



General Assembly

Distr.: General
19 June 2026

English only

**United Nations Commission on
International Trade Law**
Fifty-ninth session
New York, 29 June–10 July 2026

Compilation of comments on the draft supplementary provisions on the conduct of proceedings to resolve international investment disputes ([A.CN.9/1246](#))

The present note reproduces comments received from institutions on the draft supplementary provisions on the conduct of proceedings to resolve international investment disputes ([A/CN.9/1246](#)). A total of twelve submissions received as of 19 June 2026 are reproduced below in the form in which they were received, with minor formatting and editorial adjustments.



Compilation of comments

A.	Association for the Promotion of Arbitration in Africa (APAA)	2
B.	Asociación Latinoamericana de Arbitraje (ALARB)	5
C.	Comitê Brasileiro de Arbitragem (CBAr)	10
D.	Georgian International Arbitration Centre (GIAC)	11
E.	Santiago Arbitration and Mediation Centre (CAM Santiago)	12
F.	Young Arbitration Practitioners from the Arbitration Center of Mexico (CAM) and the Mediation and Arbitration Center of the National Chamber of Services of Mexico (CANACO)	14
G.	Organization of Islamic Cooperation (OIC), Arbitration Centre	16
H.	Shanghai International Arbitration Commission (SHIAC)	20
I.	Shenzhen Court of International Arbitration (SCIA)	35
J.	Singapore International Arbitration Centre (SIAC)	38
K.	Stockholm Chamber of Commerce (SCC) Arbitration Institute	45
L.	International Federation for Investment Law and Arbitration (IFILA)	52

A. Association for the Promotion of Arbitration in Africa (APAA)

Introduction

1. The Association for the Promotion of Arbitration in Africa (APAA) welcomes the opportunity to submit comments on document [A/CN.9/1246](#), containing the draft supplementary provisions on the conduct of proceedings to resolve international investment disputes (“supplementary provisions” or “SPs”).

2. APAA is a pan-African association, headquartered in Yaoundé (Cameroon) and founded in Geneva in 2005, whose membership encompasses arbitral institutions, legal practitioners, academics, States, and other stakeholders across the African continent. APAA has actively followed the work of WG III since the inception of the ISDS reform mandate in 2017 and participates as observer in the Commission’s deliberations.

3. The present comments are submitted in response to the Secretariat’s invitation to provide observations from an institutional perspective, with particular attention to the possible application of the SP to arbitrations not governed by the UNCITRAL Arbitration Rules (UARs) (Chapter III.C of document [A/CN.9/1246](#)). APAA also provides targeted technical observations on provisions where specific drafting questions remain open.

General observations

4. APAA commends the Working Group for the significant progress achieved in developing a coherent set of procedural provisions addressing longstanding concerns regarding the consistency, duration, and cost of ISDS proceedings. APAA supports the overall objective of greater procedural predictability and efficiency in investor-State arbitration.

5. Two considerations inform APAA’s reading of the SPs and the observations set out below. First, many African States participate in ISDS proceedings as respondents, and the SPs should operate to reduce the procedural and financial imbalances that can arise in such proceedings. Second, investment arbitrations involving African parties are frequently administered under institutional rules other than the UARs. The utility

of the SPs will therefore depend, in substantial measure, on the regime applicable to arbitrations outside the UAR framework.

Comments on Chapter III

Application to arbitrations not governed by the UNCITRAL Arbitration Rules

6. This issue is of particular relevance to APAA and its members. A significant number of investment disputes involving African parties are administered under institutional rules other than the UARs – including ICSID Rules, ICC Rules, CRCICA Rules, CCJA Rules, and AFSA Rules. The question of whether, and under what conditions, the SPs may apply to such proceedings is therefore central to the practical impact of the reform.

Support for the Application of the SPs to Non-UAR Arbitrations

7. APAA strongly supports the Commission's intention to make the SPs available for use in arbitrations not governed by the UARs (para. 50). This approach reflects the pluralistic reality of international investment arbitration and would allow African States and investors to benefit from UNCITRAL's ISDS-specific procedural framework regardless of the arbitral rules chosen.

The Need for a Clear Conflict Rule

8. APAA notes that paragraph 52 identifies the need to clarify the relationship between the SPs and the applicable institutional rules. APAA offers the following observations.

9. Where the applicable institutional rules are silent on a matter addressed by the SPs, the SPs should apply to fill the procedural gap. This gap-filling function is the primary utility of the SPs in a non-UAR context and should be confirmed expressly in any implementing instrument.

10. Where the applicable institutional rules and the SPs address the same procedural matter, APAA considers that the SPs should generally prevail, given that they have been specifically calibrated for ISDS. A clear hierarchy clause – akin to Article 3 of the draft Protocol in Chapter III.A – should be developed for the non-UAR context.

11. With respect to institutional oversight, many institutional rules vest the administering institution with supervisory functions (scrutiny of awards, approval of time extensions). APAA suggests that such oversight should be preserved unless expressly inconsistent with the SPs, and that guidance on this interaction would benefit practitioners and tribunals operating outside the UAR framework.

Consent Mechanism and Model Clauses

12. APAA considers that model clauses should be developed – as was done for the UNCITRAL Transparency Rules – to facilitate the incorporation of the SPs by reference in investment contracts, bilateral investment treaties, and institutional arbitration agreements. Model clauses tailored to non-UAR settings, including the rules of African arbitral institutions, would be of particular practical value and would materially increase the uptake of the SPs in the regions where ISDS reform is most needed.

Technical Observations on Specific Provisions

Provision XI (Third-party funding) read in conjunction with Provision V (Security for costs)

13. APAA supports the disclosure obligations set out in Provision XI and considers them essential to the integrity of ISDS proceedings. The present observation concerns the relationship between disclosure and the ordering of security for costs.

14. Paragraph 4(e) of Provision V provides that the existence of third-party funding is a relevant circumstance in determining whether to order security for costs, to be

considered in conjunction with the factors listed in subparagraphs (a) to (d). The Notes to the Commission (paras. 15-16) address the relationship between this provision and the disclosure requirement in SP XI(2)(c) – namely, whether a funder’s declared willingness to cover an adverse costs decision should reduce or eliminate the grounds for ordering security for costs.

15. APAA’s position is as follows: disclosure of a funding arrangement should not, of itself, constitute a sufficient basis for ordering security for costs, nor should it create a presumption in favour of such an order. Conversely, full and timely disclosure of the information required by Provision XI should not automatically preclude the Tribunal from ordering security for costs where the other circumstances in SP V(4)(a) to (d) so warrant.

16. In particular, APAA considers that:

- a funder’s commitment to cover adverse costs decisions, as disclosed pursuant to SP XI(2)(c), is a relevant – but not determinative – factor. The Tribunal should retain full discretion to assess the legal enforceability of such a commitment and the funder’s actual financial capacity;
- the square-bracketed text in SP V(4)(e) – “including whether the third-party funder agrees to cover any adverse decision on costs” – and the sentence beginning “For greater certainty” should be read as preserving, not limiting, the Tribunal’s discretion. APAA supports their retention in the final text, provided the Commentary makes clear that disclosure and coverage commitments do not operate as automatic defences against a security for costs order.

17. This approach respects the balance the Working Group sought to strike in SP V: third-party funding is relevant but not a standalone trigger; disclosure is required but does not exhaust the Tribunal’s inquiry.

Provision VIII – Period of time for making the award

18. APAA notes that Provision VIII introduces mandatory time frames for making awards: 60 days (manifest lack of merit), 180 days (bifurcated phase), and 240 days (all other cases). While APAA supports the objective of reducing undue delays, it wishes to draw the Commission’s attention to implementation concerns from an African institutional perspective.

19. In proceedings involving African State respondents, tribunals frequently face challenges related to the complexity of factual records, the volume of documentary evidence, and the need for translation into working languages. APAA observes that the 240-day period in paragraph 1(c) may prove difficult to meet in complex merits phases and that tribunals may be required to invoke the extension mechanism in paragraph 3 as a matter of course rather than as an exception.

20. APAA recommends that the Commentary to Provision VIII acknowledge that the time frames are aspirational benchmarks and that extensions under paragraph 3 should not be treated as grounds for challenge or adverse inference. It further suggests that the Commission consider whether paragraph 3 should be elaborated to provide clearer guidance on what constitutes “special circumstances” in the ISDS context.

Provision IX – Allocation of costs

21. APAA endorses the “costs follow the event” principle in paragraph 1 as the default rule and supports the exclusion of success fees and third-party funding costs from recoverable costs (paragraph 5).

22. APAA recommends that the Commentary confirm that this default rule applies with equal force when a State respondent prevails, and that successful respondents – including developing States – are entitled to full recovery of reasonable costs.

Provision X – Consolidation and coordination of arbitrations

23. APAA notes that Provision X addresses only consensual consolidation and acknowledges that a mechanism for unilateral consolidation at the request of one party is reserved for future treaty-level development.

24. APAA urges the Commission to prioritise this work, given the practical importance of consolidation for African State respondents facing multiple related claims arising from the same regulatory measure.

Implementation and capacity-building

25. The practical impact of the SPs will depend not only on their substantive content but on the capacity of States, institutions, and practitioners to invoke and apply them effectively. APAA observes that the procedural tools introduced by the SPs – early dismissal, security for costs, third-party funding disclosure – require familiarity with arbitral procedure that is unevenly distributed across jurisdictions.

26. APAA recommends that any instrument implementing the SPs include provision for accompanying measures: practical guides, model procedural orders, and targeted technical assistance for jurisdictions with developing arbitration infrastructure. This is consistent with UNCITRAL’s mandate to consider the needs of developing countries and economies in transition, and with APAA’s own mission of promoting arbitration capacity across the African continent.

Conclusion

27. APAA reiterates its strong support for the ISDS reform process and for the adoption of Supplementary Provisions that are capable of broad and effective application, including to arbitrations conducted under non-UNCITRAL institutional rules. APAA trusts that these comments will be of assistance to the Commission in its deliberations at the fifty-ninth session.

B. Asociación Latinoamericana de Arbitraje (ALARB)

1. This document sets forth ALARB’s comments on document [A/CN.9/1246](#), “draft supplementary provisions on the conduct of proceedings to resolve international investment disputes.

2. ALARB respectfully submits the following observations and proposed amendments (as added in square-brackets and underlined) to selected Supplementary Provisions for the Commission’s consideration.

Provision I: Evidence

3. This section proposes amendments to Provisions I(1) and I(5). Provision I (1) currently reads: *Each disputing party shall have the burden of proving the facts relied on to support its claim or defence.*

4. ALARB proposes adding the following exception: *Each disputing party shall have the burden of proving the facts relied on to support its claim or defence [, except when the Tribunal finds compelling reasons to shift such burden of proof].*

5. Current Provision I (1) reproduces Article 27(1) of the UNCITRAL Arbitration Rules (UAR), which in turn codifies the generally accepted principle *onus probandi actori incumbit*. Notwithstanding the aforementioned, investor-state dispute settlement (ISDS) decisions have recognized that in certain circumstances, shifting the burden of proof may be appropriate.¹ In the ISDS context, this may be the only

¹ E.g., *Antonio del Valle Ruiz et al. v. Kingdom of Spain*, PCA Case No. 2019-17, Final Award, 13 March 2023, para. 497; *Niko Resources (Bangladesh) Ltd. v. Bangladesh Oil Gas and Mineral Corporation (Petrobangla)*, *Bangladesh Petroleum Exploration and Production Company Limited (Bapex)*, ICSID Case No. ARB/10/18, Decision on the Corruption Claim, 25 February

means of establishing the facts—for both claimants and respondents—in cases involving corruption or illegal conduct, seizure of facilities and documents, or other exceptional circumstances where the party not bearing the burden of proof may possess material evidence.

6. This proposal seeks express acknowledgment of the tribunal’s authority to shift the burden of proof under certain exceptional circumstances. Even when it has been argued that such authority may be implied in the tribunal’s general powers,² an express provision eliminates further debate and reduces litigation costs for the benefit of the parties.

7. Provision I (5) currently reads: *If a disputing party, duly invited by the Tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time without showing sufficient cause for such failure, the Tribunal may make the award on the evidence before it.*

8. ALARB proposes the following amendments: *If a disputing party, duly invited [ordered/requested] by the Tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time without showing sufficient cause for such failure, the Tribunal may make the award on the evidence before it [notwithstanding any other measure that the Tribunal deems appropriate, including adverse inferences and costs allocation].*

9. Current Provision I (5) largely reproduces Article 30(3) of the UAR. WG III has previously considered changing the verb “invite” to “request” and discussed including additional consequences for nonproduction of documents. This proposal invites reconsideration of that approach.

10. Document production is a widely used tool in international arbitration. It assists parties and tribunals in establishing the facts of the case and reaching a just resolution. It also narrows the gap toward amicable settlement by reducing factual disputes. For this mechanism to function effectively, tribunals must be empowered to impose sanctions for noncompliance. Otherwise, from a rational perspective, parties would not have sufficient incentives to diligently search and exhibit the documents requested by the opposing party.

11. In practice, Article 30(3) of the UAR has been interpreted as permitting adverse inferences and cost allocation.³ Given the lacunae in arbitration rules, tribunals frequently reference the IBA Rules on the Taking of Evidence in International Arbitration in procedural orders, which expressly provide for sanctions in cases of noncompliance with document production orders. Accordingly, a specific provision addressing sanctions for noncompliance would codify current practice and underscore the importance and mandatory character of document production if agreed.

Provision III: Interim measures

12. This section proposes amendments to Provision III(2), which currently reads: *III. 2: An interim measure is any temporary measure by which, at any time prior to the issuance of the award by which the dispute is finally decided, the Tribunal orders a disputing party, for example [and without limitation], to:*

- (a) *Maintain or restore the status quo pending determination of the dispute;*
- (b) *Take action that would prevent, or refrain from taking action that is likely to cause, (i) current or imminent harm or (ii) prejudice to the process itself; or*

2019, para. 796; *Marvin Roy Feldman Karpa v. United Mexican States*, ICSID Case No. ARB(AF)/99/1, Award, 16 December 2002, para. 177.

² Gary B. Born, *International Commercial Arbitration* (Third Edition), §15.09[B]; *Antonio del Valle Ruiz et al. v. Kingdom of Spain*, PCA Case No. 2019-17, Final Award, 13 March 2023, para. 497.

³ Jan Paulsson and Georgios Petrochilos, *UNCITRAL Arbitration* (2017), pp. 263–272.

(c) *Preserve evidence that may be relevant and material to the resolution of the dispute.*

13. Assuming WG III accepts the Secretariat's comment to include the phrasing "and without limitation", which ALARB endorses, we propose including the following scenarios to the non-exhaustive list of provisional measures:

[(e) Refrain from initiating or continuing domestic proceedings that threaten the integrity of the arbitral process or aggravate the existing dispute; or]

[(f) Refrain from initiating or continuing proceedings before any other forum that would undermine the jurisdiction of the Tribunal or the enforceability of the eventual award.]

14. The current list of three illustrative categories in Provision III (2) could benefit from a wider illustrative scope. Rule 47(1) (2022) of the International Centre for Settlement of Investment Disputes (ICSID) Rules enumerates four categories of interim measures, and the UNCITRAL Model Law on International Commercial Arbitration, Article 17(2), provides four enumerated purposes. A more detailed list would guide tribunals unfamiliar with ISDS-specific constraints and harmonize practice across the wide range of procedural rules under which the Supplementary Provisions may apply.

15. Proposed subparagraph (e) addresses the stay of parallel domestic proceedings—one of the most frequently recognized categories of interim measures in ISDS practice. In *Tokios Tokelés v. Ukraine*, the tribunal ordered both parties to "refrain from, suspend and discontinue, any domestic proceedings, judicial or other ... which might prejudice the rendering or implementation of an eventual decision or award of this Tribunal or aggravate the existing dispute."⁴ The formulation "that threaten the integrity of the arbitral process" ties the measure to its functional justification, avoiding sovereignty concerns. The general requirements of paragraph 3 implicitly preserve the high threshold acknowledged in *Plama v. Bulgaria*.⁵

16. Proposed subparagraph (f) addresses anti-suit injunctions, which protect the tribunal's jurisdiction and the integrity of the chosen dispute resolution mechanism. These are directed at a party (not at a court) and have been recognized as a species of provisional measures under ICSID Article 47 and UNCITRAL Rules Article 26. In *SGS v. Pakistan*, the tribunal recommended a stay of parallel arbitration proceedings to protect the exclusivity of the ICSID mechanism.⁶ In *Plama v. Bulgaria*, the claimant requested the discontinuance of all related Bulgarian proceedings,⁷ demonstrating that requests for antisuit relief are a standard feature of ISDS practice.

Provision VIII: Period of time for making the award

17. This section proposes amendments to Provision VIII(1) and, consequently, the deletion of Provision VIII(2)8.

18. Provision VIII(1) currently reads: *The Tribunal shall make the award as soon as possible. In any event and unless otherwise agreed by the disputing parties, the Tribunal shall make an award no later than:*

(a) 60 days after the last submission, if the award is made [in accordance with Provision IV, paragraph 5] [pursuant to an objection based on the claim being manifestly without legal merit];

⁴ *Tokios Tokelés v. Ukraine*, ICSID Case No. ARB/02/18, Order No. 1, 1 July 2003.

⁵ *Plama v. Bulgaria*, ICSID Case No. ARB/03/24, Order on Provisional Measures, 6 September 2005, para. 43

⁶ *SGS v. Pakistan*, ICSID Case No. ARB/01/13, Procedural Order No. 2, 16 October 2002

⁷ *Plama v. Bulgaria*, ICSID Case No. ARB/03/24, Order on Provisional Measures, 6 September 2005, paras. 1–2

⁸ "A statement of costs and submission on the allocation of costs pursuant to Provision IX, paragraph 4 shall not be considered a submission for the purposes of paragraph 1."

(b) 180 days after the last submission, if [the] [an] award is made [in accordance with Provision II] [in a separate phase of the proceeding following bifurcation]; or

(c) 240 days after the last submission in all other cases.

19. ALARB proposes the following amendments: *The Tribunal shall make the award as soon as possible. In any event and unless otherwise agreed by the disputing parties, the Tribunal shall make an award no later than:*

(a) 60 days after [the date on which the Tribunal declares the proceedings closed] ~~the last submission~~, if the award is made in accordance with Provision IV, paragraph 5;

(b) 180 days after [the date on which the Tribunal declares the proceedings closed] ~~the last submission~~, if an award is made in a separate phase of the proceeding following bifurcation; or

(c) 240 days after [the date on which the Tribunal declares the proceedings closed] ~~the last submission~~ in all other cases.

[1bis. The Tribunal shall declare the proceedings closed when it is satisfied that all submissions and evidence have been received. Unless otherwise declared by the Arbitral Tribunal, proceedings are deemed to be closed in 60 days from the last submission scheduled in the procedural calendar of each case, or after the last briefing on an issue that should be decided in the form of an award or partial award pursuant to the applicable rules.]

20. A statement of costs and submission on the allocation of costs pursuant to Provision IX, paragraph 4 shall not be considered a submission for the purposes of paragraph 1.

21. The “last submission” trigger in Provision VIII(1) could create ambiguity and allow strategic behaviour by parties aimed at delaying the award. While current paragraph 2 excludes cost statements, other late filings—corrections to transcripts, responses to tribunal questions, unsolicited communications, supplementary authorities—could inadvertently or strategically restart the clock. The “closing of proceedings” formulation provides a clear, formal procedural milestone to serve as dies a quo, placing the determination within the tribunal’s control.

22. The practical impact of Provision VIII will be greatest in UNCITRAL-governed proceedings, which currently contain no deadline for rendering the award. For proceedings under ICSID Rules—which already impose a deadline under Rule 58(1) – the ICSID-specific deadline would continue to apply. The Supplementary Provisions need not replicate the ICSID approach and may instead adopt the formulation best suited to the UNCITRAL context, where they fill a genuine gap.

Provision IX: Allocation of costs

23. This section proposes the elimination of Provision IX (5), which currently reads: 5. Costs incurred by a disputing party that: (i) amount solely to a reward or bonus to its legal representatives based on the outcome of the proceeding and in excess of the remuneration of the work performed; or (ii) relate to or arise from third-party funding, shall not be included in the costs of the proceeding.

24. Parties should be permitted to recover costs related to legal representatives’ contingency or success fees and bonuses, as well as costs arising from third-party funding. The allocation of costs and the possibility to apply the loser-pays rule serve important functions in international arbitration. The prevailing party may be compensated for the costs of participating in a proceeding that should not have taken place, and the losing party internalizes the costs it caused. Parties are incentivized to act diligently in assessing their case, implement a bona fide defence, and settle amicably (if appropriate).

25. Fees contingent upon the outcome of the proceeding and third-party funding are legitimate arrangements that, in good-faith contexts, do not inflate the costs of the proceedings, may permit access to justice for parties without funds, and may even incentivize legal representatives to adequately assess a case's chances of success and provide a diligent defence.

26. First, contingency fees and third-party funding arrangements may simply allow parties to receive a discount on fees paid upfront such as, hourly fees, or lump-sum fees, without increasing the overall cost.

27. Prohibiting such arrangements simply imposes more financial pressure upfront or during the proceedings. Second, insolvent parties may be barred from pursuing legitimate claims where their only source of funding is a third-party funder entitled to charge a fee or premium for their financial services. Third, contingency fees push legal representatives to have "skin in the game." They incentivize transparency in case assessment and diligence in the legal defence. Contingency fees and third-party funding may even deter frivolous claims, as attorneys or funders may decline to fund claims with low chances of success.

28. Accordingly, there is no reason why the losing party in an arbitration should not be ordered to pay success fees or costs arising from third-party funding. In any case, this matter may ultimately be determined by the tribunal, which is in a better position to assess the reasonableness of the fees and identify situations of abuse or bad faith.

29. This concern may arise where the success fee is disproportionately high. For instance, parties and counsel may agree to an elevated success fee on the premise that payment will only be triggered upon success and that, ultimately, the burden of that fee will be shifted to the losing party through a costs award. Allowing such arrangements to pass unchecked may create distorted incentives. This underscores the importance of preserving the Tribunal's discretion to assess the reasonableness of the fee and, where necessary, reduce it.

30. Although there is no unanimous view on the matter, there are examples of investment arbitration awards in which the losing party has been ordered to pay success fees when the tribunal considered them reasonable.⁹ Furthermore, there are also cases where tribunals have awarded success fees in cases where attorney fees were contingency fees entirely.¹⁰

31. The same applies to third-party funding costs. For example, in *Kardassopoulos and Fuchs v. Georgia*, which involved a dispute over whether third-party funding costs were recoverable, the tribunal stated that "[t]he Tribunal knows of no principle why any such third-party financing arrangement should be taken into consideration in determining the amount of recovery by the Claimants of their costs¹¹." In other words, the tribunal permitted recovery of standard legal costs regardless of whether they were funded by a third party. In addition, there are decisions by ICSID annulment committees that have ordered the losing party to pay costs funded by third parties.¹²

⁹ See, e.g., *Khan Resources Inc., Khan Resources B.V. and CAUC Holding Company Ltd. v. The Government of Mongolia*, PCA Case No. 2011-09, Award on the Merits, 2 March 2015, paras. 439-450. *BSG Resources Limited (in Administration), BSG Resources (Guinea) Limited, and BSG Resources (Guinea) Sàrl v. Republic of Guinea*, ICSID Case No. ARB/14/22, Award, 18 May 2022, para. 1123. ¹⁰ See, e.g., *Waguih Elie George SIAG and Clorinda Vecchi v. The Arab Republic of Egypt*, ICSID Case No. ARB/05/15, Award, 1 June 2009, paras. 599-630.

¹⁰ See, e.g., *Waguih Elie George SIAG and Clorinda Vecchi v. The Arab Republic of Egypt*, ICSID Case No. ARB/05/15, Award, 1 June 2009, paras. 599-630.

¹¹ See e.g., *Ioannis Kardassopoulos and Ron Fuchs v. Republic of Georgia*, ICSID Case Nos. ARB/05/18 and ARB/07/15, Award, 3 March 2010, para. 691.

¹² See e.g., *RSM Production Corporation v. Grenada*, ICSID Case No. ARB/05/14 (Annulment Proceeding), Order of the committee discontinuing the proceeding and decision on costs, 28 April 2011, paras. 68-69. *ATA Construction, Industrial and Trading Company v. The Hashemite Kingdom of Jordan*, ICSID Case No. ARB/08/2 (Annulment Proceeding), Order taking note of the discontinuance of the proceeding, 11 July 2011, paras. 34-35.

C. Comitê Brasileiro de Arbitragem (CBAr)

1. The Comitê Brasileiro de Arbitragem (CBAr) welcomes the opportunity to provide comments on Document [A/CN.9/1246](#) “draft supplementary provisions on the conduct of proceedings to resolve international investment disputes”. We commend UNCITRAL Working Group III for its continued efforts to improve the procedural framework applicable to investor-State dispute settlement and appreciate the careful work reflected in the proposed supplementary provisions. Our comments are limited to a number of specific aspects of the draft provisions that, in our view, may benefit from further consideration.

2. With regard to **Provision I (Evidence)**, CBAr agrees with the concern underlying paragraph 8(a), which provides for the exclusion of evidence obtained contrary to the law of the State where it was collected. However, we would suggest caution with its current wording. An automatic exclusion based solely on the law of the State where the evidence was collected may prove excessively broad in the ISDS context, particularly where the State concerned may itself exercise control over the legal framework governing access to documents or information. We therefore believe that sufficient flexibility should be preserved for tribunals to assess the circumstances of each case.

3. Regarding paragraph 8(c), we agree with the observation made in the accompanying Notes concerning the need for further clarification of the concept of “applicable law” and consider that this issue warrants additional reflection.

4. Concerning **Provision II (Bifurcation)**, CBAr suggests that paragraph 7 be amended to expressly require consultation with the disputing parties before the Tribunal decides, on its own initiative, whether an issue should be addressed in a separate phase of the proceeding. In our view, adding the phrase “after consulting the disputing parties” would strengthen procedural fairness and transparency.

5. We would also encourage caution with respect to paragraph 3, which provides for the automatic suspension of proceedings on the merits whenever a request for bifurcation is made together with a jurisdictional objection. While a temporary suspension may be appropriate in certain circumstances, making such suspension automatic may unintentionally create incentives for dilatory tactics. In our view, it would be preferable to preserve the Tribunal’s discretion to determine whether suspension of the merits proceedings is justified, taking into account procedural efficiency, fairness to both parties, and whether the jurisdictional objection appears capable of disposing of all or a substantial part of the dispute.

6. CBAr agrees with the inclusion of the square-bracketed text in paragraph 5 regarding the possibility of not stating reasons when so agreed by the disputing parties. We also agree with the deletion of the square-bracketed reference to specific arbitration rules in paragraph 1, second sentence, in order to preserve the broader applicability of the Supplementary Provisions across different procedural frameworks.

7. With respect to **Provision III (Interim measures)**, we consider that the phrase “and without limitation” in paragraph 2 is unnecessary, as the provision already uses the expression “for example,” which adequately conveys the non-exhaustive nature of the list of interim measures.

8. CBAr also agrees with the removal of asset preservation from the list of examples of interim measures, as reflected in the current draft.

9. As to the structure of the provision, consideration could be given to repositioning paragraph 10 earlier in the text, as its current placement may render the provision unnecessarily lengthy and less streamlined.

10. Importantly, CBAr supports the retention of paragraph 10(b), concerning interim measures that may impede a State’s right to regulate in the public interest. Because interim measures are generally adopted on a *prima facie* basis and often

under circumstances of urgency, we consider it particularly important to maintain an express safeguard preventing tribunals from granting relief that could interfere – even temporarily – with a State’s regulatory powers in matters involving, among other interests, the protection of life, health, or the environment. Leaving this issue entirely to tribunal discretion may not be sufficient, especially considering that tribunals are often cautious in engaging with public regulatory concerns at the interim stage.

11. Regarding **Provision V (Security for costs)**, CBAr agrees that paragraph 5, establishing a presumption against ordering security for costs from States and regional economic integration organizations, should be retained.

12. As to paragraph 8, we suggest replacing the word “shall” with “may” in connection with the Tribunal’s authority to terminate proceedings following prolonged suspension due to noncompliance with an order to provide security for costs. Preserving tribunal discretion would allow a more context-sensitive assessment of the circumstances of each case.

13. Turning to Provision VIII (Period of time for making the award), CBAr suggests that paragraph 1(b) be aligned more closely with ICSID Rule 58(1)(b), which applies specifically to decisions or awards rendered on preliminary objections to jurisdiction pursuant to ICSID Rule 44(3)(c). As currently drafted, paragraph 1(b) may be interpreted more broadly as applying to any award rendered following bifurcation, including situations involving admissibility, liability, quantum, or other preliminary issues, which may render the proposed 180-day period excessively short in some cases.

14. This concern could be addressed by adding the words “along with a plea that the Tribunal does not have jurisdiction” at the end of subparagraph 1(b). Alternatively, the Commission may wish to clarify whether the same timeframe is intended to apply to other bifurcated matters. In any event, even with a clarified scope, CBAr considers that a 180-day period may prove unduly short depending on the nature and complexity of the bifurcated issues involved.

15. In addition, consideration could be given to clarifying whether the timeframes established in paragraph 1 also apply to counterclaims.

16. Finally, with respect to **Provision X (Consolidation and coordination of arbitrations)**, CBAr notes that paragraph 2 refers to “one award” resulting from consolidated proceedings. Since more than one award may be rendered in a consolidated procedure, including partial awards, we suggest adopting wording that accommodates this possibility, such as referring to “an award that addresses all consolidated arbitrations.”

17. CBAr hopes that these comments may contribute constructively to the Commission’s deliberations and remains available for any further dialogue on these matters.

D. Georgian International Arbitration Centre (GIAC)

1. The Georgian International Arbitration Centre (GIAC) as an observer NGO, presents its compliments to the Secretariat for giving opportunity to submit comments pursuant to the invitation to provide feedback on the Draft supplementary provisions on the conduct of proceedings to resolve international investment disputes contained in document [A/CN.9/1246](#). As instructed, GIAC’s comments focus exclusively on Chapter III, Section C, which addresses the application of the Draft supplementary provisions (SPs) to arbitrations not governed by the UNCITRAL Arbitration Rules (UARs).

2. GIAC strongly supports the SPs developed by Working Group III as an important component of the ongoing Investor-State Dispute Settlement (ISDS) reform process. We acknowledge the prospective role of the SPs in complementing and supplementing applicable arbitration rules, particularly by introducing harmonized

standards in procedural areas that are left unaddressed or entirely within broad tribunal discretion under existing frameworks.

3. From an institutional perspective, GIAC recognizes the distinct utility and relevance of the SPs in enhancing the efficiency, and integrity of the arbitration process in relation to applicable arbitration rules. As an example, in our case, provisions addressing the following issues could have significant practical value: **Bifurcation of proceedings** (Provision II); **Manifest lack of legal merits** (Provision IV); **Suspension and termination of proceedings** (Provisions VI and VII); **Third-party funding** (Provision XI).

4. Institutional arbitration rules differ in their structure, scope and degree of regulation of procedural matters. The incorporation of the SPs into non-UAR institutional frameworks might introduce potential complexities. While the SPs are intended to complement existing procedural frameworks, questions may arise regarding their interaction with institutional rules, particularly where both sets of provisions address the same procedural issue or where institutional mechanisms, such as scrutiny of awards, administrative oversight of time limits or case-management powers, are involved.

5. To ensure the consistent, coherent, and seamless application of the SPs alongside institutional arbitration rules - thereby filling procedural gaps and complementing existing frameworks without generating legal uncertainty, GIAC respectfully suggests the development of additional practical guidance regarding the incorporation of the SPs into applicable institutional rules. Such guidance could take the form of:

(a) **a practical guide or recommendations** on incorporation of SPs into institutional arbitration rules. These guidelines would provide a clear blueprint for how parties can integrate the SPs into arbitration agreement to overcome potential incompatibilities between the applicable arbitration rules and the SPs.

(b) **a model clause** that parties may use to incorporate the SPs into arbitration agreements. The model clause should clearly articulate the parties' intent to incorporate the SPs alongside their chosen institutional rules in order to avoid further complications during the arbitration process regarding the applicability of the SPs; and/or

(c) **guidance regarding the resolution of potential inconsistencies** between the SPs and institutional arbitration rules, including principles for determining whether the SPs are intended to supplement, modify or prevail over particular procedural provisions.

6. GIAC believes that such guidance would facilitate the effective implementation of the SPs, reduce uncertainty for parties and tribunals, and promote consistent application across different institutional frameworks.

7. Accordingly, GIAC supports the approach reflected in paragraphs 50–52 of the draft document and encourages suggestions for supplementing that approach with practical implementation guidance and model incorporation clause. Such measures would further advance the objective of making the SPs a useful and widely accessible procedural mechanism. GIAC remains supportive and expresses its readiness to contribute to any future work in this area.

E. Santiago Arbitration and Mediation Centre (CAM Santiago)

1. UNCITRAL (United Nations Commission on International Trade Law) sent a document to CAM Santiago proposing reforms to the investment arbitration dispute resolution system.

2. UNCITRAL requests comments on the proposed supplementary provisions in relation to the 2021 UNCITRAL Arbitration Rules, so that, in the future, they may (i) serve as a supplement to those Rules and (ii) form part of a protocol to the

Multilateral Instrument on ISDS Reform (“MIIR”) as a set of rules to which States could voluntarily adhere as a single package.

3. Accordingly, the following comments on the UNCITRAL supplementary provisions are submitted for consideration by that institution.

4. Not all of the supplementary provisions proposed by UNCITRAL have been commented upon; only those identified below and highlighted in the attached document are addressed.

Provision I: Evidence

5. Regarding the question of whether to add the phrase “to the requesting party” at the end of the first sentence of paragraph 3: it is suggested that the phrase be included in order to make clear that the production of all documents within the proceedings is requested and exchanged between the parties to the dispute, regardless of whether such documents are subsequently submitted as evidence before the tribunal.

6. Regarding the question of whether to modify the phrase “all relevant circumstances” in paragraph 4: it is suggested that it remain unchanged, as it is sufficiently broad. The phrase does not require further specification.

7. Regarding the question of whether to clarify the expression “applicable law” in paragraph 8(c): it is suggested that it be replaced with “applicable rules of law,” as the latter expression is broader, encompassing not only the positive law of a State but also any other legal norms. The same approach was adopted in Article 28(1) of the UNCITRAL Model Law on International Commercial Arbitration (2006), which provides:

8. “Article 28. Rules applicable to the substance of dispute. (1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.”

Provision II: Bifurcation

9. Regarding the question of whether to include the bracketed text “[unless the disputing parties have agreed that no reasons are to be given]” in paragraph 5: it is suggested that it be retained in accordance with the principle of party autonomy that governs arbitral proceedings.

Provision III: Interim measures

10. Regarding the question of whether to include the phrase “and without limitation” in paragraph 2: it is suggested that it be retained despite being somewhat redundant in light of the preceding expression (“for example”), because it clarifies that there is no limitation on the interim measures that the tribunal may order, in contrast to those measures that are not permitted and are identified in paragraph 10.

11. Regarding the question of the placement of paragraph 10: it is suggested that it remain in its current position (following paragraph 9) rather than being moved after paragraph 1 or 2, in order to maintain the same structure as Article 26 of the UNCITRAL Arbitration Rules.

Provision VII: Termination of the proceeding

12. Regarding the question of whether to replace the phrase “any reason not mentioned in paragraph 4” with the phrase “any other reasons” in paragraph 5: it is suggested that the replacement be made, as the latter phrase is broader than the former and encompasses reasons beyond those specifically identified in the provision.

Provision VIII: Period of time for making the award

13. Regarding the question of whether to delete the phrase “[pursuant to an objection based on the claim being manifestly without legal merit]” in paragraph 1(b): it is suggested that the phrase be deleted because its meaning is already implicit through the inclusion of the immediately preceding phrase (“[in accordance with Provision IV, paragraph 5]”).

Provision X: Consolidation and coordination of arbitrations

14. Regarding the question of whether to replace the phrase “one award” with the phrase “an award that addresses all consolidated arbitrations” in paragraph 2: it is suggested that the replacement be made, as the latter expression is broader and includes the possibility that the tribunal may issue more than one award, including partial awards.

F. Young Arbitration Practitioners from the Arbitration Center of Mexico (CAM) and the Mediation and Arbitration Center of the National Chamber of Services of Mexico (CANACO)

1. We welcome and take note of the Commission’s invite for commentary on the ‘draft supplementary provisions on the conduct of proceedings to resolve international investment disputes’ (A/CN.9/1246) (the “supplementary provisions” or the “SPs”). The Young Arbitration Practitioners from (i) the Mexican Center for Arbitration and (ii) the CANACO Mediation and Arbitration Center, submit the following brief comments on the ‘Provision III: Interim measures’, and specifically, with respect of paragraph 10(b) which currently reads “The Tribunal shall not grant an interim measure [...] Which impedes a State’s right to regulate in the public interest including in order to protect life, health or environment”. Submission on Paragraph 10(b): Whether to retain the prohibition on interim measures that impede a State’s right to regulate

2. Our comments cover: [A] the potential standard of review under paragraph 10(b) of the SPs, considering ISDS case law a risk of pre-judgement on substantive matters; [B] the possible impact on a State’s right to regulate, due to the temporary nature of interim measures; and, [C] whether paragraph 10(b) of the SPs should be reformulated to be considered as a ‘factor’ in the Tribunal’s consideration.

Standard of review

3. Paragraph 10(b) requires the Tribunal to determine whether a request for interim measure “impedes a State’s right to regulate in the public interest.” This determination often involves a substantive assessment of whether the State’s challenged conduct constitutes a legitimate exercise of regulatory authority. Such an assessment is, in most investment treaty disputes, the central question on the merits.¹³

4. Tribunals may struggle with the degree of satisfaction needed to grant interim measures, without prejudging on the merits. In *Maffezini*, the Tribunal acknowledged the risk of prejudging the merits through provisional measures decisions and took care to couch its analysis in preliminary terms.¹⁴ An absolute prohibition tied to the right

¹³ See, for example, the ample briefing to review the regulatory measures in *Philip Morris Asia Limited v. The Commonwealth of Australia* (PCA Case No. 2012-12) (on the question of whether Australia’s plain packaging legislation constituted a valid exercise of public health regulatory power) and *Vattenfall AB and others v. Federal Republic of Germany* (ICSID Case No. ARB/12/12) (on the question of whether Germany’s nuclear phase-out following the Fukushima disaster constituted a valid exercise of the right to regulate in the interest of public safety).

¹⁴ See, Procedural Order No. 2. *Emilio Agustín Maffezini v. Kingdom of Spain*, ICSID Case No. ARB/97/7, p. 4: “While hypothetical issues are stimulating and academically challenging, they are beyond the ken of an arbitral tribunal determining real issues of fact and law.”; See also, Decision on the Respondent’s Request for Provisional Measures. *Tanzania Electric Supply Co.*

to regulate would compel exactly the kind of definitive assessment that provisional measures standards are designed to avoid.

5. At the time interim measures are typically requested, often within weeks or months of the constitution of the Tribunal, the evidentiary record has not been fully fleshed out. Assessing whether the State's measure constitutes a valid exercise of regulatory power in the public interest may face certain hurdles at that time, when the parties have not submitted: (a) expert evidence on the scientific, economic, or social basis for the regulation; (b) evidence of the regulatory process (legislative history, consultations, impact assessments); (c) an analysis of the proportionality and non-discrimination of the measure; and (d) an analysis of the applicable treaty standard. Because of this, retaining paragraph 10(b) as a prohibition might not be optimal.

Temporary nature of interim measures

6. In principle, interim measures expire upon the final award, may be modified at any time upon application, and may be terminated by the Tribunal itself in exceptional circumstances. In theory, therefore, no interim measure permanently constrains a State's regulatory powers. However, the practical duration of interim measures may challenge its 'temporary' nature. Empirical data from ICSID and UNCITRAL proceedings reveals that interim measures may remain in force for extended periods. In *Burlington Resources Inc. v. Republic of Ecuador* (ICSID Case No. ARB/08/5), provisional measures were ordered on 29 June 2009, and the proceeding extended until 7 February 2017. The measures therefore operated for approximately seven to eight years. In *Perenco Ecuador Ltd. v. Republic of Ecuador* (ICSID Case No. ARB/08/6), interim measures were granted on 8 May 2009. The final award was rendered on 27 September 2019, spanning a period of over ten years. Many other arbitrations reflect similar situations, *albeit* not all of these interim measures concern "a State's right to regulate in the public interest" in terms of paragraph 10(b) of the SPs.

The Tribunal should 'factor in' paragraph 10(b) of the SPs

7. SP III (3) currently establishes two cumulative requirements for granting interim measures: irreparable harm that substantially outweighs harm to the responding party (paragraph 3(a)), and a reasonable possibility of success on the merits (paragraph 3(b)). Separately, paragraph 10 covers limitations on the scope of interim measures. The question here is whether paragraph 10(b) should be relocated from the category of prohibitions to the category of factors informing the Tribunal's discretionary assessment.

8. We consider that to minimize some of the pitfalls that might emerge from applying SPs paragraph 10(b), it should be redrafted as a factor for the Tribunal to consider. Other relevant points, subject to the final wording, might be: (i) whether paragraph 10(b) should be weighted *ex officio*, due to the risk of incurring in an *ultra petita* analysis, (ii) whether paragraph 10(b) should be redrafted into paragraph 10(a), (iii) whether the concepts of 'life, health or environment' require revisiting, given that the potential overlap of "life" and "health" under international law,¹⁵ and the use of

Ltd. v. Independent Power Tanzania Ltd., ICSID Case No. ARB/98/8, p. 4: "we think it neither appropriate nor indeed possible for us at this stage to form or express any concluded view on the merits. Our decision is required to address only the issues formulated by the parties and recited above."

¹⁵ "Life" may refer to the right to life as enshrined in Article 6 of the International Covenant on Civil and Political Rights (ICCPR) and Article 2 of the European Convention on Human Rights (ECHR). In General Comment No. 36 (2018) on Article 6 ICCPR, the UN Human Rights Committee interpreted the right to life broadly to include positive obligations to protect against reasonably foreseeable threats to life, including environmental degradation and climate change. Under the ECHR, the European Court of Human Rights in *Öneryıldız v. Turkey* (2004) held that the right to life imposes positive obligations on States to take preventive measures against identified environmental hazards that pose a risk to life (in that case, a methane explosion at a waste dump). "Health" may refer to the right to the highest attainable standard of health as

other terms in modern Bilateral Investment Treaties or other commercial agreements. To recall, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (“CPTPP”), Art. 9.16, refers to “legitimate public welfare objectives, such as public health, safety, and the environment.”¹⁶ The EU-Canada Comprehensive Economic and Trade Agreement (“CETA”), applies a broader wording in Art. 8.9(1), refers to “legitimate policy objectives, such as the protection of public health, safety, the environment, public morals, social or consumer protection, or the promotion and protection of cultural diversity.” Art. 2(2) of the Netherlands Model BIT from 2019, mirrors the wording in the CPTPP. Regardless of which wording the Commission decides to follow, we think it is important to bring the Commission’s attention to the different wording that the SPs uses in paragraph 10(b).

G. Organization of Islamic Cooperation (OIC), Arbitration Centre

Introduction

1. OIC Arbitration Centre (the “Centre”) welcomes the opportunity to comment on the draft supplementary provisions on the conduct of proceedings to resolve international investment disputes (the “supplementary provisions” or “SPs”) set out in document [A/CN.9/1246](#). The Centre commends Working Group III and the Secretariat for distilling several years of deliberation into a coherent, optional and modular set of procedural provisions, and offers these comments as a contribution to the work of the Commission.
2. These comments are prepared from the perspective of an arbitral institution, with reference to the contemplated application of the supplementary provisions to arbitrations not governed by the UNCITRAL Arbitration Rules (chapter III, section C).
3. Though the Arbitration Rules and Mediation Rules of the OIC Arbitration Centre are substantially based on the UNCITRAL Arbitration Rules, the Centre is saddled with the responsibility of advising member states in modernizing their investment treaties. In addition, at the regional level, the OIC is currently undergoing the process of modernizing its Agreement for Promotion, Protection and Guarantee of Investments among Member States of the Organisation of the Islamic Conference (commonly referred to as the 1981 OIC Investment Treaty); so, the draft supplementary provisions will be major reference point in the ongoing process.
4. Constituted under an international agreement dated 25 January 2019, the Centre is headquartered in Istanbul, functioning as the leading international arbitration hub within the legal and regulatory architecture of the 57 Member States. Its current Arbitration Rules (2026) and Mediation Rules (2026) cover both commercial and investment disputes; the Centre administers proceedings through its International Court of Arbitration, offers an expedited procedure and a subsidised cost structure, and routinely acts as an appointing and administering authority including in an ad hoc setting.

enshrined in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). In General Comment No. 14 (2000), the UN Committee on Economic, Social and Cultural Rights interpreted this right to encompass: (a) underlying determinants of health (clean water, sanitation, food, housing); (b) health care (availability, accessibility, acceptability, quality); (c) protection against health risks (occupational health, environmental hazards); and (d) health-related information and education. Arguably, the “right to health” may engaged a broader range of regulatory measures than the right to life: regulation of tobacco products (*Philip Morris v. Uruguay*, *Philip Morris v. Australia*), pharmaceutical regulation, food safety standards, restrictions on advertising of unhealthy products, workplace safety requirements, regulation of air and water quality below lethal thresholds, and mental health protections, et al.

¹⁶ The full text reads: “Investment and Environmental, Health and other Regulatory Objectives. Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental, health or other regulatory objectives”.

5. The Centre therefore has a direct interest in chapter III, section C of the Note, which contemplates that the Supplementary Provisions may be applied to arbitrations not governed by the UNCITRAL Arbitration Rules (“UARs”). The comments below are accordingly framed from the standpoint of an institution that would be asked to administer proceedings in which the Supplementary Provisions are engaged.

6. The Centre’s comments are strictly limited to the priority matters identified for the Commission’s decision at its upcoming meeting, namely: Chapter II, Note 9 (‘Draft supplementary provisions on the conduct of proceedings to resolve international investment disputes’) and Chapter III (‘Implementation of the Supplementary Provisions’).

General Observations

Opt-in mechanism

7. The Centre strongly supports the decision (paragraph 9 of the Note) that the Supplementary Provisions operate as an integrated set, opted into in their entirety, with internal cross-references rather than as free-standing rules. This design preserves coherence and is straightforward for an institution to administer; parties either engage the package or they do not, which avoids the case-by-case uncertainty that arises when individual provisions are selectively incorporated. It also mirrors the architecture of the UNCITRAL Rules on Transparency, with which practitioners are familiar.

Rule-neutral drafting

8. The choice to avoid cross-references to specific articles of any one rule set (and to use Roman numerals to distinguish the SPs from treaty and rule provisions) is essential to the goal expressed in section C. Because the SPs are intended to overlay different procedural frameworks – the UARs, the ICSID Rules, or the rules of an administering institution such as the Centre – every embedded reference to a particular instrument (for example, the bracketed reference to UARs article 23 in SP II(1)) is a potential source of friction when the SPs are used with another rule set. The Centre supports deleting such references and recommends a single interpretive provision (*see Recommendation G-1 below*) clarifying that the term “applicable rules” means the procedural rules the parties have chosen, whatever their source.

9. **Recommendation 1:** Include an interpretive provision stating that, where the Supplementary Provisions refer to the “applicable rules,” this means the arbitration rules agreed by the parties (whether the UARs, the rules of an arbitral institution, or otherwise), and that the Supplementary Provisions are to be read as supplementing and, where inconsistent, prevailing over those rules only on the specific matters they address.

Preference for a general consultation provision

10. The Note (paragraph 9) raises whether to adopt a general provision modelled on ICSID Rule 27(3), requiring the Tribunal to consult the parties before making an order on its own initiative, and to delete the bracketed consultation references in SPs I(3), II(7), V(8), VI(2) and (4), VIII(3), IX(6), XI(6) and (7)(c). The Centre supports a single, general consultation provision. The dispersed brackets create an unintended negative inference (that consultation is not expected where it is not mentioned) and are inconsistent. A general duty to consult before acting *sua sponte* reflects best institutional practice and protects the parties’ right to be heard. To preserve efficiency, the Centre suggests the provision be framed as a default subject to the Tribunal’s discretion to dispense with consultation only in cases of urgency (for example, before granting urgent interim relief under SP III).

11. **Recommendation 2.** Adopt a single general consultation provision along the lines of ICSID Rule 27(3) and delete the scattered bracketed consultation references, while preserving the Tribunal’s discretion to dispense with prior consultation where urgency requires.

Express preservation of tribunal discretion and time frame applicable to parties and to the tribunal

12. The Centre supports the confirmation in paragraph 9 that the SPs – particularly those describing the Tribunal’s discretionary powers – should not be read to imply that the Tribunal lacks such powers under the applicable rules. Several SPs (II, IV and V) operate as clarifications of discretion that already exists under, for example, UARs article 17 or the Centre’s Rules. An express savings clause to this effect would prevent the SPs from being read restrictively when used with institutional rules. However, the Commission should consider extending the definition of “Tribunal” for the purpose of “time frame applicable to parties and to the tribunal”. This is because certain arbitration centres, including our own, vest power in the International Court of Arbitration to extend specific timelines and supervise the proceedings where applicable (For instance, see

Article 33.2 of the OIC-AC Arbitration Rules 2026 on ‘Time Limit for Making the Award’).

Multi-party and broad “claim” drafting

13. The Centre supports the revisions referring to the “other disputing parties” to accommodate multi-party proceedings, and the broad reading of “claim” to include counterclaims and set-off claims unless a specific provision requires otherwise.

14. Investment proceedings increasingly involve multiple claimants and State counterclaims, and a single defined term reduces drafting clutter. Furthermore, because disputes often involve third-party claims, the definition of ‘claims’ should be broadened to encompass them. The Commission should consider permitting third-party claims or interventions specifically in disputes of a public interest nature. This includes, but is not limited to, environmental degradation claims, human rights-impacted investor-state disputes, and cases directly affecting indigenous land rights or the provision of essential public services. To safeguard due process, its inclusion should remain subject to party consent, compatible arbitration agreements, or the applicable institutional rules on joinder.

Inclusion of confidentiality, cybersecurity and data-protection safeguards

15. ISDS reform requires transparency, but administered arbitration also involves commercially sensitive, State-sensitive and security-sensitive information. The SPs should recognize confidential business information, legally protected information, national security information, personal data and cybersecurity concerns. The IBA Rules on Evidence 2020 expressly encourage early consultation about confidentiality, cybersecurity and data protection. The SPs should similarly encourage tribunals to address these matters at the first procedural conference.

Recognize settlement and mediation interfaces

16. Several provisions deal with suspension, termination and settlement awards. The Centre recommends language encouraging tribunals and institutions to preserve the possibility of mediation, conciliation, early neutral evaluation and other amicable methods without compromising arbitral independence. This is particularly important in OIC-region disputes, where long-term commercial, infrastructure and development relationships may survive the dispute.

Comments on implementation of the supplementary provisions

17. The Centre offers brief comments on the implementation options in section A and B, and more detailed comments on section C, which is of direct institutional relevance.

Protocol to the MIIR (section A) and incorporation into the UARs (section B)

18. The Centre supports the proposal (paragraph 31) to adopt the Supplementary Provisions as a standalone set capable of incorporation by reference, including in investment contracts and future treaties, and through a protocol mechanism for existing treaties modelled on the Mauritius Convention approach.

19. As between the two UARs-incorporation models in section B, the Centre considers that an express opt-in model (the Expedited Arbitration Rules approach in paragraphs 42–44), under which the SPs apply only where the parties so agree, best respects party autonomy and provides the clarity that users and institutions need. Automatic application (the Transparency Rules approach) is workable but requires careful elaboration of scope, temporal application and opt-out. Whichever model is chosen, the Centre supports the clear statement (paragraph 49) that the SPs prevail over, and switch off, the specific UARs articles they replace (articles 26, 27, 30(3) and 42).

Application to arbitrations not governed by the UARs (section C)

20. The express contemplation (paragraphs 50–52) that disputing parties may apply the Supplementary Provisions to arbitration administered under institutional rules – benefiting from ISDS-targeted procedural provisions while retaining their preferred institutional framework – is, in the Centre’s view, one of the most valuable features of the project. It would allow parties choosing the Centre (for example, in an investment contract or a treaty referring to the Centre’s Rules) to combine the Centre’s administration, appointment, scrutiny and cost mechanisms with the Supplementary Provisions. The Centre offers the following observations to make this scenario work smoothly.

A clear, predictable conflict rule

21. The Note (paragraph 52) suggests that, where the applicable rules already address the same matter, a conflict rule is needed, and that the SPs would sensibly prevail in the ISDS context. The Centre agrees that a default rule that the SPs prevail on the specific matters they address provides welcome certainty. The Centre recommends, however, that this conflict rule be drafted narrowly – displacing the institutional procedural rule only on the discrete subject the relevant SP governs – and that it expressly preserves the institution’s administrative and supervisory functions (see below).

22. **Preserving the institution’s administrative and supervisory functions.** The Supplementary Provisions regulate the conduct of the proceeding by the Tribunal; they are not designed to replace the administrative architecture of an institution. To avoid unintended displacement, the Centre recommends an express statement that, when applied under institutional rules, the SPs do not affect the institution’s functions, including:

- (i) appointment of arbitrators, and decisions on challenge and replacement;
- (ii) scrutiny or approval of draft awards, where the institution’s rules so provide (see the related point on SP VIII(1) below);
- (iii) administration of fees, deposits and costs;
- (iv) emergency arbitrator and other pre-constitution mechanisms (see the related point on SP III); and
- (v) the institution’s own consolidation, joinder and coordination powers (see the related point on SP X).

23. **Specific interaction points requiring attention.** After a careful review of the draft provisions, three interactions are most likely to generate friction when the SPs are used with institutional rules, and the Centre invites the Commission to address each expressly:

(i) *Award time limits and scrutiny (SP VIII)*. The SP VIII clock must accommodate institutional scrutiny of draft awards, either by excluding the scrutiny period or by treating the limit as met upon submission of the draft award to the institution. Without this, the time limits and institutional scrutiny cannot both be honoured.

(ii) *Interim and emergency relief (SP III)*. SP III should be confirmed as without prejudice to any emergency arbitrator or pre-constitution relief available under the applicable institutional rules.

(iii) *Consolidation (SP X)*. SP X should be confirmed as supplementing, not displacing, the institution's own consolidation and coordination powers, and the mechanics of compatibility determination and tribunal constitution in administered cases should be clarified.

24. **A model clause and adoption guidance.** To facilitate uptake in institutional settings, the Centre suggests that the Commission consider providing (or encouraging the development of) a short model clause by which parties can agree to institutional arbitration as supplemented by the UNCITRAL Supplementary Provisions (see the draft model clause below), together with explanatory guidance on the interaction points above.

25. The SPs should be described as procedural supplements, not as a parallel institutional code. In administered arbitration, the Tribunal should apply the SPs to the conduct of proceedings, while the institution should continue to administer all matters assigned to it by the applicable rules.

26. Recommended model clause for contracts or treaty instruments: *"The arbitration shall be administered by [institution] under the [institutional rules]. The UNCITRAL Supplementary Provisions on the Conduct of Proceedings to Resolve International Investment Disputes shall apply as supplementary procedural provisions. In the event of inconsistency, the Supplementary Provisions shall govern the conduct of the proceeding before the Tribunal, while the [institutional rules] shall govern institutional administration, including registration, deposits, appointment, challenges, emergency arbitration, consolidation or joinder decisions assigned to the institution, scrutiny or review of awards, service and publication or archiving."*

H. Shanghai International Arbitration Commission (SHIAC)

1. Shanghai International Arbitration Commission ("SHIAC") highly appreciates the significant efforts and achievements of the Commission in developing the SPs. As a matter of current practice, the SHIAC Arbitration Rules already expressly provide that SHIAC may administer international investment arbitration proceedings, and that such proceedings shall be conducted in accordance with the UNCITRAL Arbitration Rules ("UARs"). In this regard, the Commission's initiative to develop more detailed procedural provisions specifically tailored to international investment arbitration is welcomed, as it may contribute to greater consistency and harmonization in the conduct of investment arbitration proceedings. SHIAC therefore welcomes the SPs and hopes to explore appropriate ways to incorporate the relevant provisions of the SPs into its institutional framework in the future.

2. The following comments on document [A/CN.9/1246](#) ("Document") are submitted from a practical perspective, taking into account the experience of SHIAC, arbitrators and counsel in international dispute resolution. The comments focus primarily on the implementation and operation in practice of the supplementary provisions on the conduct of proceedings to resolve international investment disputes ("SPs"), including their compatibility with existing institutional rules and procedural frameworks.

3. The comments are based solely on the latest draft version of the SPs. It is noted that the Commission has developed draft provisions on procedural and cross-cutting issues ("DPs") in various documents and has considered those draft provisions during

different sessions of the Working Group. As SHIAC did not participate in those sessions and have not had the opportunity to review the relevant draft materials in full, the comments below do not seek to address any interaction or potential inconsistency between the SPs and the DPs or other related documents.

General Observations

4. It is understood that the SPs are drafted solely to address specific issues arising in the conduct of arbitration proceedings, without prejudice to the arbitration procedure as a whole, such as commencement of the proceedings, constitution of the tribunal, or annulment (if any). Accordingly, the following comments do not address phases or issues beyond those specifically covered by the SPs.

5. It is further understood that: (1) the SPs have been drafted in a generic manner so as to be capable of application in different circumstances without modification; (2) the Commission envisages that the SPs shall be adopted as a standalone set of provisions, to be opted into in their entirety rather than on an individual basis; and (3) the Commission envisages that the SPs are intended to apply to both treaty-based arbitration and investment contract arbitration. Nevertheless, the Commission has not yet decided the manner in which the SPs are to be implemented, nor the extent to which parties or institutions may vary from or deviate from them.

6. In this regard, in light of the discussions to date, the SPs may potentially be applied through: (i) incorporation into the Protocol of the MIIR; (ii) application in conjunction with the UARs; or (iii) application in conjunction with other institutional arbitration rules.

7. Based on the above understanding, and in response to the general questions raised in Chapter II Para 9 of the Document, SHIAC respectfully submits the following observations and comments:

- It is beneficial to ensure that the SPs are capable of operating as an independent set of procedural provisions without the need for cross-reference to other rules, in particular the UARs. This would facilitate adoption and adaptation of the SPs by arbitration institutions into their own institutional rules.
- It is important that the SPs preserve sufficient flexibility to allow their application in conjunction with different institutional arbitration rules. Consideration may also be given to allowing arbitral institutions an appropriate degree of discretion in adapting the operation of the SPs to the applicable institutional framework, with a view to facilitating broader adoption of the SPs.
- It may be useful to add a general provision clarifying that arbitral tribunals retain general discretionary authority in conducting investment arbitration proceedings, and the inclusion of specific discretionary powers in the SPs should not be interpreted as limiting the tribunal's inherent procedural powers beyond those expressly provided in the SPs.
- It may be preferable to add a general provision clarifying that, except for time limits applicable to the arbitral tribunal itself, the tribunal may extend or abridge the time periods applicable to the disputing parties where appropriate. Such flexibility may facilitate the harmonious application of the SPs together with different institutional rules and procedural arrangements.
- It may also be advisable to include a general provision stating that: "*The Tribunal shall consult with the disputing parties before making an order or decision it is authorized by the Supplementary Provisions to make on its own initiative.*" Such a provision would be consistent with general international arbitration practice and would help ensure effective protection of the disputing parties' right to be heard.
- It is understood that references to "claims" in the SPs also encompass counterclaims. In that context, it may be important to ensure that the procedural treatment of claims and counterclaims remains balanced and does not result in manifest procedural inequality between the parties.

- It is advisable to leave flexibility for arbitration institutions to determine the relationship between the SPs and their own institutional rules, including the prevailing effect of the SPs in the event of any conflict or inconsistency. Such flexibility would facilitate and encourage adoption of the SPs by arbitration institutions.
8. Under Approach C, the relationship between the SPs and institutional arbitration rules may require further clarification to enhance compatibility. It is suggested that institutional rules be permitted to serve as a fallback framework for the SPs. In other words, where the SPs contain an express provision, the SPs would prevail; where the SPs are silent, the applicable institutional rules would fill the gap, unless the parties have expressly excluded their application. This would allow institutional mechanisms – such as award scrutiny procedures or extensions of time limits for rendering awards – to continue operating where not addressed in the SPs.

Comments on specific provisions

9. For ease of reference, comments are provided in tabular form for each provision. The column titled “Observations” sets out general observations, concerns and considerations relating to the relevant provision. The column titled “Comments” contains comments on the issues raised by the Commission in the “Notes” section for consideration and confirmation by the reviewers. For ease of reference, “paragraph” refers to the specific paragraph of the provision itself, while “Para [X]” (as underlined) refers to the corresponding question number in the “Notes” section.

SPs	Observations	Comments
I. Evidence	It may be observed that the Commission seeks to provide tribunals and disputing parties with clearer and more detailed guidance on evidentiary matters, with a view to reducing disputes and promoting greater consistency in practice. At the same time, it should be noted that evidentiary rules differ significantly across jurisdictions. As a result, most arbitral rules only contain general or principle-based provisions regarding evidence. One of the main reasons is that evidentiary procedures may have substantial implications for both procedural efficiency and costs. Accordingly, most arbitral frameworks leave broad discretion to the tribunal to manage evidentiary matters on a case-by-case basis in light of the particular circumstances of the dispute. It is observed that Provision I appears to combine provisions originating from different arbitral frameworks and practices. In particular, paragraphs 1, 2, 6 and 7 largely reflect the evidentiary provisions under the UARs; paragraphs 3 and 4 introduce provisions relating to document production; paragraph 5 appears to derive from the default provisions under the UARs; paragraph 8 further introduces rules relating to exclusion of evidence; and paragraph 9 appears to incorporate concepts reflected in Rule 40 of the ICSID Arbitration Rules. It is understood that the Commission may intend to accommodate, to the greatest extent possible, different approaches to evidentiary practice. However, such an approach may, on the one hand, create issues of inconsistency and, on the other hand, potentially restrict the flexibility otherwise available to tribunals. Several concerns may therefore arise. 1) First, Provision I is titled “Evidence”, whereas document production does not necessarily concern evidence as such. As noted by the Commission in para 1 of the Notes, only documents or materials relied upon by the disputing parties would constitute evidence. It may therefore require further consideration whether it is conceptually appropriate to place document production	<u>Para 10(1)</u>: The phrase “<i>to the requesting party</i>” appears to confirm that documents requested by a disputing party are to be produced directly to that party. However, in practice, due to particular concerns such as confidentiality obligations, documents may in some cases be disclosed only to external counsel, experts, or other designated persons. Consideration may therefore be given to accommodating such situations. <u>Para 10(2)</u>: It appears unnecessary to retain the phrase “<i>In making that determination and in establishing the procedure in paragraph 3</i>”, as it may be merely explanatory in nature. <u>Para 10(3)</u>: It appears unnecessary to expressly mention the possible “existence” of such documents as another circumstance to consider because it is already implied by the phrase “all relevant circumstances”. <u>Para 10(4)</u>: Consideration may be given to whether paragraph 5 should remain under Provision I or be amended, as it was originally drafted to address issues relating to default proceedings and default awards. In its current context, it does not appear to clearly address the consequences of non-disclosure or non-production of documents. The current wording of paragraph 5 is ambiguous and would benefit from further clarification. The consequence set out in paragraph 5 for non-compliance appears functionally similar to the doctrine of adverse inference under the IBA Rules, yet the provision does not articulate it expressly. While this may be intended to preserve procedural flexibility and encourage broader acceptance, it leaves uncertain whether paragraph 5 is meant to produce the same legal effect. The Commission may therefore wish to clarify: (i) whether an adverse inference is intended, and (ii) whether the consequences of non-compliance should instead be addressed directly in paragraph 3. In that case, Paragraph 5 could be retained as stand-alone provision given its broader scope. <u>Para10(5)</u>: It may nevertheless be preferable for paragraph 5 to remain following paragraphs 3 and 4, as it appears intended to address situations where a disputing party fails to provide documents, including documents required pursuant to paragraphs 3 and 4. In order

SPs	Observations	Comments
	within the same provision addressing evidence. 2) Secondly, although document production is particularly significant in investment arbitration, given that much of the relevant information and documentation may be in the possession of the host State, paragraph 2 already appears to confer upon the tribunal the authority to require the production of evidence. In such circumstances, consideration may be given as to whether it is necessary to separately and expressly introduce the concept of document production. Given that many civil law jurisdictions do not adopt disclosure procedures comparable to those commonly used in common law systems, expressly incorporating detailed document production mechanisms may discourage civil law jurisdictions or institutions from adopting the SPs. 3) Thirdly, paragraphs 3 to 5 do not appear to clearly specify the consequences of non-compliance with document production obligations. Paragraph 5, which appears to derive from the default provisions under the UARs, was originally intended to address situations involving failure to appear or participate in the proceedings. Its placement in this context may suggest an intention to address the consequences of non-disclosure. However, the principal consequence generally associated with failure to produce documents is adverse inference, and the current drafting does not appear to expressly address this issue. 4) Fourthly, document production in international arbitration is already frequently governed in practice by the IBA Rules on the Taking of Evidence in International Arbitration, which constitute a relatively mature and widely accepted soft law framework. The current drafting appears to incorporate certain concepts reflected in the IBA Rules without adopting the framework in a comprehensive manner, thereby potentially creating uncertainty as to the relationship between the SPs and the IBA Rules.	to reduce ambiguity, consideration may be given to expressly distinguishing between “documents” and “evidence” in paragraphs 3 and 4. <u>Para 10(6)</u>: Please refer to the observations and concerns regarding Provision I set out in the left column. <u>Para 10(7)</u>: If paragraph 8(c) is retained, it would be preferable to replace “applicable law” with an alternative formulation based on article 7(2)(c) of the Transparency Rules, so that the subparagraph would read: “The use of which as evidence is prohibited, in the case of the evidence of the respondent State, under the law of the respondent State, and in the case of other evidence, under any law or rules determined by the Tribunal to be applicable to the use of such evidence.” Evidence that is excluded may originate from the host state or other jurisdictions, making the use of “domestic law” inappropriate in this context.

SPs	Observations	Comments
	5) Fifthly, rules regarding exclusion of evidence also vary substantially across jurisdictions. In common law jurisdictions, there may be separate procedures dealing specifically with exclusion or admissibility of evidence. By contrast, in many civil law jurisdictions, including China, issues concerning admissibility are generally addressed by the tribunals in the course of evaluating the evidence, rather than through a separate procedural mechanism. In such circumstances, the manner in which paragraph 8 would operate in practice may need further consideration. Accordingly, the Commission may wish to carefully reconsider whether Provision I should regulate evidentiary matters in such a detailed manner, or whether it may be preferable to confine the SPs to general principles and confer general authority upon the tribunal to manage evidentiary matters, including document production, while leaving specific procedural arrangements to the disputing parties and the tribunal on a case-by-case basis.	
II. Bifurcation	N/A	<u>Para 11 (1)</u>: It is preferable to delete the second sentence of paragraph 1 so as to ensure that the SPs are capable of operating as an independent set of procedural provisions. <u>Para 11 (2)</u>: Consideration may be given to reconsidering the sentence containing the bracketed text in paragraph 5. As a matter of general practice in international arbitration, tribunals are typically not required to provide reasons for decisions relating to procedural arrangements, including whether to bifurcate proceedings, because: (1) procedural arrangements generally fall within the tribunal's discretion; and (2) requiring reasons for such decisions may itself cause further delay and may not be consistent with the objective of procedural efficiency. Provided that the disputing parties are given a sufficient opportunity to present their positions on bifurcation, it may not be necessary to require the tribunal to provide reasons for its decision on bifurcation. On that basis, it may be unnecessary to retain the entire sentence in paragraph 5.

SPs	Observations	Comments
		That said, if the Commission considers that reasons for bifurcation decisions are necessary in light of the particular nature of investment arbitration, it may be preferable to retain the bracketed text so as to preserve party autonomy.
III. Interim Measures	It is understood that the references to “claims” in the SPs also encompass counterclaims, such that the interim measures set out in Provision III would apply equally to all disputing parties. Reading Provision III as a whole, it appears that seizure of assets is expressly excluded from the scope of interim measures. While the Document does not explain why seizure of assets is treated as a matter of particular concern, the exclusion under paragraph 10(a) would also prevent a State from seeking seizure of an investor’s assets in support of any counterclaims. Consideration may therefore be given as to whether seizure of assets, as a form of interim measure, should remain excluded. It is further understood that paragraph 10(b) of Provision III is intended to expressly exclude interim measures that would impede a state’s right to regulate in the public interest. However, this formulation is broad and potentially vague, and may provide States with an arguable basis to resist applications for interim measures brought by investors, thereby potentially delaying the proceedings or depriving investors of effective interim relief. Furthermore, in order to preserve procedural fairness and equality of treatment, caution may be warranted in introducing rights or exclusions that may be perceived as disproportionately favouring one disputing party over the other.	<u>Para 12(1)</u>: Whether the phrase “<i>and without limitation</i>” should be retained depends on: (i) whether paragraph 10 is retained; and (ii) whether paragraph 1 is intended to constitute an exhaustive list. If both questions are answered in the affirmative, the phrase “<i>and without limitation</i>” should be deleted. <u>Para 12(2)</u>: The appropriateness of paragraph 10(a) depends on the underlying rationale for treating seizure of assets as a matter of particular concern. If the concern arises from the fact that seizure of State assets is, by its nature, often difficult or unenforceable in practice, given that it generally requires the assistance of domestic courts and may be restricted by sovereign immunity, then the inclusion of paragraph 10(a) may be justified. However, it should also be noted that, by excluding seizure of assets as an interim measure, States would likewise be deprived of the ability to seek such measures against investors in support of counterclaims. Interim measures involving the seizure of assets could hardly be enforced against a sovereign state (as Respondent) due to sovereignty exemption. There is no need to expressly list this in paragraph 10 since “public interest” in clause (b) of para.10 could cover this situation. <u>Para 12 (3)</u>: From a drafting perspective, paragraph 10 may be moved to immediately following paragraph 2, so as to clarify, at an earlier stage, which measures may and may not be granted as interim measures. <u>Para 12 (4)</u>: Recommend that paragraph 10(b), concerning the limitation on the State’s right to regulate in the public interest, be retained and further clarified. From the host state’s perspective, investors often request for interim measures, such as applications for injunctions, to suspend a host state’s legitimate environmental or public health regulation. Clarifying this

SPs	Observations	Comments
		rule would help prevent interim measures from being abused as a tool to undermine the counterparty state's right. Conversely, from the investor's perspective, interim measures should also be prevented from being abused by host states in counterclaims. For instance, some host states may invoke public interest as a pretext to expropriate investors' profits or coerce investors into hiring local employees.
IV. Manifest lack of legal merit	It is noted that the concept of "<i>lack of legal merit</i>" may not bear the same meaning across different jurisdictions. In certain jurisdictions, including China, the concept may also extend to issues relating to the admissibility of a claim or whether a claim goes beyond the scope of the tribunal's authority or jurisdiction. It is therefore unclear whether such issues would be regarded as constituting a "<i>lack of legal merit</i>" under the SPs. Consideration may therefore be given to clarifying whether the determination of "<i>lack of legal merit</i>" should be made in accordance with the applicable law or the relevant legal framework governing the arbitration. Summary: Compatibility with SHIAC's arbitration rules: Provision IV addresses objections relating only to (i) the jurisdiction of the Tribunal and (ii) the manifest lack of legal merit of a claim. By contrast, the early dismissal mechanism under the SHIAC Investment Arbitration Rules extends to a broader range of grounds, including admissibility. As a result, the scope of early dismissal under the SHIAC rules is substantially wider than that under Provision IV. This difference in scope gives rise to a concrete conflict where the SPs and the SHIAC rules apply in parallel. For instance, where a disputing party raises an objection based on admissibility, that objection may be considered as a ground for early dismissal under the SHIAC rules, whereas Provision IV is silent on the matter. It is therefore unclear, in such circumstances, whether the disputing party may avail itself of	N/A

SPs	Observations	Comments
	the broader institutional mechanism, or whether the silence of Provision IV should be understood as excluding it. To address this issue, the Commission may wish to consider including a general provision clarifying the relationship between the SPs and the applicable institutional rules – in particular, providing that, where the SPs are silent on a procedural matter, the applicable institutional rules shall apply. Such a provision would preserve the institutional mechanisms that go beyond the express scope of the SPs, and would facilitate the consistent and coherent application of the SPs in institutional settings.	
V. Security for costs	1. Imbalance in Favor of States It is understood that the Commission may wish to caution tribunals against ordering security for costs against States and, at the same time, to reassure States so as to encourage broader adoption of the SPs by including paragraph 5 in Provision V. However, from the perspective of procedural fairness and equality of treatment, paragraph 5 may be perceived as creating an imbalance in Favor of States. From the standpoint of procedural justice, it may therefore not be appropriate to include such a provision in the SPs themselves. In any event, Provision V, paragraph 4 already provides that the Tribunal shall take into account all relevant circumstances when making its determination, which would already allow consideration to be given to the willingness and ability of a State to comply with an adverse costs order. If the Commission nevertheless considers this issue to be of particular importance, it may be preferable to address it through practice notes, guidelines, or other non-binding instruments, rather than through the text of the SPs themselves. 2. Compatibility with SHIAC's arbitration rules Under the currently effective Arbitration Rules (2024) of the Shanghai International Economic and Trade Arbitration	<u>Para 14:</u> Please refer to the observations and concerns regarding Provision XI set out in the column below. It is advisable to leave the determination of the consequences of non-disclosure to the discretion of the Tribunal, to be decided on a case-by-case basis having regard to the circumstances of the particular case. <u>Paras 15 and 16:</u> It is preferable to include no bracketed text or only the first bracketed text and leave the second bracket. Please refer to the observations and concerns regarding Provision XI set out in the column below for detailed reasons. <u>Para 17:</u> Please refer to the observations and concerns regarding this paragraph 5 in the left column.

SPs	Observations	Comments
	Commission (Shanghai International Arbitration Center, SHIAC), the arbitral tribunal may only allocate costs in the final award and has no power to order advance security for costs during the proceedings. We understand that the purpose of the “security for costs” provision in the current SP Provision 5 is to prevent abusive claims by investor claimants against the host state, which could leave the host state without recourse to recover its legal fees. Based on this understanding, we wish to highlight a practical consideration: if the SPs are to be integrated with institutional arbitration rules in the future, the operational implementation of such security-for-costs orders shall be carefully addressed. Key issues include: the acceptable forms of security; the designated recipient/escrow account for the security funds; the conditions and procedure for the refund of the security.	
VI. Suspension of the proceeding	Compatibility with SHIAC’s arbitration rules: The Commission’s intention to specifically include provisions on suspension in the SPs may reflect the particular characteristics of international investment arbitration and the perceived need to expressly confer such authority upon the tribunal. For the Commission’s information, neither the newly implemented Arbitration Law of China nor the arbitration rules of most Chinese arbitral institutions contain express provisions regarding the suspension of arbitral proceedings. Under Chinese practice, there is also an underlying legal principle that neither a court nor an arbitral tribunal should decline to proceed with the adjudication of a case on its own initiative, except where expressly authorized by law or applicable rules. In light of concerns relating to procedural efficiency, the Commission may wish to consider specifying the circumstances in which a tribunal may suspend the proceedings on its own initiative, while retaining a residual or catch-all provision where appropriate. Such an approach may help clarify that the tribunal’s power to suspend	N/A

SPs	Observations	Comments
	proceedings is not intended to be exercised without limitation or on an arbitrary basis.	
VII. Termination of the proceeding	Compatibility with SHIAC's arbitration rules: Similarly, for the Commission's information, neither the newly implemented Arbitration Law of China nor the arbitration rules of most Chinese arbitral institutions contain express provisions regarding the termination of arbitral proceedings. An arbitral proceeding in China may be terminated by a decision on withdrawal of the case by the disputing party or the issuance of the arbitral award/settlement award. The arbitral tribunal in China is not authorized to terminate the arbitral proceeding on its own initiative. Accordingly, if the Commission intends to confer upon arbitral tribunals the authority to terminate proceedings on their own initiative, the Commission may wish to clarify the precise legal effect or form of such termination – in particular, whether it operates as a withdrawal of the case, a termination order, a settlement award or another form. The Commission may also wish to consider leaving a degree of flexibility to arbitral institutions in determining how such provisions would interact with their own institutional rules. Such flexibility may enhance compatibility between the SPs and different institutional frameworks, and thereby facilitate and encourage adoption of the SPs by arbitral institutions.	<u>Para 20:</u> It is preferable to grant the tribunal discretion with regard to the time frames set out in paragraphs 2 and 3. Alternatively, consideration may be given to including wording such as “<i>without justifiable reasons</i>”, so as to avoid rendering the prescribed time frames absolute. <u>Para 21:</u> It may be preferable to use the phrase “<i>any other reasons</i>” so as to encompass circumstances beyond those specifically provided in paragraphs 1 to 4. In particular, paragraph 4 only relates to termination on the ground of “settlement,” whereas termination may also be triggered by other reasons, such as the revocation of an application for arbitration. The broader phrasing would ensure that such additional circumstances are adequately captured. In addition, since the grounds set out in paragraphs 1 to 4, as well as the catch-all ground under paragraph 5, all have the same effect of terminating the arbitral proceedings, it is advisable to make the final sentence, namely, “<i>The Tribunal shall have the power to order the termination unless there are remaining matters that may need to be decided and the Tribunal considers it appropriate to do so</i>”, a separate paragraph so that it would apply equally to paragraphs 1 to 4 and paragraph 5.
VIII. Period of time for making the award	Provision VIII appears to have been drafted primarily on the basis of ad hoc arbitral proceedings. In practice, however, consideration may need to be given to its compatibility with institutional arbitration, particularly where the relevant institution has an award scrutiny mechanism, which means an award must be scrutinized and confirmed by the institution before its issuance. In particular, a number of issues may arise in connection with Provision VIII, including: (i) the definition of “last submission” may require further clarification; (ii) whether	<u>Para 22:</u> It is agreed that the Commission's proposed approach of retaining only the first square-bracketed text in paragraph 1(a) is preferable. <u>Paras 23 and 24:</u> Despite some ambiguity in paragraph 1(b), it is understood that the 180-day period is intended to apply to cases in which bifurcation has been agreed or granted, while paragraph 1(c) applies to cases without any bifurcation. On that understanding, for each bifurcated phase, unless paragraph 1(a) applies, the time limit for rendering the decision would be 180 days from the last submission made in that particular phase and the following phase(s). Accordingly,

SPs	Observations	Comments
	the arbitral institution could grant extensions of time limits and scrutinize the arbitral award; and (iii) the internal structure of paragraph 1(b) lacks clarity, particularly as to whether the 180-day period applies only to the final award or also to interim awards. Accordingly, the Commission may wish to consider leaving a degree of flexibility to arbitral institutions in determining how Provision VIII would interact with their own institutional rules. Such flexibility may enhance compatibility between the SPs and different institutional frameworks, and thereby facilitate and encourage adoption of the SPs by arbitral institutions.	the use of the phrase “<i>an award</i>” is preferable, as there may be more than one award rendered in bifurcated proceedings. We are concerned, however, that paragraph 1(b) is at risk of abuse. Since each bifurcated issue may be subject to its own 180-day time limit running from the last submission, a party that bifurcates an excessive number of issues could unduly prolong the overall proceeding, effectively turning bifurcation into a tool for delay – an outcome that is not intended. From a drafting perspective, if the Commission intends to provide examples of issues that may be bifurcated, it may be more appropriate to do so in Provision II, where bifurcation proceedings are specifically addressed. In addition, consideration may be given to including a catch-all provision so as to preserve flexibility for bifurcation of other issues in appropriate cases. In connection with the foregoing, it may further be suggested that the words “along with a plea that the Tribunal does not have jurisdiction” be added at the end of paragraph 1(b), so as to make clear that the 180-day period is intended to apply primarily to preliminary objections of a procedural nature (such as jurisdiction and admissibility). Bifurcation may, however, also be granted in respect of substantive issues, for which a 180-day period may not always be sufficient. The Commission may therefore wish to consider whether different time frames should apply depending on whether the bifurcated issue is procedural or substantive in nature.”
IX. Allocation of costs	N/A	N/A
X. Consolidation and coordination of arbitrations	Consolidation and coordination are widely regarded as developments in modern international arbitration that are conducive to cost control and procedural efficiency. If capable of application in the field of international investment arbitration, such mechanisms could significantly facilitate the comprehensive resolution of disputes between investors and host States and greatly improve procedural efficiency.	<u>Para 26:</u> It may be preferable to choose the phrase “<i>an award that addresses all consolidated arbitrations</i>” to allow the tribunal to make one or more awards, including partial award etc. Para 27: N/A

SPs	Observations	Comments
	However, from an institutional perspective, the implementation of consolidation and coordination presupposes that the arbitral institution has the authority and practical ability to administer such procedures. In this regard, the current drafting of Provision X appears to contemplate the possibility of consolidation and coordination to be across proceedings administered by different institutions. This approach differs from the formulation adopted under the ICSID framework and may not be feasible in practice. Such drafting may stem from the fact that the SPs appear to have been developed on the basis of rules originally designed for ad hoc arbitration. Accordingly, the Commission may wish to further consider whether, in the context of institutional arbitration, the authority to determine issues relating to consolidation and coordination should be left to the relevant arbitral institution, so as to facilitate and encourage arbitral institutions to adopt the SPs.	
XI. Third-party funding	With respect to Provision XI, it may be observed that the current third-party funding (“TPF”) provisions go beyond the disclosure requirements adopted in most existing international arbitration frameworks. While increasing attention has been paid in recent years to the potential negative effects that may arise from TPF arrangements, the disclosure obligations imposed by most arbitral institutions continue to be primarily directed toward the identification of potential conflicts of interest. At most, such frameworks usually preserve flexibility for the tribunal, on a case-by-case basis, to determine whether further information regarding the TPF arrangement should be disclosed, as well as the consequences, if any, of non-disclosure. Therefore, there are considerable concerns regarding both its scope and practical implications of Provision XI. 1) First, the SPs appear to be intended to address specific procedural issues arising in the conduct of arbitration proceedings. However, TPF is not, in itself,	<u>Para 28:</u> It is suggested that the term “<i>beneficial owner</i>” be retained, as it is more commonly used and better understood in practice. It has a clearer definition referring to the ultimate beneficial owner of the third-party funder. The term “<i>beneficial</i>” already serves to distinguish such ownership from legal ownership and may carry different meanings under different legal systems. In circumstances where the Commission envisages that the funded party would be responsible for obtaining and assessing the relevant information regarding the beneficial owner, the use of the term “<i>beneficial</i>” already provides sufficient flexibility. By contrast, the term “<i>effective beneficiary</i>” appears to be rarely used in practice and its meaning remains highly uncertain. In addition to requiring an assessment of the “<i>beneficiary</i>”, the term would also require a separate assessment of what constitutes “<i>effective</i>”, which may give rise to further ambiguity and unnecessary disputes. It is therefore not recommended that the term “<i>effective beneficiary</i>” be adopted.

SPs	Observations	Comments
	an independent procedural issue. Rather, disclosure of TPF is primarily relevant to conflict checks and issues concerning the independence and impartiality of arbitrators. Furthermore, to the extent that TPF may be relevant to decisions on security for costs, such considerations have already been addressed in Provision V. Including a standalone provision on TPF within the SPs may therefore be inconsistent with the overall scope and subject matter of the SPs. 2) Secondly, as a matter of practice, TPF has developed largely as a mechanism to assist investors in achieving a relatively balanced economic position as against the sovereign States in international investment arbitration. Imposing extensive disclosure obligations specifically on funded parties and funders may raise concerns as to whether the rules themselves create unequal treatment between disputing parties. In addition, overly burdensome disclosure obligations may discourage funders from supporting international investment arbitration, which could ultimately reduce access to, and even the practical use of, investor-State arbitration. 3) Thirdly, the consequences for non-disclosure under paragraph 7 appear excessively strict. As currently drafted, the tribunal appears to be granted only the power to impose additional measures or sanctions, without sufficient flexibility to take into account the circumstances of the individual case, the materiality of the non-disclosure, or whether the failure was inadvertent. Such an approach may operate too harshly against both investors and funders. 4) Fourthly, paragraph 3 requires the relevant information to be disclosed not only to the tribunal, but also to the opposing party. This may create a risk that respondent States could use disclosure-related issues as a tactical means to delay the proceedings or pressure claimants into abandoning their claims. Such consequences would run contrary to the objective of the SPs to enhance procedural efficiency. 5) Lastly, paragraph 5 grants the tribunal the authority,	<u>Paras 29 and 30:</u> Please refer to the observations and concerns regarding Provision XI set out in the left column.

SPs	Observations	Comments
	after consulting the disputing parties, to decide whether the disclosed information may be made public. However, the provision does not specify the source of such authority, nor does it define the conditions, scope, or limits for the exercise of that power. As currently drafted, the provision may therefore confer excessively broad discretion upon the tribunal. Although the paragraph states that the tribunal should take confidentiality into consideration, the funded party and the funder would ultimately lose control over the disclosure of their confidential information once it has been provided. This may significantly discourage parties and funders from making disclosures in the first place, given the risk that they would no longer retain final control over the confidentiality of the disclosed information. Accordingly, the Commission may wish to further consider whether it is necessary to include a standalone provision on TPF within the SPs. Even if such a provision is to be included, consideration may be given as to whether it is appropriate to prescribe detailed and stringent requirements of the current nature. Such an approach may create significant concerns for arbitral institutions that may wish to incorporate the SPs into their institutional rules in the future, particularly due to the resulting lack of flexibility. Even if the Commission considers TPF to be an issue of particular importance, it may be preferable to address the matter through practice notes, guidelines, or other non-binding instruments, rather than through mandatory provisions in the SPs themselves.	

I. Shenzhen Court of International Arbitration (SCIA)

1. The Shenzhen Court of International Arbitration (SCIA) has carefully studied the draft supplementary provisions on the conduct of proceedings to resolve international investment disputes (the “supplementary provisions” or “SPs”) contained in document [A/CN.9/1246](#). We hereby submit the following comments and suggestions.

General Observations

2. SCIA generally supports the supplementary provisions. The SPs focus on the most pressing procedural concerns in ISDS practice, addressing key issues such as evidence, bifurcation, interim measures, manifest lack of legal merit, security for costs, suspension and termination of the proceeding, time limits for making the award, allocation of costs, consolidation and coordination of arbitrations, and third-party funding. By providing clear and predictable procedural rules, the SPs represent a progressive, procedural reform that helps reduce institutional friction, enhance procedural manageability, and promote the harmonisation of procedural rules in ISDS. They are of significant practical value in bridging the differences among various arbitral rules.

Comments on Specific Provisions

Provision I: Evidence

3. **Comment: Add Adverse Inference Authority (Para. 5)**

4. **Issue:** Para. 5 replicates UARs 30(3) but doesn’t address whether adverse inferences may be drawn.

5. **Recommendation:** “If a disputing party, duly invited by the Tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time without showing sufficient cause for such failure, the Tribunal may:

(a) Make the award on the evidence before it; or

(b) Draw such inferences as it deems appropriate, including that such documents, exhibits or evidence would have been adverse to that party.”

6. **Justification:** Express authority reduces uncertainty about tribunal powers, and incentivizes compliance with document orders. Similar adverse inference mechanisms are incorporated in Article 9(5) of the IBA Rules on the Taking of Evidence in International Arbitration and in the international arbitration practice applying such rules.

Provision II: Bifurcation

7. **Comment: Delete Reference to Specific Rules (Para. 1)**

8. **Issue:** Square-bracketed reference to “article 23 of the UNCITRAL Arbitration Rules” contradicts the principle of rule-neutrality.

9. **Source:** Para. 9, third bullet point (SPs should avoid references to specific rules).

10. **Recommendation:** Delete entire square-bracketed phrase “pursuant to article 23 of the UNCITRAL Arbitration Rules or the relevant provision in the applicable rules”.

11. **Justification:** SPs are intended to be rule-neutral. Rights preserved under “applicable rules” generally.

Provision III: Interim measures

12. **Comment: Delete “Without Limitation” (Para. 2).**

13. **Current Text:** “for example [and without limitation].”.

14. **Recommendation:** Delete “and without limitation.”.

15. **Justification:** Conflicts with express limitations in para. 10. “For example” already indicates a non-exhaustive list. Avoids interpretive confusion.

16. **Comment: No express prohibition of asset-seizure interim measures needed (Para. 10)**

17. **Issue:** whether interim measures involving the seizure of assets should be prohibited and expressly listed in paragraph 10: by way of background, the Working Group had removed from the list of examples in paragraph 2 the phrase found in UARs 26(2)(c) (“provide a means of preserving assets out of which a subsequent award may be satisfied”).

18. **Recommendation:** It is not necessary to expressly list in paragraph 10 a prohibition on interim measures involving the seizure of assets. This is because, in current international investment arbitration practice, subject to the principle of sovereign immunity, interim measures that directly involve the seizure of state property are already very difficult to enforce. Explicitly requiring arbitral tribunals to prohibit such interim measures in paragraph 10 would serve no practical purpose at this stage. Moreover, not explicitly prohibiting such measures may leave institutional room for arbitral tribunals to exercise their discretion to issue relevant interim measures in the future, should the necessity and possibility arise.

Provision IV: Manifest lack of legal merit

19. **Comment: Define “Manifest” Standard (New Para. 3bis)**

20. **Issue:** “Manifest” undefined.

21. **Recommendation:** Further define the standard of review for the term ‘manifestly’ in the provision itself or the accompanying notes, taking into account the standards from prior arbitral jurisprudence. For example, by inserting an additional paragraph or specifying in the notes that: ‘For the purposes of this provision, “manifestly” means that the legal defect underlying the claim is self-evident based on the parties’ submissions, requiring no in-depth fact-finding or elaborate legal argumentation to determine.’

22. **Justification:** This helps ensure the draft provisions are more operable and predictable in future investment arbitration practice, fulfilling their purpose of expeditiously weeding out unmeritorious claims and improving the efficiency of the proceedings.

Provision VIII: Period of time for making the award

23. **Comment: Simplify Para. 1(a)**

24. **Issue:** Redundant square-bracketed alternatives. Retain only: “...if the award is made in accordance with Provision IV, paragraph 5”.

25. **Justification:** Cross-reference sufficient (Notes para. 22). Eliminates redundant explanatory text. Provision X: Consolidation and coordination.

26. **Comment: Allow Multiple Awards (Para. 2).**

27. **Recommendation:** The suggestion in paragraph 26 of the notes is agreed with. It would give the Tribunal the flexibility to make one or more awards, including partial awards. That would preserve the benefits of consolidated proceedings while avoiding the need to wait for every detail to be resolved before moving forward, thus improving efficiency and practicability.

Provision XI: Third-Party Funding

28. **Comment: Clarification of “Indirect Provision.”(Para. 1)**

29. **Issue:** The phrase “indirect provision” lacks sufficient specificity and may be subject to divergent interpretations in practice. Given the increasing sophistication of funding structures, including portfolio funding, securitization of claim proceeds, and multi-layered special purpose vehicles, greater clarity is warranted.

30. **Recommendation:** Add an interpretive paragraph or footnote providing non-exhaustive examples: such as “For the purposes of this provision, ‘indirect provision’ includes but is not limited to:

- (a) Funding channelled through intermediate entities, special purpose vehicles, or related corporate structures;
- (b) Portfolio funding arrangements where multiple claims are funded collectively;
- (c) Securitization or assignment of interests in claim proceeds;
- (d) Insurance-based funding arrangements specifically designed to finance the proceeding.”

31. **Justification:** Prevents circumvention of disclosure obligations through complex corporate structures. Aligns with the principle of substance over form. Provides guidance to tribunals in borderline cases.

32. **Comment: Clarification and Strengthening of Disclosure Obligations (Para. 2).**

33. **Issue:** Paragraph 2 mandates disclosure of the existence of TPF and the funder’s identity, but lacks specificity regarding the timing and scope of disclosure

34. **Recommendation:** The provision could be strengthened by:

- Requiring disclosure at the earliest possible stage, preferably upon registration of the arbitration or immediately upon conclusion of the funding agreement;
- Clarifying that the duty of disclosure is continuous, extending throughout the proceedings; and
- Considering whether key terms of the funding agreement (e.g., degree of control, economic interest) should be disclosed where relevant to conflicts of interest or cost decisions.

35. **Comments on the Implementation of the Supplementary Provisions**

36. Regarding the implementation of the SPs, SCIA suggests that they be incorporated into the UNCITRAL Arbitration Rules (UARs) as an appendix, and that their application be subject to the express consent of the disputing parties. The reasons are as follows: (A) In the ISDS context, *express consent is required; automatic application should be avoided*.

37. In general, the implementation of the SPs should adhere to the principles of selectivity, flexibility and differentiated application. An overly strong automatic application mechanism should not be used to compress the space for ISDS disputing parties to design their own institutional arrangements at the bilateral, regional and multilateral levels. The SPs involve rules that have a material impact on the procedural rights and obligations of the parties, such as evidence production, bifurcation, interim measures, security for costs and third-party funding. Unlike the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (the “Transparency Rules”), which primarily govern the public dimension of investment arbitration as an external procedural arrangement, the SPs directly intervene in the internal operation of the arbitration process and thus constitute a deeper interference with the procedural autonomy of investors and States. It is therefore more appropriate to require the express consent of the disputing parties, rather than to adopt an automatic application model.

(B) The appendix model is simpler and more flexible than the MIIR protocol approach

38. The MIIR protocol path involves multiple layers of consent: ratification of the MIIR, accession to the protocol, and notification of the treaties to be modified. Such a process is relatively cumbersome. By contrast, the appendix model requires only that the disputing parties expressly agree to apply the SPs in their arbitration

agreement. This is a more expeditious procedure and is particularly suitable for the rapid incorporation of the SPs into existing treaties through case-specific consent.

(C) The appendix model preserves the integrity, compatibility and portability of the SPs

39. The SPs are designed to be applicable to different institutional arbitration rules as well as to ad hoc arbitration. Incorporating them as an appendix to the UARs allows them to exist as a self-contained set of provisions, which can be readily referred to and integrated into other arbitral rule systems. This avoids the binding effect and applicability obstacles that would arise if the text of the UARs were directly amended.

Issues for Further Clarification

40. To facilitate the effective implementation of the SPs, SCIA suggests that UNCITRAL provide further guidance on the following aspects:

(A) Compatibility: The specific interface and compatibility between the SPs and the arbitration rules of major arbitral institutions (including the SCIA Arbitration Rules), in particular how to resolve any inconsistency between the institutional rules and the SPs.

(B) Role of arbitral institutions: In proceedings where the parties have chosen to apply the SPs, the specific responsibilities and powers of arbitral institutions in terms of case management, time limit supervision, cost review and award scrutiny.

(C) Collaborative testing and refinement: SCIA encourages UNCITRAL to strengthen and promote cooperation with different arbitral institutions (including SCIA) to test the operability of the SPs through mock cases or actual proceedings, accumulate practical experience and continuously refine the text.

Expectations for Further Reform

41. SCIA reaffirms the importance and positive value of the SPs and appreciates the efforts made by the UNCITRAL Secretariat and the Working Group. SCIA is ready to provide further cooperation and support in the promotion, rule alignment and practical testing of the SPs. At the same time, SCIA suggests that UNCITRAL continue to pursue deeper institutional reforms, including the establishment of a standing appellate mechanism or other review mechanisms, reform of arbitrator and decision-maker selection, dispute prevention and management mechanisms, and mediation mechanisms, so as to build a more comprehensive, fair and sustainable system for the resolution of international investment disputes.

J. Singapore International Arbitration Centre (SIAC)

Introduction

1. We welcome the opportunity to provide these comments on the draft supplementary provisions on the conduct of proceedings to resolve international investment disputes (“SPs”) set out in the UNCITRAL Secretariat’s Note dated 15 April 2026 ([A/CN.9/1246](#)) (“**Secretariat’s Note**”).

2. This memo is structured to include notes, comments, and considerations on the following basis:

2.1 Notes provide context

2.2 Comments may be referred to verbatim at the meeting of the Commission or the Working Group

2.3 Considerations set out reasons for our comments, where applicable.

We request that the Notes and Considerations set out here are not referred to verbatim at meetings of the Commission or the Working Group.

3. Comment: We welcome the formulation of the draft SPs aimed at clarifying and enhancing the rules governing ISDS proceedings while seeking to harmonize approaches on key procedural issues.

General drafting approaches

Relationship between the SPs and institutional rules

4. Comment: We note that the draft SPs are contemplated not only for use in *ad hoc* arbitration, but also as a framework that may complement institutional arbitration rules. In our view, the draft SPs should be carefully drafted to avoid situations in which inconsistencies between the SPs and institutional rules may give rise to ambiguity or impede the effective operation of the applicable institutional rules. We note from paragraph 51 of the Secretariat's Note that the SPs are envisaged to also apply where "the disputing parties could agree to the preferred arbitration rules as complemented by [the Supplementary Provisions] (for example, in an investment contract), to the extent permitted by and compatible with those arbitration rules". It is advisable in our view to clarify in the SPs that they are intended to supplement, rather than displace institutional rules, except where the parties have expressly agreed otherwise.

5. Considerations: Where the SPs are applied alongside institutional rules, such as the SIAC Rules 2025, potential conflicts or incompatibilities may arise in relation to matters already governed by those rules, including, *inter alia*, the role of the administering institution, costs, procedural timelines, and special procedures such as consolidation, objections to claims that are manifestly without legal merit, and emergency interim relief. Arbitral institutions, including SIAC, rely on their comprehensive and internally integrated rules to provide case management services. While many institutional rules technically allow party modifications, such modifications are uncommon in practice and are generally discouraged in order to preserve procedural integrity and efficiency. Applying the SIAC Rules, as supplemented rather than modified by the SPs, may better ensure the efficient resolution of ISDS disputes administered by SIAC.

6. Comment: It is helpful for the SPs to recognize that certain functions under institutional rules are reserved to the institution and are not matters falling within the tribunal's authority alone. The SPs ought to preserve the integrity of institutional frameworks and avoid overriding institution-specific mechanisms. This is particularly important if the SPs are intended to be used flexibly across different institutional regimes.

7. Considerations: Under the SIAC Rules 2025 and the SIAC Investment Rules 2017, the power to extend the time limits in relation to the issuance of a decision regarding an objection based on the claim being manifestly without legal merit and certain final awards is reserved to the Registrar of the Court of Arbitration of SIAC ("**Registrar**").¹⁷ This constitutes an important administrative function through which SIAC supervises the efficiency of arbitral proceedings. Similar approaches, under which the arbitration institution rather than the tribunal controls the time limits for the issuance of awards, may also be observed in other institutional rules.¹⁸ The draft SPs, however, vest the power to extend such time limits solely in the tribunal. The SPs should avoid reallocating functions that are, under institutional rules, reserved to the institution and its bodies. These functions are integral to ensuring procedural

¹⁷ Under Rule 47.4 of the SIAC Rules 2025, the time limit for the tribunal to make a decision regarding an objection based on the claim being manifestly without legal merit is 45 days (rather than 60 days as proposed in the Provision VIII of the draft SPs) and the time limit can only be extended by the Registrar. The power to extend such time limit is also reserved to the Registrar under Rule 26.4 of the SIAC Investment Rules 2017.

¹⁸ For example, Article 34 of the ICC Arbitration Rules 2026 vests the President of the Court of Arbitration with the power to fix or extend the time limit for rendering the final award.

discipline, efficiency and consistency in administered arbitration. In our view, this would better facilitate the application of the SPs alongside institutional rules.

8. Comment: While SIAC supports the objective of enhancing procedural consistency and efficiency in ISDS, the draft SPs raise fundamental questions as to their interaction with institutional arbitration frameworks. In particular, absent clearer articulation of their supplementary nature, the draft risks creating uncertainty, duplication and unintended displacement of institutional rules and functions. To this extent, we do not necessarily agree that a conflict rule to address situations where both the SPs and any institutional rules agreed upon apply, the SPs ought to prevail.¹⁹

9. Comment: The Commission may wish to consider:

9.1 not specifying a default rule and providing flexibility to each State to negotiate with its treaty partners whether the SPs or any institutional rules agreed upon shall prevail in the event of any inconsistency; or

9.2 alternatively, including an express clause clarifying that, where the SPs are applied in conjunction with institutional rules, the institutional rules shall prevail in the event of any inconsistency unless the parties have expressly agreed otherwise.

10. Comment: As a matter of general drafting approach:

10.1. the SPs should operate as gap-filling provisions, rather than regulating matters already comprehensively addressed in institutional rules;

10.2. where overlap exists, the text should include express carve-outs (e.g. “unless otherwise provided under the applicable arbitration rules”);

10.3. the drafting should preserve flexibility across procedural systems, rather than impose uniform mandatory structures.

Requirement to consult with parties

11. Note: Paragraph 9 of the Secretariat’s Note invites the Commission to consider whether the SPs should include a general provision similar to ICSID Rules 27(3), which could read: “[t]he Tribunal shall consult with the disputing parties prior to making an order or a decision it is authorized by the Supplementary Provisions to make on its own initiative”.²⁰

12. Comment: We recommend that the Commission consider adopting the approach proposed, and, accordingly, deleting the repeated bracketed phrases in some sections of the SPs on the need to consult with parties. In our view, such a general provision would improve drafting economy, reduce the risk of silence in one provision being read as intentional exclusion of the need to consult in another provision, and reflect current arbitration practices.

Provision-specific notes and comments

13. The following paragraphs set out provision-specific notes and comments guided by the considerations elaborated above.

Provision I: Evidence

14. Comments:

14.1 Provision 1 is helpful in consolidating core rules on burden of proof, document production, admissibility and the tribunal’s evidentiary discretion.

14.2 Paragraphs 3 and 4 on document production may benefit from clearer separation between *inter-partes* document exchange and evidence submitted to the tribunal.

¹⁹ Secretariat’s Note, para 52.

²⁰ Secretariat’s Note, para 9.

14.3 In paragraph 3, the phrase “to the requesting party” should be retained to clarify that the provision concerns production between parties, not necessarily admission into the evidentiary record.

14.4 In paragraph 4, it would be advisable to consider adding the possible existence of the documents as an express factor, for example, by adding a subparagraph: “(e) whether the requested documents are likely to exist.” The current phrase “all relevant circumstances” may already cover this but there is benefit to expressly stating this factor.

14.5 In paragraph 5, the Commission may consider expressly articulating the tribunal’s power to draw appropriate inferences from such non-compliance.

14.6 In paragraph 8(c), the current phrase “applicable law or privileges” may invite dispute over the “applicable law”. The provision may be rephrased as follows: “The use of which as evidence is prohibited, in the case of the evidence of the respondent State, under the law of the respondent State, and in the case of other evidence, under any law or rules determined by the tribunal to be applicable to the use of such evidence.”²¹

Provision III: Interim measures

15. Comment: In paragraph 2, it appears unnecessary to add “and without limitation” as currently suggested in brackets.

16. Considerations: The chapeau already defines an interim measure as “any temporary measure,” and the phrase “for example” demonstrates the non-exhaustive nature of the list that follows.

17. Comment: In paragraph 3, the Commission may wish to consider whether it is advisable to prescribe the standards applicable to a tribunal’s determination of a request for interim measures, given that such matters arguably extend beyond the merely “procedural” aspects of investor-State arbitration. While transnational standards for the granting of interim relief are widely recognized, the SPs may need to retain sufficient flexibility to accommodate the nuanced approaches adopted across different jurisdictions for the grant of interim measures.

18. Comment: Paragraph 10(b) introduces a substantive limitation linked to a State’s right to regulate. The Commission may wish to consider whether such a limitation falls within the intended procedural scope of the SPs and is unduly broad and uncertain as to its scope of application.

19. Considerations:

19.1 Draft paragraph 10(a) is understandable in principle. Such a safeguard may be appropriate, provided it is narrowly confined to measures that would directly suspend, restrain or prevent the application of the challenged measure itself. However, care should be taken to ensure that this limitation does not unduly restrict the tribunal’s ordinary powers to preserve the integrity of the proceedings. A tribunal should remain able, where appropriate, to order measures directed at preserving evidence, preventing aggravation of the dispute, protecting confidentiality, maintaining procedural fairness, or preserving the effectiveness of the eventual award, so long as such measures do not in substance enjoin the application of the challenged State measure.

19.2 We understand the legitimate underlying concern sought to be addressed by draft paragraph 10(b). However, the proposed wording appears broad and potentially uncertain. This may make interim relief unduly difficult to obtain and may invite satellite disputes over whether a particular interim order has some indirect effect on a State’s regulatory autonomy. There is also a risk that such ancillary disputes may require the tribunal to engage prematurely with merits

²¹ See Article 7(2)(c) of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration.

issues. A categorical prohibition at the interim stage may either require the tribunal to prejudge issues concerning whether a measure is properly characterised as an exercise of the State's right to regulate in the public interest, whether it is proportionate, whether it is discriminatory, and whether it is consistent with the applicable treaty, which may be questions in the arbitration. Alternatively, it might require tribunals to defer excessively to the State's own characterisation of the measure.

19.3 It may be advisable to consider treating the State's right to regulate in the public interest instead as an important factor in the tribunal's assessment of whether interim relief is necessary, proportionate and appropriate. This would preserve the tribunal's ability to avoid undue interference with public-interest regulation, while maintaining the flexibility needed to protect the integrity of the arbitral process. This would address the legitimate concern that arbitral tribunals should not use interim measures to restrain public-interest regulation, while avoiding an overly broad rule that could impair the tribunal's ability to preserve the fairness and effectiveness of the proceedings.

Provision IV: Manifest lack of legal merit

20. Comment: As noted at [10] above, we recommend clarifying the supplementary nature of the SPs vis-à-vis institutional rules. Alternatively, it is advisable to add the phrase "[unless otherwise stipulated by the applicable arbitration rules]" to paragraphs 2 and 4.

21. Considerations: We note that Provision IV, as it currently stands, risks conflicting with the relevant provisions under the SIAC Rules 2025 and SIAC Investment Rules 2017, as follows:

	Draft Provision IV	Rule 47, SIAC Rules 2025	Rule 26, SIAC Investment Rules 2017
Time limit for objections	"as soon as possible after the constitution of the Tribunal and no later than 60 days thereafter" (paragraph 2)	No time limit; the tribunal shall determine whether the application is allowed to proceed on a case-specific basis	
Time limit for tribunal decisions	Tribunal decision within 60 days of the last submission (paragraph 4)	If the tribunal decides to allow the objection to proceed, it shall make a decision, ruling, order, or award within 45 days from the date of filing the application, unless the Registrar extends the time.	If the tribunal decides to allow the objection to proceed, it shall make a decision, ruling, order, or award within 90 days from the date of filing the application, unless the Registrar extends the time.
Procedure	One-stage procedure	Two-stage procedure: first, the tribunal decides whether the objection should be allowed to proceed; and second, if it allows the objection to proceed, it shall give all the parties opportunities to be heard and" make a decision, ruling, order, or award on the application, with reasons which may be in summary form" within the time limit.	

Provision V: Security for costs

22. Comments:

22.1 The draft provision provides useful guidance on security for costs, particularly in relation to third-party funding and non-compliance risks.

22.2 At paragraph 8, we recommend the retention of the requirement to consult with parties as set out in the text in brackets.

22.3 The Commission may wish to consider confirming expressly that security for costs may also be ordered on the tribunal's own initiative in exceptional cases, for example, as a specific sanction for non-disclosure based on SP XI(7) so that the request-based structure in paragraph 1 of SP V and SP XI's sanction structure are reconciled on the face of the text.

23. Considerations: In our view, paragraph 4 appropriately avoids treating third-party funding as a standalone consideration for ordering security for costs. In this respect, Rule 38.5 of the SIAC Rules 2025 provides that "[t]he disclosure and existence of a third-party funding agreement on its own shall not be taken as an indication of the financial status of a party." In our view, there is some benefit to stating this expressly.

Provision VII: Termination of the proceeding

24. Comment: In paragraph 5, we agree that the Commission ought to consider using the phrase "any other reasons" instead of "any reason not mentioned in paragraph 4" for a wider formulation.

Provision VIII: Period of time for making the award

25. Comments:

25.1 At paragraphs 1 and 3, the Commission may wish to consider adding the phrase "unless otherwise stipulated under applicable institutional rules" to avoid inconsistencies between the timelines in the SPs and under applicable institutional rules.

25.2 At paragraph 3, we agree with the suggested inclusion of the phrase "and after consulting with the disputing parties".

25.3 For good order, the SPs should clarify that failure to meet the time limit does not, by itself, deprive the tribunal of jurisdiction or affect the validity or enforceability of the award, unless the applicable treaty or rules provide otherwise.

26. Considerations: The power to extend the timelines for providing draft awards for review by the institution or for making awards is often reserved to administering institutions, as an administrative function through which institutions supervise the efficiency of the conduct of arbitral proceedings. It is advisable for the Commission not to vest tribunals unfettered power to extend time limits where there is an administering institution. In addition, we agree with the suggested inclusion of the need to consult with the disputing parties on any proposed extensions of time if such extensions are to be granted by the tribunal. This preserves the integrity of the proceedings.

Provision IX: Allocation of costs

27. Comment: We suggest reconsidering the need for paragraph 5 particularly as to whether ordinary legal costs paid by a funder remain recoverable.

28. Considerations: We note that paragraph 5 appears to be a provision with substantive consequences on the ability of parties to claim third party funding costs. A blanket rule excluding all costs that "relate to or arise from third-party funding" risks going further than is necessary. It may capture not only a funder's uplift, success fee,

multiple, or share of recovery, but also other funding-related costs that may, in appropriate circumstances, be more closely connected with the conduct of the arbitration. It also does not distinguish between funding obtained as a commercial risk-allocation choice and funding obtained because a party could not otherwise pursue or defend the claim. Questions concerning third-party funding costs are highly fact-sensitive and may depend on the nature of the funding arrangement, the circumstances in which funding was obtained, the parties' conduct, whether the costs were reasonably and proportionately incurred, and whether the opposing party had adequate notice of the potential cost exposure.

29. The concern that funder returns or outcome-based remuneration should not become routinely recoverable is legitimate. However, that concern can be addressed through a more tailored provision preserving tribunal discretion, rather than through an absolute prohibition. A categorical exclusion may also sit uneasily with the flexible and discretionary costs regime under the UAR.

Provision X: Consolidation and coordination

30. Comment: We agree that, in paragraph 2, the Commission may consider the use of the phrase "an award that addresses all consolidated arbitrations," instead of "one award." This allows for partial or multiple awards while still signalling that consolidation joins the disputes procedurally.

Provision XI: Third-party funding

31. Comments:

31.1 We suggest the Commission consider whether disclosure of all listed items as set out paragraph 2, particularly the items in (c) to (f), should be mandatory at the outset or whether some should be available only upon request by a party and order of the tribunal, in order to avoid disproportionate burdens.

31.2 The Commission may consider whether there is benefit to introduction of a provision in the SPs to prescribe a mechanism through which tribunals may address a conflict of interest caused by the introduction of funding after the constitution of the tribunal by being empowered to direct the party to withdraw from the funding agreement.²² The Commission is invited to consider whether similar mechanisms would be of practical assistance to preserve the integrity of tribunals and the conduct of ISDS proceedings.

Implementation of the SPs

32. Note: We note that there is benefit to considering the approach adopted with the *UNCITRAL Transparency Rules* on the implementation of the SPs. This allows wider deployment of the SPs and parties and States to benefit from the procedural features that the SPs offer for ISDS proceedings. Given the primarily procedural nature of the SPs, there appears to be a relatively lower downside to an automatic application of the SPs provided that the temporal scope of application is clearly set out in a similar manner as Articles 1 and 2 of the *UNCITRAL Transparency Rules*.

33. However, we can see some issues with the formulation of the SPs as an indivisible package. Some States or users may support the adoption of some SPs but not others. UNCITRAL may wish to consider whether there is scope for the SPs to be made available in modules to allow for specific reservations or opt-outs particularly for contested or relatively novel provisions.

²² See rule 38.3 of the SIAC Rules 2025: "38.3 After the constitution of the Tribunal, a party shall not enter into a third-party funding agreement which may give rise to a conflict of interest with any member of the Tribunal. In such circumstances, the Tribunal may direct the party to withdraw from the third-party funding agreement."

Conclusion

34. SIAC remains supportive of the development of a framework that can operate across both ad hoc and institutional arbitration, provided that sufficient flexibility is preserved and clarity is provided on the interaction between the proposed SPs and current institutional rules and frameworks.

K. Stockholm Chamber of Commerce (SCC) Arbitration Institute

About the SCC

1. The SCC Arbitration Institute (SCC) has provided a neutral and independent forum for the resolution of disputes for over 100 years. Since 1993, the SCC has administered investor-State dispute settlement (ISDS) cases and has registered over 130 such cases to date. As of 2026, 96 investment agreements in force refer to either the SCC or Stockholm in their dispute resolution clauses, including the multilateral Energy Charter Treaty. The SCC has been a longstanding observing organization at UNCITRAL and has participated in Working Group III since the commencement of its mandate on the possible reform of investor-State dispute settlement. The SCC also participates as an observer in Working Group II.

The draft supplementary provisions

2. The SCC welcomes the progress reflected in document [A/CN.9/1246](#) and commends the Working Group for the considerable effort invested in developing the draft supplementary provisions on the conduct of proceedings (the SPs). At its fifty-third session, the Working Group agreed that the SPs would form a supplement to the UNCITRAL Arbitration Rules and part of a protocol to the multilateral instrument on ISDS reform, as a set of provisions that States could opt into as one package. The SCC recognizes the importance of that work and the value of a coherent, harmonised procedural framework for ISDS proceedings.

Purpose of these comments

3. The SCC submits the comments below in response to Chapter III.C of the document, which notes that it would be possible for disputing parties to apply the SPs to arbitrations not governed by the UNCITRAL Arbitration Rules, allowing them to benefit from the ISDS-targeted provisions developed by UNCITRAL whilst retaining their preferred choice of institutional arbitration rules. The SCC's comments are directed at questions that may arise when the SPs are applied alongside an institutional framework, and are intended to assist the Commission in ensuring that the SPs operate consistently with the institutional architecture that the parties have chosen.

The SCC's institutional framework

4. At the SCC, the Board holds primary decision-making authority over the administration of cases, including:

- (i) the determination of advances on costs;
- (ii) the appointment and challenge of arbitrators;
- (iii) the extension of award deadlines;
- (iv) consolidation; and
- (v) the final determination of the costs of the arbitration.

5. The Board may delegate these functions to the Secretariat, including decisions on advances on costs, extension of time for rendering an award, and the fixing of the costs of the arbitration. In practice, the Secretariat exercises these delegated functions in the day-to-day administration of cases, acting with a light-touch approach focused on maximising party autonomy and ensuring that cases progress efficiently.

References to the administering institution throughout the SPs should, in the SCC's view, be understood as encompassing both the Board and the Secretariat acting within any applicable delegation framework.

The SCC's approach

6. The SCC's approach to ISDS has been described as the Swedish way: lean, efficient, and party driven. The SCC's comments below reflect that tradition and are intended to assist the Commission in ensuring that the SPs, where applied in an institutional setting, operate consistently with the institutional architecture that the parties have chosen. These comments are submitted ahead of the fifty-ninth session of the Commission (New York, 29 June – 10 July 2026) and the SCC remains available to provide further information or clarification upon request.

Supplementary provision	Provision	SCC comment	SCC Proposal
Chapter III.C – Conflict rule (para. 52)	“Considering that the supplementary provisions have been prepared in the context of ISDS and that the parties have chosen to apply the supplementary provisions, it would make sense for the supplementary provisions to prevail in those cases.” (para. 52)	The SCC notes that the proposed conflict rule, which would give the SPs primacy over institutional rules in the event of incompatibility, may warrant further consideration when applied in an institutional setting. At the SCC, the Board holds primary decision-making authority, with delegated authority exercised day-to-day by the Secretariat. The Board may delegate decisions to the Secretariat, including decisions on advances on costs, extension of time for rendering an award, and the fixing of the costs of the arbitration. These functions form part of the institutional framework that the parties have chosen and may not, in the SCC’s view, be treated in the same way as default procedural rules that parties may modify by agreement. The SCC also notes that references to the “administering institution” throughout the SPs would, in the SCC context, be understood as encompassing both the Board and the Secretariat acting within any applicable delegation framework.	The SCC invites the Commission to consider a tiered approach to the conflict rule: where the SPs address a matter that is the subject of a mandatory institutional function under the applicable rules (including cost determination, extension of award deadlines, arbitrator appointments, challenges, and consolidation), the institutional rules would prevail; where the applicable rules address the matter by way of a provision that is itself subject to party modification, the SPs would apply as an agreed variation; and where the applicable rules are silent, the SPs would fill the gap.
SP VIII – Period of time for making the award	“Unless otherwise agreed by the disputing parties, the Tribunal shall make an award no later than: (a) 60 days after the last submission ... for awards pursuant to paragraph 8 of supplementary provision IV; (b) 180 days after the last submission ... for awards in a separate phase; (c) 240 days after the last submission ... in all other cases.”/“When there are	The SCC notes that SP VIII(3) as currently drafted confers on the Tribunal a power to extend its own deadline by advising the disputing parties, which may not fully account for the role of the administering institution in managing award timelines. Under Article 43 of the SCC Rules, the time limit for the final award may be extended by the Board upon a reasoned request from the arbitral tribunal. In practice, the Secretariat acts on delegated authority and may extend the time limit ex officio where it considers that the award may not be rendered on time, without requiring a formal Board meeting. The SCC also observes that the 240-day period in SP VIII(1)(c) is	The SCC invites the Commission to consider amending SP VIII(3) to provide that, in institutionally administered proceedings, the Tribunal shall submit a reasoned request for an extension to the administering institution, which would decide on the request in accordance with its rules and any applicable delegation. The SCC also suggests that the conflict rule address the interaction between the 240-day limit and any shorter time limit under the applicable institutional rules.

Supplementary provision	Provision	SCC comment	SCC Proposal
	special circumstances justifying a delay, the Tribunal may, after advising the disputing parties of those circumstances, extend the period of time in paragraph 1.” (SP VIII(1), (3))	longer than the SCC’s standard six-month time limit under Article 43, and that the interaction between the two limits may benefit from clarification in the context of the conflict rule.	
SP IX – Allocation of costs	“Costs incurred by a disputing party that: (i) amount solely to a reward or bonus to its legal representatives based on the outcome of the proceeding ... or (ii) relate to or arise from third-party funding, shall not be included in the costs of the proceeding.”/“The Tribunal shall ensure that all decisions on costs are reasoned and form part of an award.” (SP IX(5), (7))	The SCC notes that the requirement in SP IX(7) that all decisions on costs form part of an award may require clarification in the context of institutionally administered proceedings. Under Articles 49(2)–(3) of the SCC Rules, before making the final award the Arbitral Tribunal shall request that the Board finally determine the costs of the arbitration, and the Tribunal shall include those costs in the final award as determined by the Board. In practice, the Secretariat determines costs on delegated authority, preferably within three days of the tribunal’s request. A provision requiring cost decisions to form part of interim or partial awards would raise questions as to how it interacts with this process. On SP IX(5), the SCC observes that Article 50 of the SCC Rules grants the Tribunal discretion to allocate any reasonable costs incurred by a party, and a categorical exclusion of certain categories of cost may give rise to questions of consistency with that framework.	The SCC invites the Commission to consider clarifying that SP IX, as it relates to the determination of institutional costs, operates alongside rather than in substitution for the cost-determination process under the applicable institutional rules. The SCC also suggests that the Commission consider whether SP IX(5) might be expressed as a rebuttable default – such costs would not be included unless the Tribunal, applying a standard of reasonableness, determines otherwise in the circumstances of the case.
SP II – Bifurcation	“When a request for bifurcation is made together with a plea that the Tribunal lacks jurisdiction, the proceeding on the merits shall be suspended until	The SCC notes that the automatic suspension of merits proceedings upon a jurisdictional bifurcation request may give rise to practical questions in the context of proceedings where the Tribunal would otherwise retain full discretion over the timetable. Under the SCC Rules, the Tribunal has procedural discretion to	The SCC invites the Commission to consider whether the automatic suspension in SP II(3) might be replaced with a discretionary stay, leaving it to the Tribunal to determine, having regard to all the circumstances, whether the merits should be suspended pending its decision on bifurcation. The SCC also suggests including an express mechanism

Supplementary provision	Provision	SCC comment	SCC Proposal
	the Tribunal decides whether to bifurcate the proceeding, unless the disputing parties agree otherwise.”/“The Tribunal shall decide on the request for bifurcation within 30 days after the date of the last submission on the request.” (SP II(3), (5))	manage the timetable and there is no automatic stay mechanism; the Tribunal assesses the circumstances of each request. On the 30-day decision deadline, the SCC observes that the Secretariat’s delegated authority to decide on extensions of time means this is achievable within the institutional framework in most cases.	for the administering institution to extend the 30-day decision period where the circumstances of the case warrant it.
SP III – Interim measures	“The Tribunal may, at the request of a disputing party, grant interim measures.”/“The Tribunal shall not grant an interim measure which: (a) attaches or enjoins the application of the measure alleged to constitute a breach ... [or (b) impedes a State’s right to regulate in the public interest].” (SP III(1), (10))	The SCC notes that SP III does not address emergency arbitration. The SCC introduced an Emergency Arbitrator procedure in 2010, which is available in ISDS arbitrations administered under the SCC Rules. The Board appoints an Emergency Arbitrator within 24 hours of the application, and the Emergency Arbitrator shall render a decision within five days of referral. Where the SPs are applied in conjunction with the SCC Rules, the relationship between SP III and the Emergency Arbitrator procedure may benefit from clarification. On SP III(10)(b), the SCC notes the Commission’s own observation that it may be questioned whether the Tribunal would be in a position to make the necessary assessment given the interim character of the measures and that, considering their temporary nature, it might be rare for interim measures to impede a State’s right to regulate.	The SCC invites the Commission to consider including in Chapter III.C a clarification that SP III applies to interim measures granted by the constituted Tribunal and does not affect the Emergency Arbitrator procedure available under the applicable institutional rules. The SCC also suggests that the Commission consider whether SP III(10)(b) might be expressed as a factor for the Tribunal to weigh in its assessment rather than as a hard prohibition.
SP IV – Manifest lack of legal merit	“A disputing party shall make the objection as soon as possible after the constitution of the Tribunal and no later than 60 days thereafter.”/“The Tribunal shall decide on	The SCC notes that Article 39 of the SCC Rules provides a summary procedure for the determination of issues including those going to jurisdiction, admissibility, and the merits, without the dual 60-day structure found in SP IV. The SCC also observes that the 60-day filing window, running from the constitution of	The SCC invites the Commission to consider whether the filing deadline in SP IV(2) might run from the submission of the claimant’s full statement of claim, or from the first procedural order, rather than from the constitution of the Tribunal. The SCC also suggests that an

Supplementary provision	Provision	SCC comment	SCC Proposal
	the objection within 60 days after the date of the last submission on the objection.” (SP IV(2), (4))	the Tribunal, may give rise to practical questions in cases where the statement of claim is filed at a later stage, such that a party may be called upon to raise a manifest lack of legal merit objection before having seen the full claim.	institutional extension mechanism be expressly available in respect of the 60-day period for the Tribunal’s decision.
SP V – Security for costs	“In determining whether to order security for costs, the Tribunal shall consider all relevant circumstances, including: (a) that party’s ability ... (b) that party’s willingness ... (c) the effect ... (d) the conduct of the parties ... (e) the existence of third-party funding [, including whether the third-party funder agrees to cover any adverse decision on costs].”/“The Tribunal shall not order a State ... to provide security for costs, unless there are exceptional circumstances.” (SP V(4), (5))	The SCC notes that Article 38 of the SCC Rules provides that the Tribunal may, in exceptional circumstances, order a claimant to provide security for costs. The multi-factor framework in SP V(4) is broadly consistent with the approach taken in SCC-administered proceedings and the SCC welcomes it. On SP V(4)(e), the SCC notes that the document clarifies that the existence of third-party funding is not a standalone factor to determine whether to order security for costs but should be considered in conjunction with the other circumstances listed. The SCC welcomes this clarification and observes that the square-bracketed text – addressing whether the funder agrees to cover adverse cost decisions – may warrant further consideration, as it could in practice carry significant weight in the Tribunal’s assessment. The SCC supports SP V(5)’s presumption in favour of States.	The SCC invites the Commission to consider whether the square-bracketed text in SP V(4)(e) might be removed or qualified, so as to preserve the character of third-party funding as one factor among several rather than a factor that may in practice become determinative. The SCC also suggests that, where an institution administers the proceedings, the consequences of noncompliance with a security for costs order under SP V(8) be coordinated with the institution’s administration of cost deposits.
SP X – Consolidation and coordination	“Parties to two or more pending arbitrations may agree to consolidate or coordinate those arbitrations.”/“The parties shall ... consult with those tribunals and institutions to ensure that the proposed terms are capable of being	The SCC notes that under the SCC Rules, consolidation is a function of the Board. The provision as currently drafted would have the administering institution play a consultative role in what is, under the SCC Rules, a decision-making function. The SCC also observes that, in cases involving more than one administering institution, guidance may be helpful on which institution administers the consolidated proceedings and how arbitrator	The SCC invites the Commission to consider whether SP X might expressly recognize the administering institution’s decision-making role in respect of consolidation where the applicable rules so provide, rather than treating the institution’s role as consultative only. The SCC also encourages the Commission to prioritise the development of the treaty-based consolidation mechanism.

Supplementary provision	Provision	SCC comment	SCC Proposal
	implemented.” (SP X(1), (4))	appointments and costs are managed across the consolidated case. The SCC further notes that the treaty-based (nonconsensual) consolidation mechanism is to be developed at a later stage, and observes from its experience administering multiple related proceedings arising from the same treaty that a purely consensual model may be of limited practical effect where the parties’ strategic interests diverge.	
SP XI – Third-party funding	“The funded party shall disclose [the funder’s identity and terms] to the other disputing parties ... when the recourse to the proceeding is initiated ... The funded party shall disclose the information listed in paragraph 2 to the Tribunal as soon as it is constituted.”/“If the funded party fails to comply with the disclosure obligations ... the Tribunal shall take any appropriate measure, such as: (a) ordering security for costs; (b) taking the failure into account when allocating costs; or (c) suspending the proceeding.” (SP XI(3), (7))	The SCC supports the transparency rationale underlying SP XI and welcomes the disclosure requirements. The SCC notes, however, that the timing of disclosure to the administering institution may benefit from clarification. At the SCC, the Secretariat prepares proposals for arbitrator appointments and carries out initial conflict-of-interest screening before the Board acts on appointments – steps that take place before the Tribunal is constituted. Information about the identity of the funder and its beneficial owners is directly relevant to that screening process. The SCC observes that, as currently drafted, the provision does not require disclosure to the administering institution at any stage; disclosure to the Tribunal is required upon its constitution, which is after the critical appointment steps have occurred. On SP XI(7), the SCC notes that termination of proceedings is a significant institutional event in the SCC framework.	The SCC invites the Commission to consider amending SP XI(3) to require the funded party to disclose the information listed in SP XI(2) to the administering institution simultaneously with disclosure to the other parties at the initiation of recourse, so that the institution may carry out effective conflict-of interest screening prior to arbitrator appointments. The SCC also suggests that, where an institution administers the proceedings, any termination pursuant to SP XI(7) require notification to, and non-objection from, the administering institution before taking effect.

L. International Federation for Investment Law and Arbitration (IFILA)

1. In advance of UNCITRAL's 59th Session, the International Federation for Investment Law and Arbitration ("IFILA") respectfully submits for consideration the following observations on the draft supplementary provisions on the conduct of ISDS proceedings (the "Supplementary Provisions" or "Provisions").
2. IFILA is an independent, non-profit think tank that works to promote public understanding and informed discussion of all aspects of international investment law and arbitration. IFILA was launched this year as the successor organization to the European Federation for Investment Law and Arbitration ("EFILA") in order to expand EFILA's mission on a global scale. IFILA aims to do this, in part, by providing thoughtful, practitioner-informed commentary to support capacity-building and the progressive development of international investment law and procedure.
3. IFILA notes the Working Group's goals to clarify, enhance, and harmonize the rules governing ISDS proceedings, including by aligning the Supplementary Provisions with the ICSID Arbitration Rules (2022) ("2022 ICSID Rules" or "ICSID Rules") to the extent possible ([A/CN.9/1246](#), paragraph 7). IFILA offers the following observations in light of those goals:

- 1) *Tribunal discretion to determine admissibility of evidence*: As drafted, Supplementary Provision I(8) states that a tribunal "shall" exclude certain categories of evidence, including evidence that was obtained contrary to the law of the State in which it was collected, or where the use of such evidence would be prohibited under applicable law or privileges. The mandatory nature of this provision is in tension with the discretion granted to a tribunal under Provision I(7) to determine the admissibility of evidence, which discretion is consistent with international practice (e.g., 2022 ICSID Rules, Rule 36(1); UNCITRAL Model Law, Art. 19(2)). Indeed, IFILA notes the Working Group's comment to the Commission to "[c]onfirm that broad discretion is provided to the Tribunal to make determinations under paragraph 8, including with respect to the State where the evidence was collected and the applicable law (also relating to where the use of such as evidence is prohibited)" ([A/CN.9/1246](#), page 5). Consistent with this comment and international practice, IFILA recommends replacing the word "shall" in Provision I(8) with "may" in order to unambiguously preserve a tribunal's discretion to determine the admissibility of evidence in the light of the circumstances of the case before it. This change would, for example, clarify a tribunal's authority to consider whether the exclusion of evidence would unfairly disadvantage a party from a jurisdiction with more permissive evidentiary rules (which, in a given case, could be either the claimant or respondent State). These concerns may be heightened in ISDS disputes where a respondent State could potentially invoke provisions of its internal law to render evidence—including evidence of internationally wrongful acts—inadmissible.²³ Equally, an investor might attempt to invoke its own home State's internal law to withhold evidence of its own wrongdoing. IFILA wishes respectfully to underscore the importance of preserving a tribunal's discretion to weigh competing interests in such instances.
- 2) *Requirements for obtaining interim measures*: Supplementary Provision III(3)(b) requires a party seeking interim measures to satisfy a tribunal that there is "a reasonable possibility that the requesting party will succeed on the

²³ Such a result would be difficult to reconcile with the principle that States may not use their internal law as a means of escaping international responsibility. *See generally* Draft articles on Responsibility of States for Internationally Wrongful Acts, as adopted by the International Law Commission at its fifty-third session (2001) and submitted to the General Assembly as a part of the Commission's report covering the work of that session ([A/56/10](#)); Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, at art. 3 with commentaries.

merits of the claim.” This requirement, though present in many domestic legal systems as well as Article 26 of the 2021 UNCITRAL Rules, is absent from other institutional rules (e.g., 2022 ICSID Rules, Rule 47) and potentially raises concerns regarding prejudgment of the merits, particularly given the early stage in the proceedings during which interim measures are commonly sought. Arbitrator independence and impartiality is foundational to international arbitration’s legitimacy, including ISDS, and IFILA therefore invites the Commission to consider potentially removing Provision III(3)(b) or substituting the “reasonable possibility [of success]” requirement with an alternative, less determinative standard, such as “facially plausible” or “non-frivolous.”

- 3) *Disclosure of third-party funding terms*: IFILA notes that much of Supplementary Provision XI tracks Rule 14 of the 2022 ICSID Rules. As drafted, however, Provision XI(4) also explicitly raises the possibility that a tribunal may, “if it considers it necessary,” require a funded party to disclose the “terms” of the funding agreement supporting its pursuit of claims against a respondent State. While disclosure of third-party funding has, as under the ICSID Rules, become increasingly standard with a view to identifying potential conflicts of interest, the same is not true of disclosure of the “terms” of a third-party funding agreement. Nor is it clear how disclosure of the terms of a funding agreement or of other proceedings funded by a third-party funder against a respondent would help to protect against conflicts of interest. At the same time, requiring such disclosures has the potential seriously to undermine the equality of arms between parties and to invite abusive tactics.²⁴ To avoid inviting these difficulties while retaining discretion for tribunals to address complex circumstances, IFILA respectfully recommends that Supplementary Provision XI(4) be revised to simply provide that a tribunal may “if it considers necessary, require the funded party to disclose, to the Tribunal and the other disputing parties, further information regarding the funding agreement.” IFILA notes in this regard that Supplementary Provisions XI(2)(c)–(f) already contemplate disclosures beyond those required under ICSID Rule 14.

²⁴ Disclosure of the terms of a funding agreement could allow an unscrupulous respondent to calibrate its strategy to exhaust a funded party’s resources and thus invite abuse in much the same way as would disclosure of a respondent’s budget for defence or settlement of a claim, or the economic terms of that respondent’s engagement of counsel.