UNCITRAL Model Clauses on Specialized Express Dispute Resolution

UNITED NATIONS

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UNCITRAL Model Clauses on Specialized Express Dispute Resolution

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Contents

Decision by the United Nations Commission on International Trade Law on the adoption of the UNCITRAL Model Clauses on Specialized Express Dispute Resolution[1]

The United Nations Commission on International Trade Law,

Recalling its mandate under General Assembly resolution 2205 (XXI) of 17 December 1966 to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Recalling also its decision at the fifty-fifth session, in 2022, to entrust Working Group II (Dispute Settlement) with considering the topics of technology-related dispute resolution and adjudication jointly, and with considering ways to further accelerate the resolution of disputes,

Recognizing the value of model clauses on specialized express dispute resolution, which provide parties with a streamlined and simplified procedure for settling disputes that arise in the context of international commercial relations within a shortened time frame,

Recognizing also the need to balance the efficiency of arbitral proceedings with the rights of disputing parties to due process and fair treatment,

Noting that the preparation of the draft model clauses on specialized express dispute resolution and the explanatory notes benefited greatly from consultations with Governments and interested intergovernmental and international non-governmental organizations,

Expressing its appreciation to Working Group II for its work in developing the draft model clauses on specialized express dispute resolution and the explanatory notes and to relevant international intergovernmental and non-governmental organizations for their support and contributions,

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[1] *Official Records of the General Assembly, Seventy-ninth Session, Supplement No. 17* (A/79/17, para. 93).

1. *Adopts* the UNCITRAL Model Clauses on Specialized Express Dispute Resolution, as contained in annex II to the report of the United Nations Commission on International Trade Law on the work of its fifty-seventh session;

2. *Approves* in principle the draft explanatory notes to the UNCITRAL Model Clauses on Specialized Express Dispute Resolution contained in document A/CN.9/1181, as revised by the Commission at its fifty-seventh session, and authorizes Working Group II (Dispute Settlement) to edit and finalize the text at its eightieth session, in 2024;

3. *Recommends* the use of the UNCITRAL Model Clauses on Specialized Express Dispute Resolution by parties and administering institutions in the settlement of disputes arising in the context of international commercial relations;

4. *Requests* the Secretary-General to publish the UNCITRAL Model Clauses on Specialized Express Dispute Resolution and the final text of the explanatory notes, including electronically, in the six official languages of the United Nations, and to make all efforts to ensure that they become generally known and available.

UNCITRAL Model Clauses on Specialized Express Dispute Resolution

I. Introduction

1. The UNCITRAL Model Clauses on Specialized Express Dispute Resolution (SPEDR) (2024) (the "Model Clauses") have been developed and adopted by the United Nations Commission on International Trade Law (UNCITRAL or the "Commission"). The Model Clauses, accompanied by explanatory notes, offer customized solutions designed to be adapted and adjusted to suit the particular circumstances and preferences of the parties, building on the UNCITRAL Expedited Arbitration Rules ("Expedited Rules" or "EARs"). Designed as a resource for businesses and practitioners engaging in international dispute resolution, especially when speed and technical expertise are crucial factors, the Model Clauses provide parties with tailored means to settle disputes in an expeditious manner, ensuring the integrity and effectiveness of their dispute resolution processes, while catering to their unique needs.

2. In 2022, the Commission entrusted Working Group II with considering the topics of technology-related dispute resolution and adjudication jointly and with considering ways to further accelerate the resolution of disputes, building on the EARs.[2] This decision by the Commission was based on the recognition that the two topics aimed to achieve three common objectives: expeditious dispute resolution, comprehension of technical matters, and maintaining confidentiality. The Commission also acknowledged that the preparation of model clauses would allow disputing parties to further tailor the proceedings to their needs. The Model Clauses are a result of extensive consultations and expert input.[3]

[2] *Official Records of the General Assembly, Seventy-seventh Session, Supplement No. 17* (A/77/17), paras. 223–225; Ibid., *Seventy-eighth Session, Supplement No.17* (A/78/17), paras. 143–145.

[3] Additional background information and the discussion of the Working Group reflected in Working Group Reports: A/CN.9/1123; A/CN.9/1129; A/CN.9/1159; A/CN.9/1166 and A/CN.9/1193 are available on the dedicated webpage of UNCITRAL Working Group II (Dispute Settlement), https://uncitral.un.org/working_groups/2/arbitration.

3. Four Model Clauses are presented:

- Model Clause on Highly Expedited Arbitration
- Model Clause on Adjudication
- Model Clause on Technical Advisers
- Model Clause on Confidentiality

The first two Model Clauses provide tailored proceedings for parties with unique needs, such as those that may arise in the technology and construction sectors, as well as other sectors where a complex and long-term commercial relationship demands speed and expertise in resolving disputes to minimize project delays and financial losses. As disputes suitable for settlement through such proceedings often require expertise on technical matters and treatment of sensitive information, the other two Model Clauses may be used to complement the proceedings in the first two Model Clauses, but they are also appropriate for use in arbitration more generally.

4. To promote their best possible use, the Model Clauses are accompanied by explanatory notes that provide a detailed description on the objectives of the specific Model Clause as well as their associated risks, if any, and alternative approaches, where applicable. Parties are of course free to change the terms of the Model Clauses at any time and adjust them to suit the requirements of a particular contractual arrangement or procedural context, and to use only one of them or more as they wish according to their needs.

Model Clause on Highly Expedited Arbitration

5. This Model Clause provides an option for a highly expedited arbitration, further shortening the time frames and simplifying certain procedural steps provided in the EARs where further expediency may be sought. This Model Clause is suitable for projects or contractual relationships that may encounter disruptions if disputes that arise during their development are not promptly resolved. The annotation to the Model Clause underscores, however, the importance of parties giving adequate consideration to the possible consequences of committing to a shortened time frame, while at the same time highlighting the benefits of establishing a shortened time frame for dispute resolution.

Model Clause on Adjudication

6. This Model Clause focuses on adjudication to resolve disputes while also allowing for full arbitration when a party deems it necessary. It enables parties to obtain a fast and cost-efficient determination by an

adjudicator with the requisite expertise, which is essential for swiftly resolving disagreements and keeping a project on track. Although the determination is contractually binding and may be enforced in the near term, any party dissatisfied with the adjudicator's decision retains the right to refer the dispute to arbitration (either under the UNCITRAL Arbitration Rules ("UARs") or the EARs) to obtain a final award on the same issues that were the subject of adjudication.

7. The parties' obligation to comply with the adjudicator's determination – unless and until it is modified or reversed by an arbitral award – can itself be enforced in an arbitral proceeding. Such a proceeding would be narrowly focused on whether a party has abided by the determination and would be conducted quickly in accordance with clauses based on the Model Clause on Highly Expedited Arbitration.

8. Adjudication is appropriate for parties seeking a mechanism to quickly produce a binding and enforceable result, especially in situations where long-term contracts encounter differences on specific issues. This allows for fast decisions, enabling the parties to move forward with their project without significant disruptions. Beyond these specific cases, adjudication may have broader potential in any relationship where parties wish to reserve arbitration only for situations where the adjudicator's quick decision is found unacceptable by at least one party.

Model Clause on Technical Advisers

9. This Model Clause provides for independent technical advisers who may assist arbitral tribunals throughout an arbitration involving complex technical matters. These technical advisers will assist an arbitral tribunal to make its own informed decisions by providing technical explanations or specialized background knowledge to help the tribunal understand the technical issues, within a procedure that maintains the principles of impartiality, fairness and due process.

Model Clause on Confidentiality

10. Maintaining the confidentiality of arbitral proceedings may be an important feature of international arbitration. It is not, however, regulated in the UNCITRAL Model Law on International Commercial Arbitration or UARs. The Model Clause on Confidentiality intends to help parties who wish to establish clear and robust confidentiality safeguards, in order to ensure the privacy of the arbitration process.

II. Model Clause on Highly Expedited Arbitration

Model Clause

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Expedited Arbitration Rules ("Expedited Rules"), with the following modifications:

(a) The period of time for the parties to reach an agreement on the appointment of a sole arbitrator in article 8(2) of the Expedited Rules shall be [7] days after a proposal has been received by all other parties;

(b) The appointing authority shall be [name of institution or person];

(c) The period of time within which the arbitral tribunal shall consult the parties on the manner in which it will conduct the arbitration pursuant to article 9 of the Expedited Rules shall be [7] days;

(d) The period of time within which the award shall be made pursuant to article 16(1) of the Expedited Rules shall be [45] days;

(e) *Option I:* The extended period of time in article 16(2) of the Expedited Rules shall not exceed a total of [90] days;

OR

Option II: The extended period of time in article 16(2) of the Expedited Rules shall not exceed a total of [90] days. The period of time within which the award shall be made may not be further extended, and article 16(3) and (4) of the Expedited Rules shall not apply;

(f) The power of the arbitral tribunal pursuant to article 2(2) of the Expedited Rules to determine that the Expedited Rules shall no longer apply to the arbitration also extends to the power to determine that the modifications to the Expedited Rules contained herein shall no longer apply.

Explanatory notes

Introduction

A.1. The EARs provide a set of rules for expedited arbitration[4] and parties are free to modify the EARs to address their specific needs, preferences and any unique requirements that the EARs do not accommodate (article 1 of the EARs). The Model Clause on Highly Expedited Arbitration is for parties that wish to have a quicker procedure than what the EARs offer. The Model Clause achieves a more expedited arbitration by modifying some EARs provisions to speed up the procedure and is intended for inclusion in contracts.

A.2. Highly expedited arbitration procedures can be particularly useful in resolving disputes that arise from technology, construction, financial or other projects where failure to resolve disputes quickly may negatively impact a party's business. Shorter time frames will ensure expeditious resolution of disputes and avoid the risk, for example, that a project may be disrupted if it is suspended by a long and costly proceeding. However, parties should ensure that disputes submitted to highly expedited arbitration are suitable for such streamlined proceedings. While the highly expedited arbitration rules preserve essential procedural rights, the issues in dispute should not be disproportionately complex or extensive, as this could undermine the effectiveness of the expedited process.

A.3. Highly expedited arbitration, however, might not be suitable for cases with complex legal or technical issues requiring extensive evidence, or where those issues may require more time for presentation and resolution. The parties should thus be fully aware of the consequences involved in further shortening the proceedings beyond the period established in the EARs, which will substantially curtail the time available for the parties to present the disputed issue(s) and for the arbitral tribunal to resolve such issue(s), especially given that the dispute may turn out to involve more complex or unanticipated novel facts or legal issues than the parties anticipated when agreeing to apply the Model Clause. Therefore, parties may want to preserve some flexibility in the time frames.

A.4. When parties opt for highly expedited arbitration, the arbitral tribunal needs to ensure that the proceedings are conducted with the level of speed and efficiency that the parties have agreed upon and to exercise its discretionary powers under article 3 of the EARs and article 17 of

[4] Parties may find further explanations on the EARs in the Explanatory Note that is published with them. See UNCITRAL Arbitration Rules (with article 1, paragraph 4, as adopted in 2013, and article 1, paragraph 5, as adopted in 2021) (United Nations publication 2021), pp. 47–71.

the UARs to meet those expectations. Both the parties and the arbitral tribunal should be committed to acting expeditiously during the arbitral proceedings. It is recommended to implement the Model Clause in its entirety, as its elements are interconnected. This ensures the effectiveness and integrity of the entire Model Clause.

Selection of an arbitrator – paragraph (a)

A.5. Parties may jointly agree on a sole arbitrator before (possibly in the arbitration agreement) or after the dispute arises. If the parties have not agreed on a sole arbitrator [7] days after a proposal for the appointment of an arbitrator has been received by all other parties, any party may request an appointing authority agreed by the parties in paragraph *(b)* to appoint a sole arbitrator. Paragraph *(a)* modifies the 15-day period of time in article 8(2) of the EARs.

A.6. Parties may wish to consider the time-saving benefits of selecting an arbitrator before any dispute arises. If parties decide to agree on an arbitrator in advance of a dispute, they should carefully research their choice to confirm that he or she is qualified and capable of resolving the full range of disputes that might arise under the particular arbitration clause. Moreover, parties should be aware that agreeing on an arbitrator before the dispute arises creates a risk that the agreed arbitrator may need to be replaced. For example, at the time the dispute arises, the pre-agreed arbitrator may have developed a conflict of interest, may no longer be willing to serve as an arbitrator, or be unavailable due to other commitments, illness or even death. It is also necessary to ensure that parties have an arbitrator who is committed to the swift resolution of disputes by conducting a highly expedited arbitration, since the process of replacing an arbitrator can be time-consuming.

Selection of an appointing authority – paragraph (b)

A.7. To streamline the constitution of the arbitral tribunal, it is recommended that parties agree on an appointing authority. Otherwise, they could rely on the default appointing authority under article 6 of the EARs, that is, the Secretary-General of the Permanent Court of Arbitration at The Hague (PCA). Hence, parties could use the Model Clause even without agreeing on an appointing authority.

Consultation – paragraph (c)

A.8. Under article 9 of the EARs, the period of time within which the arbitral tribunal should consult the parties on the conduct of the arbitration is 15 days after the constitution of the arbitral tribunal.

Paragraph *(c)* of the Model Clause reduces the number of days to [7] to ensure that consultations take place promptly and still provides parties with sufficient time to prepare for a meaningful consultation.

A.9. Parties may wish to refer to the Explanatory Notes to the EARs in paragraphs 60 to 65 (Part G) which outline how consultations could be conducted between the parties and the arbitral tribunal. During the consultation, a number of issues could be discussed to expedite the proceedings, for instance: (i) limiting written submissions to one round; (ii) limiting the length of written submissions; (iii) setting the time frame for written submissions; (iv) determining whether to have a documents-only proceeding or to hold a hearing, and if the latter, whether the hearing will be conducted in person or remotely; and (v) agreeing that the arbitral tribunal does not need to provide reasons in the award (see paras. A.17–A.19 below).

Period of time for making the award – paragraphs (d) *and* (e)

A.10. Paragraph *(d)* modifies the period of time provided in article 16(1) of the EARs for making the award (six months) to [45] days from the date of the constitution of the arbitral tribunal, aligning with the goal of expeditious dispute resolution. Parties can choose the appropriate time period for their particular needs, although, in order for the proceedings to be "highly expedited", it is expected that the parties would choose a period less than the six months provided in the EARs.

A.11. Under paragraph *(e)*, parties are presented with two options.

A.12. Option I provides for a possible extension of time for the arbitral tribunal to make its award, as provided for in article 16(2) of the EARs, but which in the Model Clause should not exceed a short time limit such as a total of 90 days from the date of the constitution of the arbitral tribunal. This option gives the arbitral tribunal the further authority, in exceptional circumstances, to request additional time and then to invite the parties to express their views, in accordance with article 16(3) and (4) of the EARs. Parties will want to ensure that the extension they permit under paragraph *(e)* remains reasonable in light of the timeline they have chosen under paragraph *(d)*. If parties agreed to 45 days in paragraph *(d)*, they may wish, for example, to specify in paragraph *(e)* that an extension shall not exceed a total of 90 days.

A.13. Alternatively, Option II also permits an extended period of time referred to in article 16(2) of the EARs not exceeding a total of [90] days, but foresees that the period of time within which the arbitral award should be made cannot be further extended, which means that article 16(3) and (4) of the EARs do not apply.

A.14. Parties should note that a fixed time frame for making the award, without the safeguards provided for in article 16(3) and (4) of the EARs, may result in an award being issued after the lapse of the agreed time frame, contrary to the agreement of the parties, which may render the arbitral award unenforceable in some jurisdictions under article V(1)*(d)* of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards or may lead to the award being set aside at the seat of arbitration in accordance with the domestic legislation.[5] However, parties should also be aware that the single extension permitted under article 16(3) carries no specific time limit, except as agreed upon by the parties. There is a risk that, in certain circumstances, the parties may find it difficult to object to an extension proposal made by the arbitral tribunal, even if unreasonable. As for article 16(4), which allows the arbitral tribunal to revert to the regular procedure under the UARs, this would result in the parties not receiving the highly expedited arbitration they originally agreed upon.

Revert to EARs or UARs – paragraph (f)

A.15. The power of the arbitral tribunal provided in paragraph *(f)* is of the same nature as that in article 2(2) of the EARs, and allows, in exceptional circumstances and at the request of a party, the arbitral tribunal to reconsider and potentially revert to the default rules under the EARs if it finds that the modifications in the Model Clause, in whole or in part, were not appropriate for the case. The arbitral tribunal retains the power to revert to the UARs in accordance with article 2(2) of the EARs. Obviously, the parties may agree to revert to the UARs (article 2(1) of the EARs), should they consider that EARs are no longer appropriate. The parties may also agree to revert to the EARs to remove the "hard-stop" limitation on the period of time for granting the award provided for in Option II in paragraph *(e)*.

A.16. Paragraph *(f)* foresees that circumstances could change or that the nature of the dispute would be more complex than initially anticipated by the parties, despite their initial desire for highly expedited arbitration. It provides a degree of flexibility so that a fair and just resolution may still be achieved and the risk that an arbitral tribunal may not render an enforceable award within the agreed deadline may be minimized.

[5] For instance, under the UNCITRAL Model Law on International Commercial Arbitration adopted in many jurisdictions, as shown on the status page: https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status.

A.17. Article 34(3) of the UARs requires the arbitral tribunal to state reasons in the arbitral award unless the parties agree otherwise. If permissible under the applicable law, parties may agree that no reasons be given in the arbitral award, by including the following additional clause: "The parties agree that the award be made without reasons." This is based on the principle of party autonomy in arbitration and reflects their will for a streamlined procedure. There are circumstances in which reasons may not be needed, for example, in final offer arbitration, where the arbitrator is entrusted to simply choose between two competing offers as provided by the parties. Reducing the time for making the award may thus enhance the efficiency of the arbitral process.

A.18. When considering whether to agree that no reasons need to be provided in the award, parties should consider that in certain jurisdictions, arbitral awards without a certain level of reasoning may not be enforceable and may be set aside. A non-reasoned award may also make it difficult for parties to comprehend or accept the decision. Additionally, if a court is requested to set aside an award based on particular statutory grounds, it may not be able to make the required assessment if no reasons are provided in the award. Also, requiring an arbitrator to give reasons for an award may lead to a deeper understanding of the dispute. Providing reasons is not always a cause of undue delays in making the award, as the arbitrator can also provide succinct and focused reasoning for the award.

A.19. If the applicable law permits non-reasoned awards, the parties' preference on whether reasons should be required could be discussed with the arbitral tribunal when it organizes the proceedings, which would allow parties to consider the implications for the completeness and enforceability of the award if reasons are not provided. If the parties have initially agreed to a non-reasoned award, they could, in consultation with the arbitral tribunal, reconsider their initial agreement and engage in discussions to request reasons for the award.

III. Model Clause on Adjudication

Model Clause

Note: Parties entering into a contractual relationship may wish to adopt the following procedure whereby disputes, as and when they arise, can be resolved in an expedited and binding manner by an adjudicator, subject to any party's right to have the same dispute finally resolved in an arbitration.

Arbitration

1. Any dispute, controversy or claim arising out of or relating to this contract, or breach, termination or invalidity thereof ("Dispute"), shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules with the following additions:

(a) The appointing authority shall be… [name of institution or person];

(b) The number of arbitrators shall be… [one or three];

(c) The place of the arbitration shall be… [town and country];

(d) The language to be used in the arbitral proceedings shall be….

Adjudication

Option I

2. Any Dispute may be determined by adjudication in accordance with the following subparagraphs.

OR

Option II

2. Any Dispute relating to [certain possible disputes under the contract*] may be determined by adjudication in accordance with the following subparagraphs. Any disagreement as to whether a dispute referred to the adjudicator falls within the limited scope specified by the parties in the prior sentence shall be resolved by the adjudicator.

* For example, claims solely for monetary relief.

(a) A party initiating adjudication shall communicate a request for adjudication containing a description of the dispute, including its basis and an indication of the determination being requested to all other parties and, once there is an agreement on his or her appointment, to the adjudicator.

(b) If the parties have not reached an agreement on an impartial and independent adjudicator [7] days after a proposal made by a party has been received by all other parties, the adjudicator shall, at the request of any party, be appointed promptly by the appointing authority.

(c) The appointing authority for the adjudicator shall be… [name of institution or person].

(d) The adjudicator shall consult with the parties on matters related to the dispute and the procedure promptly and within [3] days from his or her acceptance of appointment for the dispute. The adjudicator may hold additional consultations with the parties on matters related to the dispute or request additional information from the parties as he or she deems necessary.

(e) Within [14] days from the acceptance of appointment for the dispute by the adjudicator, the other party or parties shall communicate a response to the request.

(f) Subject to subparagraph *(h)*, the adjudicator may conduct the proceedings as he or she considers appropriate, including abridging or extending any period of time, provided that the parties are treated with equality and that each party is given a reasonable opportunity to present its case.

(g) The adjudicator may determine that the dispute is, in whole or in part, not suitable for adjudication.

(h) The adjudicator shall make the determination within [30] days from the acceptance of appointment for the dispute by the adjudicator stating the reasons. In exceptional circumstances and after having consulted the parties, the adjudicator may extend the period of time for making the determination, which shall not exceed a total of [60] days.

(i) The determination of the adjudicator shall be binding on the parties and the parties shall comply with the determination without delay.

Compliance arbitration

3. Any dispute as to the compliance by any of the parties with the determination of the adjudicator under subparagraph 2*(i)* may be referred to arbitration by either party, in accordance with the UNCITRAL Expedited Arbitration Rules ("Expedited Rules"), with the following modifications:

(a) The period of time for the parties to reach an agreement on the appointment of a sole arbitrator in article 8(2) of the Expedited Rules shall be [7] days after a proposal has been received by all other parties;

(b) The period of time within which the arbitral tribunal shall consult the parties on the manner in which it will conduct the arbitration pursuant to article 9 of the Expedited Rules shall be [7] days;

(c) The period of time within which the award shall be made pursuant to article 16(1) of the Expedited Rules shall be [30] days;

(d) The extended period of time referred to in article 16(2) of the Expedited Rules shall not exceed a total of [60] days. The period of time within which the award shall be made may not be further extended, and article 16(3) and (4) of the Expedited Rules shall not apply;

(e) The arbitral tribunal shall limit the proceedings to deciding whether a party has breached its undertaking in paragraph 2*(i)* and, if so, to ordering compliance with the determination of the adjudicator, unless it finds that the adjudicator failed to comply with paragraph 2*(f)*. The arbitral tribunal shall not review the merits of the determination of the adjudicator.

Arbitration under paragraph 1 in relation to adjudication

4. In any arbitration initiated by the parties under paragraph 1,

(a) A party may submit disputes considered in the adjudication under paragraph 2 without being limited by any of its claims, arguments, evidence or other submissions in the adjudication; and

(b) The arbitral tribunal shall not be bound by any determination made by the adjudicator.

5. The initiation of adjudication and arbitration under paragraphs 2 and 3 shall not preclude the initiation or continuation of arbitration under paragraph 1 with respect to any dispute. Similarly, the initiation of arbitration under paragraph 1 shall not preclude the initiation or continuation of adjudication and arbitration under paragraphs 2 and 3 of any dispute.

Optional addition to paragraph 5: Once adjudication has been initiated and is continuing, arbitration under paragraph 1 on issues before the adjudicator may be commenced only once the adjudicator has made his or her determination. If adjudication is initiated while arbitral proceedings are continuing, the arbitral proceedings on issues before the adjudicator, at the request of a party, shall be suspended until the adjudicator has made his or her determination.

Explanatory notes

Introduction

B.1. Adjudication is a method of dispute resolution by which, in a simplified procedure and in a very short time, an adjudicator makes a determination with which the parties have to comply forthwith. A party that is not satisfied with that determination may subsequently submit some or all of the same dispute to arbitration; but it must nevertheless comply with the determination unless and until an arbitral tribunal resolves the dispute differently. Adjudication is already well-known in certain countries and internationally in the practice of certain contracts; it is particularly useful in the context of projects of some duration (for example, substantial construction projects) where there is a need for quick resolution of disputes by an adjudicator who has expertise in the subject matter of the contract. Such disputes that may arise in the course of the parties' work are often technical (for example, the interpretation of contractual designs or the need for a changed design). If each such dispute is submitted to a full arbitration, the lenthy disruption in the project (as well as the interruption in cash flow for the project participants) may destroy the viability of the project. By allowing for quick, provisionally binding resolution of such disputes by an adjudicator who may have the expertise necessary to understand the project, a system of adjudication that still preserves an opportunity for full arbitration can facilitate the completion of longer-term contracts.

B.2. Experience with adjudication in certain countries and specific types of contracts suggests that it could be applied more broadly, and the present Model Clause offers a framework to support this wider application.

B.3. This Model Clause facilitates such prompt dispute resolution through adjudication, providing for a quick and binding decision by an adjudicator (referred to in the Model Clause as a "determination"), which is distinct from a court judgment or an arbitral award. Parties agree to abide by this determination unless a different decision is subsequently rendered on all or parts of the same issues by an arbitral tribunal conducting regular arbitral proceedings, which either party may initiate. In the absence of any such conflicting award from an arbitral tribunal, the parties must adhere to the adjudicator's determination, and the Model Clause provides separately for expedited arbitration solely to resolve any dispute about a party's compliance with that determination.

B.4. The adjudicator is an impartial and independent third party who will often be an expert in the type of work reflected in the parties' contract. The Model Clause aims to facilitate the use of adjudication for long-term contracts or projects beyond those in the construction industry, such as financial or other commercial relationships, including supply chain contracts and to provide a mechanism for cross-border enforcement of determinations made by the adjudicator.

B.5. The adjudication procedure is a rapid process, with a determination expected to be rendered within [30] days. The parties contractually commit to abide by the determination made by the adjudicator (paragraph 2*(i)*). Paragraph 3 sets forth a mechanism to ensure compliance with that determination through highly expedited arbitration based on the EARs, strictly limited to any dispute as to whether a party has complied with the determination. However, parties retain the right to submit the disputed issues in adjudication as well as other disputes to arbitration under paragraph 1. In other words, adjudication and arbitration may run concurrently. Parties wishing to limit such an occurrence of concurrent proceedings may consider adopting the optional added text for paragraph 5, which provides for the sequencing of adjudication and arbitration that may arise on the same issues. Submitting a dispute to arbitration does not exempt a party from its obligation to comply with an adjudicator's determination, if any, as to that same dispute. Experience suggests that, where adjudication is available, the majority of parties accept the adjudicator's determination and do not pursue regular arbitration.

B.6. As the paragraphs in the Model Clause are interdependent, it is advisable that parties make use of the entirety of the Model Clause to maintain its integrity.

Arbitration – paragraph 1

B.7. Paragraph 1 replicates the model arbitration clause for contracts, annexed to the UARs, and captures the agreement by which the parties

resolve their Disputes by arbitration. Parties should be mindful of the distinction between "Dispute" with a capital "D", as defined in paragraph 1 of the Model Clause as "dispute, controversy or claim arising out of or relating to this contract, or breach, termination or invalidity thereof", and "dispute" with a small "d", which refers to the subject matter of the case at hand.[6]

Adjudication – paragraph 2

Scope - chapeau

B.8. Parties may wish to agree on the scope of issues that would be suitable for determination by an adjudicator, as per two options provided.

B.9. Option I is broad and inclusive, suggesting that any dispute arising under the contract can be subject to adjudication without specifying particular types of disputes or excluding any categories. This option offers the parties to not limit the scope of adjudication, i.e. any dispute arising under the contract can be subject to adjudication without specifying particular types of disputes or excluding any categories. This approach avoids potential disagreements over the scope of the adjudicator's authority. It also relies on, first, the party that decides to initiate an adjudication and, subsequently, the adjudicator him- or herself to determine if a dispute is suitable for adjudication. If the adjudicator determines that a dispute already submitted to him or her on certain aspects of it is not suitable for adjudication, the adjudicator is expressly authorized to make that finding (see para. 2(*g*)).

B.10. For parties taking a more flexible and inclusive approach to adjudication, Option I may be appropriate, which also avoids disagreement over scope. If a dispute is not suitable for adjudication, the adjudicator would decide accordingly (see para. 2(*g*)). Alternatively, if parties prefer a more detailed and specific scope for adjudication to address concerns regarding the broad range of disputes which may potentially be settled through adjudication, Option II may be chosen.

[6] To avoid translation issues, the Arabic and Chinese versions of the Model Clause abbreviate "dispute, controversy or claim arising out of or relating to this contract, or breach, termination or invalidity thereof" in paragraph 1 by using the first two words of the phrase, that is "dispute, controversy". Such abbreviations are used in the Arabic and Chinese language versions because the concept of capitalization does not exist in these languages. All six language versions are intended to convey the same notion.

Request for adjudication and selection of the adjudicator – subparagraph *(a)*

B.11. In submitting a dispute to adjudication, parties should evaluate the suitability of the chosen option and the associated time frames for the adjudicator's determination to ensure that their expectations for a timely resolution are met.

B.12. Ensuring the adjudicator's commitment to impartiality and independence is crucial, and parties should explicitly request a formal statement affirming these ethical obligations. The adjudicator should also have the right qualifications for the case at hand and possess the necessary knowledge, expertise and competence to resolve the dispute effectively, fairly and quickly.

B.13. Parties may agree on the adjudicator before the Dispute arises to streamline the proceedings and save time and cost. If parties decide to pre-agree on an adjudicator (in advance of a Dispute arising), they should carefully research their choice to confirm that he or she is qualified and capable of resolving the full range of disputes that may be submitted to adjudication. Moreover, parties should be aware that the pre-agreed adjudicator may not always be able to perform his or her role when requested. For instance, at the time the dispute arises, the pre-agreed adjudicator may have developed a conflict of interest, may no longer be willing to serve as an adjudicator, or may be unavailable, due to other commitments, illness or even death. Furthermore, at the time of contract formation, the expertise required for resolving a potential dispute arising therefrom might be uncertain, and the pre-agreed adjudicator's expertise may not align with that required to decide on the dispute at hand. To address the possible unavailability of the pre-agreed adjudicator, parties may incorporate additional clauses. For instance, they can establish that a designated appointing authority could step in and replace the pre-agreed adjudicator. Alternatively, parties may consider whether to retain the services of an adjudicator who remains "on call" from the outset of their project or, similarly, to establish a "dispute board" or similar body if they wish to ensure the availability of particular adjudicator(s) throughout the term of the contract. Such an approach, will entail additional costs (which however may be outweighed by the dispute avoiding effect of such arrangements).

Appointment of an adjudicator – subparagraph *(b)*

B.14. If parties fail to reach an agreement on the selection of the adjudicator, the appointing authority will, upon a request of a party, promptly appoint the adjudicator.

Appointing authority for adjudication – subparagraph *(c)*

B.15. The appointing authority for adjudication may differ from that for arbitration under paragraphs 3 and 4. This distinction acknowledges the distinct nature of these processes and recognizes that the appointing authority may need a different set of specialized expertise, which needs to be assessed by the parties. Appointing authorities in the context of adjudication could be, for example, professional bodies or institutions with knowledge of and familiarity with experts in the relevant field.

B.16. The appointing authority may be responsible for setting the terms of appointment, including the fees to be paid to the adjudicator, if so agreed by the parties. This would avoid the risk that a party not willing to agree on the appointment of an adjudicator may otherwise refuse to agree on the terms or fees of an adjudicator who is appointed by the appointing authority, if such matters are left to the parties. Parties should be aware that, unlike in arbitration under the UARs, there is no default appointing authority for adjudication. Thus, if the parties fail to designate an appointing authority under subparagraph *(c)* and do not subsequently agree on one, the Model Clause may become pathological. Therefore, it is essential for parties to designate an appointing authority for adjudication when agreeing to the clause.

Consultation – subparagraph *(d)*

B.17. According to subparagraph *(d)*, the adjudicator is required "to consult with the parties on matters related to the dispute and the procedure" within [3] days of the adjudicator's acceptance of appointment. This consultation should involve engaging in discussions with or seeking input from the parties regarding the resolution or management of the dispute. The purpose is to understand their perspectives, gather relevant information, and possibly facilitate negotiations or procedural arrangements to address the dispute effectively and efficiently. The first consultation should occur within [3] days of the adjudicator's acceptance of the appointment, which may precede the submission of the response by the other party. This allows the respondent to focus its response on the issues raised during the consultation. However, it is important to note that additional consultations are possible and may be advisable, even after the respondent has submitted its response, to ensure ongoing engagement and the opportunity for further input from all parties involved.

Communication of acceptance of appointment – subparagraph *(e)*

B.18. Subparagraph *(e)* outlines a procedural timeline for the responding party or parties following the acceptance of appointment of an adjudicator for a dispute. The submission of the response to the request is scheduled to take place only after the consultations to ensure that the respondent clearly understands the matters under contention and that the response is tailored to address the specific issues identified in the dispute. The submission deadline is set for [14] days following the adjudicator's acceptance of appointment, of which the respondent will be notified at the latest when approached by the adjudicator for consultations, mandated to take place within [3] days after the appointment.

Conduct of the proceedings – subparagraph *(f)*

B.19. As provided under subparagraph *(f)*, the adjudicator may conduct the proceedings as he or she considers appropriate for the dispute, including abridging or extending any period of time, provided that the parties are treated with equality and that each party is given a reasonable opportunity to present its case. Given the absence of widely acknowledged procedural rules for adjudication proceedings, the adjudicator and the parties can mutually agree on procedures or address matters that would facilitate the adjudication process. For instance, issues such as whether the adjudication process would involve a hearing, or whether it would be a documents-only process, can be discussed during consultations.

Suitability – subparagraph *(g)*

B.20. Subparagraph *(g)* grants authority to the adjudicator to assess whether the dispute, either in its entirety or partially, is suitable for adjudication. The determination should be made as promptly as possible. However, the decision that the dispute or certain aspects of it are unsuitable for adjudication may be made at a later stage of the proceedings, which could even be when the adjudicator makes the determination on parts of the dispute that are suitable for adjudication. This is because not all matters can be resolved through adjudication. For instance, an adjudicator may determine that certain disputes are too complex to make a determination in the limited amount of time. An adjudicator with expertise on technical matters may find that the dispute focuses predominantly on legal issues, which would not be suitable for his or her determination. When the relief sought is irreversible once performed or enforced, and cannot be compensated by monetary payments, an adjudicator may determine that the matter is equally not suitable for adjudication. In such cases, parties may rely on arbitration under paragraph 1.

The determination – subparagraph *(h)*

B.21. Subparagraph *(h)* outlines the time frame within which the adjudicator must reach a decision after accepting the appointment for a specific dispute, along with provisions for possible extensions under exceptional circumstances. This subparagraph aims to ensure that the adjudication process is conducted in a timely manner while allowing for flexibility in situations where additional time may be warranted due to exceptional circumstances.

B.22. Subparagraph *(h)* mandates that the adjudicator provide reasons to the parties, to allow them to understand and accept the decision. However, unless otherwise required by applicable law, parties possess the flexibility to determine whether the adjudicator is obligated to state reasons in their determination and may choose to include the following in the clause: "The adjudicator is not required to provide reasons in the determination."

B.23. Opting for a non-reasoned determination contributes to a faster procedure. However, the absence of reasoning may hinder parties from fully comprehending or accepting the adjudicator's determination. Requiring an adjudicator to give reasons for a determination can lead him or her to develop a deeper understanding of the dispute, and knowing the adjudicator's reasons for a determination may be important to the parties in deciding whether to pursue subsequent arbitration on the same dispute. Moreover, in the unlikely event that, in the course of compliance arbitration under paragraph 3, a respondent objects that the adjudicator denied it a reasonable opportunity to present its case or failed to treat the parties with equality, the compliance tribunal might have difficulty ruling on such a defence if the adjudicator provided no reasons for his or her determination. Additionally, providing reasoning may not significantly extend the time required for the adjudicator to render a determination, as the reasons can be succinct and focused.

B.24. Parties could discuss this issue with the adjudicator when organizing the proceedings in their consultations, expressing their preference regarding the inclusion of reasons. This proactive approach ensures that parties are well-informed about the implications of their decision on the comprehensibility and potential acceptance of the adjudicator's determination.

Effect of the determination – subparagraph *(i)*

B.25. Subparagraph *(i)* establishes the legal effect and obligations arising from the determination made by the adjudicator, which is that, as the parties accept the determination as being legally binding, it must be adhered to by the parties.

B.26. Furthermore, parties may consider entering into an undertaking of confidentiality and ensure that confidentiality is respected during the adjudication process. The parties may also consider whether they agree to waive any claim against the adjudicator based on any act or omission in connection with the adjudication procedure, save for intentional wrongdoing, akin to article 16 of the UARs.

Request of a security in granting relief

B.27. In granting relief and subject to specific circumstances, the adjudicator may order that the beneficiary of the determination provide security to ensure future payment or reimbursement in case of a different decision by the arbitral tribunal. At the same time, adjudication is often initiated to ensure cash flow. Therefore, any decision to order security in the context of additional monetary payments may defeat the adjudicator's objective in a determination of ensuring cash flow and thus should be carefully weighed against the broader objective of ensuring timely contract performance.

Compliance arbitration – paragraph 3

B.28. Paragraph 3 establishes arbitration as the method for resolving disputes regarding compliance with the undertaking outlined in paragraph 2*(i)*. This process offers an efficient means of addressing alleged non-compliance with the commitment to comply with the adjudicator's determination. While it aligns with highly expedited arbitration, it reflects particular choices as to time limits under the Model Clause on Highly Expedited Arbitration that seem best adapted to the very narrow focus of compliance arbitration. Additionally, paragraph 3*(d)* introduces a "hard-stop" provision on the time period for making the award. Paragraph 3*(e)* ensures that the tribunal retains authority to assess whether the adjudicator has treated parties equally, allowed them to present their cases, and maintained impartiality or independence.

Arbitration under paragraph 1 in relation to adjudication – paragraph 4

B.29. Paragraph 4 addresses two key issues for any arbitral proceedings following the adjudication process described in paragraph 2.

B.30. First, subparagraph *(a)* states that a party involved in the arbitral proceeding can submit to that arbitration disputes that were determined in any earlier adjudication under paragraph 2. Importantly, no party is

constrained or limited by any claims, arguments, evidence, or other submissions it made during the adjudication proceedings. This provision allows for a more comprehensive presentation of the party's case in the subsequent arbitration, without being restrained by its presentation of the case under time pressure in the adjudication.

B.31. Second, subparagraph *(b)* emphasizes that an arbitral tribunal that is responsible for deciding any matter in arbitral proceedings under paragraph 1, is not bound by a determination made by the adjudicator. This signifies the independence of the arbitral proceedings from any prior adjudication, ensuring that the arbitral tribunal can conduct its own assessment, reach its conclusions, and make decisions without being influenced or constrained by the findings of the adjudicator.

B.32. Hence, even if a dispute submitted to the arbitral tribunal includes factual or legal matters on which an adjudicator made a determination, the arbitral tribunal may conduct a full and *de novo* review of those disputed issues of fact and law, pursuant to the EARs or the UARs, without regard to any decisions made by the adjudicator or the arbitral tribunal under paragraph 3.

B.33. While some contracts require a notice of dissatisfaction to prevent an adjudicator's determination from becoming final, the Model Clause ensures the provisionally binding force of this determination through compliance arbitration, leaving the finality of the determination to statutory time bars.

Concurrent proceedings – paragraph 5

B.34. Paragraph 5 indicates that parties could institute adjudication (paragraph 2) and arbitration (paragraph 1) either simultaneously or consecutively, partially or even wholly covering the same issues. Hence, adjudication and arbitration may be conducted concurrently. It is expected that, if a party is aggrieved in some respect by the implementation of a contract governed by the Model Clause, that party will likely submit the disputed point to adjudication in the first instance, taking advantage of that procedure's short duration and the adjudicator's specialized expertise. In such circumstances, it would also be expected that the parties will await the adjudicator's determination before either party decides whether to initiate an arbitration (under paragraph 1) to revisit some or all of the adjudicated issues. The Model Clause, however, also recognizes that two far less likely scenarios could arise. In particular, (i) the party that does not initiate adjudication may commence arbitration on some or all of the same issues before the adjudication has been completed, or (ii) the aggrieved party may submit its dispute in the first instance directly to arbitration, while the other party (believing the same dispute should be adjudicated) initiates adjudication.

B.35. The Model Clause takes the position that if concurrent proceedings arise under either scenario (i) or (ii), the adjudication and the arbitration may both continue. This approach reflects an understanding that any period of overlapping proceedings will likely be short, since adjudication must normally be resolved within [30] days after both parties have briefed their positions, while an arbitration typically lasts much longer. Moreover, the parties may always agree to suspend one or the other of the concurrent proceedings if they believe that is sensible in a particular case.

B.36. If, however, parties wish to avoid any possibility of concurrent proceedings from the outset, they may agree to insert further language in paragraph 5 of the Model Clause to forestall such an occurrence. This optional additional text aims to avoid concurrent proceedings by establishing a specific procedural sequence and interaction between adjudication and arbitration under paragraph 1. The additional optional text in paragraph 5 sets forth the conditions under which arbitration can be initiated in relation to ongoing adjudication and vice versa, taking into account the need to follow a specific order or temporarily suspend one process in favour of the other, depending on the circumstances.

B.37. By requiring parties to await the adjudicator's determination before commencing arbitration or suspending ongoing arbitration, the clauses address concerns about duplicative efforts (i.e., concurrent proceedings) and the legal and practical risks associated with conducting two proceedings on the same issue at the same time.

B.38. However, including such a clause may carry risks, as disputes over procedural matters may emerge, leading to delays and parties may even resort to dilatory tactics. Moreover, as a practical matter, given the brief duration of adjudication proceedings, the risk of duplication in concurrent proceedings is likely to be limited even in cases where the parties do not adopt the optional addition to paragraph 5.

IV. Model Clause on Technical Advisers

Model Clause

1. The arbitral tribunal may appoint one or more independent technical advisers to accompany it in the proceedings and, as the need arises, to assist it in the technical understanding of the dispute.

2. In the process of selecting and appointing a technical adviser, the arbitral tribunal shall consult the parties on:

(a) The specific area of technical expertise necessary;

(b) The terms of reference, including the type of assistance to be provided by the technical adviser and the means and manner in which the technical adviser performs his or her role; and

(c) Any additional matters that the arbitral tribunal deems pertinent.

3. Article 29(2) of the UNCITRAL Arbitration Rules shall apply to technical advisers.

4. The arbitral tribunal shall ensure that the parties are given a reasonable opportunity to comment on the explanations provided by the technical adviser.

Explanatory notes

Role of technical advisers – paragraph 1

C.1. In highly specialized, technical or other types of disputes, arbitral tribunals may benefit from support provided on the technical aspects so as to better understand and evaluate the case. Paragraph 1 sets forth how technical expertise may be provided by technical advisers to accompany the arbitral tribunal in the proceedings. The role of technical advisers is different from that performed by experts appointed pursuant to article 29 of the UNCITRAL Arbitration Rules ("UARs") (experts appointed by the arbitral tribunal). A technical adviser assists the arbitral tribunal in the technical understanding of the dispute as the need arises. Whereas experts appointed by the arbitral tribunal prepare

written reports which include opinions on issues to be determined by the arbitral tribunal, the role of technical advisers is limited to assisting the arbitral tribunal, primarily by means of explanations, to understand the technical matters that appear in the submissions and evidence received from the parties. For example, a technical adviser may be useful in cases requiring specialized expertise or in cases involving complex calculations based on advanced models and methods. Explanations provided by technical advisers should be based on generally accepted standards in the area of technical expertise.

C.2. A technical adviser may perform his or her function at any time after appointment and during the proceedings, including in case management conferences and hearings, subject to the requirements of paragraph 4. Having understood the technical aspects of the case with the assistance of the technical adviser, the arbitral tribunal may wish, in some instances, to seek further views on the disputed issues from tribunal-appointed experts. An arbitral tribunal that has appointed a technical adviser is not precluded for that reason from appointing one or more experts in accordance with article 29 of the UARs.

Consultation with the parties – paragraph 2

C.3. The arbitral tribunal should consult the parties on certain issues relating to the appointment of the technical adviser. Paragraph 2 of this Model Clause lists two key issues, namely the area of technical expertise required and the terms of reference.

C.4. The parties, especially when they are specialists in the field, may be better placed to identify a relevant individual to be appointed as a technical adviser. If so, the arbitral tribunal may request the parties to provide a list of candidates to be considered by the other party and the arbitral tribunal.

C.5. The establishment of the terms of reference is essential to safeguard the rights of the parties to be heard, circumscribing the type of assistance to be provided by the technical adviser and the means and manner in which the technical adviser performs his or her role. Ensuring transparency and the rights of the parties to be heard is essential for building confidence in the functioning of the technical adviser. The cost of retaining the technical adviser should be considered costs under article 40(2)*(c)* of the UARs and may also be stipulated in the terms of reference.

C.6. There is a need to ensure that the parties have the opportunity to exercise their procedural right to raise an objection regarding the technical adviser's qualification, impartiality and independence prior to and after the appointment. Hence, the same process as provided for in article 29(2) of the UARs is followed.

C.7. There is also a need to ensure that the parties have the opportunity to exercise their right to be heard. In accordance with paragraph 4 of this Model Clause, the arbitral tribunal should ensure that the parties are given a reasonable opportunity to comment on explanations provided by the technical adviser, especially if these explanations introduce considerations that have not been raised by the parties or their experts. The specifics as to how the parties may comment on the explanation should be defined in the terms of reference, which is to be established by the arbitral tribunal in consultation with the parties. The arbitral tribunal may decide that the parties may be present when the technical adviser performs its role orally. When the technical adviser performs its role in writing, the parties should be kept equally informed. The arbitral tribunal may also decide that, in the interest of efficiency, it will seek explanations or assistance from the technical adviser without the presence of the parties but later provide a summary of the explanations to the parties and seek their comments.

V. Model Clause on Confidentiality**

Model Clause

1. Each party shall maintain confidentiality of all aspects of the proceedings, including the existence of the proceedings, all non-public information disclosed by another party in the proceedings, all non-public decisions or awards, [and any decisions or awards that have been proven to have become public unlawfully] with the following exceptions: to the extent that such disclosure is required by legal duty, to protect or pursue a legal right or interest, or in relation to enforcing or challenging awards in legal proceedings before a court or other competent authority, or for the purposes of having, or seeking, legal, accounting or other professional services.

2. The arbitral tribunal and the parties shall seek the same undertaking of confidentiality in writing from all those that they involve in the proceedings.

3. The arbitral tribunal may, upon the request of a party, make orders concerning the confidentiality of the arbitral proceedings and take measures for protecting confidential information.

Explanatory notes

D.1. Parties wishing to ensure confidentiality in arbitral proceedings and choosing to conduct their arbitration under the UARs are encouraged to address confidentiality explicitly in their arbitration agreements or consider entering into additional confidentiality agreements, as permitted by applicable law. Unlike some institutional rules or national legislation, the UNCITRAL Arbitration Rules ("UARs") do not specifically cover provisions regarding confidentiality.

** In some jurisdictions, a valid confidentiality agreement can only be concluded once a dispute has arisen. In such cases, parties may add a first paragraph to the Model Clause: Upon commencement of a dispute, parties may consider agreeing on the following: (and then have the Model Clause as it currently stands).

Obligation to maintain confidentiality – paragraph 1

D.2. This paragraph establishes an obligation of each party involved in the arbitral proceedings to maintain confidentiality regarding all aspects of the proceedings, including the existence of the proceedings, all non-public information shared by other parties and all non-public decisions or awards. It also outlines specific exceptions to the duty of confidentiality allowing disclosure to the extent necessary, when legally obligated, when required to protect or pursue legal rights or interests, when enforcing or challenging awards in legal proceedings, or when obtaining legal, accounting, or other professional services. Normally, consulting with a third-party funder would fall within these exceptions.

D.3. Parties may wish to consider including the text within square brackets, "and any decisions or awards that have been proven to have become public unlawfully" according to their specific needs and concerns. Inclusion of the text would provide the parties the flexibility to address situations where decisions or awards have been unlawfully disclosed to the public. In addition, parties could add language to uphold the confidentiality of any information that has been unintentionally or intentionally made public contrary to a confidentiality provision of the relevant applicable law.

Written undertaking of confidentiality – paragraph 2

D.4. Paragraph 2 establishes a requirement for the arbitral tribunal and the parties involved in the proceedings to obtain a written undertaking of confidentiality from all individuals/entities they involve in the arbitration process. This undertaking is aimed at ensuring that everyone participating in the proceedings, including witnesses and experts, agrees in writing to maintain the confidentiality of various aspects, including the existence of the proceedings, non-public information, and decisions or awards.

D.5. In all cases involving other persons in the arbitration, it is the parties' responsibility to enter into a confidentiality agreement with these persons. On the same basis, where the tribunal invites third parties, such as experts and the secretaries, to become involved in the proceedings, this responsibility rests with the arbitral tribunal.

Orders and measures on confidentiality – paragraph 3

D.6. Paragraph 3 gives the arbitral tribunal the authority to address confidentiality issues in the arbitral proceedings, providing a mechanism for parties to request intervention and for the tribunal to address such concerns. In the event of a breach of confidentiality, parties may have the right to seek remedies from the party that breaches confidentiality in accordance with the applicable law. Moreover, under the Model Clause, a party may request that the arbitral tribunal issue orders and adopt appropriate measures to address and restore the confidentiality of the arbitral proceedings.

Confidentiality within the proceedings

D.7. Paragraph 3 also covers scenarios where a party has sensitive information of intrinsic value, such as highly valuable trade secrets, know-how, algorithms or proprietary data, that it wishes to use in arbitration but wants to keep confidential from the opposing party. In such situations, measures can be discussed during a case management conference. The arbitral tribunal may classify such information as "confidential" and implement protective measures. For instance, information in a party's possession that it treats as confidential (otherwise inaccessible to the public or the opposing parties) and that is of commercial, scientific or technical sensitivity may be classified as confidential. A party can submit a request to classify information as confidential by providing justifiable reasons. If the arbitral tribunal grants such a classification, it may adopt protective measures if needed after hearing both parties and, considering potential harm to the requesting party if confidentiality is not safeguarded. Such protective measures, for example, may limit access to specific information to counsel's eyes only or experts' eyes only, controlling the distribution of specified information, permitting the submission of specified information in redacted form only as documentary evidence, and requesting witnesses and experts to sign a corresponding undertaking of confidentiality.

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