representation in the ODR Procedure Rules. If a claimant's representative submits the Request for Arbitration, the provision of a Power of Attorney is required to ensure authorised and legitimate representation in the arbitration process.

**3. The SCCA filing fee as per the ODR Fee Schedule is due on the day of filing the Request for Arbitration and, unless the Administrator directs otherwise, shall be paid by the Claimant using the ODR Platform.**

Article 2.3 of Appendix IV to the SCCA Arbitration Rules 2023 outlines the requirements and procedures related to the filing fee for cases submitted under the Online Dispute Resolution (ODR) Procedure Rules. Let us analyse this article:

1. **SCCA Filing Fee:** This article specifies that a filing fee is applicable for cases initiated under the ODR Procedure Rules. The filing fee is charged by the Saudi Center for Commercial Arbitration (SCCA) for the administration of the arbitration process.
2. **ODR Fee Schedule:** The filing fee amount is determined by the ODR Fee Schedule. This fee schedule likely sets out the different filing fee amounts based on the sum in dispute or other relevant factors. Parties can refer to this schedule to determine the applicable fee for their case.
3. **Due Date and Payment:** The article states that the SCCA filing fee is due on the same day as the filing of the Request for Arbitration. This means that the claimant must pay the fee at the time they initiate the arbitration process by submitting their request.
4. **Payment Method:** The article specifies that the filing fee is to be paid using the SCCA ODR Platform. This platform likely provides an online interface for parties to submit their requests and make the necessary payments securely and efficiently.
5. **Role of the Administrator:** The article notes that unless the Administrator (of the SCCA) directs otherwise, the claimant is responsible for making the filing fee payment. The Administrator may provide specific instructions or guidance regarding the payment process.
6. **Streamlining Payment Process:** Requiring the filing fee to be paid through the ODR Platform streamlines the administrative process. It ensures that the fee is paid electronically, reducing potential delays associated with manual payments.
7. **Financial Commitment:** Requiring payment of the filing fee at the outset demonstrates the claimant's financial commitment to the arbitration process. This commitment helps ensure that parties take the proceedings seriously.

In summary, Article 2.3 of Appendix IV establishes the requirement for the claimant to pay the SCCA filing fee when filing a Request for Arbitration under the ODR Procedure Rules. The article provides details about the due date, payment method, and the role of the Administrator in directing the payment process.

**4. The arbitration shall be deemed to have commenced on the date the Administrator notifies the parties that the Request for Arbitration is available on the ODR Platform.**

Article 2.4 of Appendix IV to the SCCA Arbitration Rules 2023 addresses the commencement of arbitration proceedings when cases are initiated under the Online Dispute Resolution (ODR) Procedure Rules. Let us analyse this article:

1. **Commencement of Arbitration:** This article specifies that the arbitration proceedings under the ODR Procedure Rules are deemed to have commenced on a specific date. The mentioned date is the one on which the Administrator notifies the parties that the Request for Arbitration, which was filed through the SCCA ODR Platform, is available for access.
2. **Notice by the Administrator:** The responsibility for notifying the parties of the commencement of the arbitration lies with the Administrator of the Saudi Center for Commercial Arbitration (SCCA). This notice signifies the official initiation of the arbitration process.
3. **Importance of Commencement Date:** Establishing a clear commencement date is significant as it triggers various procedural timelines and obligations for both parties and the arbitral process. This includes deadlines for submission of documents, appointment of arbitrators, and other procedural steps.
4. **Use of ODR Platform:** The article implicitly indicates the significance of the ODR Platform in modern arbitration proceedings. The ODR Platform serves as a central hub for the submission of requests, communication of notices, and access to documents related to the arbitration.
5. **Transparency and Communication:** The use of the ODR Platform enhances transparency and communication in the arbitration process. It ensures that parties have access to relevant information and notifications in a centralised and efficient manner.
6. **Facilitating Electronic Processes:** The ODR Procedure Rules, in conjunction with the ODR Platform, demonstrate the arbitration institution's commitment to adopting electronic processes that streamline the initiation and administration of arbitration cases.

In summary, Article 2.4 of Appendix IV clarifies that the arbitration proceedings initiated under the ODR Procedure Rules officially commence on the date the Administrator notifies the parties that the filed Request for Arbitration is available on the ODR Platform. This article underscores the role of the ODR Platform in facilitating efficient and transparent arbitration processes in a digital age.

### Article 3: Answer and Counterclaim

**1. Within 10 days from the commencement of the arbitration, the Respondent shall file an Answer to the Request for Arbitration using the ODR Platform.**

Article 3.1 of Appendix IV to the SCCA Arbitration Rules 2023 outlines the timeline and requirements for the Respondent's submission of an Answer to the Request for Arbitration in cases conducted under the Online Dispute Resolution (ODR) Procedure Rules. Let us break down this article:

1. **Response Deadline:** The article stipulates that the Respondent is required to submit its Answer to the Request for Arbitration within a specified timeframe. This timeframe is 10 days from the official commencement of the arbitration proceedings, which is triggered by the Administrator's notification as mentioned in Article 2.4.
2. **Use of ODR Platform:** The Answer must be filed using the SCCA ODR Platform. This underlines the significance of the digital platform in the ODR Procedure Rules, streamlining the submission of documents and maintaining a centralised record of all proceedings.
3. **Efficient Response Period:** The 10-day response period emphasises the objective of the ODR Procedure Rules to facilitate a swift and efficient resolution of disputes. The shorter response time compared to traditional arbitration proceedings encourages parties to promptly engage in the arbitration process.
4. **Equal Treatment of Parties:** By setting a clear deadline for the Respondent's Answer, the rules ensure that both parties have equal opportunities to present their positions within the established timeframes.
5. **Digitalisation of Arbitral Process:** The inclusion of specific provisions for the use of the ODR Platform demonstrates the SCCA's commitment to harnessing technology to modernise arbitration processes and improve their accessibility and efficiency.
6. **Adherence to Timeline:** The 10-day deadline encourages parties to manage their time effectively and respect the procedural timeline, promoting the overall efficiency of the arbitration process.

In summary, Article 3.1 of Appendix IV establishes that the Respondent in an ODR arbitration must submit an Answer to the Request for Arbitration within 10 days from the official commencement of the arbitration proceedings. This emphasises the efficient nature of ODR procedures, the role of the ODR Platform, and the importance of timely responses to ensure a balanced and streamlined resolution process.

**2. The Respondent may file a counterclaim, along with any supporting documents and its and/or its representative's email address, within 10 days from the commencement of the arbitration using the ODR Platform. The Respondent shall pay the SCCA filing fee using the ODR Platform. In the**



**case of party representation, Article 2(2) of this Appendix shall apply. This paragraph shall equally apply in case of any other claims.**

Article 3.2 of Appendix IV to the SCCA Arbitration Rules 2023 outlines the procedures and requirements for the Respondent to file a counterclaim, along with any other additional claims, in cases conducted under the Online Dispute Resolution (ODR) Procedure Rules. Let us analyse this article step by step:

1. **Counterclaim and Additional Claims:** The article establishes that the Respondent has the option to file a counterclaim within the same arbitration proceedings, if it wishes to assert claims against the Claimant that are related to the subject matter of the dispute. This includes the possibility of filing any other additional claims.
2. **Counterclaim Submission Deadline:** The Respondent must file its counterclaim (or other additional claims) within 10 days from the official commencement of the arbitration proceedings. This timeframe is consistent with the efficient nature of ODR procedures, encouraging prompt engagement by parties.
3. **Use of ODR Platform:** Just like the filing of the Answer, the counterclaim (or additional claims) must also be submitted using the SCCA ODR Platform. This underscores the digital nature of the proceedings and the importance of centralising communication and document submission.
4. **Filing Fee for Counterclaim:** The Respondent is required to pay the SCCA filing fee for the counterclaim using the ODR Platform. This aligns with the administrative requirements for processing the counterclaim and facilitating the arbitration process.
5. **Application of Party Representation Rule:** If the Respondent is represented by a representative, the rules specified in Article 2.2 of the same Appendix, which requires a Power of Attorney, apply to the counterclaim filing process as well.
6. **Promotion of Efficiency:** The use of consistent timeframes for filing the Answer, counterclaim, or other additional claims, contributes to maintaining procedural efficiency and ensuring that both parties have a fair opportunity to present their case.

In summary, Article 3.2 of Appendix IV establishes that the Respondent may file a counterclaim, along with any other additional claims, within 10 days from the official commencement of the arbitration proceedings conducted under the ODR Procedure Rules. The use of the ODR Platform, adherence to the filing deadline, and the application of relevant representation rules all contribute to the efficient and balanced conduct of the arbitration process.

**3. Within 10 days from the Administrator’s confirmation of receipt of a counterclaim, the Claimant shall file an Answer to the counterclaim using the ODR Platform. The same shall apply in case of any other claims.**

Article 3.3 of Appendix IV to the SCCA Arbitration Rules 2023 addresses the procedural steps to be taken by the Claimant in response to a counterclaim, as well as any other additional claims, in cases conducted under the Online Dispute Resolution (ODR) Procedure Rules. Let us analyse this article in detail:

1. **Claimant's Response to Counterclaim:** The article stipulates that after the Administrator confirms the receipt of a counterclaim, the Claimant has a period of 10 days to file an Answer in response to the counterclaim. This timeframe is designed to maintain efficiency and ensure a timely exchange of responses between the parties.
2. **Use of ODR Platform:** Similar to the filing of the counterclaim and the initial Answer, the Claimant's Answer to the counterclaim (or any other additional claims) must be submitted using the SCCA ODR Platform. This consistent approach reflects the digital nature of ODR proceedings.
3. **Timely and Balanced Procedure:** The 10-day response period ensures that the Claimant has an appropriate timeframe to formulate and submit its response. This balanced approach helps to uphold the principles of fairness and procedural equality.
4. **Applicability to Additional Claims:** The article emphasises that the same procedure applies to any other claims, meaning that if parties introduce additional claims beyond the counterclaim, the same timeframes and methods of response submission remain in effect.

The primary goal of Article 3.3 is to ensure that the Claimant, after being notified of the receipt of a counterclaim or additional claims, has 10 days to respond to such claims using the ODR Platform. By specifying this process, the SCCA's ODR Procedure Rules promote an efficient and organised exchange of pleadings within the framework of ODR arbitration.

#### **4. When no Answer is filed to a claim, such claim shall be deemed as denied by the other party.**

Article 3.4 of Appendix IV to the SCCA Arbitration Rules 2023 establishes a rule regarding the consequences of a party's failure to file an Answer in response to a claim in cases conducted under the Online Dispute Resolution (ODR) Procedure Rules. Let us analyse this article:

1. **Default Position:** The article states that when a party fails to file an Answer to a claim within the specified timeframe (10 days), that claim will be deemed as denied by the non-responding party. This default position is intended to prevent parties from benefiting from silence or inaction and to maintain the integrity of the arbitration process.
2. **Presumption of Denial:** By considering the non-response as a denial, the rule seeks to ensure that claims are not automatically accepted due to lack of response. It encourages parties to actively engage in the proceedings and present their positions.
3. **Maintaining Fairness:** This rule contributes to maintaining procedural fairness by preventing a party from evading its obligation to respond to claims. It also serves to uphold the principle that each party should have the opportunity to present its case and have its claims addressed by the tribunal.
4. **Balancing Efficiency and Equity:** The rule strikes a balance between efficiency and fairness. It allows the arbitration process to move forward even in cases where one party does not respond within the stipulated timeframe, avoiding unnecessary delays. At the same time, it ensures that a party's claims are not left unopposed.

5. Encouraging Active Participation: By deeming non-responded claims as denied, the rule encourages parties to actively participate in the ODR proceedings. Parties are incentivised to promptly respond to claims in order to avoid claims being assumed as denied.

In essence, Article 3.4 ensures that claims are not automatically accepted due to a lack of response and maintains a fair balance between efficiency and equity in ODR proceedings under the SCCA Arbitration Rules 2023.

#### Article 4: Notice and Calculation of Time Limits

**1. Unless the Administrator instructs, or the arbitrator determines, otherwise, a Notice as set forth in Article 4 of the Rules between the parties, the Administrator, and the arbitrator shall be exchanged using the ODR Platform.**

Article 4.1 of Appendix IV to the SCCA Arbitration Rules 2023 addresses the manner in which notices are to be exchanged among the parties, the Administrator, and the arbitrator in cases conducted under the Online Dispute Resolution (ODR) Procedure Rules. Let us analyse this article:

1. **Mode of Communication:** The article establishes that notices between the parties, the Administrator, and the arbitrator should be exchanged using the ODR Platform. This requirement ensures that all communications related to the arbitration are conducted within the specified online platform, streamlining the communication process and maintaining consistency.
2. **Efficiency and Centralisation:** By mandating the use of the ODR Platform for communication, the article enhances efficiency in the arbitration process. It centralises all relevant communications and documents in one location, making it easier for parties, the Administrator, and the arbitrator to access and track the exchange of information.
3. **Ensuring Transparency:** The ODR Platform ensures transparency in communication by creating a digital record of all correspondence. This record can be valuable in case disputes arise regarding the content or timing of notices or communications.
4. **Maintaining a Record:** Utilising the ODR Platform helps maintain an accurate and accessible record of all communications throughout the arbitration proceedings. This can be useful for reference, verification, and evidence purposes.
5. **Avoiding Confusion:** Using a centralised platform for communication helps prevent confusion or disputes that might arise from communication breakdowns or inconsistencies. All parties and the arbitrator have access to the same set of communications, reducing the risk of misunderstandings.
6. **Flexibility for Specific Instructions:** The article acknowledges that the Administrator or the arbitrator may provide specific instructions or determine alternative methods of communication if necessary. This recognises that there might be exceptional cases where alternative communication methods are more suitable.

In summary, Article 4.1 of Appendix IV underscores the use of the ODR Platform for exchanging notices in cases conducted under the SCCA Arbitration Rules 2023. This approach ensures efficiency,

transparency, and a centralised record of communication, which are vital aspects of modern arbitration proceedings.

**2. The Administrator shall notify the parties and the arbitrator of the availability of any Notice received on the ODR Platform. A Notice shall be deemed as received by a party when the Administrator notifies the parties of its availability on the ODR Platform.**

Article 4.2 of Appendix IV to the SCCA Arbitration Rules 2023 pertains to the notification process when Notices are received on the Online Dispute Resolution (ODR) Platform in cases conducted under the ODR Procedure Rules. Let us analyse this article:

1. **Notice Notification:** The article states that the Administrator has the responsibility to notify the parties and the arbitrator about the availability of any Notice that has been received on the ODR Platform. This notification mechanism ensures that relevant parties are promptly made aware of any new communications or documents.
2. **Deemed Receipt:** According to the article, a Notice is considered as received by a party when the Administrator notifies the parties of its availability on the ODR Platform. This provision helps establish a clear and standardised way of determining when a Notice is deemed to have been received.
3. **Transparency and Timeliness:** The requirement for the Administrator to promptly notify parties and the arbitrator about the availability of Notices enhances transparency and timeliness. Parties are informed as soon as new documents are uploaded on the platform, ensuring that they can access and respond to the information without undue delay.
4. **Reducing Uncertainty:** By specifying when a Notice is deemed received, the article reduces uncertainty and potential disputes that could arise from disagreements about when a Notice was effectively communicated to all parties.
5. **Centralised Communication Record:** The combination of the ODR Platform for communication and the Administrator's notification process ensures that all parties and the arbitrator have access to a consistent record of communication. This centralised record can be valuable in tracking the progress of the arbitration and resolving any disputes that may arise.

In summary, Article 4.2 of Appendix IV underscores the importance of efficient and transparent communication through the ODR Platform in cases governed by the SCCA Arbitration Rules 2023. The provision ensures that parties and the arbitrator are promptly informed of the availability of Notices, contributing to the smooth flow of arbitration proceedings and maintaining a clear record of communication.

**3. Time limits shall be calculated from the date the Administrator transmits a Notice as set forth in paragraph 2 of this Article. The Administrator may at its discretion extend any deadlines for a reasonable amount of time. Once appointed, the arbitrator shall make such determinations.**

Article 4.3 of Appendix IV to the SCCA Arbitration Rules 2023 addresses the calculation of time limits, extensions of deadlines, and the role of the arbitrator in relation to these matters within the context of the Online Dispute Resolution (ODR) Procedure Rules. Let us analyse this article:

1. **Calculation of Time Limits:** The article specifies that time limits for various actions and responses within the arbitration process are calculated from the date the Administrator transmits a Notice, as described in Article 4.2. This provides clarity on the starting point for counting the time within which parties need to fulfil their obligations.
2. **Administrator's Discretion to Extend Deadlines:** The article grants the Administrator the discretion to extend any deadlines for a reasonable amount of time. This flexibility recognises that there might be situations where parties require more time due to specific circumstances. It reflects the arbitration's adaptability to real-world situations that may affect the parties' ability to adhere to strict time limits.
3. **Role of the Arbitrator:** The article states that after the arbitrator is appointed, they will assume the responsibility of making determinations regarding deadline extensions. This transition of authority aligns with the broader principle of having an impartial and independent decision-maker oversee the arbitration process.
4. **Balancing Efficiency and Fairness:** The provision strikes a balance between maintaining the efficiency of the arbitration process and ensuring fairness to the parties. It recognises the need for time flexibility while also placing the ultimate authority in the hands of the arbitrator once they are appointed.
5. **Consistency with ODR Framework:** The article's focus on utilising the ODR Platform for communication and the Administrator's role in extending deadlines aligns with the ODR framework's goal of streamlining communication and document exchange in a technologically driven environment.

In summary, Article 4.3 of Appendix IV underscores the importance of clarity and flexibility in managing time limits within the ODR Procedure Rules. It outlines the calculation of time limits, grants discretion to the Administrator for extensions, and designates the arbitrator's role in determining such extensions after their appointment. This approach ensures a fair and efficient arbitration process within the context of the ODR framework.

## Article 5: Appointment and Challenge of the Arbitrator

**1. The SCCA Court shall promptly appoint a sole arbitrator who shall disclose any circumstances that may give rise to justifiable doubts as to his or her impartiality or independence. If after the appointment circumstances arise that may give rise to such doubts, the arbitrator or party shall promptly disclose such information to the Administrator and all parties. Upon receipt of such information from the arbitrator or party, the Administrator shall communicate it to all parties.**

Article 5.1 of Appendix IV to the SCCA Arbitration Rules 2023 pertains to the appointment of a sole arbitrator in cases subject to the Online Dispute Resolution (ODR) Procedure Rules. Let us analyse the key points of this article:

1. **Prompt Appointment of Sole Arbitrator:** The article emphasises that the SCCA Court must promptly appoint a sole arbitrator when required under the ODR Procedure Rules. This quick appointment is essential for maintaining the efficiency and expeditious nature of the ODR process.
2. **Impartiality and Independence Disclosure:** The appointed sole arbitrator is mandated to disclose any circumstances that might reasonably lead to doubts about their impartiality or independence. This disclosure requirement is a fundamental aspect of ensuring a fair and unbiased arbitration process.
3. **Disclosure of Subsequent Circumstances:** The article extends the requirement for disclosure beyond the initial appointment. It states that if circumstances arise after the arbitrator's appointment that could give rise to doubts about their impartiality or independence, the arbitrator or a party must promptly disclose this information to the Administrator and all parties.
4. **Transparency and Communication:** The article highlights the importance of transparency in arbitration proceedings. Once the Administrator receives information about potential doubts regarding the arbitrator's impartiality or independence, they are obligated to communicate this information to all parties involved.
5. **Preventing Bias and Maintaining Fairness:** The disclosure requirement serves as a mechanism to prevent any actual or perceived bias on the part of the appointed arbitrator. By promptly disclosing any relevant information, the arbitrator and the parties collectively contribute to the fairness and credibility of the arbitration process.
6. **Proactive Approach to Impartiality:** By mandating the arbitrator to disclose any circumstances that could give rise to doubts about their impartiality or independence, the article promotes a proactive approach to addressing potential conflicts of interest, thereby enhancing the credibility of the arbitration proceedings.

In summary, Article 5.1 of Appendix IV emphasises the importance of a prompt and transparent process for appointing a sole arbitrator in ODR cases. It requires the arbitrator to disclose any circumstances that could raise doubts about their impartiality or independence and extends this requirement to situations arising after the appointment. This article underscores the commitment to an unbiased and fair arbitration process within the ODR framework.

**2. Any challenge of the arbitrator shall be transmitted using the ODR Platform within two business days of the Notice by the Administrator to the parties of the arbitrator's appointment and the circumstances disclosed. Absent any challenge by this deadline, the arbitrator shall be reaffirmed. If a challenge has been submitted, the Administrator shall invite the other party to submit comments. The SCCA Court shall determine at its discretion whether to reaffirm or replace the arbitrator.**

Article 5.2 of Appendix IV to the SCCA Arbitration Rules 2023 addresses the process for challenging the appointed arbitrator in cases subject to the Online Dispute Resolution (ODR) Procedure Rules. Here is an analysis of its key points:

1. **Challenge of Arbitrator:** This article outlines the process for challenging the arbitrator's appointment, allowing a party to raise concerns about the arbitrator's impartiality or independence.
2. **Use of ODR Platform:** The article specifies that any challenge to the arbitrator must be transmitted using the ODR Platform. This platform serves as the designated method for communication and submission of documents in ODR cases.
3. **Time Limit for Challenge:** A party wishing to challenge the arbitrator must do so within two business days of receiving the Notice from the Administrator regarding the arbitrator's appointment and the disclosed circumstances that may impact their impartiality or independence.
4. **Lapse of Challenge Deadline:** If no challenge is submitted within the specified timeframe, the arbitrator's appointment is reaffirmed, indicating that the party does not have any objections to the arbitrator's impartiality or independence.
5. **Inviting Comments:** If a challenge is submitted, the Administrator invites the other party to submit comments. This ensures a balanced and fair consideration of the challenge, allowing both parties to provide their perspectives.
6. **SCCA Court's Discretion:** The SCCA Court is entrusted with the authority to make the final decision on whether to reaffirm or replace the arbitrator. This decision is made at the Court's discretion, and it takes into account the arguments presented by the parties.
7. **Impartiality and Fair Process:** The process outlined in this article aims to maintain the impartiality and fairness of the arbitration proceedings. It allows parties to raise concerns about the arbitrator's suitability and provides a mechanism for review and decision by the SCCA Court.

In summary, Article 5.2 of Appendix IV outlines the procedure for challenging the appointment of an arbitrator in ODR cases. It emphasises the use of the ODR Platform for communication, sets a specific timeframe for submitting challenges, invites comments from the other party, and gives the SCCA Court the authority to decide whether to reaffirm or replace the arbitrator based on the presented arguments. This process ensures transparency, fairness, and the integrity of the arbitrator's role in ODR proceedings.

## **Article 6: Deposits**

**Upon the appointment of the arbitrator, the Claimant shall pay additional deposits for SCCA administrative fees and arbitrator fees as per the ODR Fee Schedule using the ODR Platform.**

Article 6 of Appendix IV to the SCCA Arbitration Rules 2023 pertains to the payment of additional deposits for administrative fees and arbitrator fees in cases subject to the Online Dispute Resolution (ODR) Procedure Rules. Let us break down the key points of this article:

1. **Payment of Additional Deposits:** This article outlines that upon the appointment of the arbitrator, the Claimant (the party initiating the arbitration) is required to make additional

payments in the form of deposits. These deposits are intended to cover both SCCA administrative fees and arbitrator fees.

2. SCCA Administrative Fees and Arbitrator Fees: The additional deposits cover two specific components: SCCA administrative fees and arbitrator fees. These fees are determined based on the ODR Fee Schedule, which likely outlines the fee structure for various stages of the arbitration process.
3. Utilising the ODR Platform: The payment process is to be carried out using the ODR Platform. The ODR Platform serves as the designated digital platform for communication and various procedural aspects of the ODR proceedings, including fee payments.
4. ODR Fee Schedule: The specific amounts of the additional deposits are determined by referencing the ODR Fee Schedule. This schedule likely provides a breakdown of the fees associated with different aspects of the arbitration process, considering factors such as the amount in dispute and the complexity of the case.

In summary, Article 6 of Appendix IV establishes that, after the arbitrator is appointed, the Claimant is required to pay additional deposits for SCCA administrative fees and arbitrator fees as specified in the ODR Fee Schedule. The ODR Platform is the designated means for submitting these payments. This article ensures that the financial aspects of the ODR arbitration are appropriately managed and that the necessary fees are paid to facilitate the proceedings.

#### **Article 7: Place of Arbitration**

**Unless the parties agree otherwise, the place of arbitration shall be Riyadh, Kingdom of Saudi Arabia.**

Article 7 of Appendix IV to the SCCA Arbitration Rules 2023 addresses the determination of the place of arbitration in cases subject to the Online Dispute Resolution (ODR) Procedure Rules. Let us examine the key points of this article:

1. **Default Place of Arbitration:** The article establishes a default rule regarding the place of arbitration in ODR proceedings. It states that, unless the parties explicitly agree otherwise, the designated place of arbitration is Riyadh, Kingdom of Saudi Arabia. This means that Riyadh is the default location where the arbitration proceedings will be considered to take place.
2. **Importance of Determining the Place of Arbitration:** The place of arbitration is a significant aspect of any arbitration proceeding. It determines factors such as the legal framework that will apply to the proceedings and the potential jurisdiction of local courts over certain matters related to the arbitration.
3. **Party Autonomy and Agreement:** The article acknowledges that the parties have the autonomy to agree on a different place of arbitration if they wish. This underscores the principle of party autonomy in international arbitration, allowing parties to choose the seat of arbitration that best suits their needs and preferences.



4. **Legal and Practical Implications:** The specified default place of arbitration, Riyadh, carries legal and practical implications. It signifies that Saudi Arabian arbitration law and regulations may apply to the proceedings, and it designates Riyadh as the location where hearings, meetings, and other arbitration-related activities would potentially occur.

In summary, Article 7 of Appendix IV clarifies that the default place of arbitration for ODR proceedings under the SCCA Arbitration Rules 2023 is Riyadh, Kingdom of Saudi Arabia, unless the parties explicitly agree otherwise. This article acknowledges the importance of the place of arbitration in determining the legal and practical aspects of the arbitration process while respecting the parties' autonomy to choose an alternative location if desired.

### **Article 8: Language of Arbitration**

**Unless the parties agree otherwise, the language of arbitration shall be Arabic.**

Article 8 of Appendix IV to the SCCA Arbitration Rules 2023 addresses the language of arbitration in cases subject to the Online Dispute Resolution (ODR) Procedure Rules. Let us examine the key points of this article:

1. **Default Language of Arbitration:** The article establishes a default rule regarding the language of arbitration in ODR proceedings. It states that, unless the parties explicitly agree otherwise, the language of arbitration shall be Arabic. This means that all written submissions, hearings, and other communications related to the arbitration will be conducted in Arabic.
2. **Party Autonomy and Agreement:** Similar to the determination of the place of arbitration, this article also emphasises the principle of party autonomy in international arbitration. The parties have the freedom to agree on a different language of arbitration if they wish.
3. **Legal and Practical Implications:** The choice of language of arbitration has significant legal and practical implications. It affects the accessibility of the proceedings for the parties, the ability of the arbitrator(s) to understand the case, and the language in which any final award will be rendered.
4. **Translation and Interpretation:** If Arabic is designated as the language of arbitration, parties that are not proficient in Arabic may need to arrange for translations of documents and hire interpreters for hearings to ensure effective participation in the arbitration process.

In summary, Article 8 of Appendix IV clarifies that the default language of arbitration for ODR proceedings under the SCCA Arbitration Rules 2023 is Arabic, unless the parties explicitly agree otherwise. This article recognises the importance of language in conducting fair and effective arbitration proceedings, while also allowing the parties the flexibility to select a different language if needed.

## Article 9: Conduct of Proceedings

**1. The arbitrator shall conduct the arbitration in such manner as he or she deems appropriate, provided that the parties are treated on an equal basis and that each party has the right to be heard and is given a fair opportunity to present its case.**

Article 9.1 of Appendix IV to the SCCA Arbitration Rules 2023 outlines the authority and responsibilities of the arbitrator in conducting the arbitration proceedings. Here is an analysis of the key points of this article:

1. **Arbitrator's Discretion:** The article emphasises that the arbitrator is granted broad discretion to conduct the arbitration proceedings in a manner he or she deems appropriate. This recognises the arbitrator's role as the decision-maker in managing the proceedings.
2. **Equality and Fairness:** The arbitrator is required to ensure that both parties are treated on an equal basis. This principle of equality underscores the importance of maintaining a balanced and impartial process throughout the arbitration.
3. **Right to Be Heard:** The article affirms the fundamental principle that each party has the right to be heard. This means that parties must be given an opportunity to present their case, evidence, arguments, and defences before the arbitrator.
4. **Fair Opportunity to Present Case:** The arbitrator is tasked with providing a fair opportunity for each party to present its case. This includes allowing parties to submit evidence, present witnesses, and make arguments in support of their positions.
5. **Procedural Flexibility:** By stating that the arbitrator can conduct the arbitration in a manner deemed appropriate, the article recognises that different cases may require different approaches, and the arbitrator can tailor the procedures accordingly.
6. **Ensuring Due Process:** This article emphasises due process in arbitration by requiring that both parties have a fair and equal chance to participate in the proceedings and present their respective cases.

In summary, Article 9.1 of Appendix IV underscores the arbitrator's authority to manage the arbitration proceedings while ensuring that parties are treated fairly, have an equal opportunity to present their cases, and are given a chance to be heard. It reflects the core principles of arbitration, including due process, equality, and the arbitrator's role as the conductor of the proceedings.

**2. The arbitrator shall manage the arbitration with a view to maintaining efficiency and economy while expediting the resolution of the dispute.**

Article 9.2 of Appendix IV to the SCCA Arbitration Rules 2023 outlines the arbitrator's responsibilities in managing the arbitration proceedings efficiently and expeditiously. Here is an analysis of the key points of this article:

1. **Efficiency and Economy:** The article emphasises the arbitrator's duty to manage the arbitration proceedings in a manner that promotes efficiency and economy. This is in line

with the modern trend in arbitration to streamline procedures and avoid unnecessary delays and costs.

2. **Expedited Resolution:** The article underscores the importance of expediting the resolution of the dispute. Arbitration is often chosen for its relative speed compared to court proceedings, and this provision reinforces the notion that arbitration should not unnecessarily prolong the resolution process.
3. **Procedural Management:** The arbitrator is expected to take an active role in managing the procedural aspects of the case. This may involve setting timelines for submissions, hearings, and other stages of the proceedings to ensure a timely resolution.
4. **Balancing Efficiency and Due Process:** While efficiency is important, the arbitrator must also balance it with ensuring due process and a fair opportunity for both parties to present their cases. The article does not prioritise speed over the parties' right to be heard and to present evidence.
5. **Minimising Delays and Costs:** The provision suggests that the arbitrator should take measures to minimise delays and control costs throughout the arbitration process. This could include setting deadlines, limiting extensions, and avoiding unnecessary procedures.
6. **Safeguarding Integrity:** While the article emphasises efficiency, it is important to note that the arbitrator's primary duty remains ensuring a fair and impartial process that upholds the integrity of the arbitration and respects the parties' rights.

In summary, Article 9.2 of Appendix IV reflects the principle of efficient case management in arbitration. The provision encourages arbitrators to actively manage proceedings to achieve an expeditious and cost-effective resolution while still upholding the standards of due process and fairness. It strikes a balance between efficiency and the parties' rights to present their cases fully and effectively.

**3. The arbitrator and the parties should endeavor to avoid unnecessary delay or expense while at the same time avoiding surprises, assuring equal treatment, and safeguarding each party's opportunity to present its claims and defenses fairly.**

Article 9.3 of Appendix IV to the SCCA Arbitration Rules 2023 emphasises the importance of balancing efficiency, fairness, and transparency in the arbitration process. Here is an analysis of the key points of this article:

1. **Avoiding Unnecessary Delay and Expense:** The article stresses the arbitrator's and parties' collective responsibility to avoid unnecessary delays and expenses in the arbitration proceedings. This aligns with the goal of achieving an efficient and cost-effective resolution of the dispute.
2. **Balancing Efficiency and Fairness:** The provision underscores the need to strike a balance between efficiency and fairness. While the goal is to expedite the resolution process, this should not compromise the parties' rights to present their claims and defences fully and fairly.

3. **Transparency and Equal Treatment:** The article highlights the importance of transparency and equal treatment among the parties. This means that the process should be conducted in a manner that provides each party with clear and equal opportunities to present their cases, avoiding any undue advantage or surprise tactics.
4. **Avoiding Surprises:** The provision emphasises the importance of preventing unexpected developments or evidence that could catch a party off-guard. This contributes to a fair process where parties have a reasonable expectation of what to anticipate during the arbitration proceedings.
5. **Safeguarding Parties' Opportunities:** The article underscores the principle that each party must have a genuine opportunity to present its claims and defences. This includes ensuring that parties are not unfairly prevented from presenting relevant evidence or arguments.
6. **Best Practices in Case Management:** The article sets forth a standard for conduct in arbitration that aligns with best practices in case management. It encourages open communication, reasonable deadlines, and procedural fairness while minimising unnecessary delays and costs.

In summary, Article 9.3 reflects the overarching goal of conducting the arbitration proceedings in a manner that balances efficiency with fairness. It calls for active cooperation between the arbitrator and the parties to ensure that the process is conducted transparently, equitably, and without unnecessary delay or expense. This article helps to guide the conduct of the arbitration in a manner that respects the parties' rights while striving for a timely and cost-effective resolution of the dispute.

#### **Article 10: Award Based on Written Submissions or Hearing**

**1. The arbitrator shall issue the final award based on the parties' written submissions. The arbitrator may at his or her discretion request for additional information or evidence from the parties as he or she deems appropriate.**

Article 10.1 of Appendix IV to the SCCA Arbitration Rules 2023 outlines the process by which the arbitrator will issue the final award. Here is an analysis of the key points of this article:

1. **Issuance of the Final Award:** The article specifies that the arbitrator is responsible for issuing the final award in the arbitration. The final award is the formal document that outlines the arbitrator's decision on the merits of the dispute and resolves the issues presented by the parties.
2. **Basis of the Final Award:** The arbitrator's final award is to be based on the parties' written submissions. This means that the parties present their arguments, evidence, and legal positions through written documents, and the arbitrator's decision is derived from these submissions.
3. **Request for Additional Information or Evidence:** The article grants the arbitrator the discretion to request additional information or evidence from the parties if deemed appropriate. This reflects the arbitrator's authority to seek clarification, further

documentation, or evidence that may be necessary for a thorough and well-informed decision.

4. **Flexibility and Case-Specific Approach:** The article gives the arbitrator some flexibility in conducting the proceedings. The discretion to request additional information or evidence allows the arbitrator to tailor the proceedings to the specific needs of the case, ensuring a comprehensive understanding of the issues involved.
5. **Efficient and Balanced Approach:** By allowing the arbitrator to seek additional information or evidence, the article aligns with the principle of conducting the arbitration efficiently and fairly. This approach allows the arbitrator to address any gaps in the parties' submissions and make a well-informed decision without compromising the timely resolution of the dispute.

In summary, Article 10.1 underscores the role of the arbitrator in issuing the final award based on the written submissions of the parties. It also recognises the arbitrator's authority to request additional information or evidence to ensure a thorough understanding of the case. This provision reflects the balance between maintaining efficiency and fairness in the arbitration process.

**2. If the parties so agree or the arbitrator deems it appropriate, a hearing shall be held via telephone or videoconference under the following conditions:**

- a) **Unless the arbitrator directs otherwise, the hearing shall not exceed one day.**
- b) **The parties shall inform each other, the arbitrator, and the Administrator of the names of all participants in advance of the hearing. Persons not involved in the arbitration shall not be admitted unless approved by the parties and the arbitrator prior to the hearing.**
- c) **Any unauthorized transcript, stenographic record, or any other form of recording is prohibited. A party desiring a transcript, stenographic record, or other form of recording may arrange for one only after prior written consent from all parties and the arbitrator.**
- d) **The parties shall pay the costs of the hearing in advance on an equal basis, subject to reallocation by the arbitrator in the final award.**

Article 10.2 of Appendix IV to the SCCA Arbitration Rules 2023 provides guidelines for holding a hearing via telephone or videoconference in arbitration proceedings. Here is an analysis of the key points of this article:

1. **Agreement or Discretion of the Arbitrator:** This article allows for the holding of a hearing via telephone or videoconference if the parties agree to it or if the arbitrator deems it appropriate. This reflects the flexibility of modern arbitration procedures to use technology for conducting hearings, which can be especially relevant in situations where parties and arbitrators are located in different geographic locations.
2. **Conditions for the Hearing:** The article outlines several conditions that apply to hearings held via telephone or videoconference:

- a. The hearing should generally not exceed one day, unless the arbitrator directs otherwise. This underscores the efficiency of such hearings.
  - b. The parties are required to inform each other, the arbitrator, and the Administrator of the names of all participants who will be attending the hearing. This transparency ensures that all participants are aware of who will be present.
  - c. Only individuals directly involved in the arbitration proceedings may attend the hearing, unless approved by both parties and the arbitrator in advance. This ensures the privacy and focus of the hearing.
  - d. Unauthorised transcripts, stenographic records, or any form of unauthorised recording are prohibited. This protects the integrity of the proceedings and prevents potential misinterpretations or misuse of the information.
  - e. If a party desires a transcript, stenographic record, or other recording, they can arrange for one only with prior written consent from all parties and the arbitrator. This provision ensures that any official recording is agreed upon by all relevant parties.
3. **Costs and Reallocation:** The article specifies that the parties are responsible for paying the costs of the hearing in advance on an equal basis. However, the arbitrator retains the authority to reallocate these costs in the final award. This provision recognises the arbitrator’s discretion to determine the fair distribution of costs based on the outcomes of the arbitration.

In summary, Article 11.2 establishes the framework for holding hearings via telephone or videoconference in accordance with modern arbitration practices. It highlights the importance of transparency, efficiency, and fairness in conducting remote hearings while addressing issues related to participation, recording, and cost allocation.

### Article 11: Final Award

**1. The arbitrator shall issue the final award within 30 days of his or her appointment or, in case of a challenge, the date of his or her reaffirmation. In exceptional circumstances, the Administrator may extend this time limit at its discretion as it deems appropriate.**

Article 11.1 of Appendix IV to the SCCA Arbitration Rules 2023 establishes a timeframe for the issuance of the final award in arbitration proceedings. Here is an analysis of the key points of this article:

1. **Timeframe for Issuing the Final Award:** The article sets a specific time limit for the arbitrator to issue the final award. The arbitrator is required to issue the final award within 30 days from the date of their appointment or, if applicable, the date of their reaffirmation after a challenge.
2. **Efficient Resolution:** The prescribed 30-day timeframe emphasises the goal of achieving efficient and timely resolution of disputes through arbitration. This timeframe is designed to expedite the arbitration process and deliver a final decision within a relatively short period.

3. Exceptional Circumstances and Extension:
  - a. The article recognises that there may be exceptional circumstances that could warrant an extension of the 30-day time limit. It grants the Administrator the discretionary authority to extend this time limit if it deems it appropriate to do so.
  - b. The ability to grant extensions acknowledges that unforeseen situations or complex cases may arise that require additional time for thorough consideration and the preparation of a well-reasoned final award.

In summary, Article 11.1 underscores the importance of efficiency and timely resolution in arbitration proceedings. It provides a clear time limit for the arbitrator to issue the final award, while also allowing for flexibility in exceptional circumstances. This balance seeks to ensure that parties receive a prompt and fair resolution while acknowledging that some cases may require more time for careful deliberation.

**2. The arbitrator shall state the reasons upon which his or her final award is based and shall allocate the costs of arbitration among the parties.**

Article 11.2 of Appendix IV to the SCCA Arbitration Rules 2023 pertains to the content and aspects of the final award in arbitration proceedings. Here is an analysis of the key points of this article:

1. Reasons for the Final Award: The article emphasises that the arbitrator is required to state the reasons upon which the final award is based. This requirement underscores the fundamental principle of transparency and fairness in arbitration. By providing clear and well-reasoned explanations for the decisions reached, the arbitrator ensures that parties understand the rationale behind the award.
2. Transparency and Legitimacy: Requiring the arbitrator to provide reasons enhances the legitimacy of the arbitration process. It enables parties to comprehend the arbitrator's thought process and the legal principles applied. Transparent and reasoned awards contribute to the overall credibility of the arbitration system and promote confidence in the outcome.
3. Cost Allocation:
  - a. The article also mandates that the arbitrator shall allocate the costs of arbitration among the parties. This pertains to the expenses related to conducting the arbitration, including administrative fees, arbitrator fees, and any other costs incurred during the process.
  - b. The arbitrator's responsibility to allocate costs ensures a fair distribution of financial obligations among the parties. The allocation is typically based on factors such as the outcome of the case, the conduct of the parties, and any contractual provisions or applicable law.

In summary, Article 11.2 emphasises transparency, fairness, and accountability in the final award. Requiring the arbitrator to state the reasons for the award and allocate costs contributes to the credibility of the arbitration process and the satisfaction of the parties involved.

**3. Before signing the final award, the arbitrator shall transmit it in draft form to the SCCA. No award shall be issued by the arbitrator until it has been reviewed by the SCCA as to its form. The SCCA shall transmit the final award to the parties using the ODR Platform, which shall constitute proper service. Where requested by the Administrator or a party, or where applicable law requires, the arbitrator shall provide the Administrator with one or more signed original hard copies of the final award for transmission to the parties.**

Article 11.3 of Appendix IV to the SCCA Arbitration Rules 2023 outlines the procedural steps related to the issuance and transmission of the final award in arbitration proceedings. Here is an analysis of the key points of this article:

1. Review and Form of the Final Award:
  - a. The article mandates that the arbitrator must transmit the final award in draft form to the SCCA before signing it. This provision serves as a quality control measure, ensuring that the award adheres to proper form and that it is consistent with procedural and administrative requirements.
  - b. The SCCA's review of the draft award primarily focuses on its form rather than its substance. This is to ensure that the award is consistent with the established rules and procedures, thus minimising the risk of procedural errors or irregularities.
2. SCCA's Role and Final Award Transmission:
  - a. The SCCA's involvement in the review process adds an additional layer of oversight to the arbitration process, contributing to its reliability and adherence to standards.
  - b. Once the final award has been reviewed and approved by the SCCA in terms of its form, the SCCA transmits the award to the parties using the ODR Platform. This constitutes proper service of the award, ensuring that all parties are informed of the outcome.
3. Hard Copies and Compliance with Applicable Law:
  - a. The article recognises that there may be instances where hard copies of the final award are required. If requested by the Administrator, a party, or if applicable law demands it, the arbitrator must provide one or more signed original hard copies of the final award to the Administrator. These hard copies are then transmitted to the parties.
  - b. This provision underscores the importance of compliance with any legal requirements regarding the issuance and transmission of awards.

In summary, Article 11.3 focuses on procedural safeguards and administrative measures to ensure the proper issuance and transmission of the final award. The involvement of the SCCA in the review process and the recognition of hard copy requirements enhance the efficiency and reliability of the arbitration process.



**4. The final award shall be binding on the parties and shall constitute a duly executed final award for the purposes of enforcement.**

Article 11.4 of Appendix IV to the SCCA Arbitration Rules 2023 addresses the legal significance and enforceability of the final award rendered in arbitration proceedings. Here is an analysis of this article:

1. Binding Nature of the Final Award:
  - a. The article emphasises that the final award is binding on the parties involved in the arbitration. This means that once the arbitrator has issued the final award, the parties are legally obligated to abide by its terms and provisions.
  - b. The binding nature of the final award reflects a fundamental principle of arbitration – that the decisions reached through the arbitration process are intended to be final and conclusive.
2. Duly Executed Final Award for Enforcement:
  - a. The article specifies that the final award constitutes a “duly executed final award” for the purposes of enforcement. This indicates that the award has met the necessary requirements to be considered valid and enforceable under applicable laws.
  - b. Enforcement refers to the process by which a successful party seeks to have the arbitration award recognised and executed by national courts in order to secure the benefits awarded by the tribunal.

In summary, Article 11.4 confirms the binding nature of the final award and underscores its significance as a legally enforceable decision. This provision recognises the final award’s role in resolving the dispute conclusively and ensuring that the parties comply with their obligations as determined by the arbitrator.

**5. If applicable law requires an award to be filed or registered, the arbitrator shall cause such requirement to be satisfied. It is the responsibility of the parties to bring such requirements or any other procedural requirements of the place of arbitration to the attention of the arbitrator.**

Article 11.5 of Appendix IV to the SCCA Arbitration Rules 2023 addresses the requirement for compliance with applicable legal procedures related to filing, registration, or other formalities associated with the final award. Here is an analysis of this article:

1. Applicable Legal Requirements:
  - a. The article states that if the applicable law mandates that the arbitration award must be filed or registered with a particular authority or institution, the arbitrator has a responsibility to ensure that this requirement is fulfilled.
  - b. This provision recognises that different jurisdictions may have varying legal requirements for the formal recognition and enforceability of arbitration awards.

2. **Arbitrator’s Role:** The article assigns the responsibility of meeting any such legal requirement to the arbitrator. This underscores the arbitrator’s duty to not only render a well-reasoned and valid award but also to ensure that the award is executed in a manner that complies with relevant legal procedures.
3. **Parties’ Obligations:**
  - a. The article further places the onus on the parties to inform the arbitrator of any procedural requirements of the place of arbitration, including those related to filing, registration, or other formalities.
  - b. This reflects the collaborative nature of the arbitration process, where the parties are expected to assist in the smooth execution of the arbitration and the final award.

In summary, Article 11.5 addresses the need to comply with any legal requirements for filing, registration, or other procedural formalities related to the final award. It outlines the arbitrator’s role in ensuring such compliance and underscores the parties’ responsibility to bring any relevant procedural requirements to the arbitrator’s attention. This provision reflects the importance of aligning the arbitration process with the legal requirements of the jurisdiction where enforcement or recognition is sought.

## **Article 12: Suitability, Adequacy, Risks, and Exclusion of Liability**

**1. Parties agreeing to the ODR Procedure Rules confirm that they have made their own inquiries as to the ODR Platform’s suitability and adequacy for use in the arbitration and that assume their liability and all risks relating to the use of this technology, including any risks relating to security, privacy, and confidentiality.**

Article 12.1 of Appendix IV to the SCCA Arbitration Rules 2023 addresses the acknowledgment and assumption of risks by parties regarding the use of the Online Dispute Resolution (ODR) Platform. Here is an analysis of this article:

1. **Informed Decision and Confirmation:**
  - a. This article highlights that parties who choose to utilise the ODR Procedure Rules are affirming that they have conducted their own assessment to determine whether the ODR Platform is suitable and adequate for conducting their arbitration.
  - b. Parties are essentially confirming that they have made an informed decision to use the ODR Platform for their dispute resolution process.
2. **Liability and Risks Assumption:**
  - a. Parties are expressly assuming liability for their choice to use the ODR Platform and are taking responsibility for all associated risks.

- b. This includes risks related to security, privacy, and confidentiality. Since online platforms may have inherent vulnerabilities and risks associated with data security and privacy, parties are acknowledging that they are aware of these risks and are accepting them.
- 3. Technology Risk Mitigation:
  - a. By stating that parties “assume their liability and all risks,” this provision places the responsibility on the parties to mitigate any risks associated with using technology for dispute resolution.
  - b. It underscores the need for parties to implement appropriate measures to safeguard their information and ensure that the use of the ODR Platform does not compromise their interests.
- 4. Transparency and Informed Choice:
  - a. This provision adds a layer of transparency to the arbitration process by requiring parties to proactively assess the ODR Platform’s suitability for their specific dispute.
  - b. It encourages parties to be proactive in understanding the implications of using technology in the arbitration context.

In summary, Article 12.1 emphasises that parties opting for the ODR Procedure Rules must undertake due diligence to assess the ODR Platform’s suitability for their arbitration and accept all associated risks. This provision promotes transparency, informed decision-making, and the responsible use of technology in the arbitration process.

**2. The arbitrators, any person appointed by the arbitrator, the Administrator, the SCCA Board of Directors and its members, the SCCA Court and its members, the SCCA Committees and its members, and the SCCA and its employees shall not be liable to any person for any act or omission in connection with the arbitration or any operation of the ODR Platform, except to the extent that such limitation of liability is prohibited by applicable law.**

Article 12.2 of Appendix IV to the SCCA Arbitration Rules 2023 addresses the limitation of liability for various parties involved in the arbitration process, including arbitrators, administrators, and the SCCA itself. Here is an analysis of this article:

- 1. Scope of Liability Limitation:
  - a. This article outlines that certain individuals and entities involved in the arbitration process will not be held liable to any person for their actions or omissions in connection with the arbitration or the operation of the ODR Platform.
  - b. The individuals and entities covered include arbitrators, any person appointed by the arbitrator, the Administrator, the SCCA Board of Directors and its members, the SCCA Court and its members, the SCCA Committees and its members, and the SCCA and its employees.

2. **Standard Limitation of Liability:** The article establishes a general limitation of liability for the aforementioned individuals and entities. They will not be held accountable for any harm or consequences arising from their involvement in the arbitration or the functioning of the ODR Platform, except as prohibited by applicable law.
3. **Protection of Parties Involved:** The purpose of this provision is to shield the mentioned parties from potential legal claims or liability that may arise due to actions taken or decisions made during the arbitration process.
4. **Exception for Prohibited Liability Limitations:** The article acknowledges that the limitation of liability may not apply if it is prohibited by applicable law. This recognises that certain jurisdictions or legal contexts might not allow such broad limitations of liability.
5. **Risk Distribution:** By stating that these parties will not be liable for acts or omissions related to the arbitration or the ODR Platform, this provision effectively distributes certain risks and responsibilities among the involved parties.
6. **Encouragement for Participation:** By providing a limitation of liability, this provision could encourage qualified individuals to participate as arbitrators, administrators, and other roles without the fear of being subjected to legal actions due to decisions or actions taken in good faith.

In summary, Article 12.2 establishes a general limitation of liability for various parties involved in the arbitration process, protecting them from legal claims arising from their actions or omissions, subject to the constraints of applicable law. It aims to promote the smooth functioning of the arbitration process while acknowledging that legal limitations may vary based on jurisdiction.

### SCCA ODR Fee Schedule

SCCA Filing Fee	SCCA Administrative Fee	Arbitrator Fee
SAR 1,000	SAR 1,000	SAR 7,000
The filing fee is non-refundable and due on the day of filing the Notice of Arbitration. The Filing Fee also applies to counterclaims, set offs, and cross-claims.	The Administrative Fee is non-refundable and is due on the day of the appointment of the Arbitrator.	The Arbitrator Fee is all inclusive and non refundable and is due on the day of the appointment of the Arbitrator.

The SCCA ODR Fee Schedule, provided in Appendix IV to the SCCA Arbitration Rules 2023, outlines the fees associated with the Online Dispute Resolution (ODR) procedure. Here is an analysis of the SCCA ODR Fee Schedule:

1. **SCCA Filing Fee:**
  - a. **Amount:** SAR 1,000
  - b. **Applicability:** The filing fee is applicable to the Notice of Arbitration, counterclaims, set-offs, and cross-claims.
  - c. **Timing:** The filing fee is due on the day of filing the Notice of Arbitration.

- d. Nature: The filing fee is non-refundable, meaning that once paid, it will not be returned regardless of the outcome of the arbitration.
2. SCCA Administrative Fee:
    - a. Amount: SAR 1,000
    - b. Applicability: The administrative fee is due on the day of the appointment of the Arbitrator.
    - c. Nature: Similar to the filing fee, the administrative fee is also non-refundable.
  3. Arbitrator Fee:
    - a. Amount: SAR 7,000
    - b. Applicability: The arbitrator fee is due on the day of the appointment of the Arbitrator.
    - c. Nature: The arbitrator fee is all-inclusive, covering the costs associated with the arbitrator's services throughout the arbitration process. Like the other fees, the arbitrator fee is also non-refundable.
  4. The purpose of the SCCA ODR Fee Schedule is to provide transparency and predictability regarding the financial aspects of the ODR procedure. Parties involved in the dispute can clearly understand the costs associated with filing, administrative services, and arbitrator services.
  5. The schedule distinguishes between different stages of the arbitration process:
    - a. The filing fee is associated with the initiation of the arbitration process, including the filing of claims and responses.
    - b. The administrative fee covers the SCCA's administrative services, likely including case management and coordination.
    - c. The arbitrator fee encompasses the compensation for the arbitrator's services, which includes case review, decision-making, and award drafting.

By outlining these fees and their respective payment deadlines, the SCCA ODR Fee Schedule aims to facilitate efficient payment processing and contribute to the smooth conduct of ODR proceedings. It is important for parties to carefully review and understand these fee requirements before initiating the arbitration process to ensure compliance with the SCCA's rules and procedures.

## SCCA Model Clauses for Arbitration

### SCCA Standard Clauses

**Parties seeking to include an SCCA arbitration in their contracts may utilize one of the model clauses provided below, in consultation with their legal counsel.**

#### Standard SCCA Arbitration Clause

**Any dispute, controversy, or claim arising out of or relating to this contract, or the breach, termination, or invalidity thereof, shall be settled by arbitration administered by the Saudi Center for Commercial Arbitration (the “SCCA”) in accordance with the SCCA Arbitration Rules.**

The “SCCA Standard Clauses” provided in the SCCA Model Clauses for Arbitration under the SCCA Arbitration Rules 2023 are pre-drafted arbitration clauses that parties can incorporate into their contracts when they wish to specify the use of SCCA arbitration for the resolution of disputes. Here is an analysis of the SCCA Standard Clauses:

1. **Standard SCCA Arbitration Clause:** “Any dispute, controversy, or claim arising out of or relating to this contract, or the breach, termination, or invalidity thereof, shall be settled by arbitration administered by the Saudi Center for Commercial Arbitration (the ‘SCCA’) in accordance with the SCCA Arbitration Rules.”
2. **Purpose and Scope:** This standard arbitration clause serves as a clear and concise provision that parties can incorporate into their commercial contracts to designate SCCA arbitration as the chosen method of dispute resolution. The clause covers a wide range of disputes, controversies, or claims that may arise from the contract or its breach, termination, or invalidity.
3. **Choice of Arbitral Institution:** The clause designates the Saudi Center for Commercial Arbitration (SCCA) as the administering institution for the arbitration. This means that the SCCA’s arbitration procedures and rules will apply to the arbitration process.
4. **Reference to SCCA Arbitration Rules:** The clause specifies that the arbitration will be conducted in accordance with the SCCA Arbitration Rules. This means that the procedural aspects of the arbitration, including the process for appointing arbitrators, conducting hearings, presenting evidence, and rendering awards, will be governed by the SCCA’s established rules.
5. **Flexibility and Autonomy:** By incorporating this standard clause, parties indicate their willingness to have their disputes resolved through arbitration under the SCCA’s auspices. This allows parties to benefit from the flexibility, efficiency, and expertise provided by the SCCA’s arbitration framework.
6. **Inclusion in Contracts:** Parties can include this clause in their contracts, whether they are commercial agreements, construction contracts, joint ventures, or any other type of contractual arrangement where disputes may arise.
7. **Consultation with Legal Counsel:** The model clause suggests that parties should consult their legal counsel before including the clause in their contracts. This is important to

ensure that the chosen dispute resolution mechanism aligns with the parties' preferences, the nature of the contract, and applicable laws.

By incorporating the SCCA Standard Clauses, parties can provide a clear mechanism for the resolution of potential disputes and ensure that the arbitration process follows the established rules and procedures of the Saudi Center for Commercial Arbitration.

### Standard SCCA Mediation-Arbitration Clause

**Any dispute, controversy, or claim arising out of or relating to this contract, or a breach, termination, or invalidity thereof, the parties hereto agree first to try to settle it by mediation administered by the Saudi Center for Commercial Arbitration (the "SCCA") in accordance with the SCCA Mediation Rules.**

**If settlement is not reached within [ ] days after service of a written request for mediation, the dispute, controversy, or claim shall be settled by arbitration administered by the SCCA in accordance with the SCCA Arbitration Rules.**

The "Standard SCCA Mediation-Arbitration Clause" provided in the SCCA Model Clauses for Arbitration under the SCCA Arbitration Rules 2023 is a comprehensive dispute resolution clause that offers a two-step approach to resolving disputes. Here is an analysis of the Standard SCCA Mediation-Arbitration Clause:

1. **Standard SCCA Mediation-Arbitration Clause:** "Any dispute, controversy, or claim arising out of or relating to this contract, or a breach, termination, or invalidity thereof, the parties hereto agree first to try to settle it by mediation administered by the Saudi Center for Commercial Arbitration (the 'SCCA') in accordance with the SCCA Mediation Rules. If settlement is not reached within [ ] days after service of a written request for mediation, the dispute, controversy, or claim shall be settled by arbitration administered by the SCCA in accordance with the SCCA Arbitration Rules."
2. **Two-Step Dispute Resolution Process:** This clause establishes a two-step process for resolving disputes. First, the parties agree to attempt mediation as an initial step to settle the dispute. If mediation is unsuccessful within a specified timeframe, the clause provides for arbitration as the subsequent step.
3. **Mediation Administered by SCCA:** The clause states that the mediation will be administered by the Saudi Center for Commercial Arbitration (SCCA) and will be conducted according to the SCCA Mediation Rules. This indicates that the SCCA will oversee the mediation process, which may include appointing a mediator and managing procedural aspects of the mediation.
4. **Mandatory Mediation Attempt:** The clause emphasises the parties' commitment to first trying to settle the dispute through mediation before resorting to arbitration. This encourages parties to engage in collaborative discussions and explore potential solutions with the assistance of a mediator.

5. **Timeframe for Mediation:** The clause does not specify the exact number of days for attempting mediation, leaving the parties to insert a specific number. This gives parties the flexibility to determine a suitable timeframe for the mediation process.
6. **Arbitration as Next Step:** If the parties are unable to reach a settlement through mediation within the specified timeframe, the clause provides for arbitration as the subsequent dispute resolution mechanism. The arbitration will be administered by the SCCA and conducted according to the SCCA Arbitration Rules.
7. **Breach, Termination, or Invalidity:** The clause specifies that the dispute, controversy, or claim can arise from various situations, including breach, termination, or invalidity of the contract. This demonstrates the broad scope of disputes that can be subject to the mediation-arbitration process.
8. **Consultation with Legal Counsel:** As with other SCCA model clauses, this clause advises parties to consult their legal counsel before incorporating the clause into their contracts. This is important to ensure that the dispute resolution mechanism aligns with the parties' preferences and legal requirements.

The Standard SCCA Mediation-Arbitration Clause offers parties a structured approach to dispute resolution that begins with mediation and progresses to arbitration if needed. This clause encourages parties to explore amicable solutions while providing a clear path to arbitration if settlement efforts are unsuccessful.

#### **Adaptations to SCCA Standard Clauses**

**Parties can tailor the SCCA standard clauses to their specific needs by including additional elements such as the number of arbitrators, selection method, place of arbitration, and language of arbitration. The SCCA's Guide to Drafting ADR Clauses at [www.sadr.org](http://www.sadr.org) can be consulted for guidance, and legal counsel should be consulted as needed.**

**If parties wish to utilize the Expedited Procedure Rules for disputes that exceed SAR 4,000,000, they must opt in by explicitly adding a provision to the following effect:**

**Any dispute, controversy, or claim arising out of or relating to this contract, or the breach, termination, or invalidity thereof, shall be settled by arbitration administered by the Saudi Center for Commercial Arbitration (the "SCCA") in accordance with the SCCA Expedited Procedure Rules**



[regardless of the amount in dispute / provided the amount in dispute does not exceed SAR [ ] at the time of filing the Request for Arbitration].

If parties wish to exclude the application of the Expedited Procedure Rules, Online Dispute Resolution Procedure Rules, or Emergency Arbitrator Procedure Rules, they must opt out by explicitly adding a provision to the following effect:

The [Expedited Procedure Rules / Online Dispute Resolution Procedure Rules / Emergency Arbitrator Procedure Rules] shall not apply.

According to Article 36(3) of the Rules, the SCCA can publish any award, order, decision, or other ruling in an anonymized or redacted form unless a party objects before the arbitration concludes. If parties wish to prevent publication, they must explicitly add a provision to the following effect:

**No award, order, or decision made in the arbitration shall be published.**

The “Adaptations to SCCA Standard Clauses” section within the SCCA Model Clauses for Arbitration under the SCCA Arbitration Rules 2023 provides parties with the flexibility to customise the standard arbitration clauses to better suit their specific needs. Here is an analysis of the adaptations that parties can make to the SCCA standard clauses:

1. Tailoring Standard Clauses: Parties are given the freedom to adapt the SCCA standard clauses to include additional elements that are relevant to their particular circumstances. These additional elements can include details such as the number of arbitrators, the method of arbitrator selection, the place of arbitration, and the language of arbitration. This customisation allows parties to address their specific preferences and requirements, ensuring that the arbitration process aligns with their expectations.
2. Reference to SCCA’s Guide to Drafting ADR Clauses: The clause recommends consulting the SCCA’s Guide to Drafting ADR Clauses available at [www.sadr.org](http://www.sadr.org) for guidance. This guide likely provides practical insights and examples to help parties draft comprehensive and effective dispute resolution clauses. It emphasises the importance of seeking legal counsel when making these adaptations to ensure they are legally sound and appropriate for the parties’ situation.
3. Utilising the Expedited Procedure Rules: Parties can opt to use the SCCA Expedited Procedure Rules for disputes exceeding SAR 4,000,000 by explicitly adding a provision to that effect in the clause. This provision outlines that disputes will be settled according to the Expedited Procedure Rules. Alternatively, parties can specify that the Expedited Procedure Rules will apply if the dispute amount does not exceed a certain threshold at the time of filing the Request for Arbitration. This adaptation offers parties a mechanism for expedited dispute resolution for cases meeting the specified criteria.
4. Excluding Certain Procedure Rules: Parties also have the option to exclude the application of specific SCCA procedure rules from their arbitration clause. The clause provides guidance on opting out of the Expedited Procedure Rules, Online Dispute Resolution Procedure Rules, or Emergency Arbitrator Procedure Rules. By adding a provision to this effect, parties can ensure that these specific rules will not apply to their arbitration proceedings.

5. Publication of Awards, Orders, and Decisions: The clause references Article 36(3) of the SCCA Rules, which allows the SCCA to publish awards, orders, decisions, or other rulings in anonymised or redacted forms, unless a party objects before the arbitration concludes. To prevent the publication of any arbitration-related documents, parties can explicitly include a provision stating that no award, order, or decision made in the arbitration shall be published.

In summary, the “Adaptations to SCCA Standard Clauses” section provides parties with the tools to tailor their arbitration clauses to their specific preferences and circumstances. These adaptations allow parties to define the arbitration process that aligns best with their needs while utilising or excluding specific SCCA procedure rules as necessary.

### **Special Notes About the Substantive Law Applicable to the Contract and Arbitration Agreement**

**If parties choose a substantive law other than Shari’ah to govern the contract or the arbitration agreement but want to ensure Shari’ah compliance (especially when the place of arbitration is not Saudi Arabia), they may add a provision to the following effect:**

**The law governing the [contract and/or arbitration agreement] shall be [ ] to the extent that such law does not conflict with Shari’ah as outlined in the [e.g., Shari’ah Standards of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI)], in which case Shari’ah shall take precedence.**

**According to Article 37(4) of the Rules, the default law governing the arbitration agreement shall be the law of the place of arbitration. If parties wish to choose another law, they must explicitly add a provision to the following effect:**

**The law governing the arbitration agreement shall be [ ].**

The “Special Notes About the Substantive Law Applicable to the Contract and Arbitration Agreement” section under the SCCA Arbitration Rules 2023 addresses the important aspect of determining the applicable substantive law to the contract and the arbitration agreement. Here is an analysis of this section:

1. Addressing Applicable Substantive Law: This section underscores the significance of establishing the applicable substantive law for the contract and the arbitration agreement. The chosen substantive law serves as the legal framework that will govern the interpretation, validity, and enforceability of the contract, as well as the arbitration agreement contained within it.
2. Parties’ Autonomy: The section emphasises the principle of party autonomy in selecting the applicable substantive law. It recognises that the parties have the freedom to choose the law that will govern their contract and the arbitration agreement. This principle reflects the parties’ ability to tailor the legal framework to their preferences and needs.
3. Default Substantive Law: In the absence of an express choice of law by the parties, the section specifies that the default substantive law will be the law with which the contract has the closest connection. This approach ensures that there is a clear legal basis for

resolving disputes arising from the contract, even when the parties have not explicitly chosen a governing law.

4. **Determining the Closest Connection:** The determination of the closest connection involves considering factors such as the parties' intention, the place of performance of the contract, the nationality or domicile of the parties, and any other relevant circumstances. This approach aims to identify the legal system that has the most relevant connections to the contract and the parties involved.
5. **Consistency with International Practices:** This section aligns with international arbitration practices, where parties typically have the discretion to choose the governing law for their contract and arbitration agreement. The default rule of applying the law with the closest connection when there is no express choice of law reflects a balanced and pragmatic approach to addressing conflicts of law in cross-border transactions.

In summary, the "Special Notes About the Substantive Law Applicable to the Contract and Arbitration Agreement" section in the SCCA Arbitration Rules 2023 highlights the importance of selecting the applicable substantive law for the contract and the arbitration agreement. It underscores party autonomy, provides a default rule in case of no express choice, and outlines the factors that determine the closest connection to the law. This approach enhances the clarity and effectiveness of the arbitration process by establishing a clear legal framework for resolving disputes.



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