



AI COMMENTARY: DIAC ARBITRATION RULES 2022

Prepared by Galadari Advocates & Legal Consultants with ChatGPT

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About Galadari

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

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

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

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

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

Galadari's International Arbitration Practice

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

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

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

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

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

Galadari's International Arbitration Team



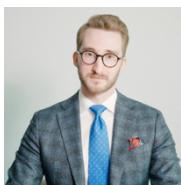
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Editors' Preface

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ChatGPT: “Article 4.1 of the DIAC Arbitration Rules outlines the requirements for submitting a Request to commence an arbitration under the Rules. Let us analyse each component of this article: [...] Copy of relevant agreement: The Request ~~should~~ include a copy of any relevant

agreement between the parties that contains the agreement to arbitrate, which is the basis for the claim being made.”

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

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

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

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

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

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

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

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

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

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DIAC ARBITRATION RULES 2022¹

I. INTRODUCTORY PROVISIONS

ARTICLE (1) DEFINITIONS

1.1. The following words and phrases shall have the meaning assigned to them unless the context indicates otherwise:

“Answer” means the written answer to the Request

“Appendix I” means the Appendix I – Costs of the Arbitration

“Appendix II” means Appendix II – Exceptional Procedures

“Arbitration Court” means the Arbitration Court of DIAC

“Centre” or **“DIAC”** means the Dubai International Arbitration Centre

“Claimant” means the party initiating an arbitration

“Claim” means any claim submitted by the Claimant

“Complete Request” means a Request, submitted in compliance with Articles 4.1, 4.3 and 4.4, as determined by the Centre

“Counterclaim” means any claim or defence by way of set-off submitted by the Respondent

“DIFC” means the Dubai International Financial Centre

“Emergency Arbitrator” means an arbitrator appointed in accordance with Article 2.5 of Appendix II

“Final Award” means the award by which the dispute is finally decided by the Tribunal

“Party” or **“parties”** means the Claimant(s) and/or the Respondent(s)

“Request” means the written request for arbitration

“Respondent” means the party against whom an arbitration is initiated

“Rules” means the DIAC Arbitration Rules in force on the date of the submission of the Request

“Seat” means the legal place of the arbitration (which may or may not be the same as the location/venue of the arbitration)

“Table” means the DIAC Table of Fees and Costs

¹ Source: www.diac.com.

“Third-party Funding Arrangement” means an arrangement between an independent third party (whether an individual or body corporate) and one of the parties to the arbitration which confers on that third party an economic benefit which is linked to the outcome of the arbitration and may involve the receipt of a share of the proceeds of any award.

“Tribunal” means the arbitral tribunal composed of one or more arbitrators appointed in accordance with the Rules.

Article 1.1 of the DIAC Arbitration Rules provides definitions for various terms used throughout the rules. Let us analyse the key definitions specified in this article:

1. **“Answer”**: Refers to the written answer provided by the Respondent in response to the request for arbitration initiated by the Claimant.
2. **“Appendix I”**: Refers to Appendix I of the DIAC Arbitration Rules, which contains information about the costs associated with the arbitration.
3. **“Appendix II”**: Refers to Appendix II of the DIAC Arbitration Rules, which covers exceptional procedures in arbitration.
4. **“Arbitration Court”**: Refers to the Arbitration Court of DIAC, the administrative body responsible for overseeing the arbitration process.
5. **“Centre” or “DIAC”**: Refers to the Dubai International Arbitration Centre, the institution administering the arbitration.
6. **“Claimant”**: Refers to the party who initiates the arbitration by submitting the Request.
7. **“Claim”**: Refers to any claim submitted by the Claimant in the arbitration.
8. **“Complete Request”**: Refers to a Request that is submitted in compliance with the specific requirements outlined in Articles 4.1, 4.3, and 4.4, as determined by the Centre.
9. **“Counterclaim”**: Refers to any claim or defence by way of set-off submitted by the Respondent in response to the Claimant’s claim.
10. **“DIFC”**: Refers to the Dubai International Financial Centre, a special economic zone in Dubai.
11. **“Emergency Arbitrator”**: Refers to an arbitrator appointed in accordance with Article 2.5 of Appendix II, who has the authority to deal with urgent matters before the formation of the full arbitral tribunal.
12. **“Final Award”**: Refers to the award issued by the Tribunal, which represents the final decision on the dispute.
13. **“Party” or “parties”**: Refers to the Claimant(s) and/or Respondent(s) involved in the arbitration.
14. **“Request”**: Refers to the written request for arbitration submitted by the Claimant, initiating the arbitration process.

15. “Respondent”: Refers to the party against whom the arbitration is initiated by the Claimant.
16. “Rules”: Refers to the DIAC Arbitration Rules in effect on the date the Request for arbitration is submitted.
17. “Seat”: Refers to the legal place or jurisdiction where the arbitration is officially recognised,² which may or may not be the same as the physical location or venue of the arbitration.
18. “Table”: Refers to the DIAC Table of Fees and Costs, which provides information about the fees associated with the arbitration process.
19. “Third-party Funding Arrangement”: Refers to an arrangement between an independent third party and one of the parties to the arbitration, where the third party receives an economic benefit linked to the outcome of the arbitration, potentially including a share of any award proceeds.
20. “Tribunal”: Refers to the arbitral tribunal composed of one or more arbitrators appointed in accordance with the Rules. The tribunal is responsible for deciding the dispute and issuing the Final Award.

These definitions provide clarity and consistency in understanding the terms used throughout the DIAC Arbitration Rules. They ensure that the parties, the tribunal, and the administrative body involved in the arbitration have a common understanding of the key concepts and terminology used in the arbitration process.

1.2. Words used in singular include the plural and vice versa, as the context may require.

In Article 1.2 of the DIAC Arbitration Rules, it is stated that words used in the singular form also include the plural form, and vice versa, as long as the context requires it. This provision is a common principle in legal drafting known as the “ejusdem generis” rule.

The purpose of this provision is to ensure flexibility in interpreting the language used within the rules. It allows for a broader interpretation of terms by recognising that singular and plural forms can be used interchangeably depending on the context. This provision aims to avoid any potential ambiguity or limitation that may arise due to strict adherence to grammatical number agreement.

By employing this principle, the intention is to facilitate a more comprehensive understanding of the rules and to accommodate various scenarios where the context may necessitate treating singular and plural forms as interchangeable. It allows for a more inclusive interpretation to ensure that the rules are applied appropriately to both singular and plural situations.

In practical terms, this provision means that when a term is used in the singular form within the DIAC Arbitration Rules, it should be understood to include its plural form whenever the context requires it.

² Misapprehension by ChatGPT.

Similarly, when a term is used in the plural form, it should be understood to include its singular form when the context calls for it.

Overall, this provision promotes flexibility and clarity in interpreting the rules and ensures that the intended meaning is not hindered by strict adherence to grammatical number agreement.

1.3. The provisions of the Appendices to the Rules shall form part of and be treated as an integral part of the Rules.

Article 1.3 of the DIAC Arbitration Rules states that the provisions of the Appendices to the Rules are considered as an integral part of the Rules themselves. This provision establishes the binding nature of the Appendices and ensures that they are treated with the same authority and importance as the main body of the Rules.

The Appendices referred to in this article, namely Appendix I (Costs of the Arbitration) and Appendix II (Exceptional Procedures), contain additional provisions and procedures that are relevant to the conduct and administration of arbitration proceedings under the DIAC Arbitration Rules.

By incorporating the Appendices into the Rules, the article emphasises that they should be given equal consideration and compliance. This means that parties involved in DIAC arbitration must adhere to the provisions outlined in the Appendices, just as they would with the provisions outlined in the main body of the Rules.

This provision serves to enhance clarity and certainty in the application of the DIAC Arbitration Rules. It ensures that the Appendices are not seen as mere ancillary documents but are recognised as integral components of the overall arbitration framework provided by the Rules. Parties and arbitrators must familiarise themselves with the provisions of the Appendices and follow them in conjunction with the provisions set out in the main body of the Rules.

In summary, Article 1.3 confirms that the Appendices to the DIAC Arbitration Rules are an essential part of the Rules themselves and must be treated and applied accordingly in any DIAC arbitration proceedings.

ARTICLE (2) SCOPE

2.1. Where the parties have agreed to submit their existing or future dispute to DIAC or the Dubai Chamber of Commerce and Industry, they shall be deemed to have submitted to the application of the Rules.

Article 2.1 of the DIAC Arbitration Rules states that if the parties have agreed to refer their current or future dispute to DIAC (Dubai International Arbitration Centre) or the Dubai Chamber of Commerce and Industry, they are considered to have consented to the application of the DIAC Arbitration Rules.

This provision emphasises the importance of party agreement in initiating an arbitration process under the DIAC Arbitration Rules. It specifies that by mutually deciding to submit their dispute to DIAC or the Dubai Chamber of Commerce and Industry, the parties are also deemed to have agreed to be bound by the procedural framework and principles set forth in the DIAC Arbitration Rules.

This provision highlights the principle of party autonomy in arbitration. It acknowledges that arbitration is a consensual process, and the parties have the freedom to choose the arbitration institution and the rules that will govern their dispute resolution. By agreeing to submit their dispute to DIAC or the Dubai Chamber of Commerce and Industry, the parties are presumed to have accepted the application of the DIAC Arbitration Rules as the guiding framework for their arbitration proceedings.

In practical terms, this means that once the parties have agreed to submit their dispute to DIAC or the Dubai Chamber of Commerce and Industry, they are bound by the procedural requirements, rights, and obligations outlined in the DIAC Arbitration Rules. This includes provisions related to the appointment of arbitrators, the conduct of the arbitration, the determination of costs, the enforcement of awards, and other matters pertaining to the arbitration process.

Article 2.1 serves to establish the foundation for the application of the DIAC Arbitration Rules and ensures that parties who choose DIAC or the Dubai Chamber of Commerce and Industry as their arbitration institution are subject to the rules and procedures specified by DIAC. It provides clarity and certainty regarding the governing framework for the arbitration proceedings.

2.2. The Rules shall govern the arbitration and shall be considered as supplementary to any agreement referred to in Article 2.1 above, save where the Rules conflict with a mandatory provision of the procedural law applicable to the seat of the arbitration.

Article 2.2 of the DIAC Arbitration Rules states that the Rules will govern the arbitration proceedings and should be seen as supplementary to any agreement mentioned in Article 2.1, except in cases where the Rules conflict with a mandatory provision of the procedural law applicable to the seat of the arbitration.

This provision clarifies the relationship between the DIAC Arbitration Rules and any prior agreement made by the parties regarding the arbitration process. It affirms that the Rules serve as the primary framework for conducting the arbitration, but they should be read in conjunction with any specific agreements reached between the parties.

The article also introduces the concept of mandatory provisions of procedural law applicable to the seat of the arbitration. The “seat” refers to the legal place or jurisdiction where the arbitration is considered to be taking place. It recognises that certain mandatory provisions of the procedural law of that jurisdiction may prevail over the provisions of the DIAC Arbitration Rules in cases of conflict.

In such instances, if a mandatory provision of the procedural law applicable to the seat of the arbitration contradicts a provision in the DIAC Arbitration Rules, the mandatory provision will take precedence. This ensures that the local procedural law is respected and enforced when it is deemed to be mandatory and non-negotiable.

Overall, Article 2.2 establishes the hierarchical relationship between the DIAC Arbitration Rules, any specific agreement between the parties, and the mandatory provisions of the procedural law applicable to the seat of the arbitration. It clarifies that the Rules are the governing framework unless they conflict with a mandatory provision of local procedural law, in which case the latter prevails.

2.3. The Rules shall apply to arbitrations which commence after the date on which the Rules came into force regardless of the date on which the underlying agreement to arbitrate was entered into, unless the parties agree otherwise.

Article 2.3 of the DIAC Arbitration Rules states that the Rules will apply to arbitrations that begin after the date when the Rules came into effect, regardless of the date on which the underlying agreement to arbitrate was entered into, unless the parties have agreed otherwise.

This provision establishes the temporal scope of the DIAC Arbitration Rules. It emphasises that the Rules will be applicable to arbitrations that commence after the effective date of the Rules, regardless of when the parties initially agreed to arbitrate their dispute.

The intention of Article 2.3 is to ensure that the most up-to-date version of the DIAC Arbitration Rules is applied to ongoing and future arbitrations, even if the underlying agreement to arbitrate was made before the Rules came into force. This promotes consistency and uniformity in the application of the Rules and avoids potential conflicts or confusion that may arise from applying different versions of the Rules to different cases.

However, this provision also acknowledges the importance of party autonomy and allows for flexibility. It states that the parties can agree to apply a different set of rules or a specific version of the Rules to their arbitration, overriding the default application of the DIAC Arbitration Rules.

In summary, Article 2.3 establishes that the DIAC Arbitration Rules will generally apply to arbitrations initiated after the effective date of the Rules, irrespective of the date of the underlying arbitration agreement. However, parties have the freedom to agree on the application of different rules or versions of the Rules if they wish to do so.

2.4. Where a submission to arbitration is made in accordance with Article 2.1, the parties agree that where any provision of their agreement to arbitrate is inconsistent with the Rules, the provisions of the Rules shall take precedence. Notwithstanding the foregoing, Article 32 shall only apply to agreements to arbitrate made after the date on which the Rules came into force, unless the parties agree otherwise pursuant to Article 32.1 (b).

Article 2.4 of the DIAC Arbitration Rules states that when parties submit to arbitration in accordance with Article 2.1 (referring to the agreement to submit the dispute to DIAC or the Dubai Chamber of Commerce and Industry), they agree that in case of any inconsistency between their agreement to arbitrate and the Rules, the provisions of the Rules will take precedence.

This provision establishes the hierarchy between the parties' agreement to arbitrate and the DIAC Arbitration Rules. It specifies that if there is a conflict or inconsistency between the two, the provisions of the Rules will prevail. This ensures uniformity and consistency in the application of the arbitration process and avoids potential conflicts arising from conflicting terms between the parties' agreement and the Rules.

However, the article also introduces a qualification to this general principle. It states that Article 32, ~~which likely pertains to the settlement or termination of proceedings,~~³ will only apply to agreements

³ Incorrect guess by ChatGPT.

to arbitrate made after the effective date of the Rules unless the parties agree otherwise pursuant to Article 32.1 (b).

This exception indicates that certain specific provisions, such as Article 32, may have limited application to agreements to arbitrate made before the effective date of the Rules. It provides flexibility for parties to agree on different rules or procedures ~~regarding the settlement or termination of proceedings,~~⁴ even if the general principle of the Rules taking precedence over the parties' agreement still applies.

In summary, Article 2.4 establishes that the provisions of the DIAC Arbitration Rules will generally supersede any inconsistent provisions in the parties' agreement to arbitrate. However, it introduces an exception for specific provisions, such as Article 32, which may have limited application to agreements made before the effective date of the Rules, unless the parties agree otherwise.

ARTICLE (3) WRITTEN NOTIFICATIONS, COMMUNICATIONS AND CALCULATION OF TIME LIMITS

3.1. All notifications and communications from the parties or the arbitrators to the Centre shall be made in writing by email or in accordance with the terms of use of any electronic case management system implemented by the Centre, unless required otherwise by the Centre. The Centre may also request any party to provide any relevant documentation in hard copy format as it deems necessary.

Article 3.1 of the DIAC Arbitration Rules pertains to the mode of communication between the parties, arbitrators, and the Centre (referring to the Dubai International Arbitration Centre).

According to this provision, all notifications and communications from the parties or the arbitrators to the Centre should be in writing. The accepted methods of written communication are email or any electronic case management system implemented by the Centre, unless the Centre specifies otherwise. This establishes the primary means of communication and emphasises the importance of written correspondence to ensure clarity, documentation, and a reliable record of the proceedings.

The article also grants the Centre the authority to request parties to provide relevant documentation in hard copy format if it deems it necessary. This provision allows the Centre to exercise discretion and request physical copies of documents when required, which could be due to specific circumstances or for administrative purposes.

Overall, Article 3.1 promotes efficient and secure communication by establishing written communication through email or an electronic case management system as the primary mode of correspondence between the parties, arbitrators, and the Centre. It recognises the practicality and convenience of electronic communication while providing flexibility for the Centre to request physical copies of documents when necessary.

⁴ Incorrect guess by ChatGPT.

3.2. Following the notification by the Centre of the constitution of the Tribunal and transmission of the file to it, all communications between the Tribunal and the parties shall be in writing and take place directly between them, copied to the Centre.

Article 3.2 of the DIAC Arbitration Rules addresses the mode of communication between the arbitral tribunal, parties, and the Centre (Dubai International Arbitration Centre) after the tribunal has been constituted.

According to this provision, once the Centre notifies the parties of the tribunal's constitution and transmits the case file to the tribunal, all communications between the tribunal and the parties should be in writing. The article further specifies that these communications should take place directly between the tribunal and the parties, with copies sent to the Centre.

The purpose of this provision is to establish a direct line of communication between the tribunal and the parties involved in the arbitration. By requiring written communications, it ensures that there is a clear record of the exchanges and facilitates efficient and documented communication throughout the arbitration process.

Additionally, copying the Centre on these communications allows the Centre to stay informed and be aware of the ongoing correspondence between the tribunal and the parties. This ensures transparency and allows the Centre to monitor the progress of the arbitration while also providing administrative support if needed.

Overall, Article 3.2 emphasises the importance of written communication and direct interaction between the arbitral tribunal and the parties once the tribunal has been constituted. It promotes clear and documented exchanges while also involving the Centre to facilitate oversight and administrative assistance as required.

3.3. All notifications and communications from the Centre or the Tribunal shall be made to the address of a party or its nominated representative, as provided by such party or by the other party to the Centre.

Article 3.3 of the DIAC Arbitration Rules concerns the mode and recipient of notifications and communications from the Centre or the arbitral tribunal.

According to this provision, any notifications or communications from the Centre or the tribunal are to be directed to the address of a party or its nominated representative. The address should be provided by the respective party or by the other party to the Centre.

This article highlights the significance of providing accurate and up-to-date contact information to the Centre. It emphasises that parties must inform the Centre of their preferred address for receiving notifications and communications. Similarly, parties are responsible for providing the Centre with the address of their nominated representative if they choose to appoint one.

The purpose of this requirement is to ensure that parties receive timely and proper notice of any communications or decisions from the Centre or the tribunal. By designating a specific address, parties can ensure that important information is delivered to the appropriate person or entity involved in the arbitration process.

Furthermore, this provision underscores the importance of effective communication and maintaining open lines of correspondence between the Centre, tribunal, and the parties. It establishes a framework where the Centre and the tribunal rely on the provided addresses to reach out to the parties, ensuring transparency and effective administration of the arbitration proceedings.

In summary, Article 3.3 emphasises the need for parties to provide accurate contact information to the Centre and establishes that notifications and communications from the Centre or the tribunal will be directed to the designated address of the party or its nominated representative. This ensures that parties receive relevant information in a timely manner and facilitates smooth communication throughout the arbitration process.

3.4. Such notifications and communications shall be made by registered post, courier or transmitted by email or any other means of telecommunication agreed by the parties that provides a record of its sending.

Article 3.4 of the DIAC Arbitration Rules addresses the permissible methods of sending notifications and communications between the parties, the Centre (Dubai International Arbitration Centre), and the arbitral tribunal.

According to this provision, notifications and communications can be made through various means, including:

1. Registered post: This refers to sending documents through a postal service that requires a signature upon delivery. It provides a level of security and proof of delivery.
2. Courier: This involves using a courier service to deliver documents. Courier services often provide tracking and proof of delivery, ensuring reliability and accountability.
3. Email: Communications can be transmitted electronically through email. Email provides a quick and efficient method of communication, allowing for the exchange of documents and messages.
4. Other means of telecommunication agreed by the parties: This provision recognises that parties can agree to use alternative methods of communication, as long as they provide a record of sending. This may include secure messaging platforms, fax, or other electronic means.

The key requirement for any chosen method of communication is that it must provide a record of its sending. This ensures that there is evidence of the communication taking place, promoting transparency and facilitating the establishment of a reliable record of the arbitration proceedings.

Overall, Article 3.4 provides flexibility in the choice of communication methods. It allows for notifications and communications to be sent by registered post, courier, email, or any other agreed means of telecommunication that provides a record of sending. This provision recognises the importance of ensuring secure and documented exchanges between the parties, the Centre, and the arbitral tribunal throughout the arbitration process.

3.5. Notifications and communications shall be deemed to have been made on the day they were received by a party or its nominated representative, or would have been received provided service was attempted in accordance with Article 3.4 above.

Article 3.5 of the DIAC Arbitration Rules establishes the deemed date of making notifications and communications between the parties, their nominated representatives, and the Centre (Dubai International Arbitration Centre) or the arbitral tribunal.

According to this provision, notifications and communications are deemed to have been made on the day they were received by a party or its nominated representative. This means that the official date of communication is considered to be the day it reaches the intended recipient and comes to their knowledge.

The article further clarifies that the deemed date of making notifications and communications can also be the day on which the communication would have been received, provided that service was attempted in accordance with Article 3.4. This implies that if the sending party adhered to the prescribed methods of communication outlined in Article 3.4 (such as using registered post, courier, email, or any other agreed means of telecommunication that provides a record of sending), the communication is considered to have been made on the day it would have been received by the recipient in the ordinary course of events.

This provision aims to establish certainty regarding the timing of notifications and communications. It ensures that parties can determine when they are deemed to have received important information, thereby facilitating the proper progression of the arbitration proceedings and enabling timely responses.

In summary, Article 3.5 specifies that notifications and communications are deemed to have been made on the day they were received by a party or its nominated representative. Alternatively, if service was attempted in accordance with the prescribed methods of communication, the deemed date can be the day on which the communication would have been received. This provision provides clarity regarding the timing of communications and helps parties in determining their obligations and responses within the arbitration process.

3.6. Failure of a party to appear and/or participate in the arbitration, having been notified in accordance with Articles 3.3, 3.4 and 3.5, shall not prevent the arbitration from proceeding.

Article 3.6 of the DIAC Arbitration Rules addresses the consequences of a party's failure to appear or participate in the arbitration proceedings, despite being properly notified in accordance with Articles 3.3, 3.4, and 3.5.

According to this provision, if a party fails to appear or participate in the arbitration, even after receiving proper notifications as per the mentioned articles, it does not prevent the arbitration from proceeding. In other words, the arbitration will continue regardless of the absent party's non-participation.

This provision reflects the principle that arbitration can proceed even in the absence of one party. It ensures that the arbitration process is not unduly delayed or obstructed due to the non-cooperation or non-appearance of a party. It also highlights the importance of timely and effective communication, as outlined in the preceding articles, to ensure that all parties are properly notified of the proceedings.

It is important to note that while the arbitration can proceed in the absence of a party, the absent party may suffer certain consequences. Their non-participation may impact their ability to present their case, provide evidence, cross-examine witnesses, or influence the decision-making process. The arbitral tribunal will typically proceed based on the evidence and arguments presented by the participating party, taking into account the principle of due process.

Overall, Article 3.6 confirms that the failure of a party to appear or participate in the arbitration, despite being properly notified, does not hinder the progress of the arbitration proceedings. It underscores the principle of procedural efficiency and allows the arbitration to move forward, ensuring that non-participation does not unduly delay the resolution of the dispute.

3.7. For the purpose of calculating a period of time under the Rules and unless the parties otherwise agree in writing, such period shall begin to run on the day following the day when a notification or communication is received or deemed to have been received in accordance with Article 3.5. If the last day of such period is an official holiday or a non-business day in Dubai, United Arab Emirates, the period is extended until the first business day which follows. Except as otherwise expressly provided, days are considered to be calendar days such that official holidays or non-business days occurring during the running of the period of time are included in calculating the period. Any reference to months is similarly considered as being to calendar months.

Article 3.7 of the DIAC Arbitration Rules addresses the calculation of time periods in the context of the arbitration proceedings.

According to this provision, when calculating a period of time under the Rules, the following principles apply:

1. Commencement of the period: Unless the parties agree otherwise in writing, the period begins on the day following the day when a notification or communication is received or deemed to have been received in accordance with Article 3.5. This means that the clock starts ticking the day after the communication is received or deemed received.
2. Extension for official holidays or non-business days: If the last day of the calculated period falls on an official holiday or a non-business day in Dubai, United Arab Emirates ~~(the seat of DIAC)~~,⁵ the period is extended until the first business day that follows. This provision allows for practical adjustments when official holidays or non-business days would otherwise impede the timely completion of an action or response.
3. Inclusion of official holidays and non-business days: Except as otherwise expressly provided, days are considered to be calendar days. This means that official holidays or non-business days occurring during the running of the period of time are included in the calculation of the period. In other words, such days are not excluded or skipped over when counting the duration of the time period.
4. Calculation of months: Any reference to months is considered as being to calendar months. This means that when a time period is specified in terms of months, it is

⁵ Misapprehension by ChatGPT.

calculated based on the standard calendar months and not based on specific durations or working months.

The purpose of Article 3.7 is to provide clarity and uniformity in calculating time periods within the arbitration proceedings. It establishes a standard framework for determining when a period begins, how extensions are granted for holidays or non-business days, and how days and months are counted.

Overall, Article 3.7 ensures fairness and consistency in calculating time periods by setting clear guidelines for the commencement, extension, and inclusion of official holidays or non-business days. It contributes to the smooth progress of the arbitration process and helps parties and the arbitral tribunal manage their obligations and deadlines effectively.

II. COMMENCING THE ARBITRATION

ARTICLE (4) REQUEST FOR ARBITRATION

4.1. Any party wishing to commence an arbitration under the Rules shall submit to the Centre a Request which shall include:

- (a) a request that the dispute be referred to arbitration under the Rules;
- (b) the full name, nationality, address and other contact details including telephone and email address of each party to the arbitration and of the Claimant's representative (if any);
- (c) a copy of any relevant agreement between the parties, which contains the agreement to arbitrate, in respect of which the claim arises;
- (d) where claims arise under more than one agreement to arbitrate, an indication as to which agreement to arbitrate each claim relates;
- (e) a brief description of the nature and circumstances of the dispute giving rise to the claim;
- (f) a preliminary statement of the relief sought and an estimate of the sum claimed or in dispute;
- (g) all relevant particulars concerning the number of arbitrators and their choice in accordance with the relevant provisions of Articles 10, 11 and 12 and if the agreement to arbitrate calls for the parties to nominate arbitrators, the name and contact details of the Claimant's nominee;
- (h) all relevant particulars concerning the seat and the language of the arbitration in accordance with Articles 20.1 and 21.1; and
- (i) any comments on the applicable rules of law.

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

1. Request for arbitration: The party wishing to commence the arbitration must clearly state in the Request that they seek the dispute to be referred to arbitration under the DIAC Arbitration Rules.
2. Party details: The Request must include the full name, nationality, address, and other contact details (including telephone and email address) of each party involved in the arbitration. Additionally, the contact details of the Claimant's representative, if any, should also be provided.
3. Copy of relevant agreement: The Request ~~should~~⁶ include a copy of any relevant agreement between the parties that contains the agreement to arbitrate, which is the basis for the claim being made.

⁶ The operative term in Article 4.1 of the Rules is "shall".

4. Identification of claims under multiple agreements: If the claims in the dispute arise under more than one agreement to arbitrate, the Request ~~should~~⁷ indicate which agreement each claim relates to. This helps to specify the scope and basis of each claim.
5. Description of the dispute: A brief description of the nature and circumstances of the dispute that gives rise to the claim should be included in the Request. This provides an overview of the underlying issues and context of the dispute.
6. Relief sought and estimate of the claim: The Request ~~should~~⁸ include a preliminary statement of the relief sought, meaning the specific remedy or outcome desired by the Claimant, along with an estimate of the amount claimed or the amount in dispute. This gives an initial indication of the desired outcome and the financial magnitude of the dispute.
7. Arbitrator details: The Request ~~should~~⁹ provide all relevant particulars regarding the number of arbitrators and their selection process. If the agreement to arbitrate requires the parties to nominate arbitrators, the name and contact details of the Claimant's nominee should be included.
8. Seat and language of the arbitration: The Request ~~should~~¹⁰ include all relevant particulars regarding the seat, which is the legal place of the arbitration, and the language in which the arbitration proceedings will be conducted. This ensures clarity regarding the procedural framework and communication requirements.
9. Comments on applicable rules of law: The Request ~~may~~¹¹ also include any comments or observations from the Claimant regarding the applicable rules of law. This allows the Claimant to express their perspective on the legal framework that should govern the arbitration.

By specifying these requirements in Article 4.1, the DIAC Arbitration Rules ensure that the Request to commence arbitration provides essential information to initiate the proceedings properly. It covers crucial aspects such as the parties involved, the nature of the dispute, relief sought, arbitrator selection, seat, language, and applicable rules of law. Providing these details at the outset facilitates the smooth functioning and administration of the arbitration process.

4.2 The Request may also include the statement of claim referred to in Article 24.1.

Article 4.2 of the DIAC Arbitration Rules states that the Request to commence arbitration may also include the statement of claim referred to in Article 24.1.

⁷ The operative term in Article 4.1 of the Rules is “shall”.

⁸ The operative term in Article 4.1 of the Rules is “shall”.

⁹ The operative term in Article 4.1 of the Rules is “shall”.

¹⁰ The operative term in Article 4.1 of the Rules is “shall”.

¹¹ The operative term in Article 4.1 of the Rules applicable to each of the listed elements is “shall”.

This provision recognises that the party submitting the Request has the option to include the statement of claim along with the Request itself. The statement of claim is a more detailed document that outlines the party's specific arguments, facts, and legal basis for their claim.

By allowing the inclusion of the statement of claim in the Request, this provision offers the submitting party the opportunity to provide a comprehensive and detailed account of their case from the outset of the arbitration proceedings. It can help to streamline the process and provide the other party, the arbitral tribunal, and the Centre (Dubai International Arbitration Centre) with a clear understanding of the claims being made and the supporting evidence.

It is important to note that Article 24.1, referred to in Article 4.2, likely provides further details on the content and requirements of the statement of claim, which may include specific elements such as the relief sought, the legal arguments, and the supporting documents.¹²

Including the statement of claim in the Request can be beneficial for both parties and the tribunal as it allows for a more efficient and focused exchange of information and can contribute to a more effective resolution of the dispute.

Overall, Article 4.2 provides parties with the flexibility to include the statement of claim in the Request, thereby facilitating a more comprehensive presentation of their case at the outset of the arbitration proceedings.

4.3 The Request, including all accompanying documents, shall be submitted to the Centre by email or in accordance with the terms of use of any electronic case management system implemented by the Centre.

Article 4.3 of the DIAC Arbitration Rules outlines the method of submitting the Request, along with all accompanying documents, to the Centre (Dubai International Arbitration Centre).

According to this provision, the Request and its accompanying documents must be submitted to the Centre by email or in accordance with the terms of use of any electronic case management system implemented by the Centre.

This article reflects the modernisation and efficiency in the submission process by allowing electronic means of communication. It recognises that the digitalisation of arbitration proceedings can streamline the administrative process, improve accessibility, and facilitate timely communication.

The two specified methods of submission are as follows:

1. Email: The submitting party can send the Request and accompanying documents to the Centre via email. Email is a widely used and convenient method of communication that enables fast transmission of documents and facilitates efficient record-keeping.
2. Electronic case management system: The Centre may have implemented an electronic case management system to handle arbitration cases. If such a system is in place, the submitting party must comply with the terms of use of that system when submitting the

¹² Marginally correct guess by ChatGPT.

Request and associated documents. This may involve uploading the documents to the designated platform or following any specific instructions provided by the Centre.

By specifying these electronic methods of submission, Article 4.3 promotes efficiency, reduces administrative burdens, and ensures that parties can easily submit their Request and accompanying documents to the Centre. It aligns with contemporary practices in the digital era and allows for seamless communication between the parties and the Centre.

Overall, Article 4.3 encourages the use of electronic communication by allowing the submission of the Request and accompanying documents by email or through an electronic case management system implemented by the Centre. This supports the advancement of technology in arbitration proceedings and streamlines the administrative process for the benefit of all parties involved.

4.4. Together with the Request, the Claimant shall make payment of the registration fee required by Article 1.1 of Appendix I in force on the date the Request is submitted. If the Claimant fails to pay the registration fee, the Request shall not be registered by the Centre.

Article 4.4 of the DIAC Arbitration Rules addresses the requirement for the Claimant to make payment of the registration fee along with the submission of the Request to commence arbitration.

According to this provision, the Claimant must make payment of the registration fee that is required as per Article 1.1 of Appendix I. The specific amount of the registration fee will be determined by the provisions in force on the date the Request is submitted.

It is essential for the Claimant to fulfil this payment obligation along with the submission of the Request. Failure to pay the registration fee will result in the Request not being registered by the Centre. This means that the arbitration proceedings will not formally commence, and the Centre will not proceed with further administrative steps.

The registration fee is an administrative fee imposed by the Centre to cover the costs associated with initiating and administering the arbitration process. It helps to fund the services provided by the Centre, such as case management, appointment of arbitrators, and facilitation of the arbitration proceedings.

By stipulating the requirement for payment of the registration fee, Article 4.4 ensures that the Claimant demonstrates their commitment and financial responsibility in initiating the arbitration. It also guarantees the efficient management of the arbitration process by ensuring that the Centre has the necessary resources to handle the case.

Overall, Article 4.4 highlights the importance of paying the registration fee in conjunction with the submission of the Request. It emphasises the financial obligation of the Claimant and ensures that the arbitration process can proceed smoothly by enabling the Centre to provide the necessary administrative support.

4.5. The Centre shall notify the Request to the Respondent at the address provided by the Claimant in the Request, in compliance with Articles 3.3 and 3.4. If notification by courier to the Respondent is unsuccessful, the Centre shall, after reasonable inquiries, re-notify the Request through any other

means deemed appropriate pursuant to Article 3.3. Notwithstanding the provisions of Articles 3.3 and 3.5, the Centre shall not notify the Request or any other correspondence to any representative of the Respondent, as may be identified by the Claimant, unless so advised by the Respondent.

Article 4.5 of the DIAC Arbitration Rules addresses the responsibility of the Centre (Dubai International Arbitration Centre) to notify the Respondent about the submitted Request for arbitration.

According to this provision, the Centre is required to notify the Respondent of the Request by using the address provided by the Claimant in the Request, in compliance with the requirements set forth in Articles 3.3 and 3.4. These articles govern the mode and recipient of notifications and communications.

If the initial notification attempt by courier is unsuccessful, the Centre is obligated to make reasonable inquiries to determine alternative means of notifying the Respondent. The Centre may then re-notify the Request through any other appropriate means as determined in accordance with Article 3.3, which specifies the permissible methods of communication.

It is important to note that, despite the provisions of Articles 3.3 and 3.5, the Centre is not authorised to directly notify the Request or any other correspondence to any representative of the Respondent, as identified by the Claimant unless advised to do so by the Respondent.

This provision ensures that the Respondent is promptly and properly notified of the Request for arbitration. It obligates the Centre to use the contact information provided by the Claimant and make reasonable efforts to ensure that the Respondent receives the notification. It also respects the autonomy of the Respondent in terms of choosing its own representatives and determining who should receive the notifications on its behalf.

In summary, Article 4.5 establishes the Centre's responsibility to notify the Respondent about the Request for arbitration using the address provided by the Claimant. It emphasises the Centre's obligation to ensure proper communication with the Respondent and allows for alternative means of notification if the initial attempt is unsuccessful. Additionally, it respects the Respondent's right to control the distribution of notifications among its representatives.

4.6. The date of receipt by the Centre of the Complete Request, shall be deemed to be the date on which the arbitration commenced.

Article 4.6 of the DIAC Arbitration Rules addresses the determination of the commencement date of the arbitration.

According to this provision, the date on which the Centre receives the Complete Request is deemed to be the date on which the arbitration commenced. The "Complete Request" refers to the Request submitted by the Claimant, along with all the necessary accompanying documents and the payment of the registration fee as required.

This provision establishes a clear starting point for the arbitration process. It ensures that the arbitration officially begins once the Centre has received all the required documentation and fees from the Claimant. This date is significant as it marks the beginning of the procedural timeline for various actions and deadlines within the arbitration.

By defining the commencement date based on the receipt of the Complete Request, Article 4.6 creates certainty and consistency in determining when the arbitration formally starts. It also provides clarity for the parties involved and helps to establish a clear timeline for the subsequent stages of the arbitration process.

It is important for the parties to ensure that the Complete Request is submitted promptly and accurately to the Centre, as the commencement of the arbitration is contingent upon its receipt. Delays or deficiencies in the submission of the Complete Request may impact the timeline and overall efficiency of the arbitration process.

In summary, Article 4.6 specifies that the date of receipt by the Centre of the Complete Request is considered the date on which the arbitration commenced. This provision establishes an objective and identifiable starting point for the arbitration proceedings, enabling the parties and the Centre to proceed with subsequent steps in a timely and organised manner.

ARTICLE (5) ANSWER TO THE REQUEST

5.1. Within 30 days after the Request has been notified to the Respondent in accordance with Article 4.5, the Respondent shall submit to the Centre an Answer which shall include the following:

- (a) its full name, nationality, address and other contact details, including telephone and email address of itself and of its representative (if any);**
- (b) its preliminary comments as to the nature and circumstances of the dispute giving rise to the claim;**
- (c) its preliminary response to the claim and the relief sought by the Claimant as well as to the sum claimed or in dispute in light of the Claimant's estimate;**
- (d) any preliminary objections concerning the validity, existence, scope or applicability of the agreement to arbitrate;**
- (e) any comments concerning the number of arbitrators and their choice in light of the Claimant's proposals and in accordance with the relevant provisions of Articles 10, 11 and 12, and if the agreement to arbitrate calls for the parties to nominate arbitrators, the name and contact details of the Respondent's nominee;**
- (f) any comments concerning the seat and the language of the arbitration in light of the Claimant's proposals and in accordance with Articles 20.1 and 21.1; and**
- (g) any comments on the applicable rules of law.**

Article 5.1 of the DIAC Arbitration Rules outlines the requirements for the Respondent to submit an Answer within a specific timeframe after being notified of the Request. Let us analyse each component of this article:

1. Full name, nationality, and contact details: The Respondent is required to provide its full name, nationality, address, and other contact details, including telephone and email

address. Similarly, if the Respondent has appointed a representative, the representative's contact details should also be included.

2. Preliminary comments on the nature and circumstances of the dispute: The Respondent ~~should~~¹³ provide its preliminary comments on the nature and circumstances of the dispute that gave rise to the claim. This allows the Respondent to present its initial perspective and understanding of the underlying issues.
3. Preliminary response to the claim and relief sought: The Respondent ~~is expected to~~¹⁴ provide a preliminary response to the claim made by the Claimant, as well as the relief sought. This enables the Respondent to indicate its initial position and stance regarding the requested remedies and the amount in dispute, considering the Claimant's estimate.
4. Preliminary objections: If the Respondent has any preliminary objections concerning the validity, existence, scope, or applicability of the agreement to arbitrate, it ~~should~~¹⁵ raise them in the Answer. This allows the Respondent to address any procedural or jurisdictional matters at the outset.
5. Comments on the number of arbitrators: The Respondent ~~should~~¹⁶ provide its comments on the number of arbitrators and their selection in response to the proposals made by the Claimant. If the agreement to arbitrate calls for the parties to nominate arbitrators, the Respondent ~~should~~¹⁷ also provide the name and contact details of its nominee.
6. Comments on the seat and language of the arbitration: The Respondent ~~should~~¹⁸ provide its comments on the seat and language of the arbitration in response to the proposals made by the Claimant. This facilitates the determination of the procedural framework and logistics of the arbitration proceedings.
7. Comments on the applicable rules of law: The Respondent ~~may~~ include its comments on the applicable rules of law in relation to the dispute. This allows the Respondent to express its perspective on the legal framework that should govern the arbitration.

By specifying these requirements in Article 5.1, the DIAC Arbitration Rules ensure that the Respondent has the opportunity to provide its initial response and address various aspects of the dispute raised by the Claimant. It allows for a balanced and comprehensive presentation of the parties' positions at the early stage of the arbitration proceedings.

Overall, Article 5.1 sets out the ~~expectations~~¹⁹ for the Respondent to submit an Answer within 30 days of being notified of the Request. It highlights the specific information and comments that the

¹³ The operative term in Article 5.1 of the Rules is "shall".

¹⁴ The operative term in Article 5.1 of the Rules is "shall".

¹⁵ The operative term in Article 5.1 of the Rules is "shall".

¹⁶ The operative term in Article 5.1 of the Rules is "shall".

¹⁷ The operative term in Article 5.1 of the Rules is "shall".

¹⁸ The operative term in Article 5.1 of the Rules is "shall".

¹⁹ Misapprehension by ChatGPT. Pursuant to Article 5.1 of the Rules, the Respondent is under an obligation to file its Answer "[w]ithin 30 days after the Request has been notified to the Respondent".

Respondent should²⁰ include, facilitating the exchange of positions and the progression of the arbitration process.

5.2. If the Claimant has submitted a statement of claim with the Request pursuant to Article 4.2, the Answer may also be accompanied by the statement of defence referred to in Article 24.2.

Article 5.2 of the DIAC Arbitration Rules addresses the situation when the Claimant has submitted a statement of claim along with the Request, as specified in Article 4.2. In such cases, the Respondent's Answer may also be accompanied by the statement of defence referred to in Article 24.2.

This provision allows for a more efficient exchange of information between the parties. If the Claimant has already provided a detailed statement of claim in the Request, the Respondent has the option to submit a corresponding statement of defence along with the Answer. The statement of defence serves as a comprehensive response to the allegations and arguments put forward in the statement of claim.

By permitting the Respondent to include the statement of defence with the Answer, the DIAC Arbitration Rules enable the parties to present their respective positions and arguments at an early stage of the arbitration process. This promotes fairness, transparency, and a balanced exchange of information.

It is important to note that the specific requirements and content of the statement of defence are likely further detailed in Article 24.2, which is referenced in Article 5.2. Article 24.2 may provide additional guidance on the necessary elements and structure of the statement of defence.²¹

Overall, Article 5.2 recognises that if the Claimant has already submitted a statement of claim with the Request, the Respondent may choose to submit a corresponding statement of defence along with the Answer. This provision facilitates a more complete and comprehensive presentation of the parties' arguments and positions at an early stage of the arbitration proceedings.

5.3. The Answer, including all accompanying documents, shall be submitted to the Centre by email or in accordance with the terms of use of any electronic case management system implemented by the Centre.

Article 5.3 of the DIAC Arbitration Rules specifies the method of submitting the Answer, along with any accompanying documents, to the Centre (Dubai International Arbitration Centre).

According to this provision, the Respondent is required to submit the Answer and its accompanying documents to the Centre using one of the following methods:

1. Email: The Respondent can send the Answer and associated documents to the Centre by email. Email communication is a widely used and convenient method for transmitting documents, allowing for efficient and timely communication.

²⁰ The operative term in Article 5.1 of the Rules is "shall".

²¹ Marginally correct guess by ChatGPT.

2. Electronic case management system: If the Centre has implemented an electronic case management system, the Respondent must adhere to the terms of use of that system when submitting the Answer and accompanying documents. This may involve uploading the documents to the designated platform or following specific instructions provided by the Centre.

By providing these electronic submission options, Article 5.3 reflects the modernisation and efficiency of arbitration proceedings. It recognises the benefits of electronic communication, such as speed, ease of access, and streamlined administration.

The use of email and electronic case management systems facilitates the efficient exchange of documents between the parties and the Centre, reducing reliance on physical mail and promoting timely and organised communication.

It is important for the Respondent to comply with the specified submission methods to ensure proper and timely delivery of the Answer and associated documents to the Centre. Failure to comply with the designated methods may result in delays or complications in the arbitration process.

In summary, Article 5.3 mandates that the Respondent submits the Answer and accompanying documents to the Centre either by email or in accordance with the terms of use of any electronic case management system implemented by the Centre. This provision embraces the benefits of electronic communication, ensuring the efficient transmission of information and promoting effective case administration.

5.4. With its Answer, or at a later stage in the arbitration if the Tribunal decides that the delay was justified in view of the relevant circumstances, the Respondent may make a counterclaim and shall provide:

- (a) a brief description of the nature and circumstances of the dispute giving rise to the counterclaim; and**
- (b) a preliminary statement of the relief sought and an estimate of the sum counterclaimed.**

Article 5.4 of the DIAC Arbitration Rules addresses the possibility for the Respondent to make a counterclaim in its Answer or at a later stage in the arbitration, subject to the Tribunal's decision on the justification of any delay. Let us examine the requirements outlined in this article:

1. Brief description of the counterclaim: If the Respondent wishes to assert a counterclaim, it ~~should~~²² provide a concise description of the nature and circumstances of the dispute that gave rise to the counterclaim. This description helps to clarify the subject matter and context of the counterclaim.
2. Preliminary statement of relief sought and estimate of the counterclaim: The Respondent is required to provide a preliminary statement of the relief sought in relation to the counterclaim, indicating the specific remedy or outcome it is seeking. Additionally, the

²² The operative term in Article 5.4 of the Rules is "shall".

Respondent ~~should~~²³ include an estimate of the monetary value associated with the counterclaim.

It is important to note that the timing of the submission of a counterclaim may be subject to the Tribunal's discretion. If the Respondent does not include the counterclaim in its Answer, it may still be allowed to introduce the counterclaim at a later stage if the Tribunal determines that the delay in raising the counterclaim was justified given the relevant circumstances.

This provision acknowledges that circumstances may arise during the course of the arbitration that warrant the introduction of a counterclaim at a later stage. The Tribunal assesses the reasons for the delay and makes a determination based on the particular circumstances of the case.

By allowing the Respondent to make a counterclaim and specifying the information required, Article 5.4 ensures that the Respondent has the opportunity to assert its own claims against the Claimant within the arbitration process. It promotes fairness and efficiency by allowing the consolidation of related claims and addressing multiple issues in a single proceeding.

Overall, Article 5.4 establishes the framework for the Respondent to make a counterclaim in its Answer or at a later stage with the Tribunal's approval. It emphasises the need for a concise description of the counterclaim and a preliminary statement of the relief sought, contributing to the comprehensive presentation and resolution of all relevant disputes within the arbitration.

5.5. If the Respondent submits a counterclaim with its Answer or, subject to Article 24.3, at a later stage in the arbitration, the Respondent shall make payment of the registration fee required by Article 1.1 of Appendix I in force on the date the counterclaim is submitted. If the Respondent fails to pay the registration fee within 7 days from the date the counterclaim is submitted, the counterclaim shall not be registered by the Centre.

Article 5.5 of the DIAC Arbitration Rules addresses the requirement for the Respondent to make payment of the registration fee when submitting a counterclaim. Let us examine the details outlined in this article:

1. If the Respondent decides to assert a counterclaim along with its Answer or, subject to Article 24.3, at a later stage in the arbitration, the Respondent is obliged to pay the registration fee. The specific amount of the registration fee will be determined based on Article 1.1 of Appendix I, which is in force on the date the counterclaim is submitted.
2. It is important for the Respondent to make the payment of the registration fee within 7 days from the date the counterclaim is submitted. Failure to make this payment within the specified timeframe will result in the counterclaim not being registered by the Centre.
3. The registration fee is an administrative fee imposed by the Centre to cover the costs associated with processing and managing the counterclaim within the arbitration proceedings. It ensures the proper administration of the counterclaim and contributes to the overall functioning of the arbitration process.

²³ The operative term in Article 5.4 of the Rules is "shall".

4. By stipulating the requirement for payment of the registration fee for the counterclaim, Article 5.5 emphasises the financial obligation of the Respondent and ensures that the Centre has the necessary resources to handle the additional claim. It also encourages efficiency and fairness in the process, as the payment of the registration fee demonstrates the Respondent's commitment and financial responsibility for asserting the counterclaim.
5. It is crucial for the Respondent to fulfil the payment requirement within the prescribed timeframe to ensure the registration and consideration of their counterclaim within the arbitration proceedings. Failure to comply may result in the exclusion of the counterclaim from the arbitration.

In summary, Article 5.5 establishes the obligation for the Respondent to pay the registration fee when submitting a counterclaim. It emphasises the timely payment of the fee within 7 days from the date of submission to ensure the proper registration and consideration of the counterclaim within the arbitration process.

5.6. Failure by the Respondent to submit an Answer shall not prevent the arbitration from proceeding pursuant to the Rules.

Article 5.6 of the DIAC Arbitration Rules addresses the situation where the Respondent fails to submit an Answer within the specified timeframe. Let us analyse the significance of this provision:

1. According to Article 5.6, if the Respondent does not submit an Answer within the designated timeframe, it does not prevent the arbitration from proceeding pursuant to the Rules. In other words, the arbitration process will continue despite the absence of a formal response from the Respondent.
2. This provision recognises that the failure of the Respondent to submit an Answer should not unduly hinder the progress of the arbitration proceedings. It ensures that the Claimant's request for arbitration is not unreasonably delayed or frustrated due to the Respondent's non-compliance with the requirement to submit an Answer.
3. By allowing the arbitration to proceed, the provision promotes the efficiency and continuity of the process. It ensures that the Claimant's claims are not indefinitely stalled or hindered by the lack of participation from the Respondent. The arbitration can proceed with the presentation of evidence and arguments by the Claimant, and the arbitral tribunal can render a decision based on the available information.
4. However, it is important to note that the absence of an Answer from the Respondent may limit the input and perspective from their side of the dispute. It may also affect the overall fairness and balance of the arbitration proceedings. Nonetheless, the provision allows the proceedings to move forward to avoid unnecessary delays or impasses.

In summary, Article 5.6 establishes that the failure of the Respondent to submit an Answer does not prevent the arbitration from proceeding pursuant to the Rules. It ensures that the Claimant's claims can still be addressed and adjudicated, even in the absence of a formal response from the Respondent.

5.7. The Centre may grant the Respondent an extension of time for filing the Answer of up to 10 days, provided the application for extension contains the Respondent’s comments concerning the number of arbitrators and, if applicable, the nomination of an arbitrator in accordance with the relevant provisions of Articles 10 and 12.

Article 5.7 of the DIAC Arbitration Rules addresses the authority of the Centre (Dubai International Arbitration Centre) to grant the Respondent an extension of time for filing the Answer. Let us examine the details outlined in this article:

1. According to Article 5.7, the Centre has the discretion to grant the Respondent an extension of time for submitting the Answer, with a maximum extension period of up to 10 days. This extension is subject to certain conditions.
2. To qualify for an extension, the Respondent must submit an application to the Centre, requesting additional time to file the Answer. The application must include the Respondent’s comments regarding the number of arbitrators and, if applicable, the nomination of an arbitrator in accordance with the relevant provisions of Articles 10 and 12.
3. By specifying these requirements, Article 5.7 ensures that the Respondent’s request for an extension is accompanied by its input on crucial matters related to the composition of the arbitral tribunal. This input allows the Centre to consider the Respondent’s perspective on the appointment of arbitrators, ensuring fairness and procedural balance.
4. The provision grants the Centre the authority to assess the reasons provided by the Respondent for seeking an extension and determine whether the extension is justified based on the relevant circumstances of the case. It allows the Centre to exercise discretion in managing the timeline of the arbitration process while taking into account the Respondent’s needs.
5. It is important to note that the extension of time granted by the Centre under Article 5.7 is limited to a maximum of 10 days. This timeframe provides a reasonable allowance for the Respondent to prepare and submit the Answer while maintaining the overall efficiency of the arbitration proceedings.

In summary, Article 5.7 empowers the Centre to grant the Respondent an extension of time for filing the Answer, up to a maximum of 10 days. The Respondent must submit an application, including comments on the number of arbitrators and, if applicable, the nomination of an arbitrator. This provision allows for flexibility in the timeline while ensuring fairness and adherence to the relevant provisions of the DIAC Arbitration Rules.

5.8. The Centre shall communicate the Answer and any counterclaim to the Claimant. Subject to Article 6.2, any comments made by the Claimant on the Respondent’s Answer and/or counterclaim shall be submitted directly to the Tribunal.

Article 5.8 of the DIAC Arbitration Rules deals with the communication and submission of the Respondent’s Answer and any counterclaim to the Claimant, as well as the subsequent procedure for the Claimant’s comments. Let us break down the key elements of this article:

1. The Centre’s communication: The Centre is responsible for transmitting the Respondent’s Answer and any counterclaim to the Claimant. This communication ensures that the Claimant receives the Respondent’s response and is aware of any counterclaim raised by the Respondent.
2. Claimant’s comments: After receiving the Respondent’s Answer and/or counterclaim, the Claimant has the opportunity to make comments on these submissions. However, the procedure for submitting these comments is subject to Article 6.2 of the DIAC Arbitration Rules.
3. Submission of comments to the Tribunal: As per Article 5.8, any comments made by the Claimant on the Respondent’s Answer and/or counterclaim are to be submitted directly to the Tribunal. This implies that the Claimant’s comments should be addressed and communicated exclusively to the arbitral tribunal overseeing the dispute.

The purpose of this provision is to establish a clear process for communication between the parties and the tribunal. The Centre facilitates the initial communication of the Respondent’s Answer and any counterclaim to the Claimant. Subsequently, the Claimant’s comments on these submissions are to be directed to the tribunal, ensuring that the tribunal has access to both parties’ arguments and positions.

~~It is important to note that Article 6.2 may contain further details regarding the timing and procedural requirements for the Claimant’s comments. These details will likely govern the specific timeline and format for the submission of comments to the tribunal.²⁴~~

In summary, Article 5.8 of the DIAC Arbitration Rules stipulates that the Centre is responsible for communicating the Respondent’s Answer and any counterclaim to the Claimant. The Claimant’s comments on these submissions are to be directed to the tribunal. This article ensures a clear and structured process for the exchange of information and arguments between the parties and the arbitral tribunal overseeing the dispute.

ARTICLE (6) SEPARABILITY OF THE AGREEMENT TO ARBITRATE AND JURISDICTION

6.1. The Tribunal shall have the power to rule on its own jurisdiction, including on any objections made with respect to the existence, validity, scope, applicability or interpretation of the agreement to arbitrate regardless of any allegation that the relevant underlying contract is non-existent, cancelled, rescinded, terminated and/or null and void.

Article 6.1 of the DIAC Arbitration Rules addresses the jurisdictional power of the arbitral tribunal. Let us analyse the key points outlined in this article:

1. Power to rule on jurisdiction: According to Article 6.1, the arbitral tribunal has the authority to determine its own jurisdiction. This means that the tribunal has the power to decide on matters related to its own competence and whether it has the authority to hear and decide the dispute at hand.
2. Objections to the agreement to arbitrate: The article specifies that the tribunal has the power to rule on objections regarding the existence, validity, scope, applicability, or

²⁴ Incorrect guess by ChatGPT.

interpretation of the agreement to arbitrate. This includes the authority to assess any challenges to the enforceability or legitimacy of the arbitration agreement itself.

3. Disregard for allegations regarding the underlying contract: Article 6.1 explicitly states that the tribunal can make jurisdictional determinations regardless of any claims made regarding the underlying contract. Even if the parties dispute the existence, cancellation, rescission, termination, or nullity of the underlying contract, the tribunal retains the power to rule on its own jurisdiction.

This provision grants the arbitral tribunal significant autonomy and authority in assessing and deciding matters related to its jurisdiction. It allows the tribunal to address objections and challenges raised by the parties regarding the validity and scope of the arbitration agreement, without being bound by the parties' contentions regarding the underlying contract.

By empowering the tribunal to independently rule on its jurisdiction, Article 6.1 promotes the principle of competence-competence, which recognises the tribunal's competence to determine the limits of its own authority. It enables the tribunal to make preliminary determinations on jurisdictional issues before proceeding to the merits of the dispute.

It is important to note that Article 6.1 does not prevent the parties from challenging the tribunal's jurisdiction in the appropriate forum or at a later stage. However, it establishes the tribunal's initial authority to make determinations on its own jurisdiction, providing a framework for the arbitration proceedings to proceed.

In summary, Article 6.1 of the DIAC Arbitration Rules grants the arbitral tribunal the power to rule on its own jurisdiction. It enables the tribunal to address objections related to the agreement to arbitrate and make jurisdictional determinations independently, irrespective of allegations regarding the underlying contract. This provision upholds the tribunal's authority to assess its own competence and decide on its jurisdiction within the arbitration proceedings.

6.2. If, no later than with its Answer, the Respondent raises preliminary objections concerning the existence, validity, scope or applicability of the agreement to arbitrate, or in response to any counterclaim the Claimant raises objections of a similar nature, then, if so requested, the Arbitration Court shall decide, without prejudice to the admissibility or merits of the parties' respective claims, that the arbitration shall proceed, if it is prima facie satisfied that an agreement to arbitrate may exist under the Rules.

Article 6.2 of the DIAC Arbitration Rules addresses the procedure for handling preliminary objections related to the agreement to arbitrate. Let us examine the key elements of this article:

1. Respondent's objections: If the Respondent raises preliminary objections in its Answer regarding the existence, validity, scope, or applicability of the agreement to arbitrate, it must do so no later than with its Answer. These objections challenge the enforceability or legitimacy of the arbitration agreement.
2. Claimant's objections: Similarly, if the Claimant raises objections of a similar nature in response to any counterclaim, these objections must be raised at the appropriate stage of the proceedings.

3. Request for decision: If either party requests a decision on these preliminary objections, the Arbitration Court, which is the court or administrative body overseeing the arbitration process, shall decide on the matter.
4. Prima facie satisfaction: The Arbitration Court will make its decision without prejudging the admissibility or merits of the parties' respective claims. Instead, it will assess the preliminary objections and determine, based on a prima facie assessment, whether an agreement to arbitrate may exist under the Rules.
5. Proceeding with the arbitration: If the Arbitration Court is satisfied, at this preliminary stage, that there is a possibility of an agreement to arbitrate under the Rules, it will decide that the arbitration shall proceed. This decision does not determine the ultimate outcome of the dispute but allows the arbitration process to continue.

This article aims to address preliminary objections related to the agreement to arbitrate in a fair and efficient manner. It ensures that these objections are promptly considered, without prejudging the parties' claims, and provides a mechanism for the Arbitration Court to decide whether the arbitration should proceed based on a prima facie assessment of the existence of an arbitration agreement.

By allowing the arbitration to proceed if the Arbitration Court is prima facie satisfied that an agreement to arbitrate may exist, the provision strikes a balance between addressing preliminary objections and avoiding unnecessary delays or dismissals of the arbitration process.

In summary, this article establishes a procedure for handling preliminary objections regarding the existence, validity, scope, or applicability of the agreement to arbitrate. It empowers the Arbitration Court to decide whether the arbitration should proceed based on a prima facie assessment of the agreement's existence under the Rules, without prejudging the merits of the parties' respective claims.

6.3. Where the Arbitration Court has decided pursuant to Article 6.2 above that the arbitration shall proceed, the final decision as to the jurisdiction of the Tribunal shall be taken by the Tribunal itself. In any event, and even in the absence of a specific objection to jurisdiction at any stage of the arbitration, the Tribunal shall satisfy itself that the agreement to arbitrate, referred to in the Request, is valid and that the claims and any counterclaims fall within its scope, and shall rule on the Tribunal's jurisdiction in the manner prescribed in Article 6.6.

Article 6.3 of the DIAC Arbitration Rules addresses the final decision-making authority regarding the jurisdiction of the arbitral tribunal. Let us examine the key points outlined in this article:

1. Decision-making authority: The article states that once the Arbitration Court has determined, pursuant to Article 6.2, that the arbitration shall proceed despite preliminary objections, the final decision on the jurisdiction of the tribunal rests with the tribunal itself. This means that the tribunal has the ultimate authority to rule on its own jurisdiction.
2. Tribunal's assessment: Even if there is no specific objection to jurisdiction raised by either party at any stage of the arbitration, the tribunal is still obligated to satisfy itself regarding the validity of the arbitration agreement mentioned in the Request. The tribunal must ensure that the claims and any counterclaims fall within the scope of the agreement to arbitrate.

3. Ruling on jurisdiction: The tribunal is required to make a formal ruling on its jurisdiction in accordance with the procedure outlined in Article 6.6 of the DIAC Arbitration Rules. The specific details of this procedure, including the timing and manner of the ruling, will be provided in Article 6.6.²⁵

This article emphasises the importance of the tribunal’s role in determining its own jurisdiction. It ensures that the tribunal is actively engaged in assessing the validity and scope of the arbitration agreement and confirming that the claims and counterclaims fall within its purview. This process contributes to the overall fairness and integrity of the arbitration proceedings.

Furthermore, the provision highlights that even in the absence of a specific jurisdictional objection from the parties, the tribunal has a duty to independently verify its jurisdiction. This demonstrates the tribunal’s proactive approach in safeguarding the integrity of the arbitration process and ensuring compliance with the agreed-upon terms of the arbitration agreement.

In summary, Article 6.3 of the DIAC Arbitration Rules establishes that the tribunal has the final decision-making authority regarding its own jurisdiction. It requires the tribunal to satisfy itself on the validity of the arbitration agreement and the scope of the claims and counterclaims. The tribunal must make a formal ruling on its jurisdiction in accordance with the prescribed procedure. This article reinforces the tribunal’s responsibility in determining its jurisdiction and upholding the integrity of the arbitration proceedings.

6.4. Any objection to the jurisdiction of the Tribunal shall be raised no later than in the statement of defence or, as the case may be, in any statement of defence to counterclaim.

Article 6.4 of the DIAC Arbitration Rules addresses the timing for raising objections to the jurisdiction of the tribunal. Let us analyse the key elements of this article:

1. Timing of objections: According to Article 6.4, any objection to the jurisdiction of the tribunal must be raised no later than in the statement of defence. This means that the party disputing the tribunal’s jurisdiction should raise their objection in their initial response to the claims asserted against them. If there is a counterclaim, objections to jurisdiction should be included in the statement of defence to the counterclaim as well.
2. Requirement for timely objection: The article establishes that objections to jurisdiction must be raised at an early stage of the proceedings. By setting a specific deadline for raising jurisdictional objections, the provision encourages parties to promptly address any concerns they have regarding the tribunal’s jurisdiction.
3. Consequence of failure to timely object: It can be inferred from the article that failure to raise objections to jurisdiction within the prescribed timeframe may result in a waiver or loss of the right to challenge the tribunal’s jurisdiction later in the proceedings. The article does not explicitly state the consequences, but it implies that objections raised after the specified deadline may not be considered.

²⁵ Marginally correct guess by ChatGPT.

The purpose of this provision is to ensure that parties raise any objections to the jurisdiction of the tribunal in a timely manner. By requiring objections to be raised in the statement of defence or statement of defence to counterclaim, the article promotes procedural efficiency and allows the tribunal to consider jurisdictional issues at an early stage of the arbitration.

It is important for parties to carefully assess their objections to jurisdiction and comply with the deadline specified in Article 6.4. Failing to raise objections within the prescribed timeframe may result in the objections being deemed waived, and the tribunal may proceed with the arbitration on the assumption of its jurisdiction.

In summary, Article 6.4 of the DIAC Arbitration Rules establishes that objections to the jurisdiction of the tribunal must be raised no later than in the statement of defence or, if applicable, in the statement of defence to counterclaim. The provision emphasises the importance of timely raising objections and allows the tribunal to address jurisdictional issues early in the arbitration process. Parties should be mindful of this requirement to avoid potential waivers of jurisdictional objections.

6.5. A party shall not be precluded from raising objection to the jurisdiction of the Tribunal on the grounds of such party having nominated, or participated in the appointment of, an arbitrator in the arbitration.

Article 6.5 of the DIAC Arbitration Rules addresses the issue of a party's ability to raise objections to the jurisdiction of the tribunal despite their involvement in the nomination or appointment of an arbitrator. Let us examine the key points outlined in this article:

1. **Objection to jurisdiction:** According to Article 6.5, a party is not precluded from raising an objection to the jurisdiction of the tribunal. This means that even if a party has participated in the nomination or appointment of an arbitrator in the arbitration, they retain the right to challenge the tribunal's jurisdiction.
2. **Involvement in arbitrator selection:** The provision specifically addresses situations where a party has nominated or participated in the appointment of an arbitrator. It clarifies that this involvement does not automatically preclude the party from objecting to the tribunal's jurisdiction. The party's participation in the appointment process does not waive their right to challenge the tribunal's authority.
3. **Preserving the right to jurisdictional objection:** By stating that involvement in the nomination or appointment of an arbitrator does not preclude a party from raising jurisdictional objections, Article 6.5 safeguards the party's right to challenge the tribunal's jurisdiction. It ensures that a party's previous actions in the selection process do not restrict their ability to contest the tribunal's authority.

This article recognises the importance of allowing parties to raise objections to the jurisdiction of the tribunal, even if they have played a role in the appointment of an arbitrator. It acknowledges that a party's participation in the selection process does not equate to a waiver of their right to challenge jurisdictional issues.

The provision promotes fairness and preserves parties' rights by clarifying that involvement in the appointment of an arbitrator does not serve as a bar to raising jurisdictional objections. It ensures that

parties have the opportunity to contest the tribunal's authority if they genuinely believe there are grounds to do so.

In summary, Article 6.5 of the DIAC Arbitration Rules affirms that a party is not prevented from raising objections to the jurisdiction of the tribunal based on their prior nomination or participation in the appointment of an arbitrator. The provision acknowledges the parties' right to challenge jurisdictional issues, regardless of their involvement in the arbitrator selection process. This article ensures fairness and preserves the parties' ability to raise objections to the tribunal's jurisdiction when appropriate.

6.6. In general, the Tribunal shall rule on any objection to its jurisdiction as a preliminary question. However, after consultation with the parties (including at the preliminary meeting), the Tribunal may proceed with the arbitration and rule on such jurisdictional objection in the Final Award.

Article 6.6 of the DIAC Arbitration Rules addresses the timing and procedure for ruling on objections to the jurisdiction of the arbitral tribunal. Let us examine the key elements of this article:

1. Preliminary ruling on jurisdiction: The general rule stated in Article 6.6 is that the tribunal shall rule on any objection to its jurisdiction as a preliminary question. This means that the tribunal will typically address and decide on jurisdictional objections before proceeding further with the arbitration proceedings.
2. Consultation with the parties: However, the article also states that the tribunal, after consulting with the parties, may choose to proceed with the arbitration and defer ruling on the jurisdictional objection to the Final Award. This allows the tribunal to consider the objection in conjunction with the merits of the case and address it in the final decision.
3. Flexibility in determining timing: The article grants the tribunal some discretion in deciding when to rule on jurisdictional objections. It acknowledges that in certain situations, it may be more appropriate or efficient to defer the ruling until the final stage of the arbitration. This approach allows for a more comprehensive and informed consideration of the objection in light of the entire proceedings.
4. Final Award: If the tribunal decides to defer ruling on the jurisdictional objection, Article 6.6 specifies that the tribunal will address the objection and make a definitive ruling in the Final Award. The Final Award is the tribunal's ultimate decision on the merits of the case and other relevant issues.

This article provides flexibility to the tribunal in determining the timing and procedure for ruling on jurisdictional objections. It recognises that in some cases, it may be more beneficial to address the objection alongside the merits of the dispute, rather than as a separate preliminary matter.

By allowing consultation with the parties and deferring the ruling to the Final Award, the article promotes efficiency and ensures a comprehensive consideration of jurisdictional objections within the overall context of the arbitration proceedings.

In summary, Article 6.6 of the DIAC Arbitration Rules stipulates that, in general, the tribunal will rule on objections to its jurisdiction as a preliminary question. However, the tribunal may, after consulting with the parties, choose to proceed with the arbitration and defer ruling on the jurisdictional objection

to the Final Award. This provision allows flexibility in determining the timing and procedure for ruling on jurisdictional objections, ensuring a fair and efficient resolution of such issues.

ARTICLE (7) REPRESENTATION

7.1. Subject to Article 7.5, the parties may be represented or assisted by person(s) of their choice, irrespective of their nationality or professional qualifications. The names and contact details of such representative(s) shall be included in the Request and the Answer, as required by Articles 4.1(b) and 5.1(a).

Article 7.1 of the DIAC Arbitration Rules addresses the representation of parties in the arbitration proceedings. Let us analyse the key elements of this article:

1. **Freedom of representation:** According to Article 7.1, the parties have the freedom to choose and be represented or assisted by person(s) of their choice. This includes legal representation or any other form of assistance in the arbitration process. The provision emphasises that the parties' choice of representative is not limited by nationality or professional qualifications.
2. **Inclusion in the Request and Answer:** The article requires that the names and contact details of the representative(s) chosen by the parties be included in the Request (initiated by the Claimant) and the Answer (submitted by the Respondent). This ensures transparency and facilitates effective communication between the parties, their representatives, and the administrative body overseeing the arbitration.
3. **Compliance with other relevant articles:** Article 7.1 references the corresponding provisions in Articles 4.1(b) and 5.1(a) of the DIAC Arbitration Rules. These articles outline the specific information and requirements to be included in the Request and Answer, respectively, including the details of the parties and their representatives.

The purpose of Article 7.1 is to affirm the principle of party autonomy in the selection of their representatives in the arbitration proceedings. It ensures that parties have the freedom to choose individuals they trust and believe will effectively advocate for their interests, regardless of nationality or professional qualifications.

By requiring the inclusion of representative information in the Request and Answer, the provision enhances transparency and facilitates clear communication between the parties and the administrative body overseeing the arbitration.

In summary, Article 7.1 of the DIAC Arbitration Rules affirms the parties' freedom to choose their representatives in the arbitration proceedings. It ensures that parties can be represented or assisted by person(s) of their choice, regardless of nationality or professional qualifications. The article also specifies the requirement for including representative details in the Request and Answer, promoting transparency and effective communication throughout the arbitration process.

7.2. In seeking compliance with the core objective of the Rules, each party shall ensure, insofar as is possible, that its representative(s) act(s) ethically and professionally and has/have sufficient time available to carry out their duties and enable the arbitration to proceed efficiently and expeditiously.

Article 7.2 of the DIAC Arbitration Rules addresses the ethical and professional conduct expected from the representatives chosen by the parties in the arbitration proceedings. Let us analyse the key points outlined in this article:

1. **Core objective of the Rules:** Article 7.2 highlights that the parties should seek compliance with the core objective of the DIAC Arbitration Rules. While the specific core objective is not explicitly stated, it generally refers to the effective and efficient resolution of the dispute through arbitration.
2. **Ethical and professional conduct:** The article emphasises that each party is responsible for ensuring that its chosen representative(s) act ethically and professionally throughout the arbitration process. This includes conducting themselves in a manner consistent with recognised professional standards and principles of integrity, fairness, and good faith.
3. **Sufficient time availability:** The provision further states that representatives should have sufficient time available to fulfil their duties effectively. This implies that representatives should be able to devote the necessary time and attention to the arbitration proceedings, ensuring that they can participate actively and contribute to the efficient and expeditious progress of the case.

The purpose of Article 7.2 is to promote ethical conduct and professionalism among the representatives involved in the arbitration. It highlights the importance of maintaining high ethical standards and ensuring that representatives have the capacity to fulfil their responsibilities effectively.

By requiring parties to select representatives who can act ethically and professionally and have sufficient time available, the article aims to contribute to a fair and efficient arbitration process. It helps foster an environment conducive to productive discussions, effective advocacy, and timely resolution of the dispute.

In summary, Article 7.2 of the DIAC Arbitration Rules emphasises the responsibility of each party to ensure that its representatives act ethically and professionally. It highlights the importance of maintaining high ethical standards and ensuring sufficient time availability to enable the arbitration to proceed efficiently and expeditiously. This article promotes the core objective of the Rules and contributes to a fair and effective arbitration process.

7.3. Prior to the constitution of the Tribunal, the Centre may also require from the parties' representatives' proof of authority to represent the respective parties in the arbitration. The validity of the authority submitted by the parties shall ultimately be determined by the Tribunal.

Article 7.3 of the DIAC Arbitration Rules addresses the requirement for parties' representatives to provide proof of authority to represent their respective parties in the arbitration. Let us analyse the key points outlined in this article:

1. **Timing:** The article specifies that the Centre may request proof of authority from the parties' representatives prior to the constitution of the Tribunal. This means that before

the arbitrators are appointed and the tribunal is formally established, the Centre may ask the representatives to provide documentation demonstrating their authority to act on behalf of their respective parties.

2. **Proof of authority:** The article requires the representatives to provide proof of their authority to represent their parties in the arbitration. This could include documents such as powers of attorney, authorisation letters, or other relevant legal instruments. By requesting proof of authority, the aim is to ensure that the representatives have the necessary authorisation and legitimacy to act on behalf of their parties in the arbitration proceedings.
3. **Determination by the Tribunal:** While the Centre may request proof of authority, Article 7.3 clarifies that the ultimate determination of the validity of the authority submitted by the parties' representatives lies with the Tribunal. This means that the Tribunal will make the final decision on whether the representatives are duly authorised to represent their parties in the arbitration.

The purpose of Article 7.3 is to ensure that the representatives appearing before the Tribunal have the necessary authority to act on behalf of their parties. It allows the Centre to request proof of authority to safeguard the integrity and fairness of the arbitration proceedings.

By placing the responsibility of determining the validity of the authority in the hands of the Tribunal, the article ensures that the issue is addressed by the decision-making body of the arbitration. The Tribunal, with its legal expertise, can assess the submitted proof of authority and make an informed decision on the representation of the parties.

In summary, Article 7.3 of the DIAC Arbitration Rules allows the Centre to request proof of authority from the representatives prior to the constitution of the Tribunal. The representatives are required to provide evidence demonstrating their authority to represent their parties in the arbitration. However, the ultimate determination of the validity of the authority rests with the Tribunal. This article helps ensure that the arbitration proceedings are conducted by duly authorised representatives, providing assurance of the parties' representation and maintaining the integrity of the process.

7.4. Upon its constitution, the Tribunal shall have the power to require from any party proof of authority granted to its representative(s) in such a form as the Tribunal may determine, so as to satisfy itself that the parties' representatives have the authority required by the seat of the arbitration to conduct the arbitration.

Article 7.4 of the DIAC Arbitration Rules addresses the power of the Tribunal to require proof of authority from the parties regarding the representatives appointed to conduct the arbitration. Let us analyse the key points outlined in this article:

1. **Timing:** The article states that once the Tribunal is constituted, it has the power to request proof of authority from any party. This means that after the arbitrators are appointed and the Tribunal is established, it can demand evidence demonstrating that the parties' representatives have the necessary authority to conduct the arbitration.
2. **Proof of authority:** The Tribunal may require the parties to provide proof of the authority granted to their representatives. The form in which this proof should be provided is not

specified and is left to the discretion of the Tribunal. It could involve submitting documents such as powers of attorney, authorisation letters, or any other evidence that satisfies the Tribunal regarding the authority of the representatives.

3. **Compliance with seat requirements:** The purpose of requesting proof of authority is to ensure that the parties' representatives possess the necessary authority required by the seat of the arbitration. The seat refers to the legal jurisdiction where the arbitration is recognised and governed. By verifying the authority of the representatives, the Tribunal ensures that they meet the requirements set by the applicable law of the seat.

The provision in Article 7.4 empowers the Tribunal to assess and verify the authority of the parties' representatives to conduct the arbitration. It emphasises the importance of ensuring that the representatives have the requisite authority in accordance with the seat's requirements.

By conducting this review, the Tribunal contributes to the integrity and validity of the arbitration proceedings. It ensures that the parties' representatives are properly authorised to act on behalf of their respective parties, providing confidence in the representation and upholding the principles of procedural fairness.

In summary, Article 7.4 of the DIAC Arbitration Rules grants the Tribunal the power to request proof of authority from the parties to verify that their representatives have the necessary authorisation to conduct the arbitration. The purpose is to ensure compliance with the seat's requirements and maintain the integrity of the proceedings. This provision reinforces the importance of proper representation and aligns with the principles of procedural fairness in arbitration.

7.5. Following the constitution of the Tribunal, any party may change or add to its representatives, subject to:

- (a) informing the other parties, the Tribunal and the Centre of its intention to do so; and**
- (b) the Tribunal approving, after consultation with the parties, the proposed replacement or addition of representative(s), having due regard to, amongst other things, the right of a party to be represented by its chosen representative(s), any representations of any other party to the arbitration, the potential for conflicts of interest if the proposed change or addition is made, the stage at which the arbitration has reached and any impact upon time and/or cost that any proposed change or addition to such representation may make.**

Article 7.5 of the DIAC Arbitration Rules addresses the ability of parties to change or add representatives following the constitution of the Tribunal. Let us analyse the key points outlined in this article:

1. **Right to change or add representatives:** The article recognises that parties have the right to change or add representatives after the Tribunal has been constituted. This allows parties to adjust their representation during the course of the arbitration proceedings.
2. **Informing the other parties, Tribunal, and Centre:** In order to change or add representatives, the party seeking the change or addition must inform the other parties, the Tribunal, and the Centre of their intention to do so. This requirement ensures

transparency and allows all relevant stakeholders to be aware of any changes in the party's representation.

3. Approval of the Tribunal: Before the change or addition can take effect, the Tribunal must approve the proposed replacement or addition of representatives. The Tribunal exercises its discretion in granting approval after consulting with the parties involved. In making this decision, the Tribunal considers factors such as the parties' right to be represented by their chosen representatives, any representations made by other parties, the potential for conflicts of interest, the stage of the arbitration proceedings, and the potential impact on time and cost.

The purpose of Article 7.5 is to strike a balance between the parties' right to choose their representatives and the need to ensure fairness and efficiency in the arbitration proceedings. It allows parties flexibility in adjusting their representation but also ensures that any changes or additions are carefully considered to avoid undue disruption or prejudice to the arbitration process.

By requiring the party to inform other parties, the Tribunal, and the Centre, the article promotes transparency and allows all stakeholders to be aware of any changes in representation. The requirement for Tribunal approval ensures that any proposed changes are evaluated in light of relevant factors, such as potential conflicts of interest and the impact on time and cost.

In summary, Article 7.5 of the DIAC Arbitration Rules permits parties to change or add representatives following the constitution of the Tribunal. It requires the party to inform the other parties, the Tribunal, and the Centre of their intention and mandates Tribunal approval after considering various factors. This provision strikes a balance between the parties' right to representation and the need to maintain fairness and efficiency in the arbitration proceedings.

III. MULTIPLE CONTRACTS, CONSOLIDATION AND JOINDER

ARTICLE (8) MULTIPLE CONTRACTS AND CONSOLIDATION

8.1. Subject to the provisions of Articles 6.1 and 6.2, a party wishing to commence an arbitration under the Rules may submit to the Centre a single Request in respect of multiple claims arising out of or in connection with more than one agreement to arbitrate, provided the requirements of Article 8.2 below are or may be satisfied.

Article 8.1 of the DIAC Arbitration Rules addresses the ability of a party to commence an arbitration under the Rules by submitting a single Request in respect of multiple claims arising from more than one agreement to arbitrate. Let us analyse the key points outlined in this article:

1. **Commencing arbitration for multiple claims:** The article allows a party to initiate arbitration proceedings for multiple claims arising out of or in connection with more than one agreement to arbitrate. This provision recognises that disputes may involve multiple claims that are interconnected or stem from different contractual relationships.
2. **Single Request:** The party wishing to commence the arbitration can submit a single Request to the Centre, rather than filing separate Requests for each claim or agreement. This streamlines the process by consolidating the claims and facilitating their adjudication in a unified manner.
3. **Requirements of Article 8.2:** The ability to submit a single Request for multiple claims is subject to the requirements outlined in Article 8.2. This suggests that there are specific conditions or criteria that need to be satisfied for the consolidation of claims in a single Request.

The purpose of Article 8.1 is to provide flexibility and efficiency in addressing disputes involving multiple claims arising from more than one agreement to arbitrate. By allowing parties to consolidate their claims into a single Request, the article promotes a streamlined and cost-effective approach to resolving complex disputes.

The specific requirements for the consolidation of claims in a single Request are further outlined in Article 8.2. It can be inferred that these requirements serve to ensure that the consolidation is appropriate and feasible in the given circumstances.²⁶

In summary, Article 8.1 of the DIAC Arbitration Rules enables a party to commence arbitration for multiple claims arising from more than one agreement to arbitrate by submitting a single Request to the Centre. This provision promotes efficiency and convenience in resolving complex disputes. However, the specific requirements for consolidation are governed by Article 8.2, which provides further guidance on the conditions that need to be satisfied for the consolidation of claims in a single Request.²⁷

²⁶ Marginally correct guess by ChatGPT.

²⁷ Marginally correct guess by ChatGPT.

8.2. Prior to the appointment of any arbitrator(s) in the arbitrations sought to be consolidated, the Arbitration Court may, upon an application by a party and after having invited all parties to comment, allow the consolidation into a single arbitration of two or more arbitrations, where all parties agree to such consolidation or it is satisfied on a prima facie basis that:

- (a) all claims in the arbitrations are made under the same agreement to arbitrate; or**
- (b) the arbitrations involve the same parties, the agreements to arbitrate are compatible, and:**
 - (i) the disputes arise out of the same legal relationship(s); or**
 - (ii) the underlying contracts consist of a principal contract and its ancillary contract(s); or**
 - (iii) the claims arise out of the same transaction or series of related transactions.**

Article 8.2 of the DIAC Arbitration Rules addresses the consolidation of multiple arbitrations into a single arbitration. Let us analyse the key points outlined in this article:

1. Application for consolidation: The article states that prior to the appointment of any arbitrator(s) in the arbitrations that are sought to be consolidated, a party can make an application to the Arbitration Court for consolidation.
2. Invitation for comments: The Arbitration Court invites all parties involved in the arbitrations to provide their comments on the proposed consolidation. This ensures that all parties have an opportunity to express their views on the matter.
3. Grounds for consolidation: The article provides two scenarios in which consolidation may be allowed:
4. a. Agreement-based consolidation: The consolidation may be permitted if all claims in the arbitrations are made under the same agreement to arbitrate. This means that the claims arise from a single contractual relationship governed by a common arbitration agreement.
5. b. Relationship-based consolidation: The consolidation may also be allowed if the arbitrations involve the same parties and the agreements to arbitrate are compatible. In this case, the consolidation may be granted if the disputes arise out of the same legal relationship(s), the underlying contracts consist of a principal contract and its ancillary contract(s), or the claims arise out of the same transaction or series of related transactions.
6. Prima facie assessment: The Arbitration Court is required to conduct a prima facie assessment of the grounds for consolidation. This means that it makes an initial determination based on the available information and evidence, without delving into the full merits of the case. The purpose of this assessment is to determine whether there is a sufficient basis to allow the consolidation.

The purpose of Article 8.2 is to provide a framework for the consolidation of multiple arbitrations into a single arbitration. The article allows parties to seek consolidation, subject to certain conditions and the satisfaction of the Arbitration Court. By consolidating arbitrations, the aim is to promote efficiency,

avoid potential inconsistencies or duplications, and facilitate the resolution of related disputes in a unified manner.

In summary, Article 8.2 of the DIAC Arbitration Rules sets out the conditions and process for the consolidation of multiple arbitrations into a single arbitration. It requires an application to the Arbitration Court, invites comments from all parties, and allows consolidation if there is agreement among the parties or if certain grounds for consolidation are satisfied. This provision aims to enhance efficiency and streamline the resolution of related disputes within the DIAC arbitration framework.

8.3. Where the Arbitration Court has decided pursuant to Article 6.2 that the arbitration shall not proceed in respect of any of the multiple claims, should the Claimant wish to proceed with one or more of the claims that have not been consolidated, it shall re-submit to the Centre a Complete Request for any such claim(s) within 15 days from the date of the notification of the Arbitration Court’s decision. Any claim which is not re-submitted shall be considered withdrawn.

Article 8.3 of the DIAC Arbitration Rules addresses the situation where the Arbitration Court decides that the arbitration shall not proceed in respect of any of the multiple claims consolidated under Article 6.2. Let us analyse the key points outlined in this article:

1. Decision not to proceed with certain claims: If the Arbitration Court determines, pursuant to Article 6.2, that the arbitration shall not proceed in relation to some of the claims that were consolidated, the Claimant has the option to proceed with the claims that have not been consolidated.
2. Resubmission of Complete Request: In order to proceed with the claims that were not consolidated, the Claimant must re-submit a Complete Request to the Centre within 15 days from the date of the notification of the Arbitration Court’s decision. This means that the Claimant needs to provide a separate Request specifically addressing the claims that were not consolidated.
3. Claim considered withdrawn if not re-submitted: If the Claimant fails to re-submit a Complete Request for any claims that were not consolidated within the specified timeframe, those claims will be considered withdrawn. ~~This means that the Claimant will no longer be able to pursue those particular claims in the arbitration.~~²⁸

The purpose of Article 8.3 is to provide clarity and procedural guidance in situations where the Arbitration Court decides not to proceed with certain claims ~~that were consolidated.~~²⁹ It ensures that the Claimant has the opportunity to pursue the remaining claims separately by re-submitting a Complete Request. However, it also establishes a deadline for the re-submission, emphasising the importance of timely action on the part of the Claimant.

In summary, Article 8.3 of the DIAC Arbitration Rules allows the Claimant to proceed with claims that were not consolidated if the Arbitration Court decides not to proceed with them. The Claimant must re-submit a Complete Request for the non-consolidated claims within 15 days from the date of the

²⁸ Misapprehension by ChatGPT.

²⁹ Misapprehension by ChatGPT.

notification. Failure to do so will result in the claims being considered withdrawn. This provision ensures procedural clarity and enables the efficient management of claims in the arbitration process.

8.4. The decision of the Arbitration Court in respect of consolidation shall be without prejudice to the Tribunal's powers to rule on its own jurisdiction under Article 6.1 or on a party's right to apply for consolidation under Articles 8.5 and 8.6 below.

Article 8.4 of the DIAC Arbitration Rules addresses the decision of the Arbitration Court regarding consolidation of multiple arbitrations. Let us analyse the key points outlined in this article:

1. Decision not affecting Tribunal's jurisdiction: The article states that the decision of the Arbitration Court regarding consolidation of arbitrations is without prejudice to the Tribunal's powers to rule on its own jurisdiction. This means that the decision made by the Arbitration Court does not prevent the Tribunal from independently considering and ruling on issues related to its own jurisdiction.
2. Application for consolidation by a party: Article 8.4 also mentions that a party has the right to apply for consolidation under Articles 8.5 and 8.6. This indicates that the decision made by the Arbitration Court regarding consolidation does not restrict a party from seeking consolidation through the appropriate provisions outlined in the subsequent articles.

The purpose of Article 8.4 is to clarify that the decision made by the Arbitration Court regarding consolidation does not impede the Tribunal's authority to assess its own jurisdiction. It also acknowledges the rights of the parties to seek consolidation through the relevant provisions specified in the subsequent articles.

In summary, Article 8.4 of the DIAC Arbitration Rules confirms that the decision made by the Arbitration Court regarding consolidation does not hinder the Tribunal's power to rule on jurisdiction matters. It also recognises the parties' right to apply for consolidation using the procedures outlined in Articles 8.5 and 8.6. This provision ensures that the Tribunal retains its autonomy to determine jurisdictional issues and acknowledges the parties' procedural rights in seeking consolidation when appropriate.

8.5. Where the Tribunal has been constituted in one of the arbitrations sought to be consolidated and provided no arbitrator(s) has/have been appointed in any other arbitration, upon an application by a party and after having invited all parties to comment, the Tribunal may, having considered any other relevant factors, including the composition of the proposed Tribunal and the impact of the

proposed consolidation on the arbitration and its efficient and expeditious progress, consolidate two or more arbitrations into a single arbitration, where:

- (a) all parties agree to such consolidation; or**
- (b) the requirements of Article 8.2 (a) or (b) have been met.**

Article 8.5 of the DIAC Arbitration Rules addresses the consolidation of arbitrations when the Tribunal has been constituted in one of the arbitrations sought to be consolidated. Let us analyse the key points outlined in this article:

1. Consolidation upon application by a party: The article states that a party can apply for consolidation of two or more arbitrations into a single arbitration. This application can be made when the Tribunal has already been constituted in one of the arbitrations and no arbitrator(s) have been appointed in any of the other arbitrations.
2. Invitation for comments: The Tribunal is required to invite all parties to comment on the application for consolidation. This ensures that all parties have an opportunity to provide their views and input on the proposed consolidation.
3. Factors considered by the Tribunal: The Tribunal, in deciding whether to grant the application for consolidation, takes into account various factors. These factors may include the composition of the proposed Tribunal, the impact of consolidation on the arbitration process, and the efficient and expeditious progress of the proceedings.
4. Consolidation requirements: The article specifies two scenarios in which consolidation may be granted. The first scenario is when all parties agree to the consolidation. The second scenario is when the requirements outlined in Article 8.2 (a) or (b) have been met. These requirements refer to claims made under the same agreement to arbitrate or when the arbitrations involve the same parties and arise out of the same legal relationship(s) or transaction(s).

The purpose of Article 8.5 is to provide a framework for the consolidation of arbitrations when the Tribunal has already been constituted in one of the arbitrations. It sets out the conditions under which consolidation can be granted, ensuring that the parties and the Tribunal consider relevant factors to determine the appropriateness of consolidation in light of the specific circumstances of the case.

In summary, Article 8.5 of the DIAC Arbitration Rules allows for the consolidation of arbitrations when the Tribunal has been constituted in one of the arbitrations. Consolidation can be granted if all parties agree or if certain requirements specified in Article 8.2 are met. The Tribunal considers relevant factors in making its decision, aiming to ensure an efficient and expeditious arbitration process.

8.6. An application for consolidation may be made by any party where two or more Tribunals have been constituted and comprise the same members. The Tribunal shall consider an application for consolidation applying the provisions of Article 8.5 above.

Article 8.6 of the DIAC Arbitration Rules addresses the situation where two or more Tribunals have been constituted and comprise the same members, and a party applies for consolidation. Let us analyse the key points outlined in this article:

1. Application for consolidation: Any party involved in the arbitrations can make an application for consolidation when two or more Tribunals have been constituted, and these Tribunals comprise the same members. This means that the same arbitrators have been appointed to multiple arbitrations.
2. Consideration by the Tribunal: The Tribunal, upon receiving the application for consolidation, is required to consider it in accordance with the provisions outlined in Article 8.5. This means that the factors mentioned in Article 8.5, such as the composition of the proposed Tribunal and the impact on the efficiency and progress of the arbitration, will be taken into account.

The purpose of Article 8.6 is to provide a mechanism for consolidation when multiple Tribunals have been constituted with the same members. It allows for the possibility of streamlining the arbitration process by consolidating these separate proceedings into a single arbitration.

In summary, Article 8.6 of the DIAC Arbitration Rules permits a party to apply for consolidation when two or more Tribunals have been constituted and comprise the same members. The Tribunal will consider the application in line with the provisions of Article 8.5. This provision ensures that the Tribunal can assess the appropriateness of consolidation in such circumstances, taking into account the relevant factors mentioned in the rules.

8.7. Where consolidation is granted, the arbitrations shall, unless the parties agree otherwise, be consolidated into the arbitration that commenced first and the Centre shall adjust the advance on costs of the arbitration by reference to the total of the sum(s) claimed and/or counterclaimed in such consolidated arbitration in accordance with the Table in force on the date of the consolidation. Any arbitration that is not consolidated shall continue to be conducted separately.

Article 8.7 of the DIAC Arbitration Rules addresses the consequences and procedures related to consolidation of arbitrations. Let us analyse the key points outlined in this article:

1. Consolidation into the first commenced arbitration: When consolidation is granted, the arbitrations will be consolidated into the arbitration that commenced first. This means that all consolidated claims and counterclaims will be combined and heard in the arbitration that started earliest among the consolidated cases.
2. Adjustment of advance on costs: The Centre, which administers the arbitration, will adjust the advance on costs based on the total sum claimed and/or counterclaimed in the consolidated arbitration. The adjustment will be made in accordance with the applicable Table of Fees and Costs in force on the date of consolidation. This ensures that the financial aspects of the consolidated arbitration are appropriately accounted for.
3. Continuation of separate arbitrations: Any arbitration that is not consolidated will continue to be conducted separately. This means that if some claims or counterclaims are not eligible for consolidation, those specific cases will proceed independently, unaffected by the consolidation process.

The purpose of Article 8.7 is to establish the procedure and effects of consolidation when granted. It specifies that the consolidated claims and counterclaims will be consolidated into the arbitration that

commenced first, and the Centre will adjust the advance on costs accordingly. Additionally, the article clarifies that any non-consolidated arbitrations will proceed separately.

In summary, Article 8.7 of the DIAC Arbitration Rules outlines the consequences of consolidation. It mandates that consolidated cases will be merged into the arbitration that started first, with adjustments made to the advance on costs. Non-consolidated cases will continue separately. This provision ensures clarity and consistency in handling consolidated and non-consolidated arbitrations under the DIAC rules.

8.8. Any consolidation granted under Articles 8.5 and 8.6, shall not affect the binding nature of any award, order or other decision issued prior to the consolidation.

Article 8.8 of the DIAC Arbitration Rules addresses the impact of consolidation on the binding nature of awards, orders, or other decisions issued prior to the consolidation. Let us analyse the key points outlined in this article:

1. Preservation of binding nature: Article 8.8 states that any consolidation granted under Articles 8.5 and 8.6 shall not affect the binding nature of any award, order, or other decision that was issued before the consolidation took place. This means that the validity and enforceability of the decisions made in the individual arbitrations prior to consolidation remain intact.
2. Finality of prior decisions: By preserving the binding nature of prior awards, orders, or decisions, Article 8.8 ensures that the parties' rights and obligations established through those decisions are not affected by the consolidation process. The parties can rely on and enforce these prior decisions as if consolidation had not occurred.

The purpose of Article 8.8 is to provide clarity and certainty regarding the status of awards, orders, or decisions made in the individual arbitrations prior to consolidation. It emphasises that the binding nature of these prior decisions remains unaffected, regardless of the subsequent consolidation.

In summary, Article 8.8 of the DIAC Arbitration Rules safeguards the binding nature of awards, orders, or decisions issued before consolidation. It ensures that the parties' rights and obligations established through these prior decisions are preserved and unaffected by the consolidation process.

8.9. Consolidation shall not apply where the parties have expressly agreed in the agreement to arbitrate to opt out of consolidation.

Article 8.9 of the DIAC Arbitration Rules addresses the issue of parties opting out of consolidation. Let us analyse the key points outlined in this article:

1. Opting out of consolidation: Article 8.9 states that consolidation will not apply in cases where the parties have expressly agreed in their agreement to arbitrate to opt out of consolidation. This means that if the parties have included a specific provision in their arbitration agreement to exclude or waive the possibility of consolidation, the general rules regarding consolidation will not apply.

2. Preserving party autonomy: By allowing parties to opt out of consolidation, Article 8.9 recognises and respects the principle of party autonomy. Parties have the freedom to tailor their arbitration agreements to suit their specific needs and preferences, including the decision of whether or not to allow consolidation of arbitrations.

The purpose of Article 8.9 is to acknowledge and give effect to the parties' express agreement regarding consolidation. It ensures that parties who have explicitly chosen to exclude consolidation in their arbitration agreement are not subject to the default provisions related to consolidation in the DIAC Arbitration Rules.

In summary, Article 8.9 of the DIAC Arbitration Rules acknowledges the importance of party autonomy by allowing parties to opt out of consolidation if they have expressly agreed to do so in their arbitration agreement. This provision respects the parties' choice and ensures that their agreement regarding consolidation, or the lack thereof, is upheld.

ARTICLE (9) JOINDER

9.1. Prior to the appointment of any arbitrator(s) in the arbitration in which the application for joinder is made, the Arbitration Court may, upon an application by a party, whether or not such party is a party to the arbitration, and after having invited all parties and any proposed additional party to comment, allow one or more additional parties to be joined in the arbitration as Claimant(s) or Respondent(s) provided that:

- (a) all parties (inclusive of any party to be joined and whether or not such party is a party to the agreement to arbitrate referred to in the Request) have consented in writing to the joinder; or**
- (b) it is prima facie satisfied that any such party to be joined may be a party to the agreement to arbitrate referred to in the Request.**

Article 9.1 of the DIAC Arbitration Rules pertains to joinder, which is the process of allowing additional parties to join an ongoing arbitration. Let us analyse the key points outlined in this article:

1. Timing of the joinder application: Article 9.1 specifies that the application for joinder must be made prior to the appointment of any arbitrator(s) in the ongoing arbitration. This means that the request to join additional parties should be submitted before the composition of the arbitral tribunal is finalised.
2. Discretion of the Arbitration Court: The decision to allow joinder rests with the Arbitration Court, which is the body responsible for administering the arbitration under the DIAC Arbitration Rules. The Arbitration Court may consider an application for joinder submitted by a party, regardless of whether that party is already a party to the arbitration or not.
3. Consent of parties or prima facie satisfaction: The Arbitration Court may grant joinder if either of the following conditions is satisfied:
 - a. Written consent of all parties: Joinder may be allowed if all parties, including the party to be joined, provide written consent to the joinder. This demonstrates the parties' agreement to have additional parties participate in the arbitration.

- b. Prima facie satisfaction: Joinder may be allowed if the Arbitration Court is prima facie satisfied that the party to be joined may be a party to the agreement to arbitrate referred to in the initial Request. In other words, if there is a reasonable belief that the party seeking joinder has a valid basis for being included in the arbitration.

The purpose of Article 9.1 is to provide a framework for the joinder of additional parties in ongoing arbitrations. It allows for the inclusion of parties who were not originally part of the arbitration, subject to the consent of all parties or the Arbitration Court's satisfaction that the party seeking joinder may be a party to the underlying arbitration agreement.

In summary, Article 9.1 of the DIAC Arbitration Rules outlines the conditions and procedures for the joinder of additional parties in ongoing arbitrations. It ensures that joinder is either based on the written consent of all parties or on the prima facie satisfaction of the Arbitration Court that the party seeking joinder may be a party to the underlying arbitration agreement.

9.2. Where the Arbitration Court has allowed the joinder of any additional party in accordance with Article 9.1 above:

(a) the relevant provisions of Articles 4 and 5 shall, with any changes that the Centre deems necessary, apply to any new claim(s) and/or counterclaim(s) made by or against any such party; and

(b) Article 12.5 shall apply to the constitution of the Tribunal.

Article 9.2 of the DIAC Arbitration Rules addresses the consequences and procedural aspects of allowing joinder of an additional party in an ongoing arbitration. Let us analyse the key points outlined in this article:

1. Applicability of Articles 4 and 5: Article 9.2(a) states that the relevant provisions of Articles 4 and 5, with any necessary changes determined by the Centre, shall apply to any new claim(s) and/or counterclaim(s) made by or against the additional party that has been joined. This means that the procedural requirements and submissions outlined in Articles 4 and 5, which pertain to the initial Request and the subsequent Answer and counterclaim, will also apply to the claims involving the joined party.
2. Application of Article 12.5: Article 9.2(b) specifies that Article 12.5 of the DIAC Arbitration Rules shall apply to the constitution of the arbitral tribunal in cases where joinder has been allowed. Article 12.5 addresses the appointment ~~and replacement~~ of arbitrators, including the selection and confirmation process.³⁰ This provision ensures that the proper procedures for appointing arbitrators are followed, taking into account the addition of the new party to the arbitration.

The purpose of Article 9.2 is to establish the procedural framework for handling new claims or counterclaims involving the joined party and to ensure that the appointment of the arbitral tribunal is conducted in accordance with the DIAC Arbitration Rules.

³⁰ Marginally correct guess by ChatGPT.

In summary, Article 9.2 of the DIAC Arbitration Rules sets out the specific procedural rules that apply when an additional party is joined in an ongoing arbitration. It mandates the application of relevant provisions from Articles 4 and 5 for new claims or counterclaims involving the joined party and invokes Article 12.5 for the constitution of the arbitral tribunal in light of the joinder.

9.3. The decision of the Arbitration Court to allow the joinder of any additional party shall be without prejudice to the Tribunal’s powers to rule on its own jurisdiction under Article 6.1 or to a party’s right to apply for joinder under Article 9.4 below.

Article 9.3 of the DIAC Arbitration Rules addresses the impact of the Arbitration Court’s decision to allow the joinder of an additional party on the jurisdiction of the tribunal and the right of a party to apply for joinder. Here is an analysis of this article:

1. **Jurisdiction of the Tribunal:** Article 9.3 states that the decision of the Arbitration Court to allow the joinder of an additional party does not prejudice the powers of the tribunal to rule on its own jurisdiction as outlined in Article 6.1. This means that even after the joinder, the tribunal retains its authority to determine any objections or challenges to its jurisdiction raised by any party involved in the arbitration. The tribunal will have the power to decide on its own jurisdiction independently, regardless of the joinder of the additional party.
2. **Right to Apply for Joinder:** Article 9.3 also acknowledges that a party retains the right to apply for joinder under Article 9.4. This provision implies that even if an additional party has been joined with the consent of all parties or on prima facie satisfaction, other parties still have the opportunity to seek further joinder of additional parties if they meet the requirements set out in Article 9.4. The right to apply for joinder remains available to parties throughout the arbitration process.

The purpose of Article 9.3 is to clarify that the decision to allow joinder by the Arbitration Court does not affect the tribunal’s jurisdiction to rule on its own authority or a party’s right to seek further joinder. It preserves the tribunal’s autonomy to determine its jurisdiction and acknowledges the ongoing possibility for parties to seek additional joinder in the arbitration proceedings.

In summary, Article 9.3 of the DIAC Arbitration Rules confirms that the tribunal retains the power to rule on its own jurisdiction despite the joinder of additional parties and acknowledges the right of parties to apply for further joinder in accordance with Article 9.4. It ensures that the decision to allow joinder does not compromise the tribunal’s jurisdiction or limit parties’ ability to seek joinder at a later stage of the arbitration.

9.4. Following the constitution of the Tribunal, upon an application by a party and after having invited all parties and any proposed additional party to comment, the Tribunal may, having considered any other relevant factors, including potential conflicts of interest and the impact of the proposed joinder on the arbitration and its efficient and expeditious progress, allow one or more additional parties to be joined in the arbitration as Claimant(s) or Respondent(s) provided that:

- (a) all parties (inclusive of any party to be joined, whether or not such party is a party to the agreement to arbitrate referred to in the Request) have consented in writing to such joinder**

and any party to be joined has expressly agreed to the appointment and the powers of the Tribunal and the application of the Rules; or

(b) the Tribunal is satisfied that any such party to be joined is a party to the agreement to arbitrate referred to in the Request. A party joined in accordance with this Article 9.4 (b) shall be deemed to have waived its right, if any, to nominate an arbitrator in accordance with the Rules or the agreement to arbitrate.

Article 9.4 of the DIAC Arbitration Rules addresses the joinder of additional parties to the arbitration proceedings after the constitution of the tribunal. Here is an analysis of this article:

1. **Application for Joinder:** Article 9.4 states that after the tribunal has been constituted, a party may apply for the joinder of one or more additional parties to the arbitration. The application must be made in writing and is subject to consideration by the tribunal. The tribunal will invite all parties, including the proposed additional party, to comment on the application.
2. **Relevant Factors for Consideration:** The tribunal, when deciding on the application for joinder, must consider various relevant factors. These factors may include potential conflicts of interest that may arise from the joinder, as well as the impact of the proposed joinder on the arbitration proceedings and its efficient and expeditious progress. The tribunal will take into account these factors in assessing whether to allow the joinder of the additional party.
3. **Consent and Agreement:** There are two conditions for the joinder of additional parties under Article 9.4. First, all parties involved in the arbitration, including the proposed additional party, must provide written consent to the joinder. Second, the party to be joined must expressly agree to the appointment and the powers of the tribunal, as well as the application of the DIAC Arbitration Rules.
4. **Deemed Waiver:** If a party is joined in accordance with Article 9.4(b), which means they are found to be a party to the agreement to arbitrate referred to in the Request, they are deemed to have waived their right, if any, to nominate an arbitrator in accordance with the DIAC Arbitration Rules or the agreement to arbitrate. This provision ensures that the newly joined party cannot exercise the right to nominate an arbitrator.

The purpose of Article 9.4 is to provide a mechanism for parties to apply for the joinder of additional parties to the arbitration proceedings after the constitution of the tribunal. It sets out the conditions for such joinder, including the requirement for consent and agreement from all parties involved. It also ensures that the tribunal considers relevant factors and potential conflicts of interest before allowing the joinder.

In summary, Article 9.4 of the DIAC Arbitration Rules establishes the procedure for the joinder of additional parties after the constitution of the tribunal. It requires consent and agreement from all parties involved and provides the tribunal with the discretion to consider relevant factors before allowing the joinder. It also clarifies that a party joined under certain conditions will waive their right to nominate an arbitrator.

9.5. Nothing in this Article 9 shall prevent any party from challenging the jurisdiction of the Tribunal on grounds other than those referred to in Article 9.4 (b) above.

Article 9.5 of the DIAC Arbitration Rules addresses the issue of challenging the jurisdiction of the tribunal in relation to the joinder of additional parties. Here is an analysis of this article:

1. **Challenging Jurisdiction:** Article 9.5 explicitly states that nothing in Article 9, which pertains to the joinder of additional parties, shall prevent any party from challenging the jurisdiction of the tribunal on grounds other than those specified in Article 9.4(b). In other words, parties are not precluded from raising objections to the jurisdiction of the tribunal based on reasons other than the ones related to the joinder of additional parties.
2. **Scope of Jurisdictional Challenges:** While Article 9.4(b) specifically deals with the circumstances in which a party to be joined is considered a party to the agreement to arbitrate and waives the right to nominate an arbitrator, Article 9.5 clarifies that parties can still raise jurisdictional objections on other grounds. These grounds could include issues such as the validity, existence, scope, or applicability of the agreement to arbitrate, as well as other jurisdictional challenges.

The purpose of Article 9.5 is to ensure that parties are not limited in their ability to challenge the jurisdiction of the tribunal when it comes to matters beyond the joinder of additional parties. It affirms that parties can raise jurisdictional objections based on any valid grounds, allowing for a comprehensive examination of the tribunal's jurisdiction.

In summary, Article 9.5 of the DIAC Arbitration Rules clarifies that parties are not restricted from challenging the jurisdiction of the tribunal on grounds other than those related to the joinder of additional parties. It allows parties to raise jurisdictional objections based on various other factors, ensuring a fair and comprehensive assessment of the tribunal's jurisdiction in the arbitration proceedings.

9.6. Where the Tribunal has allowed the joinder of any additional party, Articles 24.1 and 24.2 shall apply to any new claim(s) and/or counterclaim(s) made by or against any additional party.

Article 9.6 of the DIAC Arbitration Rules addresses the situation where the Tribunal has granted the joinder of an additional party in the arbitration proceedings. It states that in such cases, the provisions of Articles 24.1 and 24.2 will apply to any new claims or counterclaims brought by or against the added party.

The reference to Articles 24.1 and 24.2 suggests that these articles contain relevant provisions regarding the statement of claim and statement of defence for the newly added party.³¹

Overall, Article 9.6 ensures that when an additional party is joined in the arbitration proceedings, the procedural rules governing the submission of claims and counterclaims by or against that party are in accordance with the provisions outlined in Articles 24.1 and 24.2 of the DIAC Arbitration Rules.

³¹ Marginally correct guess by ChatGPT.

9.7. The date on which the application for joinder is received by the Centre or, after its constitution, by the Tribunal, shall be the date on which the arbitration commenced against the additional party or parties.

Article 9.7 of the DIAC Arbitration Rules addresses the issue of determining the commencement date of the arbitration proceedings with respect to the additional party or parties that have been joined. It specifies that the date on which the application for joinder is received by the Centre or, if the Tribunal has already been constituted, by the Tribunal itself, will be considered as the official commencement date of the arbitration against the newly added party or parties.

By establishing a specific date of commencement, this provision helps in clarifying the timeline and procedural aspects of the arbitration proceedings involving the additional party or parties that have been joined. It ensures that the rights and obligations of all parties, including the newly joined parties, are clearly defined from the commencement of the arbitration.

IV. THE TRIBUNAL

ARTICLE (10) NUMBER OF ARBITRATORS

10.1. The Tribunal shall consist of such number of arbitrators as has been agreed by the parties. If there is more than one arbitrator, their number shall be uneven.

Article 10.1 of the DIAC Arbitration Rules addresses the composition of the arbitral tribunal in a DIAC arbitration. It emphasises that the number of arbitrators on the tribunal should be determined by the agreement of the parties. The parties have the flexibility to decide whether they want a single arbitrator or a panel of multiple arbitrators to resolve their dispute.

If the parties choose to have more than one arbitrator, the article specifies that the number of arbitrators should be uneven. This requirement is commonly followed in arbitration to avoid the possibility of a tie vote and ensure that a majority decision can be reached.

Overall, Article 10.1 ensures that the parties have control over the composition of the arbitral tribunal and allows them to determine the number of arbitrators based on their preferences and the complexity of the dispute.

10.2. Where the parties have not agreed on the number of arbitrators the Tribunal shall consist of a sole arbitrator, except where the Arbitration Court taking into account the relevant circumstances and in its absolute discretion, determines that a Tribunal composed of three members is appropriate.

Article 10.2 of the DIAC Arbitration Rules article addresses the situation where the parties have not reached an agreement on the number of arbitrators for the tribunal. In such cases, the default position is that the tribunal will consist of a sole arbitrator. However, the Arbitration Court has the authority to exercise its discretion and decide that a tribunal composed of three members is more suitable based on the relevant circumstances.

The article grants the Arbitration Court the power to consider factors such as the complexity of the dispute, the nature of the legal and factual issues involved, and the overall fairness and efficiency of the arbitration process. The decision to appoint a three-member tribunal is within the absolute discretion of the Arbitration Court, allowing it to determine what is appropriate in each case.

Overall, Article 10.2 provides flexibility in determining the number of arbitrators when the parties have not agreed, and it empowers the Arbitration Court to make a decision based on the specific circumstances of the arbitration.

ARTICLE (11) NATIONALITY OF ARBITRATORS

11.1. Where the parties are of different nationalities, a sole arbitrator or a chairperson of the Tribunal shall not have the same nationality as any party, unless the parties who are not of the same

nationality as the proposed arbitrator all agree otherwise in writing or decided by the Arbitration Court.

Article 11.1 of the DIAC Arbitration Rules addresses the issue of nationality in the selection of the sole arbitrator or the chairperson of the tribunal when the parties involved in the arbitration are of different nationalities. The general principle is that the arbitrator should not have the same nationality as any of the parties to ensure impartiality and avoid potential conflicts of interest.

According to Article 11.1, if the parties are of different nationalities, the default position is that the sole arbitrator or chairperson should not share the same nationality as any party. However, there are two exceptions to this rule. First, if all parties who are not of the same nationality as the proposed arbitrator agree in writing, they can waive the requirement of a different nationality. Second, the Arbitration Court has the authority to make a decision on this matter, which suggests that it has the power to deviate from the default rule under exceptional circumstances.

The purpose of this provision is to promote the impartiality and fairness of the arbitration process by ensuring that the arbitrator or chairperson is independent of any party's nationality. By prohibiting arbitrators from sharing the same nationality as any party by default, it helps maintain the perception of neutrality and avoids potential biases that could arise from nationality-based affiliations.

Overall, Article 11.1 establishes the general principle of different nationality for the sole arbitrator or chairperson and provides limited exceptions that allow parties to deviate from this rule with mutual agreement or by decision of the Arbitration Court.

11.2. For the purpose of this Article, a person who is a citizen of two or more states shall be treated as a national of each state.

Article 11.2 of the DIAC Arbitration Rules provides a definition or clarification for the term “nationality” as used in Article 11.1. It states that if a person holds citizenship in multiple states, they are considered a national of each of those states for the purpose of applying the nationality requirement in the appointment of the sole arbitrator or chairperson.

The purpose of this provision is to address situations where an individual holds dual or multiple citizenships. It ensures that if an arbitrator is a citizen of two or more states, they are treated as a national of each of those states. This is relevant because the requirement in Article 11.1 prohibits an arbitrator from having the same nationality as any party involved in the arbitration. By considering dual nationals as nationals of each state they hold citizenship in, the provision ensures that the requirement of different nationality is not circumvented by individuals with multiple citizenships.

Overall, Article 11.2 clarifies how the concept of nationality is applied in the context of the arbitration process and ensures consistency with the requirement of different nationality set forth in Article 11.1.

ARTICLE (12) NOMINATION AND APPOINTMENT OF THE TRIBUNAL

12.1. All arbitrators shall be appointed by the Arbitration Court. Where the agreement to arbitrate provides that the Claimant(s), the Respondent(s), the co-arbitrators or any third party are to appoint

an arbitrator, such agreement shall be construed as an agreement for such party to nominate an arbitrator for appointment by the Arbitration Court under the Rules.

Article 12.1 of the DIAC Arbitration Rules outlines the process for appointing arbitrators in DIAC arbitration. It establishes that the appointment of arbitrators is the responsibility of the Arbitration Court. This means that the Arbitration Court has the authority to make the final decision regarding the appointment of arbitrators.

Additionally, the article addresses situations where the agreement to arbitrate specifies that a particular party, such as the Claimant(s), Respondent(s), co-arbitrators, or any third party, has the power to appoint an arbitrator. In such cases, the article clarifies that this provision should be interpreted as an agreement for that party to nominate an arbitrator for appointment by the Arbitration Court under the DIAC Rules.

This provision ensures that the appointment process remains under the authority and control of the Arbitration Court, even if the agreement to arbitrate initially designates certain parties with the power to appoint an arbitrator. It helps maintain the impartiality and independence of the appointment process and ensures compliance with the DIAC Arbitration Rules.

In summary, Article 12.1 of the DIAC Arbitration Rules establishes the authority of the Arbitration Court to appoint arbitrators and clarifies the interpretation of appointment provisions in the agreement to arbitrate.

12.2. In appointing any arbitrator, the Arbitration Court shall take into account any mechanism or method of nomination agreed upon by the parties and give due consideration to the nature of the transaction, the nature of the dispute, the nationality, location and language of the parties and other relevant circumstances.

Article 12.2 of the DIAC Arbitration Rules outlines the factors that the Arbitration Court must consider when appointing an arbitrator. The primary consideration is any mechanism or method of nomination that the parties have agreed upon in their arbitration agreement. If the parties have specified a particular process for selecting an arbitrator, the Arbitration Court must take that into account.

In addition to the agreed nomination mechanism, the Arbitration Court must also consider other relevant factors. These factors include the nature of the transaction and dispute, the nationality, location, and language of the parties, as well as any other circumstances that may be pertinent to the appointment. The purpose of considering these factors is to ensure the selection of an arbitrator who is suitable for the specific case and who can provide a fair and impartial resolution.

By including these considerations in the appointment process, the DIAC Arbitration Rules aim to promote the fairness and effectiveness of the arbitration proceedings. It recognises that the choice of arbitrator is an important aspect of the arbitration process and should be tailored to the specific needs and circumstances of each case.

In summary, Article 12.2 of the DIAC Arbitration Rules requires the Arbitration Court to consider any agreed-upon nomination mechanism and relevant factors when appointing an arbitrator. This provision ensures that the appointed arbitrator is suitable for the case and can contribute to a fair and effective arbitration process.

12.3. Where the Tribunal is composed of a sole arbitrator, the parties may agree jointly to nominate the arbitrator within any specified time limit in the agreement to arbitrate or any time as may be granted by the Centre or as agreed by the parties. In the absence of such joint nomination by the parties, the Arbitration Court shall appoint the sole arbitrator.

Article 12.3 of the DIAC Arbitration Rules addresses the procedure for appointing a sole arbitrator when the parties have not made a joint nomination. It provides the parties with the opportunity to agree jointly on the appointment of the sole arbitrator within a specified time limit mentioned in the arbitration agreement or any other time limit that may be granted by the Centre or agreed upon by the parties.

If the parties fail to make a joint nomination within the specified time frame or any additional time granted, the responsibility for appointing the sole arbitrator falls on the Arbitration Court. The Arbitration Court will then proceed with the appointment of the sole arbitrator, ensuring that the appointment is made in accordance with the applicable rules and procedures.

This provision allows the parties to have some control over the appointment of the sole arbitrator. They have the opportunity to mutually agree on the nomination, providing them with a level of input and participation in the arbitration process. However, if the parties are unable to reach a joint nomination, the Arbitration Court steps in to ensure the appointment is made promptly and efficiently.

Overall, Article 12.3 of the DIAC Arbitration Rules establishes a mechanism for the appointment of a sole arbitrator in cases where the parties have not jointly nominated one. It strikes a balance between party autonomy and the need for an efficient and impartial appointment process.

12.4. In case of a three-member Tribunal, each party shall nominate a co-arbitrator for appointment by the Arbitration Court in the manner prescribed in this Article 12. The following applies to the appointment of the chairperson:

(a) If the parties have agreed upon a mechanism for nomination of the chairperson, such mechanism shall be followed in accordance with Article 12.6

(b) In the absence of any agreed mechanism, the co-arbitrators shall agree upon the third arbitrator who shall act as chairperson, subject to confirmation and appointment by the Arbitration Court. Unless the parties have agreed to an alternative mechanism for appointment pursuant to Articles 13.6, 13.7, 13.8 and 13.9 should the co-arbitrators fail to agree upon a third arbitrator within 10 days from the date of notification of the Arbitration Court's decision of appointment of the last co-arbitrator or any additional time as may be exceptionally granted by the Centre, the Arbitration Court shall appoint the chairperson.

Article 12.4 of the DIAC Arbitration Rules governs the process of appointing a three-member Tribunal and specifies the requirements for the appointment of the chairperson.

Under this provision, each party in the arbitration is responsible for nominating a co-arbitrator. The Arbitration Court is then responsible for appointing these co-arbitrators in accordance with the procedures outlined in Article 12.

Regarding the appointment of the chairperson, the rules provide two scenarios. First, if the parties have already agreed upon a mechanism for the nomination of the chairperson, that agreed mechanism should be followed in accordance with Article 12.6. This allows parties to have control over the selection process if they have already agreed upon a specific method.

In the absence of any agreed mechanism, the co-arbitrators are tasked with agreeing upon the third arbitrator who will serve as the chairperson. The appointment of the chairperson is subject to confirmation and appointment by the Arbitration Court. If the co-arbitrators fail to agree on a third arbitrator within 10 days from the date of notification of the Arbitration Court's appointment of the last co-arbitrator, or within any additional time exceptionally granted by the Centre, the responsibility for appointing the chairperson falls on the Arbitration Court.

This provision ensures that the appointment of the chairperson is carried out in a timely manner and provides a mechanism for resolving any deadlock that may arise between the co-arbitrators in reaching an agreement on the chairperson. The involvement of the Arbitration Court ensures that the appointment process moves forward, ensuring the constitution of the three-member Tribunal.

Overall, Article 12.4 of the DIAC Arbitration Rules establishes the procedure for appointing the co-arbitrators and the chairperson in a three-member Tribunal, taking into account both agreed mechanisms and alternative methods in case of a lack of agreement between the co-arbitrators.

12.5. Where there are multiple parties, whether as Claimants and/or Respondents, and where the dispute is to be referred to a three-member Tribunal, the multiple Claimants, jointly, and/or the multiple Respondents, jointly, shall each nominate an arbitrator for appointment by the Arbitration Court in accordance with this Article 12. In the absence of such a joint nomination by the multiple Claimants and/or multiple Respondents and/or where all the parties are unable to agree to a method for the constitution of the Tribunal, the Arbitration Court shall appoint the respective arbitrator(s). The chairperson of the Tribunal shall be appointed in accordance with Article 12.4 above.

Article 12.5 of the DIAC Arbitration Rules addresses the situation where there are multiple parties involved in the arbitration, either as Claimants and/or Respondents, and the dispute is to be resolved by a three-member Tribunal.

According to this provision, in cases involving multiple Claimants or multiple Respondents, each group of Claimants or Respondents, jointly, is required to nominate an arbitrator. These nominations are then submitted to the Arbitration Court for appointment in accordance with the procedures outlined in Article 12.

However, if the multiple Claimants or multiple Respondents fail to make a joint nomination or if all parties are unable to agree on a method for the constitution of the Tribunal, the responsibility for appointing the respective arbitrator(s) falls on the Arbitration Court. This ensures that the Tribunal is properly constituted even in cases where the parties are unable to reach a consensus on the appointment of arbitrators.

The chairperson of the Tribunal, as stated in Article 12.4, is appointed according to the rules outlined in that provision.

Overall, Article 12.5 of the DIAC Arbitration Rules ensures that in cases involving multiple parties and a three-member Tribunal, each group of Claimants or Respondents has the opportunity to nominate an arbitrator, and in case of a failure to nominate or an inability to agree, the Arbitration Court steps in to make the necessary appointments. This guarantees the constitution of a balanced and fair Tribunal to adjudicate the dispute.

12.6. If the parties have agreed upon a mechanism for nomination of the Tribunal, such mechanism shall be followed to the extent that it is capable of operating at the time and compatible with the Rules, giving due consideration to the nature of the transaction, the nature and circumstances of the dispute, and subject to confirmation and appointment by the Arbitration Court. In the event that the nomination mechanism is not capable of operating or not compatible with the Rules, the parties agree that the respective arbitrator(s) shall be appointed by the Arbitration Court.

Article 12.6 of the DIAC Arbitration Rules addresses the situation where the parties to the arbitration agreement have agreed upon a specific mechanism for the nomination of the Tribunal members.

According to this provision, if the parties have agreed upon such a mechanism, it should be followed, provided that it is capable of operating at the time and compatible with the DIAC Arbitration Rules. The mechanism should take into consideration the nature of the transaction and the nature and circumstances of the dispute.

However, the final confirmation and appointment of the arbitrator(s) nominated through this agreed mechanism are subject to review and approval by the Arbitration Court. The Arbitration Court plays a crucial role in ensuring that the nomination process is in line with the Rules and meets the necessary requirements.

In the event that the agreed nomination mechanism is not capable of operating or is not compatible with the DIAC Arbitration Rules, the parties explicitly agree that the respective arbitrator(s) shall be appointed by the Arbitration Court. This provision serves as a fallback option to ensure the appointment of arbitrators in cases where the agreed mechanism fails or is not valid.

Overall, Article 12.6 emphasises the importance of adhering to the agreed nomination mechanism, provided it meets the requirements of the DIAC Arbitration Rules. However, the final appointment authority rests with the Arbitration Court, ensuring that the selection process is in line with the Rules and safeguards the integrity and effectiveness of the arbitration proceedings.

12.7. Where the parties have agreed that the Claimant(s) and/or the Respondent(s) shall nominate an arbitrator and such party fails to do so in the Request or, as the case may be, in the Answer, or within any specified time limit in the agreement to arbitrate or any additional time as may be granted by the Centre or as agreed by the parties, such failure shall constitute an irrevocable waiver of that party's right to nominate an arbitrator and the Arbitration Court shall appoint an arbitrator on behalf of the defaulting party or parties.

Article 12.7 of the DIAC Arbitration Rules deals with situations where the parties have agreed that a specific party, either the Claimant(s) or the Respondent(s), has the right to nominate an arbitrator.

According to Article 12.7, if the party with the nomination right fails to exercise that right within the specified time limit or any additional time granted by the Centre or agreed upon by the parties, it constitutes an irrevocable waiver of that party's right to nominate an arbitrator. In such cases, the responsibility of appointing an arbitrator falls upon the Arbitration Court.

The provision ensures that the arbitration process moves forward even if one party fails to nominate an arbitrator as agreed. The defaulting party's failure to nominate an arbitrator results in the Arbitration Court stepping in to appoint an arbitrator on behalf of that party. This mechanism is designed to prevent delays and ensure the constitution of the Tribunal even in situations where a party fails to fulfil its obligation to nominate an arbitrator.

Overall, Article 12.7 establishes a clear consequence for the failure of a party to nominate an arbitrator as required by the agreement. It provides certainty and efficiency in the appointment process, allowing the arbitration to proceed in a timely manner.

12.8. The Arbitration Court shall proceed with the appointment of the respective arbitrator(s) only if the advance on costs of the arbitration has been paid in full.

Article 12.8 of the DIAC Arbitration Rules highlights an important requirement for the appointment of arbitrators by the Arbitration Court. It states that the Court will proceed with the appointment process only if the advance on costs of the arbitration has been paid in full.

The advance on costs is a payment made by the parties to cover the expenses related to the arbitration proceedings, including the fees and expenses of the arbitrators and the administrative costs of the arbitration. It ensures that the necessary funds are available to conduct the arbitration effectively.

By linking the appointment of arbitrators to the payment of the advance on costs, Article 12.8 serves as a mechanism to ensure that the parties fulfil their financial obligations before the appointment process takes place. It helps to safeguard the integrity of the arbitration process and ensures that the Tribunal has the necessary financial resources to carry out its duties.

In practical terms, this provision encourages parties to promptly make the required payment to the Centre so that the arbitration proceedings can proceed smoothly. It also reflects the importance of financial responsibility and accountability in arbitration.

Overall, Article 12.8 emphasises the requirement for the advance on costs to be paid in full before the appointment of arbitrators by the Arbitration Court, thereby promoting the efficient and effective administration of the arbitration.

ARTICLE (13) ALTERNATIVE APPOINTMENT PROCESS

Appointment of a sole arbitrator

13.1. If the parties:

- (a) fail jointly to nominate a sole arbitrator;
- (b) have not stipulated any mechanism of appointment; and
- (c) notify the Centre of their agreement to the alternative appointment process in this Article 13,

the sole arbitrator shall be appointed in accordance with the following provisions.

Article 13.1 of the DIAC Arbitration Rules addresses the appointment of a sole arbitrator when the parties fail to jointly nominate one, have not stipulated any appointment mechanism, and agree to the alternative appointment process outlined in this article.

The provision states that in such cases, the appointment of the sole arbitrator shall be made in accordance with the following provisions. This article sets out the procedure to be followed when the parties are unable to agree on the appointment of a sole arbitrator.

This provision recognises that there may be situations where the parties are unable to reach a consensus on the appointment of a sole arbitrator. It outlines the default procedure to be followed in such cases, ensuring that the arbitration process can move forward even in the absence of a joint nomination by the parties.

Overall, Article 13.1 establishes a fallback mechanism for the appointment of a sole arbitrator in cases where the parties are unable to agree. It ensures that the arbitration process can continue despite the absence of a joint nomination and provides a framework for the appointment process to proceed in a fair and efficient manner.

13.2. The Centre shall communicate simultaneously to each party an identical list of at least 3 names of suitable candidates. Each party may add to the list up to three candidate names of its own.

Article 13.2 of the DIAC Arbitration Rules establishes the procedure for the Centre to communicate a list of suitable candidates for the appointment of a sole arbitrator to each party.

According to this provision, the Centre is responsible for compiling a list of at least three names of suitable candidates for the sole arbitrator position. The Centre will then communicate this identical list to each party involved in the arbitration. The purpose of providing the same list to all parties is to ensure fairness and transparency in the appointment process.

Additionally, Article 13.2 allows each party to add up to three candidate names of its own to the list provided by the Centre. This provision grants the parties some degree of input and allows them to participate in the nomination process.

By providing a list of suitable candidates and allowing parties to add their own candidates, Article 13.2 seeks to facilitate the appointment of a sole arbitrator through a collaborative approach. This mechanism ensures that the parties have a pool of potential arbitrators to choose from and enables them to have a say in the selection process.

Overall, Article 13.2 establishes a framework for the Centre to provide a list of potential arbitrators and allows parties to contribute their own candidate suggestions, promoting transparency and inclusivity in the appointment process.

13.3. Each party shall have 7 days from the date of the above communication from the Centre in which to number the names in order of preference and return the list to the Centre without copying the other party.

Article 13.3 of the DIAC Arbitration Rules outlines the timeframe and procedure for each party to prioritise and return the list of preferred arbitrator candidates to the Centre.

According to this provision, once the Centre communicates the list of suitable arbitrator candidates to each party, each party is given a period of 7 days from the date of the communication to number the names on the list in order of preference. During this process, it is essential for each party to maintain the confidentiality of their selections and refrain from copying or sharing their choices with the other party.

The purpose of this provision is to ensure an independent and unbiased ranking of the preferred arbitrator candidates by each party. By requiring parties to prioritise the list individually, it aims to prevent any potential influence or collusion³² between the parties during the selection process. This procedure promotes fairness and allows each party to express their preferences based on their own assessment of the candidates' qualifications and suitability for the arbitration.

Once each party has numbered the names in order of preference, they are required to return the list to the Centre within the designated timeframe. By doing so, the parties provide their input regarding their preferred candidates, enabling the Centre to consider their choices when making the final appointment decision.

Overall, Article 13.3 establishes a clear timeframe and process for the parties to prioritise and submit their preferred arbitrator candidates to the Centre. This procedure aims to maintain the integrity of the selection process and allows each party to independently express their preferences without interference or influence from the other party.

13.4. If a party fails to return the list within the time specified, all candidates named on the list by the Centre shall be deemed to be equally acceptable by that party.

Article 13.4 of the DIAC Arbitration Rules addresses the consequences if a party fails to submit their list of preferred arbitrator candidates within the specified time frame.

³² Misapprehension by ChatGPT.

According to this provision, if a party fails to return the list within the designated time specified in Article 13.3, all the candidates named on the list by the Centre shall be deemed to be equally acceptable by that party. In other words, the party that did not submit their list within the given timeframe forfeits their ability to prioritise or express a preference for specific arbitrator candidates. Instead, they are deemed to accept all the candidates on the list in an equal manner.

The purpose of this provision is to ensure that the arbitration process can move forward even if a party fails to comply with the time limit for submitting their preferences. By deeming all candidates equally acceptable, it prevents any potential delays or disputes arising from a party's failure to participate in the selection process or express their preferences.

However, it is important to note that this provision does not diminish the overall authority of the Arbitration Court or the Centre in making the final appointment decision. While a party's failure to submit their preferences may result in the equal acceptability of all candidates, the ultimate appointment decision remains with the Court or the Centre, taking into consideration the parties' preferences, the qualifications of the candidates, and other relevant factors.

Overall, Article 13.4 ensures that the arbitration process can proceed smoothly even if a party fails to meet the deadline for submitting their preferred arbitrator candidates. It establishes a default position of equal acceptability for all candidates on the list, while maintaining the authority of the Court or the Centre in making the final appointment decision.

13.5. From among the candidates who have been approved (or, as the case may be, nominated by the parties) on both lists, and taking into the account the indicated order of mutual preference, the candidates shall be invited in such order until one accepts to serve as arbitrator. The candidates' appointment shall be subject to the Arbitration Court's approval. If the parties fail to agree on any of the persons named or if a selected candidate is unable to act or does not fulfil the requirements of impartiality, independence and availability, the Arbitration Court shall have the power to decide whether to repeat the alternative appointment process or make a direct appointment.

Article 13.5 of the DIAC Arbitration Rules outlines the process for appointing a sole arbitrator when the parties fail to jointly nominate one. It specifies the steps to be followed to select an arbitrator from the candidates approved or nominated by the parties.

According to this provision, the candidates who have been approved or nominated by the parties on both lists are considered. These candidates are evaluated based on the indicated order of mutual preference. The candidates are then invited in that order until one accepts to serve as an arbitrator. It is important to note that the appointment of the selected candidate is subject to the approval of the Arbitration Court.

If the parties fail to agree on any of the persons named on the lists or if the selected candidate is unable to act or fails to fulfil the requirements of impartiality, independence, and availability, the Arbitration Court has the power to decide on the further course of action. The Court may choose to repeat the alternative appointment process, allowing the parties to provide new candidates or revise their preferences. Alternatively, the Court may exercise its authority to make a direct appointment, selecting an arbitrator without further involvement of the parties.

The purpose of Article 13.5 is to establish a mechanism for the appointment of a sole arbitrator when the parties cannot reach an agreement on their own. It ensures that the selection process is fair and

allows the parties to have a say in the appointment through the submission of their preferred candidates. However, the final decision rests with the Arbitration Court, which evaluates the candidates and considers factors such as availability, impartiality, and independence.

Overall, Article 13.5 provides a structured approach to the appointment of a sole arbitrator in situations where the parties fail to nominate one jointly. It balances the parties' input and the Court's authority, ensuring the selection of an arbitrator who meets the necessary qualifications and safeguards the integrity of the arbitration process.

Appointment of a chairperson

13.6. If:

(a) the co-arbitrators fail jointly to nominate a chairperson within the time limit provided in Article 12.4 (b);

(b) the parties have not stipulated any mechanism of appointment; and

(c) the parties notify the Centre of their agreement to the alternative appointment process in this Article 13,

the chairperson shall be appointed in accordance with the following provisions.

Article 13.6 of the DIAC Arbitration Rules addresses the appointment of a chairperson when the co-arbitrators fail to jointly nominate one within the specified time limit and the parties have not established any mechanism for appointment. It sets out the alternative appointment process to be followed in such circumstances.

According to this provision, if the co-arbitrators are unable to agree on the appointment of a chairperson within the designated time limit as stated in Article 12.4 (b), and if the parties have not specified an alternative mechanism for appointment, they can opt for the alternative appointment process outlined in Article 13.

The purpose of this article is to provide a solution for the selection of a chairperson when the co-arbitrators cannot agree on their own or when the parties have not made provisions for the appointment of a chairperson in their agreement to arbitrate.

Overall, Article 13.6 recognises the possibility of disagreement or absence of provisions regarding the appointment of a chairperson and offers an alternative process to ensure the smooth progression of the arbitration. It allows the parties to proceed with the appointment of a chairperson in a manner that is consistent with the principles of fairness and impartiality, as governed by the DIAC Arbitration Rules.

13.7. The Centre will provide each co-arbitrator with an identical list of at least 3 names of suitable candidates. Each co-arbitrator may add to the list up to three candidate names of her/his own and return the list to the Centre without copying the other co-arbitrator or the other party.

Article 13.7 of the DIAC Arbitration Rules outlines the procedure for the appointment of a chairperson when the co-arbitrators fail to jointly nominate one and the parties have agreed to the alternative appointment process under Article 13.

According to this provision, the Centre will supply each co-arbitrator with an identical list of at least three suitable candidate names for the chairperson position. Each co-arbitrator has the opportunity to add up to three candidate names of their own to the list. The co-arbitrators must submit their lists to the Centre without sharing them with the other co-arbitrator or the parties involved in the arbitration.

This process ensures that both co-arbitrators have an equal opportunity to contribute to the selection of the chairperson. By providing each co-arbitrator with the same initial list of candidate names, the Centre aims to maintain fairness and impartiality in the appointment process.

The purpose of this article is to allow the co-arbitrators to participate in the selection of the chairperson, thereby enabling them to have a say in the composition of the Tribunal. It ensures that both co-arbitrators can propose candidates who they believe are suitable for the role, while maintaining confidentiality and preventing any potential bias or influence between the co-arbitrators or with the other parties.

Overall, Article 13.7 establishes a structured and fair process for the nomination of candidates for the chairperson position in cases where the co-arbitrators are unable to reach an agreement. It promotes transparency and impartiality in the appointment process and helps ensure the integrity of the arbitration proceedings.

13.8. Each co-arbitrator shall have 7 days from the date of the above communication from the Centre in which to number the names in order of preference and return the list to the Centre without copying the other co-arbitrator.

Article 13.8 of the DIAC Arbitration Rules outlines the timeframe and procedure for the ranking of candidates by each co-arbitrator in the appointment of a chairperson when the co-arbitrators fail to jointly nominate one and the alternative appointment process under Article 13 is applicable.

According to this provision, each co-arbitrator is given a period of 7 days from the date of communication from the Centre to number the names of the candidates on the list in order of preference. The co-arbitrators must submit their ranked lists to the Centre without sharing them with the other co-arbitrator. This requirement aims to maintain the confidentiality of the ranking process and avoid any influence or bias between the co-arbitrators.

By providing a specific timeframe for the ranking process, Article 13.8 ensures that the appointment process progresses in a timely manner. It allows each co-arbitrator sufficient time to evaluate the candidates and make an informed decision about their preferences.

The purpose of this article is to facilitate the ranking of candidates by each co-arbitrator, thereby contributing to the selection of the chairperson. By numbering the names in order of preference, the co-arbitrators provide their input on the candidates they consider most suitable for the position. This

process helps determine the preferences and consensus between the co-arbitrators, which is crucial for the appointment of a chairperson.

Overall, Article 13.8 establishes a clear timeframe and procedure for the ranking of candidates by each co-arbitrator in the appointment of a chairperson. It ensures confidentiality, allows for informed decision-making, and promotes a fair and transparent process for selecting the chairperson in cases where the co-arbitrators are unable to agree jointly.

13.9. For the avoidance of doubt and provided all parties agree, each co-arbitrator may liaise with her or his nominating party for the sole purpose of selecting a chairperson whether or not such nomination process includes names of candidates provided by the Centre.

Article 13.9 of the DIAC Arbitration Rules addresses the possibility of co-arbitrators liaising with their respective nominating parties for the purpose of selecting a chairperson. This provision emphasises that such communication is allowed if all parties involved in the arbitration agree to it.

The purpose of this article is to clarify that, with the consent of all parties, the co-arbitrators may engage in discussions with their nominating parties specifically for the purpose of selecting a chairperson. This communication may occur regardless of whether the nomination process includes names of candidates provided by the Centre.

By allowing this communication, the DIAC Arbitration Rules recognise that co-arbitrators may seek guidance or input from their nominating parties during the process of selecting a chairperson. It acknowledges the importance of consensus and collaboration between the co-arbitrators and their nominating parties in the appointment of the chairperson.

However, it is important to note that such communication is subject to the agreement of all parties involved in the arbitration. This requirement ensures that the process remains transparent and fair, and that all parties have the opportunity to provide their input and express their agreement to this form of communication.

Overall, Article 13.9 provides clarity on the permissibility of co-arbitrators liaising with their nominating parties for the purpose of selecting a chairperson, provided all parties agree. This provision aims to facilitate effective communication and cooperation among the co-arbitrators and their nominating parties in the appointment process, promoting a fair and efficient arbitration procedure.

ARTICLE (14) IMPARTIALITY, INDEPENDENCE AND AVAILABILITY

14.1. Any arbitrator conducting an arbitration under the Rules shall be and remain impartial and independent of the parties involved in the arbitration.

Article 14.1 of the DIAC Arbitration Rules establishes a fundamental principle regarding the conduct of arbitrators in DIAC arbitrations. The article states that any arbitrator appointed to conduct an arbitration under these rules must be impartial and independent of the parties involved in the arbitration.

Impartiality and independence are essential qualities expected of arbitrators to ensure fairness and the integrity of the arbitration process. Impartiality refers to the arbitrator's ability to approach the case without bias or preconceived notions, while independence refers to the arbitrator's freedom from any undue influence or conflict of interest that could compromise their decision-making.

By explicitly stating this requirement in Article 14.1, the DIAC Arbitration Rules emphasise the importance of maintaining a neutral and unbiased approach throughout the arbitration proceedings. This provision ensures that the arbitrators are not aligned with any party and are capable of making decisions based solely on the merits of the case and the applicable law.

Arbitrators are expected to adhere to the principles of impartiality and independence from the moment of their appointment until the final resolution of the dispute. They should not have any personal, financial, or professional interest that could affect their ability to make fair and unbiased decisions.

Moreover, this provision aligns with international standards and best practices in arbitration, which prioritise the selection of qualified and independent arbitrators to guarantee a fair and just resolution of disputes.

In summary, Article 14.1 of the DIAC Arbitration Rules underscores the importance of arbitrators being impartial and independent throughout the arbitration process. This provision aims to promote fairness, integrity, and confidence in the arbitration proceedings, ensuring that the arbitrators' decisions are based solely on the facts and legal principles relevant to the case.

14.2. Prior to an appointment by the Arbitration Court, a prospective arbitrator shall:

(a) sign a declaration containing a statement of acceptance, impartiality and independence, availability of time and nationality and provide the Centre with an up-to-date curriculum vitae; and

(b) provide a confirmation of her/his willingness to serve on the basis of the fees as determined by the Centre in accordance with Articles 4 and 6 of Appendix I and the expenses as fixed by the Centre in the advance on costs of the arbitration.

Article 14.2 of the DIAC Arbitration Rules outlines the requirements for a prospective arbitrator prior to their appointment by the Arbitration Court. The article specifies two key obligations that the prospective arbitrator must fulfil:

1. **Signing a declaration:** The prospective arbitrator is required to sign a declaration that includes a statement of acceptance, impartiality, and independence. This declaration affirms the arbitrator's commitment to fulfilling their role in a fair and unbiased manner. By signing this declaration, the prospective arbitrator acknowledges their duty to act independently and impartially, without any conflicts of interest that may compromise the integrity of the arbitration process.
2. **Providing information and confirmation:** The prospective arbitrator must provide the Centre with an up-to-date curriculum vitae (CV), which outlines their qualifications, professional experience, and any relevant affiliations. This CV serves as a means for evaluating the arbitrator's expertise and suitability for the case. Additionally, the

prospective arbitrator must confirm their willingness to serve on the basis of the fees and expenses determined by the Centre. This confirms their acceptance of the financial terms and conditions associated with their appointment.

These requirements are crucial for maintaining the integrity and credibility of the arbitration proceedings. The declaration of acceptance, impartiality, and independence ensures that the appointed arbitrator is committed to conducting the arbitration fairly and without any bias. The provision of a comprehensive CV allows the parties and the Centre to assess the arbitrator's qualifications and expertise, ensuring they are well-suited to handle the specific dispute. Lastly, the confirmation of willingness to serve based on the predetermined fees and expenses demonstrates the arbitrator's commitment to fulfilling their duties in a professional manner.³³

By incorporating these provisions, Article 14.2 of the DIAC Arbitration Rules contributes to the overall transparency and credibility of the arbitration process. It reinforces the importance of having qualified, independent, and committed arbitrators who can effectively resolve disputes in a fair and impartial manner.

14.3. By accepting an appointment as an arbitrator under the Rules, the arbitrator undertakes a continuing duty to disclose to the Centre, the other members of the Tribunal and to the parties any circumstances which might be of such nature as to call into question or give rise to reasonable doubts as to the arbitrator's impartiality, independence and/or availability. If any arbitrator makes any such disclosure, the Centre shall communicate it to the parties and the other members of the Tribunal and fix a time limit for any comments to be made.

Article 14.3 of the DIAC Arbitration Rules establishes the ongoing duty of an arbitrator to disclose any circumstances that could raise concerns or doubts about their impartiality, independence, or availability. This duty applies from the moment the arbitrator accepts their appointment until the completion of the arbitration process. The article outlines the procedure for disclosing such circumstances and ensures transparency in the arbitration proceedings.

Under this article, when an arbitrator becomes aware of any circumstances that may call into question their impartiality, independence, or availability, they are obligated to disclose these circumstances to the Centre, the other members of the Tribunal, and the parties involved in the arbitration. The purpose of this requirement is to enable the parties and the Tribunal to assess the potential impact of these circumstances on the arbitrator's ability to fairly and objectively decide the dispute.

Upon receiving the disclosure from the arbitrator, the Centre is responsible for communicating this information to the parties and the other members of the Tribunal. The Centre may also set a specific time limit for the parties and the Tribunal to provide any comments or raise any concerns regarding the disclosed circumstances. This allows all parties involved to have an opportunity to respond and voice their opinions on the matter.

The aim of Article 14.3 is to ensure transparency and maintain the integrity of the arbitration process. By requiring arbitrators to disclose any circumstances that may impact their impartiality, independence, or availability, the article promotes fairness and confidence in the arbitration

³³ Misapprehension by ChatGPT.

proceedings. It allows the parties to be informed and provides them with an opportunity to raise objections or seek clarification if they have concerns about the disclosed circumstances.

Overall, Article 14.3 emphasises the importance of arbitrators maintaining their impartiality, independence, and availability throughout the arbitration process and highlights the need for open communication and disclosure of any relevant circumstances that could affect these principles.

14.4. The Arbitration Court may decline to appoint any nominee proposed by a party if it considers the nominee to be lacking independence, impartiality, availability or to be otherwise unsuitable. In such a case, the nominating party shall provide a new nomination within such time limit as granted by the Centre. If that party fails to nominate an alternative arbitrator, the Arbitration Court shall appoint the arbitrator. If the Arbitration Court declines to appoint an alternative nominee, the Arbitration Court has discretion to decide whether or not a further nomination shall be permitted and, if not, shall appoint the arbitrator.

Article 14.4 of the DIAC Arbitration Rules addresses the authority of the Arbitration Court to decline the appointment of an arbitrator proposed by a party if the Court determines that the nominee lacks independence, impartiality, availability, or is otherwise unsuitable for the role. The article sets out the consequences of such a decision and the process for providing a new nomination.

According to this article, if the Arbitration Court finds that a nominee proposed by a party is not suitable to serve as an arbitrator, the Court has the discretion to decline the appointment. In such a case, the party making the nomination is given an opportunity to propose an alternative arbitrator within a specified time limit granted by the Centre. If the party fails to nominate a suitable alternative, the Arbitration Court has the authority to appoint the arbitrator.

Furthermore, if the Arbitration Court declines the appointment of an alternative nominee, the Court has the discretion to decide whether to permit further nominations. If the Court determines that no further nominations will be allowed, it will proceed to appoint the arbitrator itself.

The purpose of Article 14.4 is to ensure that the arbitrators appointed in the arbitration proceedings possess the necessary qualities of independence, impartiality, and availability. The Arbitration Court is entrusted with the responsibility of assessing the suitability of proposed nominees and has the power to exercise its discretion in appointing arbitrators who meet the required standards.

By allowing the Arbitration Court to decline appointments and request new nominations, the article reinforces the importance of maintaining the integrity and fairness of the arbitration process. It ensures that arbitrators are selected based on their qualifications, independence, and impartiality, which are essential for conducting a fair and unbiased arbitration.

ARTICLE (15) CHALLENGE TO ARBITRATORS

15.1. Any party has the right to challenge an appointed arbitrator for an alleged lack of independence and/or impartiality or for any other reason that may result in the revocation of the arbitrator's continued appointment. Any such challenge shall be made by an application to the

Centre specifying the facts and circumstances on which the challenge is based together with any evidence relied upon.

Article 15.1 of the DIAC Arbitration Rules grants any party in an arbitration the right to challenge an appointed arbitrator if there are allegations of a lack of independence, impartiality, or any other grounds that could lead to the revocation of the arbitrator's appointment. The article outlines the procedure for making such a challenge and provides guidelines for the submission of the challenge to the Centre.

According to this article, a party wishing to challenge an appointed arbitrator must submit an application to the Centre. The application should specify the facts and circumstances on which the challenge is based and include any evidence relied upon to support the challenge. This requirement ensures that the challenge is based on specific grounds and supported by relevant information, promoting transparency and fairness in the arbitration process.

The purpose of Article 15.1 is to safeguard the integrity of the arbitration proceedings by allowing parties to raise concerns about an arbitrator's independence, impartiality, or any other factors that may affect their ability to act fairly and objectively. By providing a formal mechanism for challenging arbitrators, the DIAC Arbitration Rules enable parties to address potential conflicts or biases that could undermine the credibility and effectiveness of the arbitration.

15.2. For a challenge to be admissible, it must be submitted either within 15 days from receipt of the notification of the appointment of the arbitrator or within 15 days from the date when the facts and circumstances on which the challenge is based became known or ought reasonably to have been known.

Article 15.2 of the DIAC Arbitration Rules sets out the time limit within which a challenge to an appointed arbitrator must be submitted for it to be admissible. The article establishes two alternative time frames for filing a challenge, providing parties with a reasonable opportunity to raise objections based on a lack of independence, impartiality, or any other grounds.

According to the article, a challenge must be submitted either within 15 days from the receipt of the notification of the arbitrator's appointment or within 15 days from the date when the facts and circumstances forming the basis of the challenge became known or reasonably should have been known. This time limit ensures that challenges are made in a timely manner, allowing for the efficient resolution of any concerns regarding the arbitrator's suitability for the case.

By imposing a specific time frame, the DIAC Arbitration Rules aim to strike a balance between the need to address potential issues with an arbitrator and the necessity to maintain the progress and efficiency of the arbitration proceedings. The time limit encourages parties to promptly raise any concerns they may have, reducing the risk of undue delays or disruptions to the arbitration process.

It is important for parties to adhere to the time limit specified in Article 15.2 to ensure the admissibility of their challenges. Failure to submit a challenge within the prescribed timeframe may result in the challenge being deemed inadmissible, and the appointed arbitrator's appointment would continue without further review.

It is worth noting that parties should carefully review the DIAC Arbitration Rules and any applicable laws or regulations to understand the specific requirements and procedures for challenging an arbitrator beyond the admissibility criteria outlined in Article 15.2.

15.3. Unless the challenged arbitrator(s) withdraw(s) or all parties agree to the revocation of their appointment (in which case the revocation of such appointment shall not impliedly accept the validity of the grounds for the underlying challenge), the Arbitration Court shall decide on the challenge after inviting all parties and members of the Tribunal, including the challenged arbitrator(s), to provide comments within such time limit as granted by the Centre.

Article 15.3 of the DIAC Arbitration Rules outlines the procedure for the resolution of a challenge to an appointed arbitrator. The article states that unless the challenged arbitrator voluntarily withdraws or all parties unanimously agree to revoke the appointment, the Arbitration Court will make a decision on the challenge.

Under this provision, the Arbitration Court, upon receiving a challenge to an arbitrator's appointment, will invite all parties involved in the arbitration, as well as the members of the Tribunal, including the challenged arbitrator, to provide comments on the challenge. The purpose of seeking comments from all relevant parties is to allow for a fair and comprehensive assessment of the challenge and to ensure that all perspectives are taken into account.

The time limit within which parties and members of the Tribunal must submit their comments will be determined by the Centre, which administers the arbitration proceedings. The specified time limit ensures that the challenge is promptly addressed, allowing the Arbitration Court to make an informed decision without unduly delaying the arbitration process.

It is important to note that the revocation of an arbitrator's appointment, whether through their voluntary withdrawal or unanimous agreement by the parties, does not imply acceptance of the grounds for the challenge. In other words, the revocation of the appointment does not indicate that the challenge was valid or that the arbitrator's lack of independence or impartiality has been substantiated.

The final decision on the challenge is made by the Arbitration Court based on the information and comments provided by the parties and members of the Tribunal. The Court will assess the merits of the challenge and determine whether there are sufficient grounds to revoke the arbitrator's appointment.

Overall, Article 15.3 ensures that challenges to arbitrators are handled in a fair and transparent manner, allowing for the appropriate consideration of all relevant factors before a decision is made.

ARTICLE (16) REVOCATION OF APPOINTMENT AND REPLACEMENT OF ARBITRATORS

16.1. The Arbitration Court shall revoke the appointment of an arbitrator upon the written agreement of all parties or upon:

- (a) the arbitrator’s death;**
- (b) the arbitrator’s illness or other personal circumstance resulting in an inability to serve;**
- (c) the arbitrator’s notification of their resignation; or**
- (d) a successful challenge to the arbitrator’s continued appointment on the grounds of a failure to act independently and/or impartially.**

Article 16.1 of the DIAC Arbitration Rules outlines the circumstances under which the appointment of an arbitrator may be revoked by the Arbitration Court. The article states that the appointment of an arbitrator can be revoked upon the written agreement of all parties or in certain specified situations.

The first situation is when the arbitrator passes away, which naturally renders them unable to fulfil their duties in the arbitration. In such cases, the appointment is automatically revoked due to the arbitrator’s demise.

The second situation is when the arbitrator becomes ill or experiences personal circumstances that prevent them from serving as an arbitrator. These circumstances may include serious health issues or personal emergencies that significantly impede their ability to perform their duties effectively.

The third situation is when the arbitrator voluntarily resigns from their position. If the appointed arbitrator notifies the Arbitration Court of their intention to resign, the Court will proceed to revoke their appointment.

The final situation is when there is a successful challenge to the arbitrator’s continued appointment based on grounds of a failure to act independently and/or impartially. This refers to cases where a party raises a challenge against an arbitrator, alleging that they lack the required independence or impartiality to fairly adjudicate the dispute. If the challenge is successful, meaning the grounds for the challenge are substantiated, the Arbitration Court will revoke the arbitrator’s appointment.

It is important to note that in all these situations, the revocation of the arbitrator’s appointment is either based on mutual agreement among the parties or due to specific circumstances that prevent the arbitrator from fulfilling their duties. The revocation is aimed at ensuring the integrity and fairness of the arbitration process and preserving the principles of independence and impartiality.

Overall, Article 16.1 of the DIAC Arbitration Rules provides a clear framework for revoking the appointment of an arbitrator under agreed-upon circumstances or in situations where it is necessary to safeguard the fairness and effectiveness of the arbitration proceedings.

16.2. The appointment of an arbitrator may also be revoked on the Arbitration Court’s own initiative or upon an application by a party or any other member(s) of the Tribunal, if the Arbitration Court decides that such arbitrator:

- (a) is prevented in law or in fact from fulfilling their functions;**
- (b) is acting or has acted in violation of the agreement to arbitrate and/or the Rules; or**
- (c) does not conduct the arbitration in accordance with the Rules, including the obligation to conduct the arbitration with diligence and avoiding unnecessary delay or expense.**

Article 16.2 of the DIAC Arbitration Rules addresses additional grounds for revoking the appointment of an arbitrator. The revocation can be initiated by the Arbitration Court, a party to the arbitration, or any other member(s) of the Tribunal in specific situations where the appointed arbitrator is deemed unfit to continue serving.

The first ground for revocation outlined in Article 16.2(a) is when the arbitrator is prevented by law or factual circumstances from fulfilling their functions. This could include situations where the arbitrator becomes disqualified or ineligible to act as an arbitrator due to legal reasons, such as conflicts of interest, or when unforeseen circumstances arise that render the arbitrator unable to perform their duties effectively.

The second ground for revocation, as stated in Article 16.2(b), is if the arbitrator is found to be acting or has acted in violation of the agreement to arbitrate and/or the Rules. This could involve situations where the arbitrator demonstrates bias, fails to adhere to the ethical standards expected of an arbitrator, or disregards the procedural requirements set forth in the agreement or the Rules.

The third ground for revocation, as described in Article 16.2(c), is when the arbitrator fails to conduct the arbitration in accordance with the Rules. This includes the obligation to conduct the arbitration with diligence and avoid unnecessary delay or expense. If an arbitrator consistently exhibits behaviours that disrupt or impede the progress of the arbitration, such as unjustified delays or excessive costs, their appointment may be revoked.

It is important to note that Article 16.2 allows for the revocation of an arbitrator’s appointment not only based on the parties’ agreement or specific circumstances mentioned in Article 16.1, but also on the Arbitration Court’s own initiative or upon application by a party or other member(s) of the Tribunal. This provision ensures that the Court has the authority to intervene and address situations where an arbitrator’s conduct or performance jeopardises the integrity and efficiency of the arbitration process.

In summary, Article 16.2 of the DIAC Arbitration Rules provides grounds for revoking the appointment of an arbitrator, including when the arbitrator is legally or practically unable to fulfil their functions, acts in violation of the agreement or the Rules, or fails to conduct the arbitration diligently and in accordance with the prescribed procedures. This provision serves to maintain the integrity and effectiveness of the arbitration proceedings.

16.3. When the appointment of an arbitrator is revoked, a replacement arbitrator shall be appointed in accordance with the relevant provisions of Article 12. In such cases, the time limit for issuing the Final Award shall be extended for a number of days equal to the period starting from the date upon

which the appointment of such arbitrator has been revoked and ending on the date the replacement arbitrator has been appointed by the Arbitration Court.

Article 16.3 of the DIAC Arbitration Rules addresses the consequences of revoking the appointment of an arbitrator and the subsequent appointment of a replacement arbitrator.

According to this provision, when an arbitrator's appointment is revoked, a replacement arbitrator shall be appointed in accordance with the relevant provisions of Article 12. Article 12 sets out the general framework for the appointment of arbitrators, including the process for selecting a sole arbitrator or forming a three-member tribunal.

In practical terms, revoking the appointment of an arbitrator may disrupt the arbitration proceedings and necessitate the appointment of a new arbitrator to fill the vacancy. This ensures the continuation of the arbitration process with a complete tribunal.

Furthermore, Article 16.3 specifies that the time limit for issuing the Final Award, which is the ultimate decision on the dispute, will be extended in cases where an arbitrator's appointment is revoked and a replacement arbitrator needs to be appointed. The extension period is calculated from the date the appointment of the revoked arbitrator is terminated until the date the replacement arbitrator is appointed by the Arbitration Court.

This extension of time allows for the necessary adjustments to accommodate the change in the composition of the tribunal. It recognises that the appointment of a new arbitrator may require additional time for the replacement arbitrator to familiarise themselves with the case, review the evidence, and participate in any remaining proceedings leading up to the issuance of the Final Award.

In summary, Article 16.3 of the DIAC Arbitration Rules stipulates that when an arbitrator's appointment is revoked, a replacement arbitrator will be appointed following the provisions of Article 12. The revocation of an arbitrator's appointment triggers an extension of the time limit for issuing the Final Award to account for the necessary adjustments resulting from the change in the tribunal's composition.

16.4. In the event that any Tribunal is reconstituted, it shall, after having invited the parties to comment, determine as soon as reasonably practicable, but in any event no later than a period of 20 days after the transmission of the file to the replacement arbitrator(s), whether the prior proceedings or any part of them shall be repeated before the reconstituted Tribunal. Such determination shall not affect the binding nature of any award, order or other decision issued prior to the appointment of the replacement arbitrator(s), unless the Tribunal decides otherwise.

Article 16.4 of the DIAC Arbitration Rules deals with the reconstitution of a tribunal and addresses the question of whether prior proceedings should be repeated before the reconstituted tribunal.

According to this provision, when a tribunal is reconstituted due to the revocation of an arbitrator's appointment, the reconstituted tribunal has the authority to determine whether the prior proceedings, or any part of them, should be repeated. The tribunal must invite the parties to provide their comments on this matter. The determination should be made as soon as reasonably practicable, within a period of 20 days after the transmission of the case file to the replacement arbitrator(s).

The purpose of this provision is to ensure procedural efficiency and fairness in the arbitration process. By allowing the reconstituted tribunal to decide whether or not to repeat prior proceedings, the DIAC rules recognise that it may not always be necessary or practical to redo all previous stages of the arbitration. The tribunal, in consultation with the parties, will consider factors such as the stage of the proceedings, the significance of the prior proceedings, and any potential impact on time and cost.

It is important to note that the determination made by the reconstituted tribunal regarding the repetition of prior proceedings does not affect the binding nature of any awards, orders, or decisions issued prior to the appointment of the replacement arbitrator(s), unless the tribunal decides otherwise. This provision underscores the principle that prior decisions of the tribunal remain valid and binding unless there are compelling reasons to revisit them.

Overall, Article 16.4 of the DIAC Arbitration Rules ensures that the reconstituted tribunal has the discretion to decide whether to repeat prior proceedings and promotes efficiency in the arbitration process while preserving the finality of previous decisions.

V. THE PROCEEDINGS

ARTICLE (17) GENERAL PROVISIONS

17.1. The core objective of the Rules is for all arbitrations to be conducted justly, fairly, impartially, efficiently and proportionately (having due regard to the sum(s) claimed and/or counterclaimed and the complexity of the dispute). The Tribunal, the parties and the parties' representatives undertake to conduct the arbitration in accordance with that objective.

Article 17.1 of the DIAC Arbitration Rules sets out the core objective of the rules, which is to ensure that all arbitrations conducted under the rules are done so in a just, fair, impartial, efficient, and proportionate manner. The article emphasises the importance of conducting the arbitration process with due regard to the specific circumstances of each case, including the amount in dispute and the complexity of the dispute.

This provision establishes the overarching principle that governs the conduct of the arbitration proceedings. It imposes obligations on the Tribunal, the parties, and their representatives to adhere to this core objective throughout the arbitration process. The Tribunal is responsible for ensuring that the arbitration is conducted in accordance with these principles, while the parties and their representatives are expected to actively participate and contribute to the achievement of this objective.

By including these principles in the arbitration rules, the DIAC aims to promote fairness, efficiency, and proportionality in the resolution of disputes. The requirement for just and fair proceedings ensures that each party has an equal opportunity to present its case and have it considered by an unbiased Tribunal. Impartiality and efficiency help to maintain the integrity of the arbitration process and expedite the resolution of disputes. Proportionality recognises that the resources and procedures employed in the arbitration should be appropriate and commensurate with the complexity and value of the dispute.

Overall, Article 17.1 underscores the commitment of the DIAC to provide a framework for arbitration that upholds fundamental principles of justice, fairness, and efficiency. It sets the standard for the conduct of all parties involved in the arbitration and serves as a guiding principle to ensure the integrity and effectiveness of the arbitration process under the DIAC Arbitration Rules.

17.2. In applying the core objective of the Rules, the Tribunal shall ensure that each party is given a reasonable opportunity to present its case. The Tribunal shall also ensure that the arbitration is conducted expeditiously, diligently and in a cost-efficient manner. This may include making determinations of issues on a preliminary basis, determinations on documentary evidence alone, limiting disclosure or written submissions of the parties, limiting the extent of expert evidence and/or encouraging experts to agree on certain issues.

Article 17.2 of the DIAC Arbitration Rules elaborates on how the core objective of the rules, as stated in Article 17.1, is to be implemented by the Tribunal. It sets forth certain measures and considerations that the Tribunal should employ to ensure that the arbitration is conducted expeditiously, diligently, and in a cost-efficient manner, while still affording each party a reasonable opportunity to present its case.

The article highlights the Tribunal's responsibility to manage the arbitration proceedings efficiently. This includes employing various procedural tools and measures to streamline the process and avoid unnecessary delays or expenses. The Tribunal has the authority to make determinations on certain issues at a preliminary stage, decide on the admissibility and weight of documentary evidence, limit the scope of disclosure or written submissions, restrict the extent of expert evidence, and encourage experts to reach agreements on specific issues. These measures are aimed at promoting efficiency and avoiding unnecessary costs associated with excessive procedural steps.

Importantly, the article emphasises the need for the Tribunal to ensure that each party is given a reasonable opportunity to present its case. This highlights the importance of maintaining fairness and due process throughout the proceedings. Despite the focus on efficiency, the Tribunal must balance the need for expeditiousness with the fundamental principle of affording parties a fair and meaningful opportunity to present their arguments and evidence.

By providing guidance to the Tribunal on how to achieve the core objective of the Rules, Article 17.2 aims to strike a balance between efficiency and fairness in the arbitration process. It acknowledges the importance of managing the proceedings effectively while upholding the principles of due process and ensuring that each party has a reasonable opportunity to present its case.

17.3. In complying with its obligations under the Rules, the Tribunal shall have the discretion to adopt procedures it considers necessary, having due regard to the relevant circumstances.

Article 17.3 of the DIAC Arbitration Rules grants the Tribunal discretion to adopt procedures it deems necessary in complying with its obligations under the Rules. This provision recognises that the Tribunal, as the adjudicating body in the arbitration, is best positioned to determine the appropriate procedures to be followed in light of the specific circumstances of the case.

The article acknowledges that arbitration proceedings can vary significantly in terms of their complexity, the nature of the dispute, and the parties involved. Therefore, the Tribunal is granted flexibility to tailor the procedures to suit the particular circumstances of each case. This discretion allows the Tribunal to adapt its approach in a manner that ensures fairness, efficiency, and the effective resolution of the dispute.

By having the authority to adopt procedures it considers necessary, the Tribunal can take into account factors such as the complexity of the legal and factual issues, the amount of evidence involved, the parties' positions, and any unique aspects of the case. This discretionary power allows the Tribunal to exercise its professional judgment and expertise to streamline the proceedings and ensure that they are conducted in the most appropriate and effective manner.

Overall, Article 17.3 provides the Tribunal with the necessary flexibility to adapt the procedural framework to the specific circumstances of each case. This provision acknowledges that a one-size-fits-all approach may not be suitable for every arbitration and allows the Tribunal to adopt procedures that are tailored to the needs of the parties and the particular dispute at hand.

17.4. In all matters not expressly provided for in the Rules, the Centre, the Tribunal and the parties shall act in the spirit of the Rules and shall make reasonable efforts to ensure that any award issued is enforceable at law.

Article 17.4 of the DIAC Arbitration Rules sets forth the guiding principle for matters not explicitly covered by the Rules. It establishes that the Centre, the Tribunal, and the parties should act in the spirit of the Rules and make reasonable efforts to ensure that any award issued is enforceable at law.

This article recognises that the Rules may not address every procedural or substantive issue that may arise during the arbitration process. It emphasises the importance of adhering to the underlying principles and objectives of the Rules and promoting a fair and enforceable outcome.

The provision underscores the collaborative nature of arbitration, with all stakeholders— including the Centre, the Tribunal, and the parties—expected to work together in a cooperative and constructive manner. It encourages a proactive approach to resolving any procedural or substantive gaps that may arise during the arbitration proceedings.

By acting in the spirit of the Rules, the Centre, the Tribunal, and the parties are urged to interpret and apply the provisions of the Rules in a manner that aligns with the overarching principles of fairness, efficiency, and enforceability. This implies that they should consider the underlying goals of the arbitration process and the applicable laws to ensure that the final award is capable of being recognised and enforced by relevant authorities.

Overall, Article 17.4 emphasises the need for cooperation and collaboration among the stakeholders involved in the arbitration process. It encourages them to work together to address any gaps or uncertainties in the Rules, ensuring that the arbitration is conducted in accordance with its spirit and results in an enforceable award.

17.5. In applying the core objective of the Rules, the Arbitration Court may, upon a reasoned request from the Tribunal and after inviting the parties' comments, communicate any actions of the parties' representative(s) it considers an attempt to unfairly obstruct the arbitration or otherwise to constitute misconduct, to the relevant supervising authority/professional body and/or to the respective party who appointed such representative.

Article 17.5 of the DIAC Arbitration Rules addresses the authority of the Arbitration Court to address actions by the parties' representatives that are deemed to obstruct the arbitration or constitute misconduct. It provides that upon a reasoned request from the Tribunal and after inviting the parties' comments, the Arbitration Court may communicate such actions to the relevant supervising authority/professional body and/or to the party who appointed the representative.

This article demonstrates the commitment of the DIAC Arbitration Rules to ensure that arbitrations are conducted fairly, efficiently, and with proper professional conduct. It recognises that the actions of the parties' representatives can significantly impact the arbitration process and the achievement of its core objectives.

The provision empowers the Tribunal to bring to the attention of the Arbitration Court any actions by the parties' representatives that are seen as attempts to unfairly obstruct the arbitration or constitute misconduct. The Tribunal must provide a reasoned request, outlining the specific actions and their perceived negative impact on the arbitration process.

The Arbitration Court, upon receiving such a request, will then invite the comments of the parties before deciding on further action. If it finds the actions of the representative(s) to be improper, it may communicate these actions to the relevant supervising authority/professional body and/or inform the party who appointed such representative.

By taking this step, the DIAC Arbitration Rules aim to discourage any misconduct or unfair practices that may undermine the integrity and effectiveness of the arbitration process. It emphasises the importance of maintaining high ethical standards and professional conduct among the parties' representatives.

Overall, Article 17.5 reflects the commitment of the DIAC to uphold the core objectives of fairness, efficiency, and integrity in the arbitration process. It provides a mechanism to address and rectify any misconduct or obstruction by parties' representatives, thereby promoting a conducive and reputable arbitration environment.

ARTICLE (18) TRANSMISSION OF THE FILE TO THE TRIBUNAL

The Centre shall transmit a copy of the file to the Tribunal as soon as reasonably practicable after its constitution.

Article 18 of the DIAC Arbitration Rules states that the Centre, responsible for administering the arbitration, is required to transmit a copy of the file to the Tribunal promptly after its constitution.

This provision emphasises the importance of timely and efficient communication between the Centre and the Tribunal. The file transmission includes all relevant documents, pleadings, evidence, and submissions related to the arbitration case. By providing the Tribunal with the complete file, it ensures that the arbitrators have access to all the necessary information to conduct the arbitration proceedings effectively.

The phrase "as soon as reasonably practicable" implies that the Centre should make diligent efforts to transmit the file promptly without unnecessary delay. This reflects the goal of conducting the arbitration in an expeditious manner, aligning with the core objectives of the DIAC Arbitration Rules.

By promptly sharing the case file with the Tribunal, this provision facilitates the arbitrators' ability to familiarise themselves with the facts, issues, and arguments of the parties. It allows them to assess the case thoroughly and make informed decisions during the arbitration process.

Additionally, this provision supports the principle of procedural fairness by ensuring that the Tribunal and the parties have equal access to the relevant information. It promotes transparency and provides a solid foundation for the arbitration proceedings.

In summary, Article 18 of the DIAC Arbitration Rules mandating the Centre to transmit the case file to the Tribunal promptly demonstrates the commitment to efficient case management and the fair administration of the arbitration process.

ARTICLE (19) MODIFICATIONS OF TIME LIMITS

19.1. The parties may agree to modify the time limits set out in the agreement to arbitrate or the Rules. Any such agreement proposed after the constitution of the Tribunal shall become effective only upon consultation with, and approval of, the Tribunal.

Article 19.1 of the DIAC Arbitration Rules states that the parties have the ability to modify the time limits set out in the agreement to arbitrate or the Rules by mutual agreement. However, any such modification proposed after the constitution of the Tribunal will only become effective upon consultation with, and approval of, the Tribunal.

This provision recognises the need for flexibility in the arbitration process, allowing the parties to adjust the prescribed time limits to accommodate their specific circumstances or needs. It reflects the principle of party autonomy, granting the parties the freedom to tailor the arbitration procedure to suit their preferences and requirements.

The requirement for consultation with and approval of the Tribunal after its constitution ensures that any modifications to the time limits are reasonable and do not disrupt the arbitration proceedings or prejudice any party. It safeguards the integrity and efficiency of the arbitration process, as the Tribunal is in the best position to assess the impact of the proposed modifications and make an informed decision.

By including this provision, the DIAC Arbitration Rules strike a balance between the parties' autonomy and the need for procedural fairness. It allows for necessary adjustments while ensuring that all parties have an opportunity to participate in the decision-making process.

It is important to note that while the parties can agree to modify time limits, such modifications should not undermine the fundamental principles of due process, fairness, and the efficient resolution of disputes. The Tribunal's approval acts as a safeguard to prevent any unreasonable or unfair modifications that could prejudice the rights of the parties or unduly delay the arbitration proceedings.

Overall, Article 19.1 of the DIAC Arbitration Rules provides a mechanism for parties to modify time limits by agreement, subject to the consultation and approval of the Tribunal. This provision promotes flexibility in the arbitration process while preserving the integrity and fairness of the proceedings.

19.2. The Tribunal may, upon an application by a party or on its own initiative and provided it has given the parties reasonable opportunity to state their views, modify any time limit for purely procedural matters in the arbitration including the Tribunal's own directions. No time limits within the Arbitration Court's exclusive discretion under the Rules can be modified by the Tribunal.

Article 19.2 of the DIAC Arbitration Rules empowers the Tribunal to modify time limits for purely procedural matters in the arbitration, including the Tribunal's own directions. However, it clarifies that the Tribunal does not have the authority to modify time limits within the exclusive discretion of the Arbitration Court under the Rules.

This provision recognises that certain procedural time limits may need adjustment during the course of the arbitration to ensure fairness, efficiency, and the effective administration of the proceedings. The Tribunal is granted the authority to make such modifications based on an application by a party or on its own initiative.

By allowing the Tribunal to modify time limits for procedural matters, the DIAC Arbitration Rules acknowledge the dynamic nature of arbitration proceedings. It acknowledges that unforeseen circumstances or changes in the case's complexity may require adjustments to the original time limits set out in the Rules or established by the Tribunal's directions.

However, it is important to note that the Tribunal's authority to modify time limits is limited to purely procedural matters. It does not extend to time limits that fall within the exclusive discretion of the Arbitration Court as defined by the Rules. This limitation ensures that certain critical time limits, such as those related to challenges, revocations, or other substantive matters, remain under the purview of the Arbitration Court.

The provision further emphasises the requirement for the Tribunal to provide the parties with a reasonable opportunity to state their views before making any modifications to time limits. This ensures transparency, fairness, and allows all parties to express their opinions and concerns regarding the proposed changes.

In summary, Article 19.2 of the DIAC Arbitration Rules grants the Tribunal the authority to modify time limits for purely procedural matters in the arbitration. This provision reflects the need for flexibility in the arbitration process while preserving the bounds of fairness and efficiency. It recognises the Tribunal's role in adapting time limits to accommodate the evolving needs of the case, while respecting the exclusive discretion of the Arbitration Court for certain time limits defined in the Rules.

19.3. The Arbitration Court may modify any time limit, if it decides that it is necessary to do so for the Tribunal or the Centre to comply with its responsibilities under the Rules or to give effect to parties' agreement to arbitrate.

Article 19.3 of the DIAC Arbitration Rules empowers the Arbitration Court to modify any time limit if it deems it necessary to ensure compliance with the responsibilities of the Tribunal or the Centre under the Rules or to give effect to the parties' agreement to arbitrate.

This provision recognises the authority of the Arbitration Court to intervene and modify time limits when it is essential to fulfil the obligations and responsibilities of the Tribunal and the Centre as outlined in the DIAC Arbitration Rules. The Court's power to modify time limits is exercised with the objective of ensuring the efficient and effective administration of the arbitration process.

The provision also highlights the importance of honouring the parties' agreement to arbitrate. If the modification of a time limit is required to give effect to the terms of the parties' agreement, the Arbitration Court is empowered to make such adjustments.

By granting the Arbitration Court the authority to modify time limits, the DIAC Arbitration Rules provide a mechanism to address exceptional circumstances or unforeseen events that may affect the progress or fairness of the arbitration. This flexibility ensures that the arbitration process can adapt to evolving circumstances while upholding the principles of fairness, efficiency, and the parties' agreement.

It is worth noting that the power to modify time limits rests with the Arbitration Court, which serves as the supervisory body overseeing the arbitration proceedings. The Court's decisions regarding time limit modifications are based on its evaluation of the specific circumstances and the need to ensure compliance with the Rules and the parties' agreement.

In summary, Article 19.3 of the DIAC Arbitration Rules grants the Arbitration Court the authority to modify time limits if necessary to fulfil the responsibilities of the Tribunal and the Centre under the Rules or to give effect to the parties' agreement to arbitrate. This provision allows for necessary adjustments to ensure the smooth progression of the arbitration process while maintaining fairness and compliance with the applicable rules and agreements.

ARTICLE (20) SEAT OF THE ARBITRATION AND PLACE OF HEARINGS

20.1. The parties may agree in writing on the seat of the arbitration. Where the parties have not agreed a seat, but they have agreed a location/venue for the arbitration, unless the parties agree otherwise, such location/venue shall be deemed to be the seat of the arbitration. In the absence of an agreement on the seat and location/venue, the initial seat of the arbitration shall be DIFC. In such case, the Tribunal shall, upon its constitution, have the power finally to determine the seat of the arbitration, having due regard to any observations from the parties and any other relevant circumstances.

Article 20.1 of the DIAC Arbitration Rules addresses the determination of the seat of arbitration in the absence of an explicit agreement between the parties.

According to this provision, the parties have the option to agree in writing on the seat of the arbitration. This agreement allows the parties to select a specific jurisdiction or venue where the arbitration proceedings will be conducted. The chosen seat may have legal implications, as it determines the procedural laws and the supervisory court's jurisdiction.

If the parties have not agreed on a seat but have agreed on a location or venue for the arbitration, Article 20.1 states that the agreed location or venue will be deemed the seat of the arbitration, unless the parties agree otherwise. This provision ensures that the parties' choice of a specific location or venue is respected and recognised as the seat of the arbitration.

In the absence of an agreement on the seat and location/venue, the default seat of the arbitration under the DIAC Arbitration Rules is set as the Dubai International Financial Centre (DIFC). The DIFC is an international financial hub with its own legal framework and arbitration regulations.

However, Article 20.1 further provides that, in cases where the initial seat is determined as the DIFC, the Tribunal, once constituted, has the power to finally determine the seat of the arbitration. The Tribunal's decision on the seat takes into account any observations from the parties and considers other relevant circumstances. This provision allows the Tribunal to assess factors such as convenience, fairness, and the parties' interests in determining the most appropriate seat for the arbitration.

In summary, Article 20.1 of the DIAC Arbitration Rules provides a framework for determining the seat of arbitration when there is no explicit agreement between the parties. It allows for flexibility by recognising the parties' choice of location or venue as the seat, but also grants the Tribunal the authority to determine the seat if no agreement is reached. This provision ensures a fair and efficient process for determining the seat of arbitration, taking into consideration the parties' preferences and the relevant circumstances.

20.2. The Tribunal may, after consultation with the parties, decide to conduct hearings or meetings at any place, be it in person, by telephone or through any other appropriate means of virtual communication including video conferencing.

Article 20.2 of the DIAC Arbitration Rules addresses the flexibility of the Tribunal in determining the location and means of conducting hearings or meetings during the arbitration process.

According to this provision, the Tribunal has the authority to decide, after consultation with the parties, the location and mode of conducting hearings or meetings. The Tribunal is empowered to conduct such proceedings at any place, whether in person, by telephone, or through any other suitable means of virtual communication, including video conferencing.

This article recognises the modern realities of international arbitration, where parties and arbitrators may be located in different jurisdictions, making it impractical or costly to physically gather for hearings or meetings. By allowing for alternative methods of communication, such as telephone or video conferencing, the DIAC Arbitration Rules promote efficiency and cost-effectiveness in the arbitration process.

The flexibility provided by Article 20.2 also enables the parties to participate in the proceedings without being physically present at the same location, which can facilitate the involvement of parties from different countries or regions. This provision acknowledges the advancements in technology and the increasing use of virtual communication methods in arbitration proceedings.

The requirement for consultation with the parties ensures that their views and preferences are taken into account in determining the most appropriate mode of conducting hearings or meetings. This collaborative approach promotes fairness and allows the parties to actively participate in shaping the arbitration process.

In summary, Article 20.2 of the DIAC Arbitration Rules grants the Tribunal the discretion to decide on the location and means of conducting hearings or meetings, considering the specific circumstances of the case and after consultation with the parties. This provision reflects the modern trends in international arbitration, promoting efficiency, cost-effectiveness, and the use of virtual communication methods in the arbitration process.

20.3. Any award shall be deemed to have been issued at the seat of the arbitration, regardless of where it has been signed by the Tribunal, and whether at one single sitting or separately by each member to whom the award was forwarded for signature, and whether physically or by electronic means.

Article 20.3 of the DIAC Arbitration Rules addresses the determination of the seat of the arbitration and the place where an award is deemed to have been issued.

According to this provision, regardless of where the award is physically signed by the Tribunal members and whether it is signed in one sitting or separately, the award is deemed to have been issued at the seat of the arbitration. This applies even if the award is signed electronically instead of in physical form.

The seat of the arbitration holds significant importance as it determines the legal framework and procedural laws that govern the arbitration proceedings. It also determines the jurisdiction of the courts where certain challenges or enforcement actions related to the award may be pursued.

By specifying that the award is deemed to have been issued at the seat of the arbitration, Article 20.3 clarifies the legal implications of the award and establishes a connection between the award and the chosen seat. This provision ensures legal certainty and clarity for the parties involved, as well as for potential challenges or enforcement actions.

Furthermore, the article acknowledges the evolving nature of technology and the increasing use of electronic means in arbitration proceedings. It recognises that electronic signatures are considered valid and legally binding, and therefore an award signed electronically is given the same effect as a physically signed award.

In summary, Article 20.3 of the DIAC Arbitration Rules establishes that any award, regardless of how and where it is signed, is deemed to have been issued at the seat of the arbitration. This provision ensures clarity regarding the legal implications of the award and acknowledges the validity of electronic signatures in arbitration proceedings.

ARTICLE (21) LANGUAGE OF THE ARBITRATION

21.1. Unless otherwise agreed by the parties, the initial language of the arbitration shall be the language of the agreement to arbitrate.

Article 21.1 of the DIAC Arbitration Rules deals with the language of the arbitration proceedings and establishes the default language in the absence of an agreement between the parties.

According to this provision, unless the parties have agreed otherwise, the initial language of the arbitration shall be the language of the agreement to arbitrate. In other words, the language in which the parties have agreed to conduct their arbitration will be the language used for the proceedings, including written submissions, oral arguments, and the award.

The choice of language is an important aspect of arbitration, as it affects the ability of the parties to present their case effectively and understand the proceedings. By defaulting to the language of the agreement to arbitrate, Article 21.1 seeks to maintain consistency and continuity in the arbitration process, ensuring that the parties can communicate and understand the proceedings in a language they have previously agreed upon.

However, it is worth noting that this provision is subject to the “unless otherwise agreed” clause. This means that the parties have the flexibility to agree on a different language for the arbitration proceedings. If the parties have reached a specific agreement regarding the language, that agreement will prevail over the default provision of Article 21.1.

In summary, Article 21.1 of the DIAC Arbitration Rules establishes the default language of the arbitration as the language of the agreement to arbitrate. This provision ensures clarity and consistency in the proceedings, while still allowing the parties to agree on a different language if they so choose.

21.2. In the event that the agreement to arbitrate is written in more than one language, the Arbitration Court shall, unless the agreement to arbitrate provides that the arbitration shall be

conducted in more than one language, decide which of those languages shall be the initial language of the arbitration.

Article 21.2 of the DIAC Arbitration Rules addresses the situation where the agreement to arbitrate is written in multiple languages. It establishes a mechanism for determining the initial language of the arbitration proceedings in such cases.

According to this provision, unless the agreement to arbitrate specifically provides that the arbitration shall be conducted in multiple languages, the Arbitration Court will decide which of the languages in the agreement will be the initial language of the arbitration.

This provision recognises the practical need for clarity and consistency in the arbitration process, particularly when dealing with agreements that are drafted in multiple languages. It provides a mechanism for selecting a single language to be used in the initial stages of the arbitration, including written submissions, oral arguments, and the award.

The purpose of this provision is to avoid confusion and potential disputes arising from conducting the arbitration in multiple languages when there is no explicit agreement to do so. By determining the initial language, the Arbitration Court ensures that the proceedings can proceed efficiently and effectively.

It is important to note that this provision only applies when the agreement to arbitrate is written in more than one language and does not specifically provide for arbitration to be conducted in multiple languages. If the agreement itself specifies that the arbitration should be conducted in multiple languages, then that provision will prevail over Article 21.2.

In summary, Article 21.2 of the DIAC Arbitration Rules provides a mechanism for determining the initial language of the arbitration proceedings when the agreement to arbitrate is written in multiple languages. This provision aims to ensure clarity and consistency in the proceedings, promoting an efficient and effective arbitration process.

21.3. Failing an agreement by the parties on the language of the arbitration, the Tribunal shall, upon its constitution, have the power finally to determine the language or languages of the arbitration, having due regard to any observations from the parties and any other relevant circumstances.

Article 21.3 of the DIAC Arbitration Rules addresses the situation where the parties fail to agree on the language of the arbitration. It grants the Tribunal the authority to make a final determination on the language or languages to be used in the arbitration proceedings.

If the parties do not reach an agreement on the language of the arbitration, the Tribunal, once constituted, has the power to decide the language or languages to be used. In making this determination, the Tribunal is required to consider any observations made by the parties and take into account any other relevant circumstances.

The purpose of this provision is to provide a mechanism for resolving disputes or disagreements between the parties regarding the language of the arbitration. It ensures that the Tribunal has the authority to make a final decision on the language, which is crucial for conducting the proceedings in an efficient and effective manner.

The Tribunal's decision on the language or languages of the arbitration is binding on the parties and will govern the conduct of the proceedings, including the submission of documents, the presentation of oral arguments, and the issuance of the final award. It allows for a clear and consistent communication process throughout the arbitration.

By granting the Tribunal the power to determine the language or languages of the arbitration, Article 21.3 helps to facilitate a fair and accessible process for all parties involved. It ensures that the proceedings are conducted in a language that is suitable for the parties and allows them to effectively present their case.

In summary, Article 21.3 of the DIAC Arbitration Rules empowers the Tribunal to make the final decision on the language or languages to be used in the arbitration proceedings in cases where the parties fail to reach an agreement on the language. This provision promotes an efficient and fair arbitration process by providing a mechanism for resolving disputes concerning the language of the proceedings.

21.4. The Tribunal may order that any documents submitted in languages other than the language of the arbitration be accompanied by a translation (which the Tribunal may order to be certified) in whole or in part into the language of the arbitration.

Article 21.4 of the DIAC Arbitration Rules grants the Tribunal the authority to order the submission of translated documents in cases where the documents are not in the language of the arbitration. The purpose of this provision is to ensure that all parties can effectively understand and engage with the documents submitted during the arbitration proceedings.

According to this article, if any party submits documents in a language other than the language of the arbitration, the Tribunal has the discretion to require those documents to be accompanied by a translation. The translation may be required for the entire document or only for specific parts as determined by the Tribunal. Additionally, the Tribunal may also order that the translation be certified.

This provision serves the purpose of promoting transparency and clarity in the arbitration process. By ordering the submission of translations, the Tribunal ensures that all parties have access to the information contained in the documents and can fully comprehend their content. This is particularly important when parties involved in the arbitration may not be fluent in the language in which the documents are originally written.

Requiring translations helps to mitigate any potential language barriers that could hinder the parties' ability to present their case or understand the arguments and evidence presented by the opposing party. It ensures that all parties have an equal opportunity to engage in the proceedings and effectively participate in the arbitration.

The Tribunal's power to order translations is discretionary, meaning that it will be exercised on a case-by-case basis. The Tribunal will consider factors such as the nature and significance of the documents, the language abilities of the parties and the impact on the efficiency and fairness of the proceedings in making a decision on whether translations should be required.

In summary, Article 21.4 of the DIAC Arbitration Rules grants the Tribunal the authority to order the submission of translations for documents submitted in languages other than the language of the arbitration. This provision aims to enhance the transparency and accessibility of the arbitration process

by ensuring that all parties can fully understand and engage with the information presented in the proceedings.

ARTICLE (22) THIRD-PARTY FUNDING

22.1. Prior to the constitution of the Tribunal, a party who has entered into a Third-party Funding Arrangement must promptly disclose that fact to all other parties and the Centre, together with details of the identity of the funder, and whether or not the funder has committed to an adverse costs liability.

Article 22.1 of the DIAC Arbitration Rules imposes a duty on parties involved in arbitration who have entered into a Third-party Funding Arrangement to disclose this information to the other parties and the Centre. The purpose of this provision is to ensure transparency and promote fairness in the arbitration process by disclosing the involvement of third-party funders.

Under this article, if a party has obtained third-party funding for the arbitration, they are required to promptly disclose this fact to all other parties and the Centre. The disclosure should include details about the identity of the funder and whether the funder has committed to assume liability for adverse costs.

The requirement for disclosure serves several important purposes. First, it promotes transparency and fairness by ensuring that all parties are aware of any potential financial interests or relationships that could influence the conduct of the arbitration. By disclosing the involvement of a third-party funder, parties and the Tribunal can assess the potential impact on the proceedings and any potential conflicts of interest that may arise.

Second, the disclosure requirement allows parties and the Tribunal to assess the financial resources available to the funded party. This information can be relevant when considering matters such as costs, security for costs, and potential enforcement of an award. It helps to ensure that the arbitration process is not unduly affected by the financial circumstances of the parties.

Lastly, the disclosure of third-party funding arrangements allows for more informed decision-making. Parties and the Tribunal can take into account the potential impact of the funding arrangement on the dynamics of the arbitration and consider any necessary safeguards or adjustments to ensure a fair and efficient process.

By requiring prompt disclosure, Article 22.1 seeks to prevent any surprise or prejudice that may arise from undisclosed third-party funding arrangements. It encourages openness and transparency among the parties and facilitates a more balanced and informed arbitration process.

It is worth noting that the obligation to disclose third-party funding arrangements applies before the constitution of the Tribunal, emphasising the importance of early disclosure to allow for proper consideration and potential adjustments in the arbitration proceedings.

In summary, Article 22.1 of the DIAC Arbitration Rules mandates the disclosure of Third-party Funding Arrangements by parties involved in the arbitration. This disclosure requirement promotes transparency, fairness, and informed decision-making by ensuring that all parties are aware of any third-party funding arrangements and their potential impact on the arbitration process.

22.2. After the constitution of the Tribunal, the parties shall not enter into a Third-party Funding Arrangements if the consequence of that arrangement will or may give rise to a conflict of interest between the third-party funder and any member of the Tribunal. A party entering into such an arrangement shall make the same disclosure to all other parties, the Centre and the Tribunal, as required by Article 22.1 above.

Article 22.2 of the DIAC Arbitration Rules addresses the issue of entering into Third-party Funding Arrangements after the constitution of the Tribunal. This provision prohibits parties from entering into such arrangements if they may give rise to a conflict of interest between the third-party funder and any member of the Tribunal.

Under this article, if a party intends to enter into a Third-party Funding Arrangement after the constitution of the Tribunal, they must ensure that such an arrangement does not create a conflict of interest between the funder and any member of the Tribunal. The party entering into the funding arrangement must make the same disclosure to all other parties, the Centre, and the Tribunal as required under Article 22.1.

The purpose of this provision is to safeguard the integrity and impartiality of the arbitration process. It recognises that conflicts of interest can arise when a party is funded by a third party who may have a direct or indirect interest in the outcome of the arbitration. Such conflicts could compromise the independence and impartiality of the Tribunal and undermine the fairness of the proceedings.

By imposing a prohibition on entering into funding arrangements that may give rise to conflicts of interest, the provision seeks to protect the integrity of the arbitration process and ensure that the Tribunal remains impartial and independent in its decision-making.

Additionally, by requiring the disclosure of these arrangements to all parties, the Centre, and the Tribunal, the provision promotes transparency and allows all stakeholders to assess any potential conflicts and take appropriate measures to address them.

Overall, Article 22.2 of the DIAC Arbitration Rules establishes a prohibition on entering into Third-party Funding Arrangements that may create conflicts of interest after the constitution of the Tribunal. The provision aims to maintain the integrity of the arbitration process and ensure that the Tribunal remains independent and impartial in its decision-making.

22.3. The Tribunal may take into account the existence of any third-party adverse costs liability when apportioning the costs of the arbitration between the parties.

Article 22.3 of the DIAC Arbitration Rules addresses the consideration of third-party adverse costs liability by the Tribunal when apportioning the costs of the arbitration between the parties.

This provision acknowledges that a party may have entered into a Third-party Funding Arrangement that includes an adverse costs liability, meaning that the third-party funder assumes the responsibility for paying the opposing party's costs if the funded party is unsuccessful in the arbitration. In such cases, the Tribunal is empowered to take this factor into account when determining the allocation of costs among the parties.

The purpose of this provision is to ensure that the Tribunal has the discretion to consider the impact of third-party adverse costs liability on the parties' financial obligations in the arbitration. By taking this factor into account, the Tribunal can make an equitable decision on the allocation of costs, taking into consideration the potential financial consequences for the parties involved.

The provision allows the Tribunal to adjust the apportionment of costs to reflect the existence of third-party adverse costs liability. This means that if a party benefits from third-party funding with an adverse costs liability, the Tribunal may allocate a lesser portion of costs to that party if they are unsuccessful in the arbitration, as the third-party funder would be responsible for covering a significant portion of the opposing party's costs.

By giving the Tribunal the authority to consider third-party adverse costs liability, the provision promotes fairness and ensures that the financial burden of the arbitration is appropriately distributed among the parties. It takes into account the potential risk-sharing arrangement created by third-party funding and allows the Tribunal to adjust the costs allocation accordingly.

In summary, Article 22.3 of the DIAC Arbitration Rules allows the Tribunal to consider the existence of third-party adverse costs liability when apportioning the costs of the arbitration. It aims to ensure fairness in the cost allocation process and takes into account the risk-sharing arrangements created by third-party funding.

ARTICLE (23) PRELIMINARY MEETING

23.1. The Tribunal shall, as soon as reasonably practicable, but in any event no later than a period of 15 days after the transmission of the file to the Tribunal, contact the parties with a view to setting the date for a preliminary meeting.

Article 23.1 of the DIAC Arbitration Rules establishes the requirement for the Tribunal to promptly contact the parties in order to schedule a preliminary meeting. This meeting serves as an important procedural step in the arbitration process and is aimed at facilitating the efficient and organised conduct of the proceedings.

According to this provision, the Tribunal is obliged to initiate contact with the parties within a reasonable time frame, specifically no later than 15 days after receiving the arbitration file from the Centre. The purpose of this contact is to coordinate and agree upon a suitable date for the preliminary meeting.

The preliminary meeting, also known as the case management conference, is an opportunity for the Tribunal and the parties to discuss and address various matters related to the arbitration proceedings. These matters may include procedural issues, the organisation of the hearings, the exchange of documents, the submission of evidence, and the overall timeline for the arbitration process.

By setting a specific timeframe for the Tribunal to initiate contact with the parties, Article 23.1 emphasises the importance of timely case management and demonstrates a commitment to procedural efficiency. The provision ensures that the preliminary meeting takes place promptly after the Tribunal has received the case file, allowing the parties to begin planning and preparing for the arbitration proceedings in a timely manner.

The requirement for the Tribunal to initiate contact with the parties reflects the collaborative nature of arbitration and encourages open communication between the Tribunal and the parties. It demonstrates a proactive approach to case management, enabling the Tribunal to address any procedural issues or concerns early on and streamline the arbitration process.

In summary, Article 23.1 of the DIAC Arbitration Rules mandates the Tribunal to contact the parties within a specified timeframe after receiving the case file to schedule a preliminary meeting. This provision emphasises the importance of timely case management and facilitates effective communication between the Tribunal and the parties to ensure the efficient progress of the arbitration proceedings.

23.2. The preliminary meeting can be held in person, by telephone or through any other appropriate means of virtual communication including video conferencing, as may be agreed by the parties or determined by the Tribunal after consultation with the parties.

Article 23.2 of the DIAC Arbitration Rules addresses the format and methods of conducting the preliminary meeting in arbitration proceedings. This provision recognises the flexibility and adaptability of modern technology in facilitating effective communication and allows for various means of holding the preliminary meeting.

According to this article, the preliminary meeting can take place in different formats, including in-person meetings, telephone conferences, or any other appropriate means of virtual communication, such as video conferencing. The choice of the meeting format is subject to agreement by the parties or determination by the Tribunal after consultation with the parties.

This provision reflects the recognition that advancements in technology have made virtual communication an efficient and convenient alternative to physical meetings. Video conferencing and other virtual communication methods can offer significant benefits, particularly in cases where parties, witnesses, or legal representatives are located in different jurisdictions or face travel limitations.

The flexibility provided by Article 23.2 allows the parties to choose the most suitable method for conducting the preliminary meeting, taking into account factors such as the complexity of the case, the convenience and availability of the participants, and the need for effective communication and interaction among the parties and the Tribunal.

By allowing for virtual communication methods, the provision promotes cost-effectiveness and time-efficiency in the arbitration process. It eliminates the need for extensive travel and associated expenses, while still providing an opportunity for meaningful discussions and decision-making during the preliminary meeting.

Overall, Article 23.2 of the DIAC Arbitration Rules acknowledges the importance of accommodating modern communication methods and technology in the arbitration process. It provides parties with the flexibility to choose the format of the preliminary meeting, enabling them to adopt virtual communication methods, such as video conferencing, for efficient and effective case management.

23.3. The Tribunal shall, after consultation with the parties, fix a timetable for the submission of pleadings, documents and statements, as well as the form of any such submission.

Article 23.3 of the DIAC Arbitration Rules addresses the establishment of a timetable for the submission of pleadings, documents, and statements in arbitration proceedings. This provision emphasises the importance of efficient case management and ensures that the arbitration process progresses in an organised and structured manner.

According to this article, the Tribunal is required to consult with the parties to determine a timetable for the submission of various written materials. This includes pleadings, documents, and statements that are relevant to the arbitration proceedings. The article also grants the Tribunal the authority to determine the form in which these submissions should be made.

By consulting with the parties, the Tribunal seeks to consider their respective needs, preferences, and the specific circumstances of the case when establishing the timetable. This collaborative approach promotes procedural fairness and allows the parties to participate actively in shaping the arbitration process.

The establishment of a timetable serves several purposes. It helps ensure that the arbitration proceedings progress in a timely manner, avoiding unnecessary delays. It also provides clarity and predictability to the parties, allowing them to plan and allocate resources effectively.

Additionally, the provision empowers the Tribunal to determine the form in which the submissions should be made. This allows the Tribunal to tailor the requirements to the specific needs of the case and the preferences of the parties. The form of submission may include written briefs, legal arguments, evidentiary documents, expert reports, or any other relevant materials.

Overall, Article 23.3 of the DIAC Arbitration Rules promotes efficient case management by establishing a timetable for the submission of pleadings, documents, and statements. It highlights the importance of consultation with the parties and grants the Tribunal the authority to determine the form of submission. This provision contributes to the orderly progress of the arbitration proceedings and ensures a fair and effective resolution of the dispute.

ARTICLE (24) WRITTEN STATEMENTS, MODIFICATION AND WITHDRAWAL OF CLAIMS

24.1. Unless a detailed statement of claim was submitted together with the Request, the Claimant shall, within such time limit as determined by the Tribunal after consultation with the parties (including at the preliminary meeting), submit its detailed statement of claim. The statement of claim shall be submitted together with all or part of the evidence relied upon as determined by the Tribunal.

Article 24.1 of the DIAC Arbitration Rules pertains to the requirement for the Claimant to submit a detailed statement of claim in arbitration proceedings. This provision emphasises the importance of providing a clear and comprehensive presentation of the Claimant's case and supporting evidence.

According to this article, if a detailed statement of claim was not submitted with the initial Request for arbitration, the Claimant is obligated to submit its detailed statement of claim within a specific time limit. The Tribunal, after consulting with the parties, including during the preliminary meeting, has the authority to determine the timeframe for the submission of the statement of claim.

The detailed statement of claim should contain a thorough presentation of the Claimant's position, including the relevant facts, legal arguments, and the relief sought. Additionally, the Tribunal has the discretion to determine whether the statement of claim should be accompanied by all or part of the evidence relied upon by the Claimant.

By requiring the submission of a detailed statement of claim, the provision promotes transparency and procedural fairness in the arbitration process. It ensures that the parties and the Tribunal are provided with a clear understanding of the Claimant's case, enabling them to prepare their responses and present their arguments effectively.

The determination of the time limit for the submission of the statement of claim is made in consultation with the parties, allowing for a reasonable and practical timeframe that takes into account the complexity of the case and the parties' input. This collaborative approach enhances the efficiency and effectiveness of the arbitration proceedings.

Furthermore, the discretion given to the Tribunal to decide on the submission of evidence along with the statement of claim allows for flexibility and adaptability to the specific circumstances of each case. The Tribunal can tailor the requirements to suit the nature and complexity of the evidence relied upon by the Claimant, ensuring a fair and balanced presentation of the case.

In summary, Article 24.1 of the DIAC Arbitration Rules establishes the requirement for the Claimant to submit a detailed statement of claim and provides guidance on the submission of supporting evidence. This provision promotes transparency, fairness, and efficiency in the arbitration process by ensuring a clear presentation of the Claimant's case and facilitating effective preparation and response by the parties and the Tribunal.

24.2. Unless a detailed statement of defence and, as the case may be, a detailed counterclaim was submitted together with the Answer, the Respondent shall, within such time limit as determined by the Tribunal after consultation with the parties (including at the preliminary meeting), submit its detailed statement of defence and, as the case may be, any detailed counterclaim. The statement of defence and any such counterclaim shall be submitted together with all or part of the evidence relied upon as determined by the Tribunal.

Article 24.2 of the DIAC Arbitration Rules addresses the requirement for the Respondent to submit a detailed statement of defence and, if applicable, a detailed counterclaim in arbitration proceedings. This provision ensures that the Respondent has an opportunity to respond to the Claimant's allegations and present its own case.

According to this article, if a detailed statement of defence and counterclaim were not submitted with the initial Answer, the Respondent is obligated to submit its detailed statement of defence and, if applicable, any counterclaim within a specific time limit. The determination of this time limit is made by the Tribunal after consulting with the parties, including during the preliminary meeting.

The detailed statement of defence should provide a comprehensive response to the allegations raised by the Claimant. It enables the Respondent to address each claim and present its arguments, legal defences, and any counterclaims it may have. The Tribunal has the discretion to determine whether the statement of defence should be accompanied by all or part of the evidence relied upon by the Respondent.

Similarly, if the Respondent has a counterclaim, the detailed counterclaim must also be submitted within the determined time limit. This allows the Respondent to assert any claims it has against the Claimant and present the supporting facts, legal arguments, and relief sought. The Tribunal has the authority to decide whether the counterclaim should be accompanied by all or part of the evidence relied upon by the Respondent.

By requiring the submission of a detailed statement of defence and counterclaim, if applicable, the provision ensures that both parties have an equal opportunity to present their case and arguments. It promotes fairness, transparency, and procedural balance in the arbitration proceedings.

The determination of the time limit for the submission of the statement of defence and counterclaim is made in consultation with the parties, considering the complexity of the case and allowing for effective preparation and response. This collaborative approach enhances the efficiency and effectiveness of the arbitration process.

Furthermore, the discretion given to the Tribunal to decide on the submission of evidence along with the statement of defence and counterclaim allows for flexibility and tailored requirements. It ensures that the presentation of evidence aligns with the specific circumstances of each case and facilitates a fair and balanced consideration of the parties' positions.

In summary, Article 24.2 of the DIAC Arbitration Rules establishes the requirement for the Respondent to submit a detailed statement of defence and, if applicable, a counterclaim. This provision promotes fairness, transparency, and procedural balance by allowing the Respondent to respond to the Claimant's allegations and assert any counterclaims. The determination of the time limit for submission is made in consultation with the parties, and the provision allows for flexibility in the submission of evidence.

24.3. After the submission of the statement of claim, statement of defence and any counterclaim, no party shall make new claims or counterclaims, unless permitted to do so by the Tribunal or so agreed by the parties. In deciding whether to give such permission, the Tribunal shall consider the nature of such new claims, the stage of the arbitration, the delay in making them, the prejudice that might be caused to the other party and any other relevant circumstances. For the purposes of Article 2.1 of Appendix I, the Tribunal shall inform the Centre of and indicate any increase in the sum(s) claimed and/or counterclaimed.

Article 24.3 of the DIAC Arbitration Rules addresses the issue of making new claims or counterclaims after the submission of the statement of claim, statement of defence, and any counterclaim. This provision establishes that, in principle, parties are not allowed to introduce new claims or counterclaims unless expressly permitted by the Tribunal or agreed upon by the parties.

The purpose of this rule is to promote efficiency, fairness, and procedural orderliness in arbitration proceedings. Once the parties have submitted their initial pleadings, it is generally expected that they have presented their case and the issues to be decided by the Tribunal. Limiting the introduction of new claims or counterclaims after this stage prevents unnecessary delays, surprise, and prejudice to the other party.

However, the provision recognises that there may be exceptional circumstances where the introduction of new claims or counterclaims could be justified. In such cases, the Tribunal has the discretion to permit their inclusion after considering various factors. These factors include the nature

of the new claims, the stage of the arbitration, the delay in bringing them, the potential prejudice to the other party, and any other relevant circumstances.

The Tribunal's decision on whether to allow new claims or counterclaims is guided by the principle of fairness and ensuring a balanced and equitable process. The Tribunal must carefully assess the impact of introducing new claims or counterclaims on the overall proceedings and the parties' ability to present their case. It aims to strike a balance between allowing legitimate claims and counterclaims to be considered and preventing undue disruption or unfair advantage.

Importantly, the provision also requires the Tribunal to inform the Centre of any new claims or counterclaims and indicate any increase in the sum(s) claimed and/or counterclaimed. This information is essential for administrative purposes and may have implications for the calculation of arbitration fees and costs.

Overall, Article 24.3 serves as a safeguard to maintain procedural order and fairness in arbitration proceedings. It provides a framework for parties to request the introduction of new claims or counterclaims, subject to the Tribunal's discretion and consideration of relevant factors. By setting clear guidelines, this provision promotes efficiency and protects the rights of the parties involved.

24.4. The Tribunal shall allow or request further written statements by way of reply, defence to counterclaim and rejoinder, as it deems appropriate, and shall fix the periods of time for submission of any such written statements together with any evidence relied upon.

Article 24.4 of the DIAC Arbitration Rules addresses the Tribunal's authority to allow or request further written statements in the form of a reply, defence to counterclaim, and rejoinder. This provision grants the Tribunal the discretion to determine the need for additional written submissions and the corresponding time limits for their submission.

The purpose of this rule is to ensure that each party has a fair opportunity to respond to the arguments and evidence presented by the opposing party. It recognises that new issues or evidence may arise during the course of the arbitration that warrant a further exchange of written submissions. By allowing for replies, defences to counterclaims, and rejoinders, the Tribunal ensures that parties have the chance to address any new matters that have been raised.

The Tribunal's decision to allow or request further written statements is based on its assessment of the appropriateness and necessity of such submissions in light of the specific circumstances of the case. The Tribunal takes into account factors such as the complexity of the issues, the significance of the new information or arguments, and the overall procedural fairness of the arbitration.

Additionally, Article 24.4 empowers the Tribunal to set the periods of time within which the parties must submit their written statements and any accompanying evidence. This provision ensures that the arbitration process remains organised and efficient by imposing clear deadlines for the submission of further written submissions.

By providing a framework for the Tribunal's authority in relation to additional written statements, Article 24.4 contributes to a fair and balanced arbitration process. It allows parties to present their arguments and evidence in response to new developments and ensures that each party has an opportunity to address the claims and evidence presented by the opposing side.

24.5. A party may, at any time prior to the issuance of the Final Award, withdraw any or all of its claims or counterclaims provided that no party involved objects to the withdrawal of such claim or counterclaim. If any party objects to such withdrawal, the Tribunal shall consider any submissions made by the parties and issue an order or award in relation to such withdrawal, including but not limited to costs.

Article 24.5 of the DIAC Arbitration Rules addresses the withdrawal of claims or counterclaims by a party prior to the issuance of the Final Award. This provision allows a party to voluntarily withdraw any or all of its claims or counterclaims at any time, provided that no other party objects to the withdrawal.

The purpose of this rule is to give parties the flexibility to adjust their claims or counterclaims during the course of the arbitration, reflecting changes in their legal strategy, assessment of the case, or settlement negotiations. It recognises that parties should have the freedom to determine the scope of their claims and counterclaims, subject to the agreement of the other parties involved.

However, if any party objects to the withdrawal of a claim or counterclaim, the Tribunal becomes involved in the decision-making process. The Tribunal will consider any submissions made by the parties regarding the withdrawal and issue an order or award in relation to the withdrawal, including considerations of costs.

This provision ensures that the withdrawal of claims or counterclaims is subject to the scrutiny of the Tribunal and takes into account the potential impact on the other parties and the overall fairness of the proceedings. The Tribunal's role is to evaluate the reasons for the withdrawal, assess the objections raised by other parties, and determine whether the withdrawal should be allowed or whether it may have adverse effects on the proceedings.

By including this provision, the DIAC Arbitration Rules provide a mechanism for parties to adjust their claims or counterclaims during the arbitration process while also ensuring that the interests of all parties are protected.

ARTICLE (25) BURDEN OF PROOF AND EVIDENCE

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

Article 25.1 of the DIAC Arbitration Rules addresses the burden of proof in arbitration proceedings. According to this provision, each party involved in the arbitration shall bear the burden of proving the facts necessary to support its claim or defence.

The burden of proof is a fundamental principle in arbitration and other legal proceedings. It places the responsibility on each party to present sufficient evidence and arguments to establish the facts that are essential to their case. This requirement ensures that parties must substantiate their claims or defences with credible evidence and legal arguments to persuade the Tribunal.

By placing the burden of proof on the parties, the DIAC Arbitration Rules promote fairness and efficiency in the arbitration process. It encourages parties to diligently prepare and present their case

by collecting relevant evidence, conducting thorough legal analysis, and presenting convincing arguments to support their position.

The burden of proof rule also aligns with the general principle of procedural fairness in arbitration, where each party has the opportunity to present its case and respond to the arguments and evidence put forward by the opposing party. It promotes an equal playing field and ensures that the outcome of the arbitration is based on a thorough examination of the evidence and legal arguments presented by the parties.

Overall, Article 25.1 of the DIAC Arbitration Rules establishes the principle that each party bears the responsibility of proving the facts essential to their claim or defence. It underscores the importance of presenting compelling evidence and legal arguments to support one's position and contributes to a fair and effective resolution of disputes through arbitration.

25.2. The Tribunal shall, after consultation with the parties, determine the applicable rules of evidence. The Tribunal shall also determine the time, manner and form in which the evidence to be submitted should be exchanged between the parties and presented to the Tribunal. In any event, the Tribunal shall have the power to determine the admissibility, relevance, materiality and weight of any such evidence.

Article 25.2 of the DIAC Arbitration Rules addresses the Tribunal's authority and discretion regarding the rules of evidence in arbitration proceedings. This provision grants the Tribunal the power to determine the applicable rules of evidence, as well as the procedures for exchanging and presenting evidence.

The first aspect of Article 25.2 states that the Tribunal, after consulting with the parties, has the authority to determine the rules of evidence that will be applied in the arbitration. This allows the Tribunal to consider the specific circumstances of the case and the preferences of the parties when deciding on the appropriate standards and procedures for presenting and evaluating evidence. The flexibility in determining the rules of evidence is one of the advantages of arbitration, as it allows for tailored approaches that suit the needs of the particular dispute.

The second aspect of Article 25.2 relates to the time, manner, and form of exchanging evidence between the parties and presenting it to the Tribunal. This provision gives the Tribunal the discretion to establish the specific procedures and timelines for the submission and exchange of evidence. The purpose is to ensure an organised and efficient presentation of evidence, taking into account the complexity of the case and the needs of the parties.

Additionally, Article 25.2 explicitly states that the Tribunal has the power to determine the admissibility, relevance, materiality, and weight of the evidence submitted by the parties. This grants the Tribunal the authority to assess the probative value and significance of the evidence in reaching its decision. The Tribunal's assessment is crucial for ensuring a fair and informed decision-making process and maintaining the integrity of the arbitration proceedings.

Overall, Article 25.2 emphasises the Tribunal's role in shaping the evidentiary framework of the arbitration. It grants the Tribunal the power to determine the applicable rules of evidence, establish procedures for exchanging evidence, and evaluate the admissibility and weight of the evidence. These provisions contribute to the efficient and fair conduct of the arbitration by allowing the Tribunal to tailor the evidentiary process to the specific needs and circumstances of the case.

25.3. The Tribunal, at any time during the arbitration, whether at the request of a party or on its own initiative, may order a party to produce such documents, exhibits or other evidence within such a period of time as the Tribunal considers necessary or appropriate. It may also order a party to make available to the Tribunal or to an expert appointed by it or to any other party to the arbitration, any information, document or property in its possession or control for inspection, examination or testing.

Article 25.3 of the DIAC Arbitration Rules grants the Tribunal the authority to issue orders related to the production of documents, exhibits, and other evidence during the arbitration proceedings. This provision allows the Tribunal to ensure the availability and accessibility of relevant information necessary for the resolution of the dispute.

The first aspect of Article 25.3 states that the Tribunal, either upon the request of a party or on its own initiative, may order a party to produce specific documents, exhibits, or other forms of evidence within a designated period of time. This empowers the Tribunal to compel the production of evidence that is deemed necessary or appropriate for the arbitration proceedings. Such an order may be issued to ensure that relevant information is provided to the Tribunal and the other parties in a timely manner.

The second aspect of Article 25.3 empowers the Tribunal to order a party to make available certain information, documents, or property for inspection, examination, or testing. This provision gives the Tribunal the authority to request the disclosure of specific materials or items that are relevant to the dispute. The purpose is to allow the Tribunal, experts appointed by the Tribunal, or other parties to examine and evaluate the evidence first-hand.

Overall, Article 25.3 expands the Tribunal's powers to facilitate the production and examination of evidence. The Tribunal can issue orders to compel parties to produce specific documents or evidence within a specified timeframe. Additionally, the Tribunal can require parties to make available information, documents, or property for inspection or testing. These provisions enable the Tribunal to ensure the availability of relevant evidence and promote the fair and thorough consideration of the facts and arguments presented in the arbitration.

ARTICLE (26) HEARINGS

26.1. If either party requests a hearing or hearings for the presentation of evidence by witnesses or for oral argument or for both or, failing such request, the Tribunal decides that such hearing or hearings should take place, the Tribunal shall determine whether such hearing(s) shall be held in person, by telephone or through any other appropriate means of virtual communication including video conferencing.

Article 26.1 of the DIAC Arbitration Rules addresses the issue of holding hearings for the presentation of evidence by witnesses or for oral argument, either upon the request of a party or at the discretion of the Tribunal.

The provision states that if either party requests a hearing or hearings for the presentation of evidence or oral argument, or if the Tribunal determines that such hearings should take place, the Tribunal will decide on the format of the hearing(s). The available options include in-person hearings, hearings

conducted by telephone, or hearings conducted through any other appropriate means of virtual communication, including video conferencing.

This provision reflects the flexible and adaptable nature of modern arbitration proceedings. It recognises that traditional in-person hearings may not always be necessary or practical, especially considering factors such as the geographic location of the parties, the complexity of the dispute, and the cost and efficiency considerations. Instead, the DIAC Arbitration Rules allow for alternative methods of holding hearings, such as telephone or video conferencing, which can effectively facilitate the presentation of evidence and oral arguments.

By providing the flexibility to choose the appropriate means of communication, the DIAC Arbitration Rules promote efficiency and cost-effectiveness in the arbitration process. Parties can save time and expenses associated with travel and accommodation by participating in hearings remotely. Furthermore, advancements in technology have made virtual communication platforms more accessible and reliable, enabling parties to present their case effectively even in the absence of physical presence.

Overall, Article 26.1 of the DIAC Arbitration Rules acknowledges the importance of hearings for the presentation of evidence and oral argument and provides the Tribunal with the discretion to determine the most suitable format, be it in person, by telephone, or through virtual communication methods. This flexibility ensures that hearings can be conducted efficiently and in a manner that best serves the interests of the parties and the arbitration process.

26.2. Where a hearing is to take place, the Tribunal shall consult with the parties and give them reasonable advance notice of the date, time, place and estimated duration of the hearing. Unless the Tribunal directs otherwise, the parties shall be responsible for the organisation of the hearing, including the associated costs.

Article 26.2 of the DIAC Arbitration Rules addresses the procedural aspects related to hearings in arbitration proceedings.

According to this provision, when a hearing is scheduled to take place, the Tribunal has an obligation to consult with the parties. The purpose of this consultation is to inform the parties in advance about the date, time, place, and estimated duration of the hearing. It allows the parties to adequately prepare for the hearing and make necessary arrangements to attend.

Furthermore, the article stipulates that unless the Tribunal directs otherwise, the responsibility for organising the hearing, including associated costs, lies with the parties. This means that the parties are generally responsible for making logistical arrangements, such as booking the venue, arranging for necessary equipment, and covering the costs related to the hearing, such as travel expenses, interpretation services, and transcript services, unless the Tribunal decides otherwise.

By placing the responsibility for organising the hearing on the parties, this provision promotes efficiency and flexibility in the arbitration process. It recognises that the parties are in the best position to determine the practical details of the hearing, taking into account their specific circumstances and resources. It also encourages the parties to cooperate and engage in discussions with the Tribunal to ensure that the hearing can proceed smoothly and without unnecessary delays.

However, it is important to note that the Tribunal retains the authority to give directions regarding the organisation of the hearing. In certain cases, the Tribunal may provide specific instructions to the parties regarding the conduct of the hearing, such as the use of specific technologies or the appointment of a hearing officer to oversee the proceedings.

Overall, Article 26.2 of the DIAC Arbitration Rules ensures that the parties are adequately informed and have reasonable notice of the hearing, while placing the responsibility for organising the hearing on the parties, subject to any specific directions from the Tribunal. This approach promotes efficiency, cooperation, and cost-effectiveness in the arbitration process.

26.3. The Tribunal shall determine in what form a record shall be made of any hearing and shall also determine how the cost of such record and other related costs will be allocated between the parties, unless otherwise agreed by them.

Article 26.3 of the DIAC Arbitration Rules addresses the recording of hearings and the allocation of costs related to the recording process.

According to this provision, the Tribunal has the authority to determine the form in which a record of any hearing will be made. This means that the Tribunal can decide whether the hearing will be recorded by stenographic transcription, audio recording, video recording, or any other appropriate means. The purpose of recording the hearing is to create an accurate and reliable record of the proceedings, which can be helpful for future reference, review, and the preparation of the award.

Additionally, the article states that the Tribunal shall also determine how the costs associated with the record and other related costs will be allocated between the parties, unless the parties have agreed otherwise. This means that the Tribunal has discretion to decide which party or parties will bear the costs of recording the hearing and any other related expenses, such as the fees of the stenographer or transcription services. The allocation of costs can be based on various factors, including the nature of the dispute, the conduct of the parties, and the overall fairness and reasonableness of the allocation.

The provision gives the Tribunal the flexibility to tailor the recording requirements and cost allocation to the specific circumstances of each case. The Tribunal's decision on these matters should be fair and reasonable, taking into account the parties' positions, the complexity of the case, and the overall efficiency and cost-effectiveness of the arbitration proceedings.

Importantly, the provision allows the parties to reach an agreement on the form of recording and cost allocation. If the parties agree on an alternative approach, the Tribunal will adhere to that agreement. This provision respects party autonomy and promotes the flexibility and adaptability of the arbitration process.

Overall, Article 26.3 of the DIAC Arbitration Rules grants the Tribunal the authority to determine the form of recording for hearings and the allocation of costs associated with the recording process, unless the parties have agreed otherwise. This provision ensures that the Tribunal can make appropriate decisions based on the specific circumstances of each case, promoting fairness, efficiency, and cost-effectiveness in the arbitration proceedings.

26.4. If any of the parties, having been notified, fails to appear at a hearing without showing good cause, the Tribunal shall have the power to proceed with the hearing.

Article 26.4 of the DIAC Arbitration Rules addresses the situation where a party fails to appear at a hearing without showing good cause.

According to this provision, if a party has been properly notified of a hearing but fails to appear without providing a valid reason or showing good cause for their absence, the Tribunal has the power to proceed with the hearing. In other words, the Tribunal is not obliged to adjourn the hearing or reschedule it solely because one of the parties is absent.

This provision reflects the principle of procedural efficiency and ensures that arbitration proceedings can proceed without unnecessary delays caused by the non-appearance of a party. It encourages parties to attend hearings and actively participate in the process. By allowing the Tribunal to proceed in the absence of a party, the provision aims to prevent the party's non-appearance from unduly impeding the progress of the arbitration.

However, it is important to note that the provision requires the Tribunal to determine whether there is good cause for the party's absence. This means that if the absent party can provide a valid reason for not attending the hearing, such as illness, unforeseen circumstances, or other justifiable grounds, the Tribunal may consider rescheduling the hearing or taking other appropriate measures to accommodate the party's absence.

The provision strikes a balance between ensuring procedural fairness and efficiency. It recognises that the presence of all parties at a hearing is generally preferable but also acknowledges that there may be circumstances where proceeding in the absence of a party is necessary to avoid unnecessary delays and maintain the progress of the arbitration.

Overall, Article 26.4 of the DIAC Arbitration Rules empowers the Tribunal to proceed with a hearing if a party fails to appear without showing good cause. This provision reinforces the importance of party participation and procedural efficiency in the arbitration process.

26.5. Unless the Tribunal directs or the parties agree otherwise, all meetings and hearings shall be held in private. Persons not involved in the arbitration shall not be admitted to the hearings without the approval of the Tribunal and the parties.

Article 26.5 of the DIAC Arbitration Rules pertains to the confidentiality and privacy of meetings and hearings in the arbitration process.

According to this provision, unless the Tribunal directs or the parties agree otherwise, all meetings and hearings conducted during the arbitration proceedings shall be held in private. This means that only the parties involved in the arbitration, their representatives, witnesses, and any other individuals directly participating in the proceedings are allowed to attend these meetings and hearings.

The provision emphasises the importance of maintaining confidentiality in arbitration proceedings. By holding meetings and hearings in private, the DIAC rules aim to protect the sensitive and confidential nature of the arbitration process. Confidentiality is often considered a fundamental principle in arbitration as it allows parties to freely present their cases, exchange information, and engage in open discussions without concerns about public disclosure.

Furthermore, the provision stipulates that persons who are not directly involved in the arbitration shall not be admitted to the hearings without the approval of both the Tribunal and the parties. This requirement ensures that only those with a legitimate interest in the proceedings are granted access, and it allows the Tribunal and the parties to exercise control over the presence of third parties during the arbitration.

Overall, Article 26.5 of the DIAC Arbitration Rules emphasises the importance of maintaining privacy and confidentiality in arbitration proceedings. It sets a default rule that meetings and hearings should be held in private, with limited exceptions only upon the direction of the Tribunal or with the agreement of the parties. This provision contributes to the integrity and effectiveness of the arbitration process by safeguarding the confidentiality of the proceedings.

26.6. Where neither party requests a hearing and the Tribunal determines a hearing is not necessary, then the arbitration shall be conducted by reference to documents and other materials alone.

Article 26.6 of the DIAC Arbitration Rules addresses the situation where neither party requests a hearing and the Tribunal determines that a hearing is unnecessary. In such cases, the arbitration proceedings will be conducted solely based on the review and consideration of documents and other materials submitted by the parties.

This provision reflects the principle of party autonomy in arbitration, allowing the Tribunal to exercise its discretion in determining the most appropriate procedure for the resolution of the dispute. If both parties agree and the Tribunal finds that a hearing is not necessary for the proper resolution of the case, the arbitration can proceed efficiently and expeditiously through a document-only procedure.

By conducting the arbitration by reference to documents and other materials alone, the need for a physical or virtual hearing is eliminated, saving time and costs for the parties involved. This approach is particularly suitable for cases where the parties have submitted comprehensive written submissions, evidence, and arguments, and a hearing would not significantly contribute to the resolution of the dispute.

It is worth noting that the decision to proceed with a document-only procedure is at the discretion of the Tribunal. The Tribunal will assess the circumstances of the case, the complexity of the issues, and the potential benefits of conducting a hearing or relying solely on written materials. The primary consideration is to ensure a fair and efficient resolution of the dispute.

Overall, Article 26.6 of the DIAC Arbitration Rules provides flexibility to the Tribunal to determine whether a hearing is necessary and allows for the efficient resolution of disputes through a document-only procedure when deemed appropriate by the Tribunal and in the absence of a party's request for a hearing.

ARTICLE (27) WITNESSES

27.1. The Tribunal may, after consultation with the parties, allow witnesses of fact and/or expert witnesses to give evidence at any hearing and, if necessary, provide directions relating to the advance notification of the identity and/or expertise of any such witness(es) and the evidence they

shall give. The Tribunal has discretion, on the grounds of avoiding duplication or lack of relevance, to limit the appearance of any witness, whether witness of fact or expert witness.

Article 27.1 of the DIAC Arbitration Rules addresses the Tribunal's discretion in allowing witnesses of fact and/or expert witnesses to give evidence at any hearing. The Tribunal has the authority to make determinations regarding the attendance of witnesses, including directions for advance notification of their identity and expertise, as well as the evidence they will provide.

The article recognises that witnesses can play a crucial role in presenting factual information and expert opinions relevant to the dispute. The Tribunal, after consulting with the parties, can assess the necessity and relevance of witness testimony and decide whether it should be allowed during the hearing. This ensures that the evidence presented is focused and contributes to the resolution of the dispute.

The provision also grants the Tribunal the discretion to limit the appearance of any witness, whether they are a witness of fact or an expert witness. This discretion is based on grounds such as avoiding duplication of evidence or lack of relevance. By exercising this discretion, the Tribunal can manage the proceedings efficiently and prevent unnecessary delays or the introduction of irrelevant evidence.

The purpose of Article 27.1 is to provide the Tribunal with flexibility in managing witness testimony in order to promote an effective and focused hearing. By allowing the Tribunal to determine the need for witness testimony and impose appropriate limitations, the arbitration proceedings can be conducted in a fair, efficient, and proportionate manner.

It is important to note that the Tribunal's decisions regarding witness testimony are made in consultation with the parties, ensuring that their views and interests are considered. The Tribunal's primary objective is to facilitate the presentation of relevant and probative evidence while avoiding unnecessary delays and costs.

Overall, Article 27.1 of the DIAC Arbitration Rules empowers the Tribunal to make decisions regarding witness testimony, ensuring the proceedings are conducted in a manner that promotes efficiency, fairness, and the resolution of the dispute based on relevant and reliable evidence.

27.2. Any witness who gives evidence may be questioned at a hearing by each of the parties under the supervision and direction of the Tribunal. The Tribunal may put questions to the witness at any stage of the examination.

Article 27.2 of the DIAC Arbitration Rules establishes the framework for witness examination during a hearing. The article specifies that any witness who gives evidence may be questioned by each of the parties, subject to the supervision and direction of the Tribunal. Additionally, the Tribunal itself has the authority to pose questions to the witness at any stage of the examination.

This provision recognises the importance of effective cross-examination and examination-in-chief in an arbitration proceeding. It grants the parties the opportunity to question witnesses to test their credibility, elicit relevant information, and challenge their testimony. By allowing each party to question the witness, the article ensures a fair and balanced process, giving both sides the opportunity to present their arguments and evidence.

The Tribunal's role is crucial in this process, as it supervises and directs the questioning of witnesses. The Tribunal maintains control over the proceedings and ensures that the examination is conducted in an orderly and efficient manner. The Tribunal may also exercise its discretion to ask questions directly to the witness, thereby clarifying or seeking additional information that may be relevant to the case.

By permitting questioning under the supervision of the Tribunal and allowing the Tribunal to ask its own questions, Article 27.2 helps maintain the integrity of the arbitration proceedings. It ensures that witness testimony is subjected to thorough scrutiny, promoting the search for truth and the fair determination of the issues in dispute.

Overall, Article 27.2 of the DIAC Arbitration Rules provides a framework for witness examination during a hearing, granting parties the opportunity to question witnesses while placing the Tribunal in a supervisory role. This ensures a fair and balanced process and facilitates the presentation of relevant evidence and arguments to assist the Tribunal in making an informed and just decision.

27.3. The testimony of a witnesses may, either at the discretion of a party or as directed by the Tribunal, be submitted in written form, whether by way of signed statements, sworn affidavits or otherwise, in which case the Tribunal may make the admissibility and/or weight of the testimony conditional upon the witnesses being made available to give oral testimony at a hearing.

Article 27.3 of the DIAC Arbitration Rules addresses the submission of witness testimony in written form during arbitration proceedings. According to this article, the testimony of a witness may be submitted in writing, either at the discretion of a party or as directed by the Tribunal. This can be done through signed statements, sworn affidavits, or any other suitable format.

The provision also empowers the Tribunal to make the admissibility and/or weight of such written testimony conditional upon the witnesses being made available to provide oral testimony at a hearing. In other words, while written testimony is permitted, the Tribunal may require the witness to be present during a hearing to give oral evidence and be subject to cross-examination.

This article recognises the practicality and efficiency of submitting witness testimony in written form. It allows the parties to present the evidence of witnesses without the need for their physical presence at the hearing. This can be particularly useful when witnesses are unable to attend the hearing due to geographical constraints, scheduling conflicts, or other reasons.

However, the article also ensures that the opportunity for cross-examination and questioning is not compromised. By making the admissibility and weight of the written testimony conditional upon the witnesses being made available for oral testimony, the article safeguards the right of the opposing party to challenge and question the witness's evidence. It promotes the principle of adversarial proceedings and the importance of testing witness credibility through direct examination and cross-examination.

Ultimately, Article 27.3 strikes a balance between the convenience of submitting witness testimony in written form and the need for oral examination to ensure fairness and the integrity of the arbitration process. It provides flexibility for the parties while preserving the opportunity for effective cross-examination and the assessment of witness credibility by the Tribunal.

27.4. A party shall be responsible for the practical arrangements, costs and availability of any witness it calls, and bear the consequences of non-appearance.

Article 27.4 of the DIAC Arbitration Rules addresses the responsibility of a party calling a witness during arbitration proceedings. According to this article, the party calling a witness is responsible for the practical arrangements, costs, and availability of that witness. This means that the party must make the necessary arrangements for the witness to appear at the hearing, including coordinating travel, accommodation, and any other logistical aspects related to the witness's testimony.

Furthermore, the article states that the party calling the witness will bear the consequences if the witness fails to appear at the hearing. This means that if the witness does not show up or is unavailable to testify, the party calling the witness may face the negative impact of the witness's non-appearance on their case. This could potentially affect the credibility or persuasiveness of the party's arguments if important witness testimony is missing.

The provision places the responsibility on the party calling the witness to ensure that the witness is available and able to testify when required. It emphasises the importance of proper preparation and coordination by the party to secure the presence of their witnesses during the arbitration process. By doing so, the article aims to ensure that the arbitration proceedings are conducted efficiently and that the testimony of relevant witnesses is presented in a timely manner.

Overall, Article 27.4 establishes the principle that the party calling a witness bears the responsibility for their appearance and the associated costs. This encourages parties to carefully consider the practical aspects of presenting witness testimony and reinforces the importance of proper planning and organisation to ensure the smooth progress of the arbitration proceedings.

27.5. The Tribunal shall determine whether any witness shall be excluded from the hearing, particularly during the testimony of other witnesses.

Article 27.5 of the DIAC Arbitration Rules addresses the authority of the Tribunal to determine whether any witness should be excluded from the hearing, especially during the testimony of other witnesses. This provision grants the Tribunal the discretion to make decisions regarding the presence or absence of witnesses during the arbitration proceedings.

The article recognises that in certain situations, it may be appropriate to exclude witnesses from the hearing room while other witnesses are giving their testimony. This can help maintain the integrity and credibility of witness testimony by preventing potential influence or bias that may arise from hearing the testimony of other witnesses.

The decision to exclude witnesses is within the purview of the Tribunal, which has the responsibility to ensure a fair and impartial arbitration process. The Tribunal will consider the specific circumstances of the case and exercise its judgment in determining whether the presence of certain witnesses may unduly influence or affect the testimony of other witnesses.

By granting the Tribunal the authority to make such determinations, the article promotes the principle of fairness and impartiality in the arbitration proceedings. It allows the Tribunal to take appropriate measures to protect the integrity of witness testimony and prevent any potential interference or influence that could compromise the truth-seeking process.

Overall, Article 27.5 acknowledges the Tribunal's role in maintaining the fairness and integrity of the arbitration proceedings by determining whether witnesses should be excluded from the hearing during the testimony of other witnesses. This provision helps ensure a conducive environment for witness testimony and supports the goal of conducting a fair and impartial arbitration process.

27.6. The Tribunal may require any witness who have been requested to provide oral testimony during the hearing, to swear an oath prior to giving oral evidence, subject to any mandatory provisions of the procedural law applicable to the seat of the arbitration. The Tribunal shall have the authority to accept oaths and the power to conduct examinations in person, by telephone or through any other appropriate means of virtual communication including video conferencing, provided it has first satisfied itself of the identity of the witness.

Article 27.6 of the DIAC Arbitration Rules addresses the Tribunal's authority to require witnesses providing oral testimony during the hearing to swear an oath. This provision allows the Tribunal to ensure the credibility and reliability of the witness testimony by imposing an oath, subject to any mandatory provisions of the procedural law applicable to the seat of the arbitration.

The article recognises that requiring witnesses to swear an oath before giving oral evidence adds an additional layer of solemnity and reinforces the duty of truthfulness and accuracy in their testimony. By swearing an oath, witnesses are bound by the obligation to provide truthful and honest information to the best of their knowledge and belief.

The Tribunal is granted the authority to accept oaths and conduct examinations in various formats, including in person, by telephone, or through other virtual communication means like video conferencing. This flexibility allows the Tribunal to adapt to the specific circumstances of the arbitration and the practicalities of witness testimony.

Prior to requiring witnesses to take an oath or conducting examinations, the Tribunal must satisfy itself of the identity of the witness. This ensures that the witness providing testimony is properly identified and can be held accountable for their statements.

Overall, Article 27.6 underscores the Tribunal's authority to require witnesses to swear an oath before giving oral testimony and to conduct examinations in different formats. By implementing these measures, the article promotes the integrity and reliability of witness evidence, contributing to a fair and just arbitration process.

ARTICLE (28) EXPERTS APPOINTED BY THE TRIBUNAL

28.1. The Tribunal may, after consultation with the parties, and no later than the final evidentiary hearing, appoint one or more independent experts to report to it on specific issues identified by the Tribunal. A copy of the expert's terms of appointment established by the Tribunal shall, having due regard to any observations of the parties, be communicated to the parties. Any such expert shall be required to sign an appropriate confidentiality undertaking.

Article 28.1 of the DIAC Arbitration Rules addresses the Tribunal's authority to appoint independent experts to report on specific issues identified by the Tribunal. This provision allows the Tribunal to

obtain specialised and impartial expertise to assist in resolving complex or technical matters that may arise during the arbitration.

The article emphasises that the appointment of independent experts should be made after consultation with the parties and no later than the final evidentiary hearing. This ensures that the parties have the opportunity to express their views and provide input regarding the appointment of experts and the specific issues to be addressed.

The terms of appointment of the expert, established by the Tribunal, are communicated to the parties, taking into account any observations they may have. This promotes transparency and allows the parties to understand the scope and purpose of the expert's involvement in the arbitration.

It is worth noting that the experts appointed under this provision are required to sign an appropriate confidentiality undertaking. This safeguards the confidentiality of the proceedings and protects sensitive information that may be shared with the expert during the course of their work.

By allowing the Tribunal to appoint independent experts and providing guidelines for their appointment, Article 28.1 reinforces the Tribunal's ability to obtain specialised knowledge and assistance in resolving complex issues. This ensures a more informed decision-making process and contributes to the fairness and effectiveness of the arbitration proceedings.

28.2. The Tribunal may require a party to provide any such expert all relevant information and any document or property in its possession or control for inspection, examination or testing by the expert. Any dispute between a party and the expert as to the relevance of the requested information, document or property shall be decided by the Tribunal.

Article 28.2 of the DIAC Arbitration Rules addresses the authority of the Tribunal to request a party to provide relevant information, documents, or property to an expert appointed by the Tribunal. This provision aims to facilitate the expert's examination, inspection, or testing of the requested materials in order to obtain a thorough and accurate expert opinion.

Under this article, the Tribunal has the power to require a party to provide the expert with all relevant information, documents, or property that are within the party's possession or control. This ensures that the expert has access to the necessary materials to conduct their examination and form their expert opinion.

If a dispute arises between a party and the expert regarding the relevance of the requested information, document, or property, Article 28.2 stipulates that the Tribunal shall be the final decision-maker on the matter. This empowers the Tribunal to resolve any disagreements and ensures that the expert's access to relevant materials is not unduly hindered.

By granting the Tribunal the authority to request information, documents, or property for the expert's examination and providing a mechanism to resolve disputes over relevance, Article 28.2 promotes the effective utilisation of experts and facilitates their access to the necessary materials to provide informed opinions. This contributes to the Tribunal's ability to make well-informed decisions based on reliable expert evidence.

28.3. Upon receipt of the expert's report, the Tribunal shall provide a copy of the report to the parties, who shall be given the opportunity to comment on the report. Wherever practicable, the Tribunal may permit a party to examine any evidence upon which the expert has relied in such a report.

Article 28.3 of the DIAC Arbitration Rules addresses the procedure to be followed upon receipt of the expert's report by the Tribunal. This provision ensures transparency and fairness by allowing the parties to review and comment on the expert's report and the evidence relied upon.

According to this article, once the Tribunal receives the expert's report, it is required to provide a copy of the report to the parties. This gives the parties the opportunity to familiarise themselves with the expert's findings and analysis.

Furthermore, Article 28.3 states that the parties should be given the opportunity to comment on the report. This allows the parties to express their views, provide additional information, challenge the expert's conclusions, or raise any concerns they may have regarding the report.

Importantly, the article emphasises that, whenever practicable, the Tribunal may permit a party to examine any evidence upon which the expert has relied in preparing the report. This provision allows the parties to review and assess the underlying evidence and ensure its accuracy and reliability.

By providing the parties with the expert's report and an opportunity to comment on it, as well as permitting examination of the supporting evidence, Article 28.3 promotes transparency, fairness, and the parties' right to be heard. It allows the parties to engage in an informed discussion on the expert's findings and contributes to the overall integrity of the arbitration process.

28.4. At the request of a party, the parties shall be given an opportunity to question the expert at a hearing, where the parties may also present their own appointed expert witnesses to testify on the issues in dispute.

Article 28.4 of the DIAC Arbitration Rules addresses the opportunity for the parties to question the expert and present their own expert witnesses during a hearing.

According to this article, at the request of a party, the parties shall be given an opportunity to question the expert at a hearing. This provision recognises the importance of allowing the parties to directly engage with the expert witness, ask relevant questions, and seek clarifications regarding the expert's report or opinions.

Additionally, Article 28.4 states that the parties may also present their own appointed expert witnesses to testify on the issues in dispute. This allows each party to present their own expert evidence to support their respective positions or challenge the opinions of the opposing party's expert. By providing the parties with the opportunity to present their own expert witnesses, the article ensures that the tribunal receives a balanced and comprehensive understanding of the technical or specialised aspects of the dispute.

Overall, Article 28.4 promotes fairness and procedural equality by allowing the parties to actively participate in the expert evidence phase of the arbitration. It enables them to engage with the expert witness and present their own expert evidence, thereby enhancing the parties' ability to present their case and contribute to the tribunal's decision-making process.

28.5. The opinion of other experts on the issues submitted to the Tribunal's expert shall be subject to the Tribunal's appreciation of those issues in the context of the relevant circumstances, unless the parties have agreed that the determination of the Tribunal's expert shall be conclusive in respect of any specific issue.

Article 28.5 of the DIAC Arbitration Rules deals with the weight and significance of the opinion of other experts on the issues submitted to the Tribunal's expert.

According to this article, the opinion of other experts, not appointed by the Tribunal but relied upon by the parties, is subject to the Tribunal's appreciation of those issues in the context of the relevant circumstances. This means that the Tribunal retains the discretion to evaluate and assess the opinions provided by these other experts. The Tribunal will consider the credibility, relevance, and persuasiveness of the opinions in reaching its own determination on the issues at hand.

However, there is an exception mentioned in the article. If the parties have agreed that the determination of the Tribunal's expert shall be conclusive in respect of any specific issue, then the Tribunal's expert opinion will carry more weight and will be binding on that particular issue.

This article reflects the principle that the Tribunal has the ultimate authority and responsibility to evaluate all evidence, including expert opinions, in reaching its decision. While the opinions of other experts can be influential, the Tribunal is not bound by them and has the discretion to give them the appropriate weight in light of the specific circumstances of the case.

Overall, Article 28.5 recognises the Tribunal's role as the ultimate arbiter of the expert evidence and emphasises the importance of the Tribunal's independent assessment in determining the merits of the case. It provides flexibility for the Tribunal to consider the opinions of other experts but ensures that its own determination remains the central focus of the decision-making process.

28.6. The Tribunal shall fix costs in an amount sufficient to cover the expected fees and expenses of any expert(s) appointed under this Article. Any expertise ordered by the Tribunal shall commence only if such costs have been paid in full to the Centre.

Article 28.6 of the DIAC Arbitration Rules addresses the issue of costs associated with the appointment of experts by the Tribunal.

According to this article, the Tribunal has the authority to fix costs that are sufficient to cover the expected fees and expenses of any expert(s) appointed under Article 28. This means that the Tribunal will determine the amount of costs necessary to engage the expert(s) and ensure that the parties are aware of the financial implications.

Importantly, the article specifies that any expertise ordered by the Tribunal can only commence if the costs associated with it have been paid in full to the Centre. This requirement ensures that the financial responsibility for the engagement of experts is fulfilled before the expert work begins. It is designed to provide financial security and prevent any delays or issues arising from non-payment of costs related to expert appointments.

By explicitly mentioning the payment of costs, Article 28.6 emphasises the importance of timely payment and financial responsibility in the arbitration process. It also serves to protect the efficiency and integrity of the arbitration proceedings, as the Tribunal can be confident that the necessary funds are in place before engaging experts.

Overall, this article provides a clear framework for dealing with the costs of expert appointments and ensures that the financial aspects of involving experts are adequately addressed within the arbitration process.

ARTICLE (29) FAILURE TO PARTICIPATE

29.1. Where the Tribunal is required by these Rules to consult with the parties and one party does not participate in such consultation without showing good cause and within the time period determined by the Tribunal, the Tribunal shall proceed to issue rulings so that the arbitration can continue without undue delay.

Article 29.1 of the DIAC Arbitration Rules addresses the situation where the Tribunal is required to consult with the parties, but one party fails to participate in the consultation without showing good cause and within the specified time period.

According to this article, if one party does not participate in the required consultation, the Tribunal is empowered to proceed and issue rulings necessary for the arbitration to continue without undue delay. This provision ensures that the arbitration process can move forward despite the lack of participation or cooperation from one party.

By allowing the Tribunal to issue rulings in such cases, the article aims to prevent undue delays in the proceedings caused by one party's non-participation or failure to engage in the required consultation process. It empowers the Tribunal to make decisions and move the arbitration forward in a timely manner.

However, it is important to note that the article also requires the non-participating party to show good cause for their absence and failure to engage in the consultation. This means that there should be a valid reason for the party's non-participation, and the Tribunal will consider whether the cause presented by the party justifies their absence.

Overall, Article 29.1 of the DIAC Arbitration Rules ensures that the arbitration process can continue smoothly even in the absence of participation from one party, as long as the non-participating party fails to show good cause and participate within the determined time period. This provision aims to maintain the efficiency and effectiveness of the arbitration proceedings.

29.2. If the Claimant, without showing good cause, fails to submit its statement of claim in accordance with Article 24.1, or otherwise fails to participate in the arbitration at any time, the Tribunal may decide not to proceed with the claim. However, this shall not prevent the Tribunal from

proceeding to determine the rights of the Respondent derived from the claim and/or any counterclaim raised by the Respondent in the Answer.

Article 29.2 of the DIAC Arbitration Rules addresses the situation where the Claimant fails to fulfil its obligations, specifically, by not submitting its statement of claim in accordance with Article 24.1 or by failing to participate in the arbitration process without showing good cause.

According to this article, if the Claimant fails to submit its statement of claim or fails to participate in the arbitration without good cause, the Tribunal has the authority to decide not to proceed with the claim. However, it is important to note that this provision does not prevent the Tribunal from proceeding to determine the rights of the Respondent derived from the claim and/or any counterclaim raised by the Respondent in the Answer.

The purpose of this article is to ensure that parties fulfil their obligations and actively participate in the arbitration process. By allowing the Tribunal to decide not to proceed with the claim in the event of the Claimant's failure, it serves as a mechanism to promote efficiency and prevent delays in the proceedings.

However, it is crucial to consider that the Tribunal has the discretion to determine whether there is good cause for the Claimant's failure to comply with its obligations. If the Claimant can demonstrate valid reasons for its non-compliance, such as exceptional circumstances or unforeseen events, the Tribunal may consider those factors before deciding not to proceed with the claim.

In summary, Article 29.2 of the DIAC Arbitration Rules emphasises the importance of active participation and compliance with procedural requirements. It provides the Tribunal with the authority to decide not to proceed with the claim in the event of the Claimant's failure without good cause, while still allowing the Tribunal to determine the rights of the Respondent derived from the claim and/or any counterclaim raised by the Respondent.

29.3. If the Respondent, without showing good cause, fails to submit its statement of defence in accordance with Article 24.2 or otherwise fails to participate in the arbitration at any time, the Tribunal may nevertheless proceed with the arbitration and issue the Final Award.

Article 29.3 of the DIAC Arbitration Rules addresses the situation where the Respondent fails to fulfil its obligations, specifically, by not submitting its statement of defence in accordance with Article 24.2 or by failing to participate in the arbitration process without showing good cause.

According to this article, if the Respondent fails to submit its statement of defence or fails to participate in the arbitration without good cause, the Tribunal has the authority to proceed with the arbitration and issue the Final Award. This provision indicates that the Tribunal is not prevented from moving forward with the arbitration process and rendering a decision solely due to the Respondent's failure to comply.

The purpose of this article is to ensure that the arbitration process is not unduly delayed or obstructed by the Respondent's non-compliance. It gives the Tribunal the power to proceed with the arbitration and issue the Final Award based on the available information and evidence, even in the absence of the Respondent's full participation.

It is important to note that the Tribunal may still consider any claims and arguments made by the Claimant and may make its decision based on the evidence and submissions presented by the Claimant. The Respondent's non-participation does not automatically result in a favourable outcome for the Claimant. The Tribunal will assess the evidence and arguments presented by the Claimant and render a decision based on the merits of the case.

However, it is crucial to consider that the Tribunal may take into account any valid reasons or good cause provided by the Respondent for its failure to comply with its obligations. If the Respondent can demonstrate exceptional circumstances or unforeseen events that prevented its participation, the Tribunal may consider those factors when determining the appropriate course of action.

In summary, Article 29.3 of the DIAC Arbitration Rules empowers the Tribunal to proceed with the arbitration and issue the Final Award if the Respondent fails to submit its statement of defence or participate without showing good cause. The Tribunal will make its decision based on the available evidence and submissions, taking into account the merits of the case and any valid reasons provided by the Respondent for its non-compliance.

29.4. The Tribunal may also proceed with the arbitration and issue the Final Award, if a party, without showing good cause, fails to present its case within the period of time determined by the Tribunal.

Article 29.4 of the DIAC Arbitration Rules addresses the situation where a party fails to present its case within the period of time determined by the Tribunal without showing good cause.

According to this article, if a party fails to present its case within the designated timeframe and does not provide a valid reason for its non-compliance, the Tribunal has the authority to proceed with the arbitration and issue the Final Award. This provision emphasises the importance of adhering to the established timelines and fulfilling the obligations of presenting the case in a timely manner.

The purpose of this article is to ensure the efficiency and effectiveness of the arbitration process. By allowing the Tribunal to proceed with the arbitration and issue the Final Award, it prevents unnecessary delays that could arise from a party's failure to present its case within the specified timeframe.

It is essential to note that the Tribunal's decision to proceed and issue the Final Award does not imply that the non-complying party automatically loses the case. The Tribunal will consider the evidence and arguments presented by the complying party and make its decision based on the merits of the case. The non-complying party's failure to present its case within the designated timeframe may result in limited or no input from their side, potentially affecting the outcome of the arbitration.

However, it is crucial to consider that the Tribunal may take into account any valid reasons or good cause provided by the non-complying party for its failure to present its case on time. If the party can demonstrate exceptional circumstances or unforeseen events that prevented compliance, the Tribunal may consider those factors when determining the appropriate course of action.

In summary, Article 29.4 of the DIAC Arbitration Rules empowers the Tribunal to proceed with the arbitration and issue the Final Award if a party fails to present its case within the determined timeframe without showing good cause. The Tribunal will make its decision based on the available

evidence and submissions, taking into account the merits of the case and any valid reasons provided by the non-complying party for its non-compliance.

29.5. If a party fails to comply with any provision of, or requirement under, the Rules or any direction given by the Tribunal, the Tribunal may draw any inferences it considers appropriate.

Article 29.5 of the DIAC Arbitration Rules addresses the consequences of a party's failure to comply with any provision of the Rules, requirements under the Rules, or directions given by the Tribunal.

According to this article, if a party fails to comply with any provision of the Rules or any requirement under the Rules, or if it fails to comply with any directions given by the Tribunal, the Tribunal is empowered to draw any inferences it considers appropriate. In other words, the Tribunal may draw conclusions or make assumptions based on the non-compliant party's behaviour or actions.

This provision underscores the importance of complying with the procedural requirements and directions set forth by the Tribunal and the DIAC Arbitration Rules. It serves as a reminder to the parties that they must adhere to the established procedures, timelines, and obligations throughout the arbitration process.

The article does not specify the nature or extent of the inferences that the Tribunal may draw. It grants the Tribunal broad discretion to determine the appropriate inferences based on the specific circumstances of the case. The Tribunal's decision on the inferences to be drawn will likely depend on the nature and significance of the non-compliance, as well as the potential impact on the arbitration proceedings and the parties' rights.

The purpose of Article 29.5 is to promote the fair and efficient conduct of the arbitration. By allowing the Tribunal to draw appropriate inferences, it encourages parties to fulfil their obligations and comply with the procedural requirements of the arbitration. Non-compliance may have adverse consequences, such as the Tribunal drawing negative inferences or making adverse findings based on the party's failure to comply.

It is important to note that the Tribunal's power to draw inferences does not relieve the non-compliant party of its burden to present its case or provide evidence to support its claims or defences. The Tribunal will still evaluate the evidence and arguments presented by both parties in determining the outcome of the arbitration.

In summary, Article 29.5 of the DIAC Arbitration Rules gives the Tribunal the authority to draw any inferences it considers appropriate if a party fails to comply with any provision of the Rules, requirements under the Rules, or directions given by the Tribunal. This provision underscores the importance of compliance with procedural obligations and encourages parties to fulfil their responsibilities throughout the arbitration process. The specific inferences drawn by the Tribunal will depend on the circumstances of each case and the impact of the non-compliance on the proceedings.

ARTICLE (30) THE LAW APPLICABLE TO THE MERITS

30.1. The Tribunal shall decide the dispute in accordance with the law(s) or rules of law chosen by the parties as applicable to the merits of their dispute. If and to the extent that the Tribunal

determines that the parties have made no such choice, the Tribunal shall apply the law(s) or rules of law which it considers to be most appropriate.

Article 30.1 of the DIAC Arbitration Rules addresses the governing law to be applied by the Tribunal in deciding the dispute.

According to this article, the Tribunal is required to decide the dispute in accordance with the law(s) or rules of law chosen by the parties. This means that the parties have the freedom to determine the applicable law or rules of law that will govern the merits of their dispute. They may do so in their arbitration agreement or at any other time during the arbitration process.

If the parties have explicitly chosen a specific law or rules of law, the Tribunal is bound to apply that choice in its decision-making process. The chosen law or rules of law will serve as the basis for determining the substantive rights and obligations of the parties.

However, if the parties have not made a specific choice regarding the governing law, Article 30.1 provides the Tribunal with discretion to determine the most appropriate law(s) or rules of law to be applied to the dispute. The Tribunal will exercise this discretion by considering various factors, such as the nature of the dispute, the applicable legal principles, the parties' intentions, the relevant contractual provisions, and any applicable trade customs or practices.

The purpose of this article is to ensure that the Tribunal's decision is made in accordance with a recognised legal framework. It allows for flexibility in cases where the parties have not explicitly chosen the governing law, enabling the Tribunal to select the law(s) or rules of law that it deems most appropriate for the particular dispute.

It is important to note that the Tribunal's determination of the applicable law is subject to any mandatory rules or provisions of the procedural law applicable at the seat of the arbitration. The choice of law or rules of law by the parties should not contravene the mandatory rules of the jurisdiction where the arbitration is taking place.

In summary, Article 30.1 of the DIAC Arbitration Rules provides guidance on the governing law to be applied by the Tribunal. It emphasises the parties' freedom to choose the applicable law(s) or rules of law, and in the absence of such choice, grants the Tribunal discretion to determine the most appropriate law(s) or rules of law to decide the dispute. This article ensures that the Tribunal's decision is made in accordance with recognised legal principles, while also considering the specific circumstances of the case.

30.2. Any designation of the law 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.

Article 30.2 of the DIAC Arbitration Rules provides an important clarification regarding the interpretation of the choice of law made by the parties.

According to this article, if the parties designate the law of a particular state as the governing law of their dispute, such designation is understood to refer directly to the substantive law of that state and not to its conflict of laws rules. This means that the Tribunal, when applying the chosen law, will focus on the substantive legal principles and rules of the designated state rather than its conflict of laws rules.

The purpose of this provision is to avoid potential complications and uncertainties that may arise when applying conflict of laws rules. Conflict of laws rules determine which jurisdiction's law should be applied when a dispute involves multiple jurisdictions or when there is a conflict between different legal systems. By excluding the conflict of laws rules of the designated state, the article aims to ensure a more direct and straightforward application of the chosen substantive law.

This provision reflects a common approach in international arbitration, where parties often seek certainty and predictability in the choice of governing law. By specifying that the chosen law refers to the substantive law of the designated state, the article clarifies that the Tribunal should consider the substantive legal principles, statutes, regulations, and case law of that state, rather than engaging in a separate analysis of conflict of laws principles.

It is important to note that this provision applies when the parties have expressly designated the law of a specific state. If the parties have chosen an international instrument or rules of law that are not tied to a particular state, this provision may not be relevant.

In summary, Article 30.2 of the DIAC Arbitration Rules clarifies that the designation of the law of a given state as the governing law refers directly to the substantive law of that state and not to its conflict of laws rules. This provision aims to simplify the application of the chosen law and provide clarity and predictability in the arbitration process.

30.3. In all cases, the Tribunal shall decide the dispute, having due regard to the terms of any relevant contract and taking into account applicable trade usages.

Article 30.3 of the DIAC Arbitration Rules addresses the factors that the Tribunal must consider when deciding a dispute.

According to this article, the Tribunal is required to take into account two main elements: (1) the terms of any relevant contract, and (2) applicable trade usages.

Firstly, the Tribunal must consider the terms of the contract between the parties. This means that the Tribunal should carefully analyse and interpret the provisions of the contract that are relevant to the dispute. The terms of the contract serve as the foundation for the parties' rights and obligations, and they provide guidance for the resolution of any disputes that may arise. By giving due regard to the contract, the Tribunal ensures that the parties' intentions and agreements are respected and given proper consideration in the decision-making process.

Secondly, the Tribunal must take into account applicable trade usages. Trade usages refer to the practices and customs that are widely recognised and accepted in a particular industry or trade. These usages can vary across different sectors and geographical regions and may play a significant role in shaping the parties' expectations and understanding of their rights and obligations. By considering trade usages, the Tribunal aims to align its decision with the prevailing practices and customs of the relevant industry or trade.

The inclusion of this provision underscores the importance of contextualising the dispute within the framework of the parties' contractual relationship and the relevant industry practices. By doing so, the Tribunal can ensure that its decision is fair, reasonable, and in line with the expectations and commercial realities of the parties involved.

It is worth noting that while the terms of the contract and trade usages are important factors to be considered, the Tribunal's ultimate role is to decide the dispute. The Tribunal has the authority to weigh these factors alongside other relevant considerations, such as applicable laws, facts of the case, and the arguments presented by the parties, in order to arrive at a just and equitable outcome.

In summary, Article 30.3 of the DIAC Arbitration Rules requires the Tribunal to consider the terms of the relevant contract and applicable trade usages when deciding a dispute. By giving due regard to these elements, the Tribunal ensures that its decision aligns with the parties' contractual intentions and the prevailing practices of the relevant industry or trade.

30.4. The Tribunal shall assume the powers of an amiable compositeur or decide ex aequo et bono, only if the parties have expressly agreed in writing to grant it such powers.

Article 30.4 of the DIAC Arbitration Rules addresses the power of the Tribunal to act as an amiable compositeur or decide ex aequo et bono.

The term "amiable compositeur" refers to a concept in international arbitration where the Tribunal is empowered to decide a dispute based on considerations of fairness and equity, rather than strictly applying the applicable laws or contractual provisions. Similarly, "ex aequo et bono" means deciding the dispute based on what is fair and just, without being bound by specific legal rules.

According to Article 30.4, the Tribunal can assume these powers or apply the principles of amiable compositeur or ex aequo et bono, but only if the parties have expressly agreed in writing to grant the Tribunal such authority. In other words, the Tribunal cannot invoke these powers on its own initiative or in the absence of an explicit agreement between the parties.

By requiring an express written agreement, this provision ensures that the parties are fully aware and have consciously chosen to give the Tribunal the authority to decide the dispute based on principles of fairness and equity, rather than strict adherence to the law. This reflects the principle of party autonomy in arbitration, where the parties have the freedom to determine the scope and limits of the Tribunal's authority.

It is important to note that granting the Tribunal the powers of an amiable compositeur or the ability to decide ex aequo et bono involves a departure from the usual approach of applying the law. This approach can provide flexibility and allow the Tribunal to consider a broader range of factors in reaching a decision. However, it also requires careful consideration, as it may introduce a degree of uncertainty and potentially deviate from established legal principles.

In summary, Article 30.4 of the DIAC Arbitration Rules allows the Tribunal to assume the powers of an amiable compositeur or decide ex aequo et bono, but only if the parties have expressly agreed in writing to grant the Tribunal such authority. This provision ensures that the Tribunal's departure from strict legal rules is based on the parties' explicit consent and respects the principle of party autonomy in arbitration.

ARTICLE (31) CLOSURE OF PROCEEDINGS

31.1. The Tribunal shall declare the proceedings closed when it is satisfied that the parties have had adequate opportunity to present their submissions and evidence.

Article 31.1 of the DIAC Arbitration Rules addresses the closure of the proceedings in an arbitration.

The provision states that the Tribunal shall declare the proceedings closed when it is satisfied that the parties have had an adequate opportunity to present their submissions and evidence. This means that the Tribunal will bring the arbitration to an end, ceasing any further acceptance of new submissions or evidence, once it is convinced that both parties have had sufficient time to present their cases.

The closure of the proceedings is an essential step in the arbitration process, as it indicates that all parties have had a fair and reasonable chance to put forward their arguments, present evidence, and respond to the claims and evidence of the opposing party. By declaring the proceedings closed, the Tribunal ensures that the parties have had equal opportunities to present their respective cases without undue delay.

It is important to note that the timing of the closure of the proceedings is at the discretion of the Tribunal, and it may vary depending on the complexity of the dispute, the number of issues involved, and the responsiveness of the parties. The Tribunal will take into account the overall progress of the arbitration and ensure that both parties have had adequate time to present their positions.

Once the proceedings are closed, the Tribunal will move on to the next phase of the arbitration, which typically involves the preparation and issuance of the final award. Closing the proceedings marks the end of the fact-finding and argumentation stage, and the Tribunal will proceed to deliberate and make its final decision based on the evidence and submissions presented during the arbitration.

In summary, Article 31.1 of the DIAC Arbitration Rules mandates that the Tribunal shall declare the proceedings closed when it is satisfied that the parties have had adequate opportunity to present their submissions and evidence. This ensures a fair and efficient arbitration process where both parties are given an equal chance to present their cases before the Tribunal reaches a final decision.

31.2. The Tribunal may, if it considers it necessary owing to exceptional circumstances, decide on its own initiative or upon an application by a party to re-open the proceedings it declared closed at any time prior to the issuance of the Final Award.

Article 31.2 of the DIAC Arbitration Rules addresses the re-opening of proceedings in exceptional circumstances.

According to this provision, the Tribunal has the authority to re-open the proceedings that it previously declared closed if it deems it necessary due to exceptional circumstances. The decision to re-open the proceedings can be made either on the Tribunal's own initiative or in response to an application by one of the parties involved in the arbitration.

The concept of "exceptional circumstances" suggests that the circumstances must be highly unusual, rare, or unforeseen, making it necessary to revisit and reconsider aspects of the case that were thought to be concluded. The provision does not provide an exhaustive list of what would constitute exceptional circumstances, giving the Tribunal some flexibility in its interpretation.

Some potential scenarios where re-opening the proceedings may be deemed necessary include:

1. **Discovery of new evidence:** If new evidence comes to light that was not available or known to the parties at the time the proceedings were closed, the Tribunal may consider re-opening the proceedings to allow the parties to present this new evidence and address its impact on the case.
2. **Misconduct or fraud:** If one party alleges misconduct or fraud by the other party that affects the integrity of the arbitration process or the final award, the Tribunal may decide to re-open the proceedings to investigate the allegations.
3. **Procedural errors:** In cases where there are substantial procedural errors that could have affected the outcome of the arbitration, the Tribunal may consider re-opening the proceedings to correct these errors and ensure a fair process.
4. **Serious irregularities:** If there are serious irregularities in the conduct of the arbitration that undermine its integrity or fairness, the Tribunal may decide to re-open the proceedings to address and rectify these issues.

It is important to note that re-opening the proceedings is a discretionary power of the Tribunal, and it will carefully weigh the circumstances and implications before making such a decision. The parties involved may also have an opportunity to present their views on the potential re-opening through an application to the Tribunal.

Overall, Article 31.2 of the DIAC Arbitration Rules allows the Tribunal to re-open proceedings if exceptional circumstances arise, ensuring that the arbitration remains fair, just, and in accordance with the principles of due process and natural justice.

31.3. Following the closure of proceedings, the Tribunal shall proceed to issue the Final Award in accordance with the Rules and any mandatory provisions of the procedural law applicable to the seat of the arbitration.

Article 31.3 of the DIAC Arbitration Rules addresses the issuance of the Final Award after the closure of proceedings.

Upon the closure of proceedings, which occurs when the Tribunal is satisfied that the parties have had adequate opportunity to present their submissions and evidence, the Tribunal is obligated to proceed with the issuance of the Final Award. The Final Award is the ultimate decision of the Tribunal on the merits of the dispute and represents the resolution of the arbitration.

The provision stipulates that the Final Award must be issued in accordance with two main sources:

1. **The Rules:** The Tribunal must ensure that the Final Award is issued in conformity with the DIAC Arbitration Rules. These rules govern the procedural aspects of the arbitration, including the conduct of the proceedings, the presentation of evidence, the exchange of submissions, the appointment of arbitrators, and other procedural matters.
2. **Procedural Law Applicable to the Seat:** Additionally, the Final Award must comply with any mandatory provisions of the procedural law applicable to the seat of the arbitration.

The “seat” refers to the legal jurisdiction in which the arbitration is seated or based, and it is usually specified in the arbitration agreement or chosen by the parties. The procedural law of the seat may include local laws that govern the conduct of arbitration proceedings, the recognition and enforcement of the award, and other procedural matters.

The combination of the DIAC Arbitration Rules and the applicable procedural law ensures that the issuance of the Final Award is carried out in a legally valid and enforceable manner. It also ensures that the arbitration process maintains its integrity and adheres to the principles of due process, impartiality, and procedural fairness.

The Final Award is a binding and enforceable decision that concludes the arbitration process. It sets forth the Tribunal’s decision on the merits of the dispute, and it may include determinations on liability, damages, costs, and any other relevant issues.

Overall, Article 31.3 of the DIAC Arbitration Rules ensures that the Tribunal finalises the proceedings appropriately and issues the Final Award in compliance with the relevant rules and laws, providing a final and binding resolution to the parties’ dispute.

ARTICLE (32) EXPEDITED PROCEEDINGS

32.1. Expedited proceedings shall take place:

(a) unless the parties agree otherwise in writing, if the total of the sum(s) claimed and counterclaimed is below or equals AED 1,000,000 (exclusive of interest and legal representation costs) or any other threshold amount as may be determined by the Board of Directors of DIAC from time to time; or

(b) if, the parties agree in writing; or

(c) in cases of exceptional urgency as determined by the Arbitration Court upon an application by a party,

and in all cases if considered appropriate by the Arbitration Court, based on the relevant circumstances.

Article 32.1 of the DIAC Arbitration Rules pertains to expedited proceedings and sets out the circumstances under which such proceedings may take place:

1. Sum(s) claimed and counterclaimed below or equals AED 1,000,000: Expedited proceedings are automatically³⁴ applicable if the total of the sum(s) claimed and counterclaimed is below or equals AED 1,000,000 (exclusive of interest and legal representation costs). The threshold amount may be subject to change as determined by the Board of Directors of DIAC from time to time. This provision aims to provide a more streamlined and efficient process for disputes involving relatively smaller amounts, ensuring a cost-effective resolution.

³⁴ To be confirmed by DIAC.

2. **Agreement between the Parties:** Expedited proceedings can be initiated if the parties mutually agree to it in writing. Parties to an arbitration may choose expedited proceedings voluntarily, recognising that a more efficient and faster resolution might be beneficial to them, especially in certain cases involving straightforward issues.
3. **Cases of Exceptional Urgency:** Expedited proceedings can be invoked in cases of exceptional urgency as determined by the Arbitration Court. In such instances, a party must apply to the Arbitration Court, explaining the reasons for the urgency. This provision allows for a swift resolution when time is of the essence, avoiding delays that could negatively impact the parties' interests.
4. **Arbitration Court's Discretion:** Additionally, the Arbitration Court may decide to apply expedited proceedings based on relevant circumstances even if the above conditions are not met. This grants flexibility to the Arbitration Court to assess each case individually and determine whether the circumstances warrant expedited proceedings for the sake of efficiency and expediency.

Expedited proceedings are designed to be more time-efficient and cost-effective compared to standard arbitration procedures. In such proceedings, the Tribunal may adopt various measures to expedite the process, such as shortened timelines for submissions, reduced procedural steps, and limited witness testimonies. These measures aim to provide a quicker resolution to the dispute while maintaining fairness and adherence to due process.

Overall, Article 32.1 of the DIAC Arbitration Rules outlines the circumstances under which expedited proceedings may be applied, accommodating disputes of smaller value, parties' agreement, cases of urgency, and the Arbitration Court's discretion based on relevant factors. This mechanism offers parties greater flexibility and efficiency when seeking resolution through DIAC arbitration.

32.2. Prior to the constitution of the Tribunal, and following the earlier of the submission of the Answer or the time period in which the Answer should be submitted, a party may submit an application for the arbitration to be conducted on an expedited basis. Any such application including all accompanying documents, shall be submitted to the Centre by email or in accordance with the terms of use of any electronic case management system implemented by the Centre. The Centre shall notify the application to all other parties in compliance with Articles 3.3 and 3.4. The other parties to the arbitration may comment on the application for an expedited proceeding within 7 days of receipt of the application. If no comments are made, the application shall be deemed to be unopposed.

Article 32.2 of the DIAC Arbitration Rules deals with the process of applying for expedited proceedings before the constitution of the Tribunal. Here is an analysis of this article:

1. **Timing of Application:** A party may submit an application for the arbitration to be conducted on an expedited basis before the constitution of the Tribunal. The trigger for this application is either the submission of the Answer or the expiration of the time period within which the Answer should have been submitted. This means that the party seeking expedited proceedings must do so relatively early in the arbitration process.
2. **Application Submission:** The application for expedited proceedings, along with all accompanying documents, must be submitted to the Centre. The application can be sent

by email or through any electronic case management system implemented by the Centre. This ensures that the application process is streamlined and takes advantage of modern technology to facilitate efficient communication between the parties and the Centre.

3. Notification and Opportunity to Comment: Once the Centre receives the application, it promptly notifies all other parties involved in the arbitration, as required by Articles 3.3 and 3.4 of the DIAC Arbitration Rules. These articles relate to the communication and service of documents. The other parties then have 7 days from the receipt of the application to comment on the request for expedited proceedings. This allows all parties to express their views on whether the case should proceed on an expedited basis or not.
4. Unopposed Application: If no comments or objections are received from the other parties within the given time frame, the application for expedited proceedings shall be deemed unopposed. In such a case, the Tribunal will likely proceed with expedited proceedings without further delay. This provision encourages parties to be proactive in their response if they have concerns about the appropriateness of expedited proceedings.

The purpose of Article 32.2 is to provide parties with a mechanism to seek expedited proceedings before the Tribunal's constitution. It establishes a clear and structured process for submitting such applications, ensures prompt notification to other parties, and allows for their input. This approach enhances transparency, efficiency, and fairness in the decision-making process, promoting the core objective of conducting arbitrations justly, fairly, and impartially.

32.3. Provided the advance on costs of the arbitration is paid in full, if the Arbitration Court is satisfied that any of the criteria for expedited proceedings has been met and in view of the relevant circumstances it is reasonable to allow such proceeding, the Centre shall seek to appoint a Tribunal consisting of a sole arbitrator within 5 days of the Arbitration Court's decision.

Article 32.3 of the DIAC Arbitration Rules addresses the appointment of a Tribunal in expedited proceedings. Here is an analysis of this article:

1. Satisfying Criteria for Expedited Proceedings: Before proceeding with the appointment of a Tribunal for expedited proceedings, certain criteria must be met. These criteria are outlined in Article 32.1 of the DIAC Arbitration Rules and include specific circumstances where expedited proceedings are applicable. These circumstances may include the total amount in dispute being below a certain threshold, parties' written agreement, or exceptional urgency, among others.
2. Full Payment of Advance on Costs: The article specifies that the advance on costs of the arbitration must be paid in full before the appointment of the Tribunal can take place. This ensures that parties have committed the necessary financial resources to initiate the expedited proceedings and prevents delays due to payment issues.
3. Reasonable Allowance for Expedited Proceedings: Once the Arbitration Court is satisfied that the criteria for expedited proceedings have been met and considering the relevant circumstances of the case, it is reasonable to allow such proceedings. The "relevant circumstances" could include factors like the complexity of the dispute, the urgency of resolving the matter, and the parties' cooperation.

4. Appointment of a Sole Arbitrator: In expedited proceedings, the Centre aims to appoint a sole arbitrator, as opposed to a panel of three arbitrators, which is common in regular arbitrations. Appointing a sole arbitrator reduces the time and costs associated with the arbitration process, contributing to the efficient resolution of the dispute.
5. Timely Appointment: The Centre is required to seek to appoint the sole arbitrator within five days of the Arbitration Court's decision to proceed with expedited proceedings. This timeframe reflects the urgency and efficiency expected in expedited arbitrations.

The purpose of Article 32.3 is to ensure a swift and efficient process for the appointment of a sole arbitrator in expedited proceedings. By setting clear guidelines and a short timeframe, this article supports the core objective of the DIAC Arbitration Rules to conduct arbitrations justly, fairly, and efficiently, particularly in cases where expedited proceedings are appropriate and necessary.

32.4. Having due regard to the ability of the parties to present their respective cases, and after consultation with them, the Tribunal shall decide on the procedure to be adopted in the arbitration conducted on an expedited basis. The Tribunal may limit the scope of any evidence to be submitted, giving due consideration to the expedited nature of the arbitration and the requirement to issue the Final Award within the time limit prescribed by Article 32.5 below.

Article 32.4 of the DIAC Arbitration Rules addresses the procedure to be followed in arbitrations conducted on an expedited basis. Here is an analysis of this article:

1. Balancing Ability to Present Cases: The article emphasises that the Tribunal must have due regard to the ability of the parties to present their respective cases. While the expedited nature of the arbitration is intended to accelerate the process, it is crucial to maintain fairness and ensure that both parties have a reasonable opportunity to present their arguments and evidence.
2. Consultation with the Parties: The Tribunal is required to consult with the parties before deciding on the procedure to be adopted in the expedited arbitration. This consultation allows the Tribunal to take into account the parties' specific needs and the complexity of the dispute, ensuring that the chosen procedure is appropriate for the circumstances.
3. Limiting Scope of Evidence: One of the Tribunal's powers in expedited proceedings is to limit the scope of evidence to be submitted. The Tribunal must carefully consider the expedited nature of the arbitration and the requirement to issue the Final Award within a specified time limit (as prescribed by Article 32.5). Limiting the scope of evidence may involve restricting the number of witnesses, documents, or expert reports that can be presented.
4. Expedited Award Time Limit: The Tribunal must bear in mind the time limit for issuing the Final Award, which is prescribed in Article 32.5. The need to meet this time limit further underscores the importance of efficiently managing the proceedings and limiting the scope of evidence to focus on essential elements of the dispute.

Article 32.4 aims to strike a balance between the expeditious nature of the arbitration and the parties' right to present their cases fully and fairly. By consulting with the parties and strategically managing the evidence, the Tribunal can conduct an efficient arbitration that allows for a prompt resolution of

the dispute within the specified time limit. This ensures that expedited proceedings remain a viable option for resolving disputes, especially when urgency is a critical factor for the parties involved.

32.5. The time limit within which the Tribunal must issue the Final Award is 3 months from the date of the transmission of the file to the Tribunal by the Centre, unless extended by the Arbitration Court on exceptional grounds.

Article 32.5 of the DIAC Arbitration Rules sets forth the time limit within which the Tribunal must issue the Final Award in expedited proceedings. Here is an analysis of this article:

1. **Time Limit for Final Award:** The article specifies that the Tribunal must issue the Final Award within 3 months from the date of the transmission of the file to the Tribunal by the Centre. This time limit is a key characteristic of expedited proceedings, and its purpose is to ensure a swift resolution of the dispute.
2. **Commencement of the Time Limit:** The time limit starts running from the date when the Centre transmits the arbitration file to the Tribunal. This transmission typically occurs after the Tribunal is constituted and relevant pleadings have been submitted by the parties.
3. **Exceptional Extension:** The article allows for the possibility of extending the time limit, but only under exceptional grounds. This means that the Arbitration Court may grant an extension beyond the initial 3-month period in extraordinary circumstances. However, such extensions should be granted sparingly and only when justified by compelling reasons, such as complex legal or factual issues.
4. **Balancing Speed and Fairness:** The expedited proceedings under Article 32 aim to provide a rapid resolution for low-value or less complex disputes. The 3-month time limit is intended to balance the need for speed with the requirement to maintain a fair and thorough arbitration process.
5. **Efficient Management:** The short time limit underscores the importance of efficient case management by the Tribunal. To meet the deadline, the Tribunal must conduct the proceedings promptly, promptly review evidence, and deliver the Final Award without unnecessary delay.
6. **Finality and Enforcement:** By setting a specific time limit for the issuance of the Final Award, the parties gain certainty on the duration of the arbitration process. It also ensures that the Final Award is issued in a timely manner, facilitating the prompt enforcement of the award, if necessary.

Overall, Article 32.5 reflects the commitment of the DIAC Arbitration Rules to expedite the resolution of certain disputes without sacrificing fairness and due process. The time limit encourages efficient case management and underscores the importance of conducting expedited proceedings with diligence and expediency. The option for an exceptional extension ensures that, in rare cases, the Tribunal has the flexibility to deal with unforeseen challenges without compromising the overall objectives of the expedited arbitration process.

32.6. The Tribunal may, upon an application by a party or on its own initiative, seek approval from the Arbitration Court to continue to conduct the arbitration on a non-expedited basis. The Arbitration Court shall consider the application, having due regard to the relevant circumstances including submissions of the parties and comments from the Tribunal. Where a determination is made to discontinue the expedited procedure, the same Tribunal shall continue to conduct the arbitration.

Article 32.6 of the DIAC Arbitration Rules provides a mechanism for parties to seek approval from the Arbitration Court to discontinue the expedited proceedings and conduct the arbitration on a non-expedited basis. Here is an analysis of this article:

1. **Transition from Expedited to Non-Expedited Proceedings:** The article allows either party or the Tribunal, on its own initiative, to apply to the Arbitration Court to discontinue the expedited proceedings and continue the arbitration on a non-expedited basis. This provision recognises that circumstances may arise during the course of the arbitration that warrant a more extensive and time-consuming process.
2. **Approval by the Arbitration Court:** To discontinue the expedited proceedings, the Tribunal must seek approval from the Arbitration Court. This step ensures that there is oversight and supervision by the Arbitration Court, which can assess the situation objectively.
3. **Relevant Circumstances:** The Arbitration Court is directed to consider the relevant circumstances when evaluating the application to discontinue the expedited procedure. These circumstances may include the complexity of the dispute, the volume of evidence, the need for additional hearings, or any other factors that may impact the efficient resolution of the case.
4. **Submissions and Comments:** The Arbitration Court is required to take into account the submissions of the parties and comments from the Tribunal when deciding whether to discontinue the expedited procedure. This ensures that the views of all stakeholders are considered before making a determination.
5. **Continuity of the Tribunal:** If the determination is made to discontinue the expedited procedure, the article specifies that the same Tribunal that was conducting the expedited proceedings will continue to handle the arbitration. This provision promotes consistency and avoids the need to reconstitute a new Tribunal, which can lead to unnecessary delays.
6. **Flexibility and Fairness:** Article 32.6 provides flexibility to adapt the arbitration process based on the evolving circumstances of the case. While expedited proceedings are meant to resolve disputes quickly and efficiently, this article recognises that there may be valid reasons to switch to a more comprehensive process if necessary for a fair and just resolution.

Overall, Article 32.6 demonstrates that the DIAC Arbitration Rules strike a balance between the need for expeditious resolution and the requirement to ensure a fair and thorough arbitration process. The provision reflects a pragmatic approach to accommodate changing circumstances while maintaining the continuity of the arbitration process and the efficiency of the overall proceedings.

ARTICLE (33) SETTLEMENT AND OTHER GROUNDS FOR TERMINATION

33.1. If prior to the issuance of the Final Award the parties agree on a settlement of the dispute, the Tribunal shall terminate the arbitration and issue a termination order. If requested jointly by the parties, the Tribunal may record the settlement in the form of a consent award. Such award shall contain a statement that it is an award issued with the parties' consent.

Article 33.1 of the DIAC Arbitration Rules addresses the scenario where the parties reach a settlement of their dispute before the issuance of the Final Award. Here is an analysis of this article:

1. **Settlement of Dispute:** The article recognises that parties may resolve their dispute through settlement at any stage before the Final Award is issued. Settlements are common in arbitration and can be a cost-effective and efficient way to bring the dispute to an end.
2. **Termination of Arbitration:** If the parties agree on a settlement, the Tribunal is required to terminate the arbitration and issue a termination order. This means that the arbitration proceedings come to an end, and no Final Award will be rendered.
3. **Consent Award:** The article provides an additional option for the parties if they jointly request it. The Tribunal may record the settlement in the form of a consent award. A consent award is an arbitral award issued by the Tribunal based on the agreement and consent of the parties, confirming the terms of their settlement.
4. **Statement of Consent:** The consent award, if issued, must contain a statement indicating that it is an award issued with the parties' consent. This distinguishes it from a regular Final Award that would be rendered based on the merits of the case.
5. **Flexibility and Cooperation:** Article 33.1 reflects the flexibility and cooperative nature of arbitration. It allows the parties to terminate the proceedings and finalise the resolution based on their mutual agreement without going through the entire arbitration process to obtain a Final Award.
6. **Efficiency and Finality:** Allowing for the possibility of a consent award encourages parties to engage in settlement discussions during the arbitration process. It can lead to a more efficient and cost-effective resolution of the dispute, as well as providing finality to the matter.
7. **Preserving Confidentiality:** A consent award can also be beneficial in preserving the confidentiality of the settlement terms, as it will be part of the private arbitral proceedings, rather than being publicly accessible like court judgments.

Overall, Article 33.1 promotes the effectiveness and party autonomy in arbitration. It acknowledges the right of parties to settle their dispute at any stage and provides a mechanism to record the settlement formally through a consent award if the parties request it. By doing so, the article supports the goals of arbitration in providing a flexible, efficient, and private dispute resolution process.

33.2. If prior to the issuance of the Final Award the Tribunal finds, after consultation with the parties, that the continuation of the arbitration has for any reason other than contained elsewhere in these

Rules become unnecessary or impossible it shall issue a termination order. In such case, the Tribunal may determine and apportion the costs of the arbitration, subject to Article 36.3.

Article 33.2 of the DIAC Arbitration Rules deals with the scenario where the Tribunal, after consulting with the parties, finds that the continuation of the arbitration has become unnecessary or impossible for reasons not covered elsewhere in the Rules. Here is an analysis of this article:

1. **Termination of Arbitration:** Article 33.2 provides the Tribunal with the authority to terminate the arbitration proceedings if it determines that continuation of the arbitration is unnecessary or impossible. This could occur for various reasons not specified in other parts of the DIAC Arbitration Rules.
2. **Discretion of the Tribunal:** The decision to terminate the arbitration rests with the Tribunal after consulting with the parties. This grants the Tribunal the discretion to assess the circumstances of the case and decide whether further proceedings are warranted or not.
3. **Unnecessary or Impossible Continuation:** The article does not explicitly define what constitutes “unnecessary” or “impossible” continuation of the arbitration. This lack of definition allows the Tribunal to consider a broad range of circumstances that may render the continuation unnecessary or impossible.
4. **Cost Allocation:** If the Tribunal decides to terminate the arbitration, it may determine and apportion the costs of the arbitration. This includes the fees and expenses of the Tribunal, administrative fees, and any other costs incurred during the arbitration process.
5. **Subject to Article 36.3:** The allocation of costs under Article 33.2 is subject to Article 36.3 of the DIAC Arbitration Rules. Article 36.3 provides general guidance on how the Tribunal should decide on the allocation of costs, including the principle that the Tribunal has the discretion to apportion costs between the parties.
6. **Flexibility and Efficiency:** Article 33.2 demonstrates the flexibility and efficiency of arbitration. It allows the Tribunal to take into account unforeseen circumstances that may arise during the arbitration process and decide whether it is appropriate to terminate the proceedings.
7. **Party Cooperation:** The article emphasises the importance of consultation with the parties before terminating the arbitration. This promotes cooperation and ensures that parties have an opportunity to provide input on the Tribunal’s decision.
8. **Unforeseen Circumstances:** Article 33.2 recognises that situations may arise during the arbitration that were not anticipated or covered explicitly in the rules. By providing the Tribunal with the power to terminate the arbitration in such cases, the article ensures that the process remains adaptable to unforeseen circumstances.

In summary, Article 33.2 of the DIAC Arbitration Rules empowers the Tribunal to terminate the arbitration if it finds that continuation is unnecessary or impossible due to reasons not covered elsewhere in the Rules. The article underlines the Tribunal’s discretion and promotes the efficient resolution of disputes by allowing for a flexible approach to unforeseen circumstances.

33.3. The Tribunal shall issue any termination order or consent award in accordance with Article 34.6, which shall be communicated to the parties by the Centre.

Article 33.3 of the DIAC Arbitration Rules pertains to the issuance and communication of a termination order or consent award by the Tribunal. Let us analyse this article:

1. **Termination Order or Consent Award:** Article 33.3 specifies that if the Tribunal decides to terminate the arbitration based on the grounds mentioned in Article 33.2 or if the parties reach a settlement, the Tribunal shall issue a termination order or a consent award. A termination order signifies the formal end of the arbitration proceedings, while a consent award records the parties' settlement in the form of an arbitral award.
2. **Compliance with Article 34.6:** The termination order or consent award issued by the Tribunal must be in accordance with Article 34.6 of the DIAC Arbitration Rules. ~~Article 34.6 likely contains provisions related to the form and content of the arbitral award, ensuring that the award meets the necessary legal requirements and includes the required information.~~³⁵
3. **Communication by the Centre:** After the Tribunal issues the termination order or consent award, it is the responsibility of the Centre (Dubai International Arbitration Centre — DIAC) to communicate this decision to the parties. The Centre serves as an administrative body that facilitates the arbitration process and acts as an intermediary between the parties and the Tribunal.
4. **Clear Communication:** By requiring communication through the Centre, the article ensures that the parties receive the termination order or consent award in a timely and official manner. This helps maintain transparency and clarity throughout the arbitration process.
5. **Consistency and Compliance:** By mandating compliance with Article 34.6, the article seeks to ensure that the termination order or consent award adheres to the standard format and content prescribed by the DIAC Arbitration Rules. This helps maintain consistency in the arbitration process and ensures that the parties are informed in a standardised manner.
6. **Facilitating Closure:** Article 33.3 is designed to facilitate the formal closure of the arbitration proceedings. Whether the termination order is issued due to termination of the arbitration or because of a settlement reached by the parties, the issuance of the order or award marks the conclusion of the arbitration.

In summary, Article 33.3 of the DIAC Arbitration Rules establishes the procedure for issuing a termination order or consent award by the Tribunal, and it requires that such order or award comply with the provisions of Article 34.6. The communication of this order or award to the parties through the Centre ensures transparency and standardisation throughout the arbitration process.

³⁵ Incorrect guess by ChatGPT.

VI. AWARDS

ARTICLE (34) GENERAL PROVISIONS

34.1. The Tribunal may issue preliminary, interim, partial, final, additional, supplemental or other awards as considered appropriate.

Article 34.1 of the DIAC Arbitration Rules provides the Tribunal with the authority to issue various types of awards throughout the arbitration process. Let us analyse this article:

1. **Flexibility in Issuing Awards:** The article grants the Tribunal significant discretion in issuing different types of awards. This includes preliminary awards to address specific issues early in the arbitration, interim awards to grant temporary relief pending a final decision, partial awards to address specific aspects of the dispute, and final awards that resolve the entire dispute.
2. **Additional and Supplemental Awards:** In addition to preliminary, interim, and final awards, the Tribunal may also issue additional or supplemental awards. Additional awards may be issued when new claims or issues arise during the arbitration process, while supplemental awards may address matters related to a prior award or provide further clarification.
3. **Wide Range of Remedies:** The article allows the Tribunal to provide appropriate remedies and relief to the parties based on the specific circumstances of the case. This may include damages, specific performance, declaratory relief, or any other form of relief that the Tribunal deems appropriate.
4. **Promoting Efficiency:** By granting the Tribunal the authority to issue different types of awards, the article aims to promote efficiency in the arbitration process. This allows the Tribunal to address specific issues or provide interim relief without waiting for the final resolution of the entire dispute.
5. **Ensuring Fairness:** The provision of various types of awards ensures that the Tribunal has the necessary tools to deliver a fair and just resolution to the parties. The Tribunal can tailor its awards to meet the needs of the case and address the parties' specific concerns.
6. **Protecting Party Rights:** The flexibility to issue different types of awards protects the rights of the parties involved in the arbitration. It enables the Tribunal to respond to changing circumstances and provide appropriate remedies promptly.

Overall, Article 34.1 of the DIAC Arbitration Rules gives the Tribunal broad discretion to issue preliminary, interim, partial, final, additional, supplemental, or other awards as it deems appropriate. This flexibility allows the Tribunal to adapt its decisions to the unique characteristics of each dispute and ensure that the parties' rights and interests are safeguarded throughout the arbitration process.

34.2. All awards shall be issued in writing and shall comply with any mandatory provisions of the procedural law applicable to the seat of the arbitration. All awards shall be binding on the parties.

By agreeing to arbitrate their dispute under the Rules, the parties undertake to comply in full with any award immediately and without any delay.

Article 34.2 of the DIAC Arbitration Rules pertains to the requirements and binding nature of awards issued in DIAC arbitrations. Let us analyse this article:

1. **Written Form:** According to this article, all awards issued in DIAC arbitrations must be in writing. This requirement ensures clarity and formalises the decision-making process, as written awards provide a clear and unambiguous record of the Tribunal's decision.
2. **Compliance with Procedural Law:** The article emphasises that all awards must comply with any mandatory provisions of the procedural law applicable to the seat of the arbitration. This requirement ensures that the Tribunal follows the applicable legal framework when rendering its decision and that the award is valid and enforceable under the relevant laws.
3. **Binding Nature of Awards:** The article confirms that all awards issued by the Tribunal are binding on the parties. This means that the parties are legally obligated to adhere to and implement the Tribunal's decision, subject to any available challenge or enforcement procedures under the law.
4. **Immediate Compliance:** By agreeing to arbitrate their dispute under the DIAC Rules, the parties undertake to comply fully with any award "immediately and without any delay". This language emphasises the importance of prompt compliance with the award and underscores the finality and enforceability of the Tribunal's decision.
5. **Ensuring Certainty:** Requiring awards to be in writing and emphasising their binding nature ensures certainty and predictability for the parties. It enables the parties to understand the Tribunal's decision clearly and provides assurance that the award will be legally enforced.
6. **Encouraging Cooperation:** The provision calling for immediate compliance with the award fosters a spirit of cooperation between the parties. It encourages them to accept the outcome of the arbitration process and fulfil their obligations promptly, promoting a smoother resolution of the dispute.

Overall, Article 34.2 of the DIAC Arbitration Rules establishes important principles for the issuance and implementation of awards in DIAC arbitrations. By requiring written awards, compliance with procedural law, and immediate acceptance of the award's outcome, this article reinforces the integrity and effectiveness of the arbitration process under the DIAC Rules.

34.3. Where there is more than one arbitrator, any award, order or other decision of the Tribunal may be issued by a majority. In the absence of a majority, the chairperson of the Tribunal shall issue the award, order or other decision alone.

Article 34.3 of the DIAC Arbitration Rules addresses the process of issuing awards, orders, or other decisions when there is more than one arbitrator on the Tribunal. Let us analyse this article:

1. **Majority Decision:** The first part of the article states that when there is a Tribunal consisting of more than one arbitrator, any award, order, or decision can be issued by a majority. This means that if there is a disagreement among the arbitrators on a particular issue, the decision will be determined by the majority opinion.
2. **Chairperson's Role:** In cases where a majority decision cannot be reached, the second part of the article comes into play. It states that the chairperson of the Tribunal will issue the award, order, or other decision alone. The chairperson is typically the presiding arbitrator or the arbitrator selected to lead the Tribunal's proceedings.
3. **Ensuring Decision-Making Efficiency:** This provision is designed to facilitate the decision-making process and avoid unnecessary delays in rendering awards or orders. If the Tribunal is unable to reach a majority decision on a certain matter, the chairperson, acting alone, can issue the decision promptly, thus ensuring the arbitration proceedings move forward smoothly.
4. **Equal Weight to Chairperson's Decision:** The article ensures that the chairperson's decision is given equal weight and importance as a majority decision. This prevents any undue influence that could be exerted by the chairperson on the decision-making process.
5. **Preserving Impartiality:** By allowing a majority decision first and resorting to the chairperson's decision only when necessary, the article safeguards the principle of impartiality in the arbitration process. It promotes fair and balanced deliberations among the arbitrators before resorting to a single arbitrator's decision.

Overall, Article 34.3 of the DIAC Arbitration Rules provides a clear and effective mechanism for issuing awards, orders, or decisions in cases where there is more than one arbitrator on the Tribunal. The provision seeks to strike a balance between efficiency and fairness while ensuring that the ultimate decision is made in a manner consistent with the arbitration principles and standards.

34.4. Subject to any mandatory provisions of the procedural law applicable to the seat of the arbitration, an award shall include the following:

- (a) the full names and addresses of the parties;**
- (b) the full name(s) and address(es) of the Tribunal, together with their nationalities;**
- (c) the full text of the agreement to arbitrate (but not the relevant agreement(s) between the parties, which contain(s) the agreement to arbitrate) and any amendments to it;**
- (d) a reference to the seat, language and the rules of law applicable to the merits of the arbitration;**
- (e) a summary of any claims, defences and counterclaims of the parties;**
- (f) a reference to the evidence submitted by the parties;**
- (g) the determination of the Tribunal with reasons, unless the parties have agreed that no reasons are to be given;**
- (h) any determination of the Tribunal on the costs of the arbitration in accordance with Articles 36.2 and 36.3 and their apportionment between the parties;**
- (i) the orders made by the Tribunal;**
- (j) the date and place of issue of the award; and**
- (k) the signature(s) of the Tribunal or, as the case may be, the signatures of the majority of the Tribunal, provided the reason for any omitted signature is given.**

Article 34.4 of the DIAC Arbitration Rules specifies the content that an award must include. Let us analyse each element:

1. Full names and addresses of the parties: The award must identify the parties to the arbitration, including their full legal names and addresses.
2. Full name(s) and address(es) of the Tribunal: The award must provide the names and addresses of the arbitrators who constituted the Tribunal, along with their nationalities.
3. Full text of the agreement to arbitrate: The award should contain the complete text of the agreement to arbitrate, which forms the basis for the arbitration. However, any relevant agreements between the parties that contain the arbitration agreement need not be included.
4. Reference to seat, language, and rules of law: The award must indicate the seat (location) of the arbitration, the language used in the proceedings, and the rules of law applicable to the merits of the arbitration.
5. Summary of claims, defences, and counterclaims: The award should provide a summary of the main arguments raised by each party, including their claims, defences, and any counterclaims.

6. Reference to the evidence submitted: The award must make a reference to the evidence submitted by the parties during the arbitration, which forms the basis for the Tribunal's decision.
7. Determination of the Tribunal with reasons: The award should include the Tribunal's decision on the merits of the dispute, along with the reasons supporting that decision. However, the parties may agree that no reasons need to be given.
8. Determination of costs and their apportionment: The award should address the costs of the arbitration, including the determination of the costs and how they are apportioned between the parties, in accordance with Articles 36.2 and 36.3.
9. Orders made by the Tribunal: The award must specify any orders issued by the Tribunal, such as specific remedies, declarations, or other relief granted to the parties.
10. Date and place of issue of the award: The award must mention the date and place where it is issued, providing clarity on when and where the award was made.
11. Signature(s) of the Tribunal: The award must be signed by the arbitrators who constituted the Tribunal. If the award is issued by a panel of arbitrators, it should be signed by the majority of the Tribunal. If a signature is omitted, the award must provide a reason for the omission.

Overall, Article 34.4 ensures that awards issued under the DIAC Arbitration Rules are comprehensive, clear, and meet the necessary legal requirements. The inclusion of specific elements such as parties' details, the Tribunal's information, a summary of the dispute, reasoning behind the decision, and details about the costs and orders, enhances the enforceability and transparency of the award.

34.5. Prior to signing any award, but in any event not less than 30 days prior to the expiry of the time limit pursuant to Article 35.1, the Tribunal shall submit the final draft of such award to the Arbitration Court for the purpose of:

(a) reviewing the form of the final draft in order to ensure, insofar as possible, that the formalities required by the Rules have been complied with (without prejudice to the Tribunal's duty to do so); and

(b) fixing the final fees and expenses of the Tribunal.

Article 34.5 of the DIAC Arbitration Rules outlines the procedure that the Tribunal must follow prior to signing any award. Let us analyse the key points of this article:

1. Review of the final draft by the Arbitration Court: The Tribunal is required to submit the final draft of the award to the Arbitration Court before signing it. The purpose of this submission is for the Arbitration Court to review the form of the award and ensure, to the extent possible, that all the formalities required by the DIAC Rules have been complied with. This review helps in maintaining the procedural integrity and consistency of awards issued under the DIAC arbitration process.

2. Fixing the final fees and expenses of the Tribunal: Additionally, the Arbitration Court is responsible for determining the final fees and expenses of the Tribunal. This determination includes the compensation to be paid to the arbitrators for their services and the reimbursement of any expenses they have incurred during the arbitration process. The final fees and expenses are fixed by the Arbitration Court after reviewing the submission made by the Tribunal.

The purpose of these provisions is to ensure that awards issued under the DIAC Arbitration Rules are properly reviewed for compliance with procedural requirements and that the fees and expenses of the Tribunal are appropriately determined. By involving the Arbitration Court in these matters, the DIAC aims to enhance the credibility, fairness, and efficiency of the arbitration process and the issuance of awards. The involvement of the Arbitration Court adds an additional layer of oversight and accountability to the arbitration proceedings.

34.6. Subject to any mandatory provisions of the procedural law applicable to the seat of the arbitration and after consultation with the parties, the Tribunal may sign the award by electronic means and provide it to the Centre. For the purpose of this Article, signing by electronic means shall be made through a certified electronic software or service, which allows the digital verification of the signatory's identity and their intent to sign the document. If signed in ink, the award shall be signed on each page and provided to the Centre in a number of originals sufficient to communicate one to each party, all members of the Tribunal and the Centre.

Article 34.6 of the DIAC Arbitration Rules addresses the signing and submission of the award by the Tribunal. Let us analyse the key points of this article:

1. Signing by electronic means: The Tribunal, subject to any mandatory provisions of the procedural law applicable to the seat of the arbitration, may sign the award by electronic means after consultation with the parties. This provision recognises the growing use of digital technology in arbitration proceedings and allows for the use of electronic signatures as a valid method for signing the award. The use of electronic signatures can enhance the efficiency and convenience of the arbitration process.
2. Certified electronic software or service: When signing by electronic means, the Tribunal must use a certified electronic software or service that allows for the digital verification of the signatory's identity and their intent to sign the document. This requirement is crucial to ensuring the authenticity and integrity of the electronic signature and to prevent any unauthorised alteration of the award.
3. Signing in ink: Alternatively, the award may be signed in ink. If signed in ink, the Tribunal must sign on each page of the award. The award, whether signed electronically or in ink, must be provided to the Centre in a sufficient number of originals to communicate one to each party, all members of the Tribunal, and the Centre. This ensures that each relevant party and authority involved in the arbitration process receives a copy of the duly signed award.

Overall, Article 34.6 recognises and facilitates the use of electronic signatures as a valid means of signing the award, while also providing for the traditional method of signing in ink. This flexibility in signing methods helps to adapt to modern technological advancements while maintaining the integrity and authenticity of the award-signing process in accordance with the applicable procedural law.

34.7. Provided the advance on costs of the arbitration has been paid in full, the Centre shall formally communicate the signed award to each party and the Tribunal in accordance with Articles 3.3 and 3.4.

Article 34.7 of the DIAC Arbitration Rules deals with the formal communication of the signed award to the parties and the Tribunal. Let us analyse this article:

1. **Advance on costs:** Before the Centre formally communicates the signed award, it must ensure that the advance on costs for the arbitration has been paid in full. The advance on costs is the amount of money paid by the parties to cover the expenses of the arbitration, including the fees of the Tribunal and administrative costs. Ensuring that the advance on costs has been paid in full is important to ensure that the arbitration process is adequately funded and can proceed smoothly.
2. **Formal communication of the signed award:** Once the signed award is ready, the Centre is responsible for formally communicating it to each party and the Tribunal. This formal communication process is a critical step in the arbitration procedure, as it marks the completion of the arbitration and provides the parties with the final decision of the Tribunal.
3. **Compliance with Articles 3.3 and 3.4:** The formal communication of the award must be done in accordance with Articles 3.3 and 3.4 of the DIAC Arbitration Rules. These articles likely deal with the general rules and procedures for communication in the arbitration process. They may address issues such as the language of communication, the means of communication (e.g., email, courier), and the timeframes for communication.³⁶

In summary, Article 34.7 ensures that the signed award is formally communicated to the parties and the Tribunal once the advance on costs has been paid in full. This communication process is carried out by the Centre in compliance with the relevant communication rules set out in Articles 3.3 and 3.4 of the DIAC Arbitration Rules.

34.8. The award may be made public with the consent of the parties.

Article 34.8 of the DIAC Arbitration Rules deals with the publicity of the award and the consent of the parties. Let us analyse this article:

1. **Publicity of the award:** This provision addresses whether the award can be made public, meaning whether its contents can be disclosed to the public or published. Arbitration awards are generally considered private and confidential, and their disclosure is limited to the parties involved in the arbitration and relevant authorities for enforcement purposes. However, some parties may have legitimate reasons to make the award public, such as establishing precedents or clarifying legal issues of public interest.
2. **Consent of the parties:** For the award to be made public, the parties must consent to such publicity. This means that both the claimant and the respondent must agree to disclose

³⁶ Marginally correct guess by ChatGPT.

the award to the public. Without the parties' consent, the award remains confidential and private between the parties and the Tribunal.

In summary, Article 34.8 of the DIAC Arbitration Rules allows for the possibility of making the award public if both parties consent to its publicity. Otherwise, the award remains confidential and accessible only to the parties and relevant authorities involved in the arbitration process. This provision ensures that the parties have control over the disclosure of the award's contents and can maintain the confidentiality of the arbitration process if they choose to do so.

ARTICLE (35) TIME LIMIT FOR ISSUING THE FINAL AWARD

35.1. Unless the provisions of this Article conflict with a mandatory provision of the procedural law applicable to the seat of the arbitration and subject to Articles 32.5 and 35.2, 35.3 and 35.4 below, the time limit within which the Tribunal must issue the Final Award is 6 months from the date of the transmission of the file to the Tribunal by the Centre.

Article 35.1 of the DIAC Arbitration Rules sets out the time limit within which the Tribunal must issue the Final Award. Let us analyse this article:

1. Time limit for issuing the Final Award: According to Article 35.1, the Tribunal must issue the Final Award within 6 months from the date of the transmission of the file to the Tribunal by the Centre. This means that the Tribunal has a maximum of 6 months to complete the arbitration proceedings, hear the parties' arguments, consider the evidence, and render a final decision on the merits of the dispute.
2. Exception for expedited proceedings: The time limit mentioned in Article 35.1 applies to regular arbitration proceedings. However, for expedited proceedings conducted under Article 32 of the DIAC Arbitration Rules, a shorter time limit of 3 months from the date of file transmission is applicable, as stated in Article 32.5.
3. Flexibility and mandatory provisions: Article 35.1 also emphasises that the time limit may be subject to mandatory provisions of the procedural law applicable at the seat of the arbitration. This means that if the applicable law at the seat of the arbitration mandates a specific time frame for issuing the award, that mandatory provision takes precedence over the time limit specified in Article 35.1.

In summary, Article 35.1 of the DIAC Arbitration Rules sets a general time limit of 6 months for the issuance of the Final Award in regular arbitration proceedings. However, the actual time taken may vary depending on the complexity of the case, the cooperation of the parties, and any applicable mandatory provisions of the procedural law at the seat of the arbitration. Expedited proceedings have a shorter time limit of 3 months, as specified in Article 32.5. The purpose of these time limits is to ensure efficiency and prompt resolution of disputes through arbitration.

35.2. The time limit for issuing the Final Award may, at any time during the arbitration, be extended by the written agreement of all parties.

Article 35.2 of the DIAC Arbitration Rules addresses the possibility of extending the time limit for issuing the Final Award. Let us analyse this article:

1. Extension of the time limit: According to Article 35.2, the time limit for issuing the Final Award, as specified in Article 35.1, may be extended. This extension can occur at any time during the arbitration proceedings.
2. Requirement for written agreement: To extend the time limit, the written agreement of all parties is required. This means that all parties involved in the arbitration must consent to the extension in writing.
3. Flexibility and party autonomy: The provision for extending the time limit through written agreement offers flexibility and recognises party autonomy in the arbitration process. It allows the parties to agree on additional time if they believe it is necessary for a fair and thorough resolution of the dispute.

In summary, Article 35.2 of the DIAC Arbitration Rules provides parties with the option to extend the time limit for issuing the Final Award through written agreement. This provision allows for flexibility in the arbitration process and enables the parties to adapt the proceedings to their specific circumstances and needs. However, any extension must be agreed upon by all parties involved in the arbitration.

35.3. The time limit for issuing the Final Award may, at any time during the arbitration, be extended by the Arbitration Court, upon a reasoned request from the Tribunal or on its own initiative, if it decides that it is necessary to do so for the Tribunal to comply with its responsibilities under the Rules. If, when such request is made, the existing time limit is less than one month, the time limit shall be automatically extended for one calendar month from the date of the request, pending the determination by the Arbitration Court.

Article 35.3 of the DIAC Arbitration Rules deals with the extension of the time limit for issuing the Final Award by the Arbitration Court. Let us analyse this article:

1. Extension by the Arbitration Court: According to Article 35.3, the Arbitration Court has the authority to extend the time limit for issuing the Final Award. This extension can occur at any time during the arbitration proceedings.
2. Grounds for extension: The Arbitration Court may grant an extension upon a reasoned request from the Tribunal or on its own initiative. The extension is considered necessary if it allows the Tribunal to fulfil its responsibilities under the DIAC Rules effectively.
3. Automatic extension for short time limits: If the request for extension is made when the existing time limit is less than one month, Article 35.3 provides for an automatic extension of one calendar month from the date of the request. This automatic extension gives the Arbitration Court sufficient time to review the request and make a proper determination.

4. Reasoned request: Any request for an extension from the Tribunal must be supported by reasons explaining why the extension is necessary. This ensures that the Tribunal provides adequate justification for the delay and that the Arbitration Court can assess the validity of the request.

In summary, Article 35.3 of the DIAC Arbitration Rules grants authority to the Arbitration Court to extend the time limit for issuing the Final Award. The extension may be granted based on a reasoned request from the Tribunal or on the Court's own initiative, provided it is necessary for the Tribunal to fulfil its responsibilities under the Rules. Additionally, the article automatically extends the time limit by one calendar month if the existing time limit is less than one month at the time of the request. This provision ensures that the arbitration process remains fair and efficient, allowing the Tribunal sufficient time to render a well-considered Final Award.

35.4. The time limit for issuing the Final Award shall be suspended from the date upon which the arbitration is suspended by the Tribunal or any competent court and shall recommence from the date upon which the arbitration is continued, as determined by the Tribunal.

Article 35.4 of the DIAC Arbitration Rules addresses the suspension and recommencement of the time limit for issuing the Final Award. Let us analyse this article:

1. Suspension of the time limit: The time limit for issuing the Final Award shall be suspended under two circumstances:
 - a. When the Tribunal suspends the arbitration: If the Tribunal decides to suspend the arbitration proceedings, the time limit for issuing the Final Award is put on hold. The suspension may be due to various reasons, such as pending a decision on a preliminary matter, awaiting further evidence, or awaiting the outcome of related court proceedings.
 - b. When the arbitration is suspended by any competent court: If any court with jurisdiction over the arbitration proceedings orders a suspension, the time limit for issuing the Final Award is similarly suspended.
2. Recommencement of the time limit: After the suspension period, the time limit for issuing the Final Award shall recommence from the date upon which the arbitration is continued, as determined by the Tribunal. The Tribunal holds the authority to decide when the arbitration proceedings should resume, and from that date, the clock starts running again for the issuance of the Final Award.

The purpose of Article 35.4 is to account for situations where the arbitration process may be temporarily halted or delayed due to various circumstances, such as procedural issues or court interventions. By suspending the time limit during such periods, the DIAC ensures that the Tribunal has adequate time to consider the relevant matters and render a well-reasoned and fair Final Award. Once the arbitration is back on track, the Tribunal's determination of the recommencement date triggers the countdown for issuing the Final Award to begin again.

ARTICLE (36) COSTS OF THE ARBITRATION

36.1. The costs of the arbitration shall include amongst other things any registration fees under the Rules, the Centre’s administrative fees, the fees and expenses of the Tribunal and any experts (whether appointed by the parties and/or the Tribunal), the fees of the legal representatives and any expenses incurred by those representatives, together with any other party’s costs as assessed and determined by the Tribunal.

Article 36.1 of the DIAC Arbitration Rules addresses the costs of the arbitration. Let us analyse this article:

1. Definition of costs: The costs of the arbitration encompass various elements related to the dispute resolution process. These costs include, but are not limited to, the following:
 - a. Registration fees under the Rules: This refers to the fees paid by the parties to register the arbitration case with the Dubai International Arbitration Centre (DIAC).
 - b. Centre’s administrative fees: DIAC charges administrative fees for managing and overseeing the arbitration proceedings.
 - c. Fees and expenses of the Tribunal and any appointed experts: This includes the fees and expenses incurred by the arbitrators for their services in resolving the dispute, as well as any remuneration for experts appointed by the Tribunal to provide specialised opinions on specific issues.
 - d. Fees of legal representatives: It pertains to the fees charged by the legal representatives (lawyers or attorneys) representing the parties in the arbitration proceedings.
 - e. Expenses of legal representatives: This covers any expenses incurred by the legal representatives in connection with the case, such as travel expenses, document preparation, and related costs.
 - f. Other party’s costs: The Tribunal has the authority to assess and determine any other party’s costs that may arise during the arbitration proceedings, as appropriate.
2. Comprehensive nature: The article emphasises that the costs mentioned above are “amongst other things”, indicating that it provides a non-exhaustive list of the elements included in the overall costs of the arbitration. Other costs may be applicable based on the specific circumstances of the case and as assessed by the Tribunal.

Article 36.1 aims to provide clarity to the parties involved in the arbitration by outlining the different components that make up the overall costs of the arbitration. By defining these elements, the parties can be aware of the financial implications and responsibilities associated with the dispute resolution process, ensuring transparency and facilitating a smoother arbitration experience.

36.2. At any time during the arbitration, after inviting the parties to make submissions, the Tribunal may make decisions on the costs of the arbitration. An award may be issued solely on costs.

Article 36.2 of the DIAC Arbitration Rules deals with the issue of costs in the arbitration proceedings. Let us analyse this article:

1. **Timing of cost decisions:** The article states that at any stage of the arbitration, the Tribunal has the authority to make decisions concerning the costs of the arbitration. This means that the Tribunal can assess and determine the allocation of costs to the parties during the ongoing proceedings, rather than waiting until the issuance of the final award.
2. **Inviting submissions from parties:** Before making any decisions on costs, the Tribunal is required to invite the parties to make submissions on the matter. This allows each party to present its arguments and evidence related to the allocation of costs, ensuring fairness and due process in the cost determination process.
3. **Award solely on costs:** The Tribunal has the discretion to issue an award that solely addresses the issue of costs. This means that the Tribunal can render a separate award specifically dealing with the allocation of costs between the parties, in addition to the final award that decides the merits of the dispute.

Article 36.2 empowers the Tribunal to effectively manage and resolve cost-related matters during the arbitration proceedings. By allowing the Tribunal to make decisions on costs at any time, it ensures efficiency and flexibility in addressing financial aspects of the case as they arise. The requirement for inviting submissions from the parties promotes transparency and affords each party the opportunity to present its case on cost allocation. The provision for a separate award on costs ensures that the issue of costs is dealt with independently and transparently, providing clarity to the parties on their financial responsibilities in the arbitration.

36.3. The Final Award shall fix the costs of the arbitration and its final apportionment between the parties, subject to Article 5 of Appendix I.

Article 36.3 of the DIAC Arbitration Rules pertains to the costs of the arbitration and their allocation in the Final Award. Let us analyse this article:

1. **Determination of costs in the Final Award:** According to this article, the Final Award, which is the conclusive decision of the Tribunal on the merits of the dispute, must include a determination of the costs of the arbitration. This means that the Tribunal is obliged to specify the total amount of costs incurred during the arbitration process, which includes registration fees, administrative fees, Tribunal fees, expert fees, legal representatives' fees, and any other expenses related to the arbitration.
2. **Apportionment of costs between the parties:** In addition to fixing the total costs of the arbitration, the Final Award must also apportion these costs between the parties. The Tribunal will decide how the costs are to be divided and allocated among the disputing parties. The apportionment will typically be based on factors such as the relative success or failure of each party's claims, the conduct of the parties during the arbitration, and other relevant circumstances.

3. Subject to Article 5 of Appendix I: The reference to “Article 5 of Appendix I” means that the determination of costs in the Final Award is subject to any special rules or guidelines regarding costs set forth in Appendix I of the DIAC Arbitration Rules. Appendix I may contain specific provisions on costs, and these provisions will apply in conjunction with Article 36.3 to govern the issue of costs in the arbitration.

Overall, Article 36.3 ensures that the Final Award provides a clear and comprehensive resolution to the dispute, including a definitive statement on the costs incurred and how they are to be shared between the parties. This transparency and clarity are essential for the parties to understand their financial obligations and rights arising from the arbitration proceedings.

ARTICLE (37) INTERPRETATION, CORRECTION AND ADDITIONAL AWARD

37.1. Within 30 days of receipt of the award, a party may, by an application to the Tribunal with a copy to the Centre and the other party, request the Tribunal to give an interpretation of such award and/or request the Tribunal to correct any clerical, typographical, computational or other similar errors.

Article 37.1 of the DIAC Arbitration Rules addresses the procedures for seeking an interpretation or correction of an arbitral award. Let us analyse this article:

1. Time limit for making the request: A party has 30 days from the date of receipt of the award to submit an application to the Tribunal. The application must be accompanied by a copy sent to both the Centre (DIAC) and the other party.
2. Request for interpretation: The first purpose of the application is to seek an interpretation of the arbitral award. If a party believes that the award is unclear or ambiguous in any respect, they can request the Tribunal to clarify its meaning. The aim is to eliminate any doubts or uncertainties that may arise from the language or wording used in the award.
3. Request for correction of errors: The second purpose of the application is to ask the Tribunal to correct any clerical, typographical, computational, or similar errors in the award. These errors refer to minor mistakes that do not involve substantive issues but rather relate to the accuracy or technical aspects of the award.
4. Filing procedure: The requesting party must submit the application directly to the Tribunal, while providing a copy to the Centre and the other party. This ensures that all relevant parties are informed of the request and have an opportunity to respond or provide their input.
5. Scope of the Tribunal’s response: The Tribunal is responsible for addressing the party’s request for interpretation or correction. It will consider the application and decide whether to provide an interpretation, make the requested corrections, or reject the request if it finds no grounds for interpretation or correction.

Overall, Article 37.1 gives parties an avenue to seek clarification or rectification of the award when they believe that it contains ambiguities or minor errors. This provision aims to promote a fair and accurate resolution of the dispute and allows the Tribunal to rectify any unintentional mistakes that might have occurred in the award.

37.2. If the Tribunal considers the request for interpretation and/or correction to be justified, after inviting the other party's comments, it shall provide its interpretation and/or correction, which shall take form of a supplemental award, within 30 days of receipt of the request. Any interpretation and/or correction to the original award shall not re-examine and/or amend any finding or determination made by the Tribunal in that award.

Article 37.2 of the DIAC Arbitration Rules outlines the process that the Tribunal must follow if it deems a request for interpretation and/or correction of an arbitral award to be justified. Let us analyse this article:

1. **Tribunal's assessment:** When a party submits a request for interpretation and/or correction of the arbitral award, the Tribunal is responsible for evaluating the validity of the request. The Tribunal will consider whether there are reasonable grounds for the request and if the award contains any ambiguities or errors that warrant clarification or correction.
2. **Invitation for comments:** If the Tribunal believes the request to be justified, it will invite comments from the other party on the matter. This ensures that both parties have an opportunity to provide their input regarding the requested interpretation or correction. It promotes transparency and fairness in the process.
3. **Timeline for response:** The Tribunal is required to respond to the request within 30 days of receiving it. This timeframe ensures that the process remains efficient and that any issues with the award are addressed promptly.
4. **Form of response:** If the Tribunal decides to provide an interpretation and/or correction, it will do so in the form of a supplemental award. This means that the additional clarification or correction will be documented separately from the original award to avoid confusion.
5. **Scope of the response:** The supplemental award addressing the request for interpretation and/or correction should be limited to clarifying ambiguities or rectifying errors in the original award. It should not involve revisiting or altering any substantive findings or determinations previously made by the Tribunal in the initial award.

Overall, Article 37.2 ensures that parties have the opportunity to seek clarification or correction of an award when necessary, while also preserving the finality and integrity of the original award. The provision promotes efficiency and fairness in the arbitral process by providing a mechanism to address issues related to the award's clarity and accuracy.

37.3. The Tribunal may correct any error of the type referred to in Article 37.1 on its own initiative within 30 days after the date of the award.

Article 37.3 of the DIAC Arbitration Rules addresses the Tribunal's authority to correct certain errors in the arbitral award on its own initiative. Let us analyse this article:

1. **Correctable errors:** Article 37.3 allows the Tribunal to correct errors of the type mentioned in Article 37.1. As stated in Article 37.1, these errors include clerical, typographical, computational, or other similar errors. Such errors are generally considered minor and do not involve substantive issues or interpretations of the award.
2. **Timeframe for correction:** The Tribunal is granted a specific timeframe of 30 days from the date of the award within which it can make corrections on its own initiative. This provides a reasonable window for the Tribunal to identify and rectify any evident errors that may have occurred during the drafting or issuance of the award.
3. **Proactive approach:** Allowing the Tribunal to correct errors on its own initiative demonstrates a proactive approach to ensure the accuracy and integrity of the arbitral process. The provision is designed to promptly address any unintended mistakes that might have been made during the preparation of the award.
4. **Limitation on scope:** It is important to note that the scope of corrections made by the Tribunal under Article 37.3 is confined to the types of errors specified in Article 37.1. The Tribunal does not have the authority to re-examine or amend any substantive findings or determinations made in the original award.

By granting the Tribunal the ability to correct minor errors on its own initiative, Article 37.3 seeks to ensure that the final award accurately reflects the Tribunal's intended decisions and avoid any misunderstandings or confusion caused by inadvertent mistakes in the award.

37.4. Within 30 days of receipt of the award, a party may, by an application to the Tribunal with a copy to the Centre and the other party, request the Tribunal to issue an additional award in respect of claims or counterclaims presented in the arbitration but not dealt with in any award. Prior to deciding on the request, the Tribunal shall give the parties an opportunity to be heard. If the Tribunal considers the request to be justified, it shall issue the additional award within 60 days of receipt of such request.

Article 37.4 of the DIAC Arbitration Rules addresses the issuance of additional awards in cases where certain claims or counterclaims presented in the arbitration were not addressed in the initial award. Let us analyse this article:

1. **Scope of the provision:** Article 37.4 applies when a party believes that some of its claims or counterclaims were not addressed in any of the awards issued by the Tribunal. It allows the concerned party to request an additional award specifically addressing those unresolved claims or counterclaims.
2. **Timeframe for the application:** A party must make the application for an additional award within 30 days of receiving the original award. This ensures that any outstanding claims or counterclaims are brought to the Tribunal's attention promptly after the issuance of the initial award.
3. **Request procedure:** The application for an additional award must be submitted to the Tribunal, with copies provided to the Centre and the opposing party. The Tribunal is then required to give both parties an opportunity to be heard before deciding on the request.

This ensures that both parties have a fair chance to present their arguments regarding the necessity of an additional award.

4. Timely issuance of the additional award: If the Tribunal considers the request for an additional award to be justified, it is obliged to issue the award within 60 days of receiving the request. This timeframe ensures that the resolution of the outstanding claims or counterclaims is accomplished in a timely manner.

Overall, Article 37.4 is designed to ensure that any claims or counterclaims that were inadvertently omitted or not fully addressed in the initial award can be properly considered and resolved by the Tribunal through the issuance of an additional award. It provides an efficient mechanism for parties to seek further clarification or resolution on unresolved issues that may have arisen during the arbitration process.

37.5. Any supplemental and/or additional award shall be deemed to be part of the original award.

Article 37.5 of the DIAC Arbitration Rules deals with the status and effect of supplemental and/or additional awards in relation to the original award. Let us analyse this article:

1. Nature of the awards: The article refers to both supplemental awards and additional awards. A supplemental award typically clarifies or provides further information or interpretation regarding the original award, whereas an additional award addresses claims or counterclaims not dealt with in the original award.
2. Integration with the original award: According to Article 37.5, any supplemental and/or additional award shall be deemed to be part of the original award. This means that the supplemental and/or additional award becomes an integral part of the original award and is considered together with the initial decision.
3. Legal effect: By deeming the supplemental and/or additional award as part of the original award, the Tribunal intends to establish that these awards hold the same legal effect as the initial award. Therefore, the rights and obligations determined in the supplemental and/or additional award are binding on the parties in the same manner as the original award.
4. Avoiding separate proceedings: Considering the supplemental and/or additional award as part of the original award helps avoid the need for separate proceedings or disputes related to any clarifications, interpretations, or outstanding claims. It streamlines the resolution process and ensures that all issues are resolved comprehensively within the arbitration.

In summary, Article 37.5 ensures that any supplemental and/or additional awards issued by the Tribunal are considered an integral part of the original award, maintaining their legal effect and binding the parties in the same manner as the initial award. This provision contributes to the efficiency and finality of the arbitration process under the DIAC Arbitration Rules.

37.6. The Tribunal shall not be entitled to any additional fees and/or expenses for the issuance of any supplemental and/or additional award(s).

Article 37.6 of the DIAC Arbitration Rules addresses the issue of fees and expenses for the issuance of supplemental and/or additional awards. Let us analyse this article:

1. **No additional fees:** According to Article 37.6, the Tribunal shall not be entitled to any additional fees for issuing any supplemental and/or additional award(s). This means that the Tribunal's compensation for its work in relation to the original award also covers the preparation and issuance of any subsequent supplemental and/or additional awards.
2. **No extra expenses:** In addition to the absence of additional fees, the article also clarifies that the Tribunal will not be entitled to any additional expenses for the issuance of supplemental and/or additional awards. This means that any costs incurred in the process of preparing and delivering the supplemental and/or additional awards are already covered by the compensation agreed upon for the original award.
3. **Encouraging efficiency:** By not allowing additional fees or expenses for supplemental and/or additional awards, the DIAC Arbitration Rules incentivise Tribunals to handle such awards efficiently. This encourages the timely resolution of disputes and discourages unnecessary delays or prolongation of the arbitration process due to concerns about additional financial implications.
4. **Preserving impartiality:** The provision prevents any potential bias or motivation on the part of the Tribunal to issue supplemental and/or additional awards solely to generate extra income. By precluding additional compensation for these awards, the rules aim to maintain the Tribunal's impartiality and ensure a fair and unbiased resolution of the dispute.

In summary, Article 37.6 clarifies that the Tribunal shall not receive any additional fees or expenses for issuing supplemental and/or additional awards. This provision serves to promote efficiency, impartiality, and fairness in the arbitration process under the DIAC rules. It ensures that the Tribunal's compensation for the original award covers any work related to subsequent supplemental and/or additional awards.

VII. CONFIDENTIALITY

ARTICLE (38) GENERAL PROVISION

Unless all parties expressly agree in writing to the contrary, or the law of the seat of the arbitration requires otherwise, the parties and the members of the Tribunal shall, as a general principle, keep confidential all awards and orders in the arbitration, together with all materials created for the purpose of the arbitration and all other documents produced by another party in the arbitration not otherwise in the public domain, save and to the extent that disclosure may be required from a party by legal duty, to protect or pursue a legal right, or to enforce or challenge an award in legal proceedings commenced and pursued in good faith before a state court or other judicial authority.

Article 38 of the DIAC Arbitration Rules addresses the issue of confidentiality in arbitral proceedings. Let us analyse this article:

1. **General principle of confidentiality:** The article establishes a general principle of confidentiality that applies to all awards and orders issued in the arbitration, as well as any materials created for the purpose of the arbitration and other documents produced by a party in the arbitration that are not otherwise publicly available.
2. **Exceptions to confidentiality:** While confidentiality is the default rule, the article provides three exceptions where disclosure may be allowed:
 - a. **Legal duty:** If a party is under a legal obligation to disclose certain information, such as to comply with a court order or a statutory requirement, it may be exempted from the confidentiality obligation.
 - b. **Protection or pursuit of a legal right:** If a party needs to disclose certain information to protect or pursue a legal right, such as in defence of a claim or for asserting a counterclaim, confidentiality may not be required in such instances.
 - c. **Enforcement or challenge of an award:** Parties are allowed to disclose information in good faith for the purpose of enforcing or challenging an award before a state court or other judicial authority.
3. **Requirement for written agreement:** For any deviation from the general principle of confidentiality, explicit written agreement by all parties is necessary. If the parties agree in writing to allow broader disclosure, the confidentiality obligation may be relaxed accordingly.
4. **Application of seat of arbitration law:** The article acknowledges that if the law of the seat of the arbitration requires confidentiality to be treated differently, the applicable seat law will prevail over the default confidentiality provision in the DIAC Arbitration Rules.
5. **Promoting transparency and privacy:** The provision strikes a balance between promoting transparency in legal proceedings while respecting the privacy and confidentiality of arbitration. It allows the parties to maintain confidentiality as a general rule while permitting disclosure in certain limited and justified circumstances.

In summary, Article 38 of the DIAC Arbitration Rules establishes a general principle of confidentiality for awards, orders, and materials related to the arbitration. It allows for exceptions in cases where

legal duty, protection or pursuit of legal rights, or enforcement or challenge of an award necessitates disclosure. Any deviation from the general confidentiality rule requires the written agreement of all parties or compliance with the law of the seat of arbitration. The provision aims to strike a balance between promoting transparency and preserving confidentiality in the arbitration process.

ARTICLE (39) DELIBERATIONS OF THE TRIBUNAL

The deliberations of the Tribunal and any other internal communication between the members of the Tribunal are confidential to its members at all times.

Article 39 of the DIAC Arbitration Rules addresses the confidentiality of the deliberations and internal communications of the Tribunal. Let us analyse this article:

1. **Confidentiality of deliberations:** The article explicitly states that the deliberations of the Tribunal are confidential. Deliberations refer to the discussions and exchanges among the members of the Tribunal during the decision-making process. This confidentiality requirement ensures that the internal discussions and thought processes of the Tribunal members remain private and are not disclosed to external parties.
2. **Confidentiality of internal communications:** In addition to deliberations, the article extends confidentiality to any other internal communication between the members of the Tribunal. This encompasses all forms of communications and exchanges that occur among the Tribunal members during the course of the arbitration.
3. **Maintaining the integrity of the decision-making process:** By ensuring confidentiality of deliberations and internal communications, the article aims to maintain the integrity of the decision-making process. It allows Tribunal members to freely exchange ideas, opinions, and legal analysis without fear of external scrutiny or interference.
4. **Privacy for Tribunal members:** The provision also serves to protect the privacy of the Tribunal members, ensuring that their internal communications and discussions remain confidential within the Tribunal.
5. **Impartiality and independence:** Confidentiality of deliberations and internal communications supports the impartiality and independence of the Tribunal. It allows Tribunal members to express their views and arrive at decisions based on legal analysis and reasoned discussions, free from external influence or pressure.

In summary, Article 39 of the DIAC Arbitration Rules establishes a strict confidentiality requirement for the deliberations and internal communications of the Tribunal. This provision is designed to maintain the integrity of the decision-making process, protect the privacy of Tribunal members, and uphold the principles of impartiality and independence in the arbitration proceedings.

VIII. MISCELLANEOUS

ARTICLE (40) FUNCTIONS OF THE CENTRE AND THE ARBITRATION COURT

40.1. Any matter relating to the powers and duties of the Centre not expressly referred to in the Rules, shall be decided by the Arbitration Court.

Article 40.1 of the DIAC Arbitration Rules pertains to matters relating to the powers and duties of the Centre that are not expressly covered in the Rules. Let us analyse this article:

1. **Scope of Article:** Article 40.1 establishes a default rule that applies when a matter related to the powers and duties of the Centre is not explicitly addressed in the DIAC Arbitration Rules. In such cases, the resolution of the matter falls under the purview of the Arbitration Court.
2. **Powers and Duties of the Centre:** The “Centre” refers to the Dubai International Arbitration Centre (DIAC), which is the administrative body responsible for administering the arbitration proceedings under the DIAC Arbitration Rules. It plays a crucial role in the appointment and administration of the Tribunal and the overall management of the arbitration process.
3. **Matters Not Covered by the Rules:** The article applies only to matters that are not explicitly addressed or covered by the provisions of the DIAC Arbitration Rules. If there is a gap or ambiguity in the Rules concerning the powers and duties of the Centre, Article 40.1 comes into play.
4. **Role of the Arbitration Court:** The “Arbitration Court” is the judicial body within the DIAC that is responsible for deciding on certain administrative matters and making determinations related to the arbitration proceedings. It serves as the final authority on issues not specified in the Rules.
5. **Flexibility and Adaptability:** Article 40.1 provides the flexibility to address unforeseen situations or issues that may arise during the arbitration process, which are not covered by the existing Rules. This allows the DIAC to adapt to various circumstances and ensures that all aspects of the arbitration are effectively managed.
6. **Ensuring Consistency and Fairness:** The involvement of the Arbitration Court in deciding matters not explicitly covered by the Rules helps ensure consistency and fairness in the arbitration proceedings. It ensures that the decisions are made by an impartial body with expertise in arbitration matters.

In summary, Article 40.1 of the DIAC Arbitration Rules empowers the Arbitration Court to decide on matters related to the powers and duties of the Centre that are not expressly covered in the Rules. This provision adds flexibility and adaptability to the arbitration process, allowing the DIAC to effectively manage any unforeseen issues that may arise during the proceedings while maintaining fairness and consistency.

40.2. The decisions of the Arbitration Court upon matters that it is required to decide shall be conclusive and the reasoning of the Arbitration Court’s decision(s) shall not be communicated to the

parties, save for the reasoning of decisions upholding a challenge to an arbitrator’s continued appointment.

Article 40.2 of the DIAC Arbitration Rules deals with the decisions of the Arbitration Court and their conclusive nature. Let us analyse this article:

1. **Decisions of the Arbitration Court:** Article 40.2 establishes that the decisions made by the Arbitration Court in matters it is required to decide are considered conclusive. The Arbitration Court has the authority to make determinations on specific administrative issues and procedural matters related to the arbitration proceedings.
2. **Conclusiveness of Decisions:** The decisions of the Arbitration Court are final and binding on the parties and the Tribunal. This means that once the Arbitration Court makes a decision on a matter, the parties are obliged to abide by it, and the Tribunal must comply with the decision in carrying out its functions.
3. **Non-Disclosure of Reasoning:** The article specifies that the reasoning behind the decisions of the Arbitration Court, except for decisions upholding a challenge to an arbitrator’s continued appointment, shall not be communicated to the parties. This provision aims to maintain the confidentiality and integrity of the Arbitration Court’s internal processes.
4. **Confidentiality of Challenge Decisions:** Decisions that uphold a challenge to an arbitrator’s continued appointment are an exception, and the reasoning behind such decisions can be communicated to the parties. This allows parties to understand the basis on which an arbitrator’s challenge was accepted or rejected, ensuring transparency in the selection of the Tribunal members.
5. **Importance of Confidentiality:** The non-disclosure of the reasoning behind the Arbitration Court’s decisions (except for challenge decisions) helps maintain the confidentiality and impartiality of the Court’s deliberations. Confidentiality is crucial to preserving the integrity of the arbitration process and avoiding any potential influence on future decisions.
6. **Respect for the Court’s Authority:** By making the decisions of the Arbitration Court conclusive, the article ensures that parties and the Tribunal respect the Court’s authority and accept its determinations as final.

In summary, Article 40.2 of the DIAC Arbitration Rules emphasises the conclusive nature of decisions made by the Arbitration Court. The Court’s determinations on administrative and procedural matters are binding on the parties and the Tribunal. The article also stresses the importance of confidentiality in the Court’s decision-making process, while allowing for transparency in decisions related to arbitrator challenges. By maintaining the integrity of the Arbitration Court’s decisions, the article contributes to the efficiency and fairness of the arbitration proceedings.

40.3. All arbitrations shall be administered by the Centre in accordance with the Rules and the Centre’s internal policies.

Article 40.3 of the DIAC Arbitration Rules pertains to the administration of arbitrations by the Centre. Let us analyse this article:

1. **Mandatory Administration:** The article states that all arbitrations conducted under the DIAC Arbitration Rules shall be administered by the Centre. This means that the Centre plays a crucial role in managing and overseeing the arbitration proceedings, ensuring that they are conducted in accordance with the Rules and any internal policies established by the Centre.
2. **Scope of Administration:** The Centre's administration covers all aspects of the arbitration, including case management, communication with the parties, appointment of arbitrators, and handling administrative matters related to the proceedings.
3. **Ensuring Consistency:** By mandating the Centre's administration, the article aims to ensure consistency and uniformity in the application of the DIAC Arbitration Rules. This helps to maintain fairness and equal treatment of all parties involved in DIAC-administered arbitrations.
4. **Impartiality and Independence:** As a reputable arbitral institution, the Centre is expected to conduct its administrative functions with impartiality and independence. This fosters confidence in the arbitration process and upholds the integrity of the proceedings.
5. **Expertise and Experience:** DIAC, as an established arbitration institution, possesses the expertise and experience required to handle complex arbitration cases efficiently and professionally. Its administration helps facilitate a well-organised and effective dispute resolution process.
6. **Internal Policies:** The article references the Centre's internal policies, which complement the DIAC Arbitration Rules. These policies may include guidelines for case administration, fee schedules, and other procedural matters.

In summary, Article 40.3 of the DIAC Arbitration Rules stipulates that all arbitrations conducted under these Rules shall be administered by the Centre. This underscores the important role of DIAC in overseeing the arbitration process, ensuring consistency, impartiality, and the proper application of the Rules. By administering the arbitrations, DIAC leverages its expertise and experience to facilitate efficient and fair dispute resolution for parties engaging in arbitration under its auspices.

ARTICLE (41) EXCLUSION OF LIABILITY

41.1. No member of the Tribunal, conciliator or person appointed by them, the Arbitration Court and its members, nor the Centre or any of its employees or personnel shall be liable to any person or any party for any act or omission in connection with any arbitration or conciliation governed by the Rules or any matter in which the Centre acts as an appointing authority.

Article 41.1 of the DIAC Arbitration Rules deals with the issue of liability for acts or omissions related to arbitrations or conciliations governed by the Rules. Let us analyse this article:

1. **Limited Liability:** The article establishes that no member of the Tribunal (arbitrators), conciliator, or any person appointed by them, the Arbitration Court, its members, the Centre, or any of its employees or personnel shall be liable to any person or party for any act or omission in connection with any arbitration or conciliation conducted under the DIAC Arbitration Rules

2. **Protection from Legal Claims:** This provision is designed to shield the individuals and entities mentioned above from potential legal claims arising from their actions or decisions taken during the course of an arbitration or conciliation under the DIAC Rules. It provides them with immunity from personal liability.
3. **Standard Clause:** The article likely serves as a standard clause in the DIAC Arbitration Rules to limit the liability of the arbitral institution, its employees, arbitrators, and other personnel involved in the dispute resolution process. This is common practice among arbitration institutions to protect the decision-makers and administrators from legal repercussions in their official capacity.
4. **Promoting Impartiality and Independence:** By providing immunity from liability, the article reinforces the principles of impartiality and independence for arbitrators and other officials involved in the proceedings. It ensures that their decisions and actions are not influenced by the fear of potential legal consequences.
5. **Preserving Neutrality:** The immunity granted to the arbitral institution and its personnel is consistent with the neutrality and impartiality required in the arbitration process. It encourages decision-makers to focus solely on the merits of the case without undue external pressures.
6. **Exceptions:** It is important to note that while Article 41.1 generally shields individuals from liability, it may not apply in cases of intentional misconduct or gross negligence, which are typically excluded from such immunity clauses.

In summary, Article 41.1 of the DIAC Arbitration Rules provides immunity to the members of the Tribunal, conciliators, personnel appointed by them, the Arbitration Court, the Centre, and its employees from liability for their acts or omissions in connection with any arbitration or conciliation governed by the Rules. This provision helps preserve the integrity, impartiality, and independence of the arbitration process while safeguarding decision-makers and administrators from legal claims related to their official functions.

41.2. No party shall seek to make any member of the Tribunal, member of the Arbitration Court, and/or any of the Centre’s employees or personnel act as a witness in any legal proceedings in connection with any arbitration or conciliation governed by the Rules or any matter in which the Centre acts as an appointing authority.

Article 41.2 of the DIAC Arbitration Rules addresses the issue of witness testimony and the involvement of certain individuals in any legal proceedings related to arbitrations or conciliations governed by the Rules. Let us analyse this article:

1. **Prohibition on Witness Testimony:** The article stipulates that no party shall seek to make any member of the Tribunal (arbitrators), member of the Arbitration Court, and/or any of the Centre’s employees or personnel act as a witness in any legal proceedings connected to any arbitration or conciliation governed by the DIAC Arbitration Rules.
2. **Protection of Arbitrators and Centre Personnel:** This provision aims to protect the integrity and independence of arbitrators, members of the Arbitration Court, and Centre personnel involved in administering the arbitration process. By preventing them from being called

as witnesses in legal proceedings related to the arbitration, the article preserves their impartiality and prevents their involvement in disputes that may arise outside the scope of their role as arbitrators or administrators.

3. **Ensuring Confidentiality:** By disallowing witness testimony from these individuals, the article helps maintain the confidentiality of the arbitration process and prevents sensitive information disclosed during the proceedings from being revealed in unrelated legal proceedings.
4. **Preserving Efficiency and Finality:** Prohibiting parties from seeking witness testimony from the arbitrators or Centre personnel contributes to the efficiency and finality of the arbitration process. It prevents unnecessary delays and additional burdens on the individuals involved in the dispute resolution process.
5. **Protecting Neutrality:** By preventing the involvement of arbitrators, members of the Arbitration Court, and Centre personnel as witnesses, the article reinforces the neutrality and impartiality required in arbitration proceedings. It ensures that these individuals remain focused on their primary role as decision-makers and administrators without being drawn into unrelated legal disputes.
6. **Applicability to Related Matters:** The article not only covers legal proceedings related to the arbitration itself but also includes any matter in which the Centre acts as an appointing authority. This broader scope aims to prevent any attempts to involve these individuals in disputes arising from the arbitration process, regardless of the specific context.

In summary, Article 41.2 of the DIAC Arbitration Rules prohibits parties from seeking to make any member of the Tribunal, member of the Arbitration Court, and/or any of the Centre's employees or personnel act as a witness in any legal proceedings related to arbitrations or conciliations governed by the Rules or any matter in which the Centre acts as an appointing authority. This provision ensures the impartiality, confidentiality, and efficiency of the arbitration process while safeguarding the role and integrity of the decision-makers and administrators involved.

ARTICLE (42) WAIVER

A party which knows or ought reasonably to have known that any provision of, or requirement under, the Rules or other rules applicable to the arbitration or any direction given by the Tribunal has not been complied with shall raise an objection within 7 days (or such other period as may be prescribed by the procedural law applicable to the seat of the arbitration) from the date any such fact or circumstance became known or ought reasonably to have been known. Should the party fail to do so, it shall be deemed to have irrevocably waived its right to object and may not raise that objection later.

Article 42 of the DIAC Arbitration Rules establishes the requirement for parties to raise objections in a timely manner if they become aware of any non-compliance with the Rules, other applicable rules, or directions given by the Tribunal. The key points remain the same:

1. **Timely Objection Requirement:** Parties must raise objections within a specified timeframe (usually 7 days) from the date they become aware of any non-compliance or should have reasonably known about it.

2. Knowledge or Reasonable Awareness: The provision considers the actual or constructive knowledge of the party, ensuring that parties cannot deliberately ignore or delay raising objections when they become aware of non-compliance.
3. Waiver of Right to Object: Failure to raise an objection within the specified timeframe results in the party irrevocably waiving its right to object later. This emphasises the importance of timely addressing compliance concerns.
4. Promoting Efficiency: Timely objections contribute to the efficiency of the arbitration process, preventing unnecessary delays caused by late objections.
5. Encouraging Fairness: The provision ensures fairness by requiring parties to promptly raise any objections related to non-compliance.
6. Clarity and Certainty: The article provides a clear timeframe for raising objections, creating certainty and avoiding disputes about the timing of objections.

Article 42 serves to promote an efficient and fair arbitration process by requiring parties to promptly address any non-compliance concerns they may have. The requirement for timely objections helps maintain clarity and certainty in the arbitration proceedings while encouraging parties to act promptly in asserting their rights.

ARTICLE (43) DOCUMENT RETENTION

The Centre shall maintain an archive of any award or preliminary order issued under Articles 1 and 2 of Appendix II for a maximum of 5 years from the date such award or order is deposited with the Centre. Thereafter, such documents may be destroyed in a confidential manner without notice to any party or arbitrator.

Article 43 of the DIAC Arbitration Rules pertains to the archiving of awards and preliminary orders issued under Articles 1 and 2 of Appendix II. Here is an analysis of the key points:

1. Archiving Duration: The Centre is responsible for maintaining an archive of awards or preliminary orders issued under Articles 1 and 2 of Appendix II. The specified archiving period is a maximum of 5 years from the date the award or order is deposited with the Centre.
2. Preservation Period: During the 5-year period, the Centre preserves the documents, ensuring they are accessible and available for reference if needed.
3. Confidentiality: The provision emphasises that the destruction of these documents, after the 5-year period, must be carried out in a confidential manner, without providing notice to any party or arbitrator. This ensures that sensitive information remains protected even during disposal.
4. Archiving Limitation: Article 43 applies specifically to awards or preliminary orders issued under Appendix II, focusing on a certain type of documents in the DIAC arbitration proceedings.

5. Prudent Data Management: The provision demonstrates the Centre’s commitment to efficient data management. After a reasonable period of time, preserving these documents may no longer be necessary, and destruction through a confidential process ensures responsible handling of sensitive information.
6. Compliance with Data Protection: The provision also ensures compliance with any data protection laws and regulations governing the retention and disposal of confidential information.

Overall, Article 43 of the DIAC Arbitration Rules provides a clear framework for archiving and destroying awards or preliminary orders issued under Appendix II. By setting a specific time limit for archiving and emphasising confidentiality in the disposal process, the provision ensures responsible data management and confidentiality in the arbitration proceedings.

APPENDIX I – COSTS OF THE ARBITRATION

ARTICLE (1) REGISTRATION FEES

1.1. A request for arbitration, the introduction of a counterclaim and an application for emergency interim relief must in each case be accompanied by the applicable non-refundable registration fees specified in the Table in force on the date of the commencement of the arbitration.

Article 1.1 pertains to the payment of non-refundable registration fees in the context of arbitration proceedings. Let us analyse its key points:

1. Types of Requests: The article covers three specific types of submissions that must be accompanied by applicable non-refundable registration fees. These submissions are:
 - a. Request for Arbitration
 - b. Introduction of a Counterclaim
 - c. Application for Emergency Interim Relief
2. Payment Requirement: For each of the mentioned types of submissions, the requesting party must pay the required non-refundable registration fees. These fees are essential for initiating the arbitration process and addressing specific claims or requests.
3. Time of Payment: The payment of non-refundable registration fees must be made “in each case”, meaning they are due at the time of submitting the respective request, counterclaim, or application for emergency interim relief.
4. Fee Table: The amount of non-refundable registration fees is determined by a fee table, which is in force on the date the arbitration process commences. This fee table sets out the specific amounts to be paid based on the nature and complexity of the arbitration case.
5. Clarity and Certainty: Article 1.1 ensures transparency and certainty regarding the financial aspect of arbitration proceedings. By specifying the need for payment and referring to a fee table, parties can readily determine the costs associated with initiating different aspects of the arbitration process.
6. Non-Refundable Nature: The use of the term “non-refundable” indicates that once the fees are paid, they will not be returned to the paying party, regardless of the outcome of the arbitration or any other circumstances.

In summary, Article 1.1 of the rules highlights the requirement for parties to pay non-refundable registration fees when submitting requests for arbitration, counterclaims, or applications for emergency interim relief. The article ensures clarity and transparency regarding the financial obligations associated with commencing the arbitration process and contributes to the effective administration of arbitration cases.

1.2. The Centre shall proceed with registering and administering only those claims, counterclaims and applications for emergency interim relief with respect to which the relevant registration fee has been paid in full.

Article 1.2 addresses the registration and administration of claims, counterclaims, and applications for emergency interim relief in the context of arbitration proceedings. Let us examine its key points:

1. **Registration Requirement:** The article emphasises that for a claim, counterclaim, or application for emergency interim relief to be registered and administered by the Centre, the relevant registration fee must be paid in full. In other words, the payment of the applicable non-refundable registration fee (as mentioned in Article 1.1) is a prerequisite for the commencement of the administrative process by the Centre.
2. **Precondition for Processing:** The full payment of the registration fee serves as a precondition for the Centre to proceed with the registration and administration of the claim, counterclaim, or application for emergency interim relief. Without such payment, the Centre will not handle or process the respective submission.
3. **Ensuring Adherence to Fee Requirement:** By requiring the payment of the registration fee upfront, Article 1.2 ensures that parties take the financial aspect seriously and comply with the fee requirement before initiating specific claims or applications.
4. **Efficient Case Management:** This article contributes to the efficient administration and case management by preventing unnecessary administrative work for the Centre related to claims and applications that have not been properly initiated through full fee payment.
5. **Promoting Seriousness and Accountability:** Requiring full payment of the registration fee indicates a commitment by the party submitting the claim or application, enhancing the seriousness and accountability of the parties in the arbitration process.

In summary, Article 1.2 stipulates that the Centre will only proceed with registering and administering claims, counterclaims, and applications for emergency interim relief when the relevant registration fee has been paid in full. By making the payment of fees a prerequisite, the article ensures efficiency, accountability, and adherence to financial obligations in the arbitration process.

ARTICLE (2) ADVANCE ON COSTS OF THE ARBITRATION

2.1. The Centre shall fix an advance on costs of the arbitration, which is intended to cover the fees and expenses of the Tribunal and the Centre’s administrative fees. The Centre shall fix the advance on costs of the arbitration by reference to the total of the sum(s) claimed and/or counterclaimed in accordance with the Table in force on the date of the commencement of the arbitration. The Centre may, at any time during the arbitration, readjust the advance on costs of the arbitration pursuant to Article 4.2 of Appendix I.

Article 2.1 deals with the advance on costs of the arbitration. Let us break down the key points of this article:

1. **Advance on Costs:** The article states that the Centre shall determine an advance on costs for the arbitration. This advance is intended to cover both the fees and expenses of the Tribunal and the administrative fees of the Centre.
2. **Calculation of Advance on Costs:** The amount of the advance on costs is determined based on the total sum(s) claimed and/or counterclaimed in the arbitration. The specific amount is fixed according to the Table provided in the DIAC rules, which is in force on the date of the arbitration's commencement.
3. **Readjustment of Advance on Costs:** The Centre retains the authority to readjust the initial advance on costs at any point during the arbitration process. This readjustment is done pursuant to the provisions outlined in Article 4.2 of Appendix I of the DIAC rules.
4. **Purpose of the Advance:** The primary purpose of requiring an advance on costs is to ensure that the parties contribute sufficient funds to cover the expenses associated with conducting the arbitration. By obtaining the advance, the Centre can assure the payment of the Tribunal's fees and expenses as well as its own administrative fees.
5. **Financial Transparency:** The use of a fixed Table to calculate the advance on costs promotes transparency in the arbitration process. Parties are aware of the required financial commitment from the outset, allowing them to plan and budget accordingly.
6. **Flexibility in Readjustment:** Allowing readjustment of the advance on costs provides flexibility to address any changes in circumstances or additional expenses that may arise during the arbitration. This readjustment process is governed by the rules specified in Appendix I, ensuring fairness and predictability.

In summary, Article 2.1 of the DIAC arbitration rules sets out the procedure for determining the advance on costs for the arbitration. The amount is calculated based on the total sum(s) claimed and/or counterclaimed, and the Centre has the authority to readjust it during the arbitration process, ensuring transparency and flexibility in financial matters.

2.2. Where the Respondent introduces a counterclaim, the advance on costs of the arbitration shall be fixed by reference to the total of the sums claimed and counterclaimed, which shall be payable in equal shares by the Claimant(s) and the Respondent(s), regardless of the individual sums claimed and counterclaimed.

Article 2.2 pertains to the calculation and allocation of the advance on costs when the Respondent introduces a counterclaim. Let us analyse the key points of this article:

1. **Counterclaim and Advance on Costs:** When the Respondent introduces a counterclaim in response to the Claimant's original claim, the advance on costs of the arbitration is fixed based on the total of the sums claimed and counterclaimed.
2. **Equal Sharing of Costs:** Regardless of the individual amounts claimed by each party, the advance on costs is split equally between the Claimant(s) and the Respondent(s). Each party is responsible for paying an equal share of the total advance on costs.

3. **Financial Fairness:** This provision aims to promote financial fairness in the arbitration process. By sharing the costs equally, both parties are required to contribute to the expenses associated with conducting the arbitration, regardless of the specific amounts they are claiming or counterclaiming.
4. **Encouragement of Counterclaims:** The rule encourages parties to raise legitimate counterclaims when they believe they have valid grounds to do so, without being unduly burdened by additional costs. This can help in resolving all disputes between the parties in a single arbitration proceeding, reducing the need for separate proceedings.
5. **Avoidance of Delay:** Allocating the advance on costs equally between the parties ensures that each party has a financial stake in the arbitration process. This may discourage frivolous or dilatory counterclaims or claims, as parties are motivated to proceed efficiently and in good faith.
6. **Clarity and Predictability:** The rule provides clarity and predictability in determining the financial obligations of each party concerning the arbitration. Both the Claimant(s) and the Respondent(s) are aware of their share of the advance on costs, promoting transparency in financial matters.

In summary, Appendix I, Article 2.2 of the DIAC Arbitration Rules establishes that when the Respondent introduces a counterclaim, the advance on costs is determined based on the total of the sums claimed and counterclaimed. The costs are then divided equally between the parties, irrespective of the individual amounts claimed or counterclaimed, ensuring financial fairness and encouraging the efficient resolution of disputes through arbitration.

2.3. Notwithstanding the provisions of Article 2.2 above, the Centre may, having due regard to the relevant circumstances, and at its absolute discretion, exceptionally fix separate advances on costs for the claim and the counterclaim, in which case each of the parties shall pay the advance on costs of the arbitration corresponding to its respective claim.

Article 2.3 provides an exception to the general rule stated in Article 2.2 regarding the allocation of the advance on costs when a counterclaim is introduced. Let us analyse the key points of this article:

1. **Discretionary Authority:** Article 2.3 grants the Centre discretionary authority to depart from the general rule stated in Article 2.2. The Centre has the power to make an exceptional decision on whether to fix separate advances on costs for the main claim and the counterclaim.
2. **Relevant Circumstances:** The Centre's decision to fix separate advances on costs for the claim and counterclaim is based on "relevant circumstances". These circumstances may include factors such as the complexity of the claims, the size of the claims, the nature of the counterclaim, the financial capacity of the parties, or any other pertinent considerations.
3. **Individual Cost Allocation:** If the Centre exercises its discretion to fix separate advances on costs, each party will be responsible for paying the advance on costs corresponding to its respective claim. This means that the Claimant(s) will be responsible for the advance

on costs related to the main claim, and the Respondent(s) will be responsible for the advance on costs related to the counterclaim.

4. **Exceptional Nature:** The provision emphasises that this discretion is exceptional and not the standard practice. The general rule (Article 2.2) still requires equal sharing of the advance on costs when there is a counterclaim, but the Centre has the power to depart from this norm if the circumstances warrant it.
5. **Balanced Approach:** The provision strikes a balance between promoting financial fairness and efficiency in most cases (equal sharing of costs) while recognising that some situations may call for a more tailored approach, such as fixing separate advances on costs.
6. **Centre's Decision:** The decision to fix separate advances on costs lies solely with the Centre. Parties do not have the authority to unilaterally choose this option. They must comply with the Centre's decision once it is made.

In summary, Article 2.3 allows the Centre to exercise its discretionary authority and exceptionally fix separate advances on costs for the main claim and the counterclaim if it deems it appropriate based on the relevant circumstances. This provision provides the Centre with flexibility to address specific situations that may require a departure from the general rule of equal cost sharing when there is a counterclaim.

2.4. If an arbitration terminates prior to the issuance of the Final Award, the Arbitration Court shall fix the Centre's administrative fees, at its discretion, and fix the fees and expenses of the Tribunal in accordance with Article 4.1 and 4.2 of Appendix I, and, in all cases, taking into consideration the stage reached in the arbitration and any other relevant circumstances.

Article 2.4 addresses the allocation and determination of costs when an arbitration terminates before the issuance of the Final Award. Let us analyse the key points of this article:

1. **Termination of Arbitration:** Article 2.4 applies when an arbitration comes to an end before the issuance of the Final Award. Termination can occur due to various reasons, such as settlement between the parties, withdrawal of the claim or counterclaim, or a decision to terminate the arbitration for other reasons.
2. **Discretionary Fixing of Administrative Fees:** When an arbitration is terminated before the issuance of the Final Award, the Arbitration Court, which is responsible for overseeing the arbitration process, is given discretion to fix the Centre's administrative fees. The Court will determine the appropriate amount of administrative fees based on the circumstances of the case.
3. **Fixing of Tribunal Fees and Expenses:** In addition to the administrative fees, Article 2.4 states that the Arbitration Court shall also fix the fees and expenses of the Tribunal. This is to ensure that the arbitrators are compensated for the work they have already done up to the point of termination. The determination of these fees and expenses will follow the provisions of Article 4.1 and 4.2 of Appendix I.

4. **Consideration of Relevant Circumstances:** The Arbitration Court is required to take into consideration the stage reached in the arbitration and any other relevant circumstances when fixing the administrative fees and the Tribunal's fees and expenses. These circumstances may include the progress of the proceedings, the complexity of the case, the time and effort already expended by the Tribunal, and any other relevant factors.
5. **Flexibility:** The provision allows for flexibility in determining the costs when an arbitration terminates prematurely. It acknowledges that each case may have unique circumstances that should be taken into account when fixing the fees and expenses.
6. **Center of Decision:** The decision to fix the administrative fees and the Tribunal's fees and expenses lies with the Arbitration Court, which acts as the governing body of the arbitration process.

In summary, Article 2.4 empowers the Arbitration Court to exercise its discretion in fixing the Centre's administrative fees and the fees and expenses of the Tribunal when an arbitration terminates before the issuance of the Final Award. The Court will consider the stage of the arbitration and other relevant circumstances to ensure a fair and reasonable allocation of costs in such situations.

2.5. For the purpose of this Article, if the sum(s) claimed or counterclaimed were not specified in the Request or the Answer, respectively, the Centre shall fix the advance on costs of the arbitration at its discretion, having due regard to the claims and/or the counterclaims being made and other relevant circumstances, and, after its constitution, upon consultation with the Tribunal.

Article 2.5 deals with situations where the sum(s) claimed or counterclaimed were not specified in the Request or the Answer, respectively. Let us analyse the key points of this article:

1. **Unspecified Amounts in the Request and Answer:** The article addresses a scenario where the claimant in the arbitration (Requestor) or the respondent in the arbitration (Respondent) did not specify a specific sum of money in their initial submission. This could happen if the Requestor or Respondent, for some reason, did not provide a precise monetary claim or counterclaim.
2. **Discretionary Fixing of Advance on Costs:** In such cases, the responsibility of fixing the advance on costs of the arbitration falls to the DIAC Centre. The Centre has the discretion to determine the amount of the advance on costs based on various factors, including the nature of the claims and counterclaims being made and any other relevant circumstances.
3. **Consultation with the Tribunal:** The Centre is required to consult with the Tribunal once it is constituted to determine the appropriate advance on costs. The involvement of the Tribunal in this process ensures that the arbitrators have some input into the cost allocation, considering their expertise in the specific case.
4. **Consideration of Relevant Circumstances:** The article emphasises that the Centre should have "due regard" to the claims and counterclaims and other relevant circumstances while determining the advance on costs. This means that the Centre must take into account the nature and complexity of the claims, potential expenses related to the arbitration process, and any other relevant factors that may impact the cost allocation.

5. Flexibility and Fairness: The provision allows the Centre to exercise flexibility in situations where specific sums are not specified in the Request or the Answer. The objective is to ensure that the advance on costs is determined fairly and reasonably, considering the particular circumstances of the case.

In summary, Article 2.5 grants the DIAC Centre the discretion to fix the advance on costs when specific sums are not specified in the Request or the Answer. The Centre must consider the claims and counterclaims being made, consult with the Tribunal, and take into account other relevant circumstances to determine the appropriate advance on costs. This approach allows for a fair and flexible cost allocation in such cases.

2.6. Any dispute regarding the determination of the advance on costs of the arbitration shall be finally decided by the Arbitration Court.

Article 2.6 addresses the resolution of disputes that may arise concerning the determination of the advance on costs of the arbitration. Let us analyse the key points of this article:

1. Scope of the Provision: This article applies specifically to disputes related to the determination of the advance on costs of the arbitration. The advance on costs is the initial payment made by the parties to cover the fees and expenses of the Tribunal and the administrative fees of the DIAC Centre during the arbitration process.
2. Dispute Resolution Mechanism: In case of a dispute regarding the amount of the advance on costs, the matter is referred to the Arbitration Court. The Arbitration Court is the body within the DIAC responsible for handling administrative aspects of the arbitration, including cost-related matters.
3. Exclusive Jurisdiction: The article specifies that the decision of the Arbitration Court in resolving disputes related to the determination of the advance on costs is “finally” decided. This means that the decision is conclusive and binding on the parties. Once the Arbitration Court makes a determination, it puts an end to the dispute, and the parties must comply with the decision.
4. Ensuring Fairness and Impartiality: By referring such disputes to the Arbitration Court, the rules ensure an independent and impartial resolution process. The Arbitration Court is not directly involved in the substantive merits of the case, so it can objectively evaluate the arguments presented by the parties and make a fair and reasonable decision regarding the advance on costs.
5. Efficient Resolution: Having a designated body like the Arbitration Court to handle disputes regarding the advance on costs ensures a swift and efficient resolution. This allows the arbitration proceedings to proceed smoothly without delays caused by disagreements over financial matters.

In summary, Article 2.6 establishes a mechanism for resolving disputes regarding the determination of the advance on costs of the arbitration. By entrusting this responsibility to the Arbitration Court, the rules ensure fairness, impartiality, and efficiency in handling financial disputes and contribute to the overall effectiveness of the arbitration process.

ARTICLE (3) PAYMENT OF THE ADVANCE ON COSTS OF THE ARBITRATION

3.1. All payments towards the advance on costs of the arbitration shall be made to the Centre by means acceptable to it.

Article 3.1 pertains to the payment process for the advance on costs of the arbitration. Let us analyse the key points of this article:

1. **Payment Obligation:** This article outlines the obligation of the parties to make payments towards the advance on costs of the arbitration. The advance on costs is the initial deposit required by the DIAC to cover the fees and expenses of the Tribunal and the administrative fees of the Centre during the arbitration proceedings.
2. **Payment to the Centre:** The article specifies that all payments related to the advance on costs of the arbitration shall be made directly to the DIAC Centre. The Centre is the administrative body responsible for administering the arbitration process, and it oversees the financial aspects of the arbitration.
3. **Means of Payment:** The article also states that payments shall be made by means acceptable to the Centre. This implies that the Centre may provide different payment options to the parties, such as bank transfers, online payments, or other suitable methods for remitting the required funds.
4. **Ensuring Transparency and Accountability:** By centralising the payment process with the DIAC Centre, the rules ensure transparency and accountability. The Centre will keep records of the payments received, and the parties can be assured that the funds are appropriately allocated for the arbitration proceedings.
5. **Efficient Financial Management:** Having a centralised payment system allows for more efficient financial management of the arbitration. It streamlines the process of receiving and allocating funds, ensuring that the Tribunal and the Centre have the necessary financial resources to conduct the arbitration smoothly.

In summary, Article 3.1 establishes the payment procedure for the advance on costs of the arbitration. By directing all payments to the Centre and specifying acceptable means of payment, the rules ensure transparency, efficiency, and accountability in managing the financial aspects of the arbitration process.

3.2. The advance on costs of the arbitration shall be payable in equal shares by the Claimant(s) and the Respondent(s).

Article 3.2 addresses the allocation and payment of the advance on costs of the arbitration. Let us analyse the key points of this article:

1. **Equal Sharing:** The article specifies that the advance on costs of the arbitration shall be payable in equal shares by both the Claimant(s) and the Respondent(s). This means that

the parties involved in the arbitration are equally responsible for funding the arbitration proceedings.

2. **Financial Fairness:** By requiring equal sharing of the advance on costs, the rules promote financial fairness among the parties. Each party contributes an equal portion, which prevents one party from bearing a disproportionate financial burden in the arbitration.
3. **Cost Allocation:** The equal sharing of costs encourages parties to consider the financial implications of initiating or responding to an arbitration. It may incentivise parties to assess the potential costs and benefits of pursuing or defending a claim, leading to more reasoned decision-making during the dispute resolution process.
4. **Facilitating Access to Justice:** Equal cost-sharing may also facilitate access to justice, especially in cases where one party might be financially disadvantaged compared to the other. By distributing the financial responsibility equally, the rules aim to ensure that both parties can participate in the arbitration process without undue financial strain.
5. **Administrative Simplicity:** The principle of equal sharing simplifies the administrative process for collecting and managing the advance on costs. The DIAC does not need to determine different amounts for each party, as both the Claimant(s) and the Respondent(s) contribute equally.

In summary, Article 3.2 establishes the principle of equal sharing of the advance on costs among the parties involved in the arbitration. This provision promotes financial fairness, encourages cost-conscious decision-making, and facilitates access to justice while keeping the administrative process straightforward.

3.3. Notwithstanding the provisions of Article 3.2 above, either party may, at any time, make payment of the other party's share of the advance on costs of the arbitration or any other costs, which are required to progress the arbitration. Any such payments (shall form part of the costs of the arbitration and) may be recoverable by the substituting party, including immediately after transmission of the file by requesting the Tribunal to issue an award on costs in accordance with Article 36.2.

Article 3.3 addresses the issue of one-party making payments on behalf of the other party for the advance on costs or any other costs required to progress the arbitration. Let us analyse the key points of this article:

1. **Payment by Either Party:** The article allows either party to make payment of the other party's share of the advance on costs or any other necessary costs related to the arbitration. This provision provides flexibility to the parties in managing the financial aspects of the arbitration.
2. **Progression of the Arbitration:** By permitting one party to cover the costs of the other, the rules aim to ensure that the arbitration can progress smoothly, even if one party faces financial constraints or delays in making payments.
3. **Inclusion in Costs:** The article explicitly states that any such payments made by one party on behalf of the other shall form part of the costs of the arbitration. This means that these

payments will be considered as part of the overall costs to be determined by the Tribunal at the conclusion of the arbitration.

4. **Potential Recovery:** The article further clarifies that the party making the payment may be entitled to recover these costs, including the advance on costs paid on behalf of the other party. This recovery can be sought immediately after the transmission of the file by requesting the Tribunal to issue an award on costs in accordance with Article 36.2.
5. **Facilitating the Process:** Allowing one party to cover the other party's costs when necessary can help expedite the arbitration process and prevent delays due to financial constraints. It promotes the efficient resolution of the dispute by ensuring that financial issues do not hinder the proceedings.
6. **Balanced Approach:** While Article 3.2 emphasises equal sharing of costs, Article 3.3 introduces a balanced approach by enabling one party to cover the other's share when needed, with the possibility of reimbursement.

In summary, Article 3.3 permits either party to make payments on behalf of the other party for the advance on costs or any other necessary costs required to progress the arbitration. The provision ensures the smooth functioning of the arbitration process, provides flexibility in managing financial matters, and allows for potential reimbursement of such payments at the conclusion of the arbitration.

3.4. If a request for payment of the advance on costs of the arbitration has not been complied with, the matter shall be referred to the Arbitration Court to set a final time limit for such payment, on the expiration of which the relevant claim or counterclaim (or, as the case may be, the increase in the sum claimed or counterclaimed) shall be considered withdrawn.

Article 3.4 addresses the consequences of non-compliance with a request for payment of the advance on costs of the arbitration. Let us analyse the key points of this article:

1. **Request for Payment:** The article refers to a situation where the Centre has requested both the Claimant(s) and the Respondent(s) to make payment of the advance on costs of the arbitration as per their respective shares. The advance on costs is intended to cover the fees and expenses of the Tribunal and the Centre's administrative fees.
2. **Non-Compliance Consequences:** If a party fails to comply with the request for payment of the advance on costs within the specified time frame, the matter is referred to the Arbitration Court.
3. **Intervention by the Arbitration Court:** The Arbitration Court is responsible for setting a final time limit for the delinquent party to make the required payment. This provision ensures that the parties are given one last opportunity to fulfil their financial obligations.
4. **Withdrawal of Claim or Counterclaim:** If the party in question still does not make the payment within the final time limit set by the Arbitration Court, the consequences are significant. The relevant claim or counterclaim (or the increase in the sum claimed or counterclaimed) shall be considered withdrawn.

5. Implications of Withdrawal: By considering the claim or counterclaim as withdrawn, the party may lose the opportunity to pursue the claim further in the arbitration. This could lead to a final award that does not address certain claims or counterclaims due to their withdrawal.
6. Encouraging Timely Payments: This article serves as an incentive for parties to comply with payment requests promptly. It ensures that the arbitration process can proceed smoothly without undue delays caused by financial non-compliance.

In summary, Article 3.4 outlines the consequences of non-compliance with a request for payment of the advance on costs. The Arbitration Court intervenes to set a final time limit for payment, and if the delinquent party fails to comply within that time frame, the relevant claim or counterclaim is considered withdrawn. This provision aims to encourage parties to fulfil their financial obligations timely and ensures the smooth progression of the arbitration process.

ARTICLE (4) FIXING THE FEES OF THE TRIBUNAL

4.1. In setting the Tribunal’s fees, the Centre shall take into consideration the diligence of the Tribunal, the speed and efficiency with which the arbitration has been conducted and the complexity of the dispute, so as to arrive at a figure within the limits specified in the Table.

Article 4.1 deals with the determination of the Tribunal’s fees in an arbitration. Let us analyse the key points of this article:

1. Tribunal’s Fees: This article addresses the fees that the members of the Tribunal (arbitrators) are entitled to receive for their services in conducting the arbitration. These fees are distinct from the Centre’s administrative fees and the advance on costs of the arbitration, which are covered in previous articles.
2. Considerations for Setting Fees: The article specifies the factors that the Centre should consider when setting the Tribunal’s fees. These considerations include:
 - a. Diligence of the Tribunal: The Centre evaluates the efforts and dedication put forth by the Tribunal members in handling the arbitration case.
 - b. Speed and Efficiency of the Arbitration: The Centre takes into account how quickly and efficiently the arbitration proceedings were conducted by the Tribunal.
 - c. Complexity of the Dispute: The Centre considers the level of complexity and intricacy of the dispute that the Tribunal had to deal with during the arbitration.
3. Limits Specified in the Table: The article mentions that the figure for the Tribunal’s fees should fall within the limits specified in the Table. It implies that there is a pre-established fee range or fee schedule that the Centre uses as a reference to determine the appropriate fees for the Tribunal. The exact fee amounts will depend on the specific circumstances of each case and the factors mentioned above.

4. Fair Compensation: The provision aims to ensure that the Tribunal members are fairly compensated for their time, effort, and expertise in resolving the dispute. It also encourages efficient and diligent handling of the arbitration by the Tribunal.
5. Transparent and Consistent Approach: By considering specific factors and referring to the Table for fee limits, the article promotes a transparent and consistent approach to determining the Tribunal's fees across different cases.

In summary, Article 4.1 outlines the considerations and limits to be taken into account when setting the Tribunal's fees for an arbitration. The Centre evaluates the diligence, speed, efficiency, and complexity of the dispute to arrive at an appropriate fee figure within the specified limits in the Table. This provision ensures fair compensation for the Tribunal's efforts and encourages effective case management throughout the arbitration process.

4.2. The Centre may, at any time during the arbitration, fix the fees of the Tribunal at a figure higher or lower than that which would otherwise result from the application of the Table due to the relevant circumstances. For this purpose, the Arbitration Court may take into account any such circumstances it considers appropriate, including but not limited to a fluctuation in the sum(s) claimed and/or counterclaimed, any additional claims made, any changes in the amount of the Tribunal's estimated expenses, or any unforeseen complexity of the dispute.

Article 4.2 addresses the flexibility in fixing the fees of the Tribunal during the arbitration process. Let us analyse the key points of this article:

1. Discretion to Fix Fees: The article grants the Centre the authority to adjust the fees of the Tribunal during the course of the arbitration. These adjustments can be higher or lower than what would result from the application of the fee Table mentioned in the DIAC Arbitration Rules.
2. Relevant Circumstances: The Centre has the discretion to take into account various "relevant circumstances" that may warrant the adjustment of the Tribunal's fees. The term "relevant circumstances" is not explicitly defined in the rules, but the article provides examples of such circumstances.
3. Examples of Relevant Circumstances: The article provides some examples of circumstances that may be considered, including:
 - a. Fluctuation in the sum(s) claimed and/or counterclaimed: If the amount in dispute changes significantly during the arbitration, it may impact the complexity and workload of the Tribunal, justifying an adjustment in fees.
 - b. Additional claims made: If new claims are introduced during the arbitration, it may increase the Tribunal's workload, leading to a fee adjustment.
 - c. Changes in the Tribunal's estimated expenses: If the anticipated expenses for the Tribunal's work change during the proceedings, it may be a factor for fee adjustment.

- d. Unforeseen complexity of the dispute: If unexpected complexities arise during the arbitration that were not initially anticipated, it may justify a change in fees.
4. Arbitration Court's Role: The article refers to the "Arbitration Court" as the entity responsible for considering the relevant circumstances and making decisions on adjusting the Tribunal's fees. The Arbitration Court is a body within the DIAC that handles various administrative and procedural matters related to arbitration cases.
5. Flexibility for Fairness: This provision allows for the flexibility to adjust the Tribunal's fees as necessary to ensure fairness and equity in compensating the Tribunal for their work. It also acknowledges that arbitration proceedings may evolve and change over time, and adjustments may be needed to appropriately compensate the Tribunal members.

In summary, Article 4.2 grants the Centre the discretion to adjust the fees of the Tribunal during the arbitration process based on relevant circumstances. The Centre may consider factors like changes in the amount in dispute, the introduction of new claims, fluctuations in expenses, and unforeseen complexities in the dispute. This flexibility ensures that the Tribunal's fees remain reasonable and appropriate throughout the arbitration proceedings.

4.3. When the Tribunal is composed of three members, unless the Tribunal advises the Centre of a different allocation, the Centre shall fix the Tribunal's total fees so that the chairperson receives 40% and each co-arbitrator 30%.

Article 4.3 establishes a specific allocation for the fees of the Tribunal when it is composed of three members. Let us analyse the key points of this article:

1. Fee Allocation for Three-Member Tribunal: The article sets out a predetermined fee allocation for a three-member Tribunal. In this scenario, the Tribunal consists of a chairperson and two co-arbitrators.
2. Chairperson's Fee: According to Article 4.3, the chairperson is entitled to receive 40% of the total fees allocated to the Tribunal. This means that the chairperson's compensation is higher than that of each co-arbitrator.
3. Co-arbitrators' Fee: Each co-arbitrator is entitled to receive 30% of the total fees allocated to the Tribunal. This indicates that the co-arbitrators' compensation is the same and is lower than that of the chairperson.
4. Presumption of Equal Allocation: The article provides a default or presumed allocation for the Tribunal's fees, unless the Tribunal advises the Centre of a different allocation. This means that the default allocation of 40% to the chairperson and 30% to each co-arbitrator will apply unless the Tribunal specifies a different breakdown of the fees.
5. Flexibility for Different Allocation: The article allows the Tribunal to advise the Centre of a different allocation if they consider it appropriate or necessary. This gives the Tribunal some flexibility to tailor the fee distribution based on the complexity of the case, the workload of individual Tribunal members, or other relevant factors.

6. **Transparency and Efficiency:** The provision for a fixed fee allocation for a three-member Tribunal promotes transparency and predictability in terms of compensation. It also aims to facilitate efficient decision-making by providing a standard allocation that can be adjusted by the Tribunal if required.

In summary, Article 4.3 establishes a default allocation for the fees of a three-member Tribunal. The chairperson is entitled to receive 40% of the total fees, and each co-arbitrator is entitled to 30%. However, the Tribunal has the option to suggest a different allocation to the Centre if they believe it is appropriate based on the circumstances of the case. This allocation mechanism aims to ensure fairness and efficiency in compensating the members of the Tribunal.

ARTICLE (5) REIMBURSEMENT OF THE ADVANCE ON COSTS OF THE ARBITRATION

5.1. The Centre shall reimburse to the parties any unused amounts left in the respective arbitration account, after the deduction of the fees and expenses of the Tribunal and the Centre’s administrative fees.

Article 5.1 pertains to the reimbursement of any unused funds in the arbitration account. Let us analyse the key points of this article:

1. **Unused Amounts in the Arbitration Account:** The article refers to funds that remain in the arbitration account after the conclusion of the arbitration. These funds are considered “unused” because they were not utilised to cover the fees and expenses of the Tribunal or the Centre’s administrative fees.
2. **Reimbursement to the Parties:** According to Article 5.1, the Centre is obligated to reimburse the parties for any such unused amounts. This means that if there are funds remaining in the arbitration account, the Centre will return these funds to the parties.
3. **Deduction of Fees and Expenses:** Before making the reimbursement, the Centre deducts the fees and expenses of the Tribunal and the Centre’s administrative fees from the arbitration account. These deductions cover the costs incurred during the arbitration process, and the remaining funds are then eligible for reimbursement.
4. **Purpose of Reimbursement:** The purpose of the reimbursement is to ensure that the parties do not overpay for the arbitration proceedings. If the actual costs of the arbitration turn out to be lower than the amount initially deposited in the arbitration account, the parties are entitled to receive the excess funds back.
5. **Fairness and Transparency:** The provision for reimbursement of unused funds promotes fairness and transparency in the financial aspects of the arbitration process. It prevents the Centre from retaining any excess funds that were not necessary to cover the actual costs of the arbitration.
6. **Encouraging Efficient Case Management:** The possibility of reimbursement also encourages efficient case management, as it incentivises parties to be mindful of the funds they deposit into the arbitration account. It discourages overestimation of costs and motivates parties to manage expenses effectively.

In summary, Article 5.1 ensures that any unused funds remaining in the arbitration account after the conclusion of the arbitration proceedings are reimbursed to the parties. Before making the reimbursement, the Centre deducts the fees and expenses of the Tribunal and the Centre's administrative fees. This provision promotes financial transparency and encourages efficient case management while safeguarding parties from overpaying for the arbitration process.

ARTICLE (6) TABLE OF FEES AND COSTS

The Table of Fees and Costs determines the registration fees, administrative fees of the Centre and the Tribunal's fees by reference to the total of the sum(s) claimed and/or counterclaimed.

Article 6 addresses the "Table of Fees and Costs". This table plays a crucial role in determining various fees associated with the arbitration process. Let us analyse the key points of this article:

1. **Scope of the Table:** The Table of Fees and Costs is a comprehensive document that specifies the registration fees, administrative fees of the Centre, and the Tribunal's fees. These fees are determined based on the total sum(s) claimed and/or counterclaimed in the arbitration.
2. **Registration Fees:** The table sets out the registration fees applicable to initiate an arbitration. Parties are required to pay these non-refundable registration fees when filing a request for arbitration or introducing a counterclaim. The amount of registration fees depends on the total sum(s) claimed and/or counterclaimed.
3. **Administrative Fees of the Centre:** In addition to registration fees, the Centre charges administrative fees for handling and managing the arbitration process. Like the registration fees, the administrative fees are also determined based on the total sum(s) claimed and/or counterclaimed.
4. **Tribunal's Fees:** The table also includes the fees to be paid to the Tribunal members for their services as arbitrators. The Tribunal's fees are calculated with reference to the sum(s) claimed and/or counterclaimed.
5. **Cost-Effectiveness:** By basing the registration, administrative, and Tribunal's fees on the total sum(s) claimed and/or counterclaimed, the Table of Fees and Costs aims to ensure that the fees are proportionate to the complexity and value of the dispute. This cost-effectiveness helps to make arbitration a viable and efficient alternative to resolving disputes.
6. **Transparency and Predictability:** The existence of a predetermined table with fixed fees provides transparency and predictability to the parties involved in the arbitration. They can assess the potential costs of the arbitration process based on the claimed amounts, allowing for better financial planning.
7. **Flexibility:** The Table of Fees and Costs, while providing a structured framework, allows for flexibility. As mentioned in other articles, the Centre has the discretion to adjust the fees based on relevant circumstances, such as complexity or changes in the sums claimed and counterclaimed.

In conclusion, Article 6 establishes the “Table of Fees and Costs”, which determines the registration fees, administrative fees of the Centre, and the Tribunal’s fees based on the total sum(s) claimed and/or counterclaimed. The table ensures cost-effectiveness, transparency, and predictability in the arbitration process while maintaining some flexibility to address specific circumstances.

APPENDIX II – EXCEPTIONAL PROCEDURES

ARTICLE (1) INTERIM MEASURES

1.1. The Tribunal may, upon an application by a party, order interim measures on terms that it considers appropriate in the circumstances, and issue a preliminary order in support of such measures. The Tribunal shall give summary reasons for any such order in writing.

Article 1.1 deals with “Interim Measures and Preliminary Orders”. This article empowers the Tribunal to grant interim measures and issue preliminary orders during the course of the arbitration. Let us analyse the key points of this article:

1. **Interim Measures:** An interim measure is a temporary measure granted by the Tribunal to preserve the rights of the parties or maintain the status quo pending the final resolution of the dispute. These measures are typically intended to prevent harm or maintain the effectiveness of the final award.
2. **Application by a Party:** A party to the arbitration may apply to the Tribunal for interim measures. The Tribunal has the discretion to consider the application and order such measures as it deems appropriate based on the circumstances of the case.
3. **Scope of the Tribunal’s Powers:** The Tribunal’s authority to grant interim measures is broad and allows it to order any measures it considers necessary or suitable to protect the parties’ rights. These measures may include, but are not limited to, orders to preserve assets, freeze bank accounts, prevent the disposal of assets, or require parties to take certain actions.
4. **Preliminary Orders:** The Tribunal may issue preliminary orders in support of the interim measures. These preliminary orders provide the necessary legal basis for enforcing the interim measures effectively.
5. **Summary Reasons:** The Tribunal is required to provide summary reasons for any interim measures or preliminary orders granted. This ensures transparency and allows the parties to understand the basis for the Tribunal’s decision.
6. **Timing of the Interim Measures:** Interim measures may be ordered by the Tribunal at any stage during the arbitration proceedings, from the filing of the request for arbitration to the issuance of the final award. The measures are meant to be effective during the arbitration process until the final resolution of the dispute.
7. **Flexibility:** The provision grants the Tribunal flexibility to tailor the interim measures to the specific circumstances of each case. The Tribunal can consider the unique facts and needs of the parties to ensure that the measures are fair and appropriate.

In conclusion, Article 1.1 allows the Tribunal to grant interim measures and issue preliminary orders upon application by a party. The Tribunal has broad discretion in determining the appropriate measures to protect the parties’ rights, and it is required to provide summary reasons for its decisions. This provision enhances the effectiveness and enforceability of interim measures in DIAC arbitration proceedings, promoting fair and efficient dispute resolution.

1.2. An interim measure is any temporary measure by which, at any time prior to the issuance of the Final Award, the Tribunal orders a party, for example and without limitation, to:

- (a) maintain or restore the status quo pending determination of the dispute;**
- (b) take action that would prevent, or refrain from taking action that is likely to cause:**
 - (i) current or imminent harm; or**
 - (ii) prejudice to the arbitral process itself;**
- (c) provide a means of preventing the dissipation of assets out of which a subsequent award may be satisfied;**
- (d) preserve evidence that may be relevant and material to the resolution of the dispute; or**
- (e) provide or procure security for the costs of the arbitration, including the fees of the legal representatives and any expenses incurred by those representatives, together with any other party's costs, in an amount and in a manner determined by the Tribunal having regard to the relevant circumstances.**

Article 1.2 defines the term “Interim Measure” and outlines the types of measures that the Tribunal may order during the arbitration proceedings. Let us analyse the key points of this article:

1. **Definition of Interim Measure:** Article 1.2 provides a comprehensive definition of an “interim measure”. It states that an interim measure is any temporary measure ordered by the Tribunal at any time before the issuance of the Final Award.
2. **Examples of Interim Measures:** The article then lists several examples of the types of interim measures that the Tribunal may order. These examples are provided “without limitation”, meaning that they are not exhaustive, and the Tribunal has the discretion to order other appropriate interim measures as well. The examples include:
 - a. **Maintaining or Restoring the Status Quo:** The Tribunal may order a party to maintain or restore the status quo pending the determination of the dispute. This measure aims to preserve the current situation until the final resolution of the arbitration.
 - b. **Preventing or Refraining from Harm:** The Tribunal may order a party to take or refrain from taking certain actions to prevent current or imminent harm or prejudice to the arbitral process itself.
 - c. **Preventing Dissipation of Assets:** The Tribunal may order a party to provide a means to prevent the dissipation of assets out of which a subsequent award may be satisfied. This is to ensure that the losing party has sufficient assets to satisfy the potential award.
 - d. **Preserving Evidence:** The Tribunal may order a party to preserve evidence that may be relevant and material to the resolution of the dispute. This measure aims to ensure that crucial evidence is not lost or destroyed.

- e. Providing Security for Costs: The Tribunal may order a party to provide or procure security for the costs of the arbitration, including the fees of legal representatives and any related expenses, as well as the other party's costs. The amount and manner of providing security are determined by the Tribunal based on the relevant circumstances.
3. Timing of Interim Measures: Interim measures can be ordered by the Tribunal at any stage during the arbitration proceedings, from the initiation of the dispute until the issuance of the Final Award. These measures are meant to be effective during the arbitration process to protect the rights of the parties and ensure fair and efficient dispute resolution.

In conclusion, Article 1.2 defines "Interim Measure" and provides a non-exhaustive list of examples of the types of measures that the Tribunal may order. The article aims to give the Tribunal flexibility in ordering appropriate measures to address the parties' needs and protect their rights during the arbitration proceedings. These interim measures play a crucial role in maintaining fairness and ensuring that the arbitration process is effective and successful.

1.3. The party applying for an interim measure pursuant to Articles 1.2 (a), (b) and (c) above and 2.1 of Appendix II shall satisfy the Tribunal:

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

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

Article 1.3 outlines the requirements that a party must satisfy when applying for an interim measure pursuant to certain provisions of Appendix II. Let us analyse the key points of this article:

1. Application for Interim Measures: Article 1.3 specifies that this provision applies to parties seeking an interim measure pursuant to Articles 1.2 (a), (b), and (c) and 2.1 of Appendix II. These articles deal with specific types of interim measures that the Tribunal may order.
2. Criteria for Granting Interim Measures: To obtain an interim measure, the applying party must satisfy the Tribunal of two main criteria:
 - a. Risk of Irreparable Harm: The party must demonstrate that harm that cannot be adequately repaired or compensated through an award of damages is likely to result if the interim measure is not ordered. Furthermore, the harm to be prevented must substantially outweigh the harm that is likely to be caused to the party against whom the measure is directed if the measure is granted.
 - b. Reasonable Possibility of Success on the Merits: The party must show that there is a reasonable possibility that they will succeed on the merits of their claim. In other words, they need to demonstrate that they have a plausible case and a chance of prevailing in the arbitration. However, the determination of this possibility does not affect the Tribunal's discretion in making any subsequent determinations.

3. Discretion of the Tribunal: While the party seeking an interim measure must satisfy the criteria mentioned above, it is important to note that the Tribunal retains its discretion to grant or deny the interim measure. The Tribunal will consider the evidence and arguments presented by the parties and exercise its judgment in determining whether to order the interim measure.

In conclusion, Article 1.3 sets out the requirements that a party must meet when applying for an interim measure under specific provisions of Appendix II. To be successful in obtaining an interim measure, the applying party must demonstrate the risk of irreparable harm if the measure is not ordered and show a reasonable possibility of success on the merits of their claim. However, the ultimate decision to grant or deny the interim measure lies within the discretion of the Tribunal, taking into account the specific circumstances of the case.

1.4. The party applying for an interim measure shall also:

(a) satisfy the Tribunal of the reasons why it believes that providing notice to the other party may jeopardize the efficacy of the application; or

(b) by way of a statement, certify that all other parties have been notified of the application or provide an explanation of the steps taken in good faith to notify all such parties.

Article 1.4 provides additional requirements for a party applying for an interim measure. This article focuses on the issue of notice to the other party and aims to ensure fairness and efficiency in the process of seeking interim measures. Let us analyse the key points of this article:

1. Notice Requirement: Article 1.4 sets forth two options for the party applying for an interim measure regarding the issue of notice to the other party.
 - a. Exception to Notice: The party seeking an interim measure may satisfy the Tribunal by providing reasons why it believes that providing notice to the other party may jeopardise the efficacy of the application. In certain circumstances, immediate action may be necessary to preserve the status quo or prevent harm, and providing notice to the other party could potentially undermine the purpose of the interim measure.
 - b. Notice Certification: Alternatively, the applying party may choose to provide a statement certifying that all other parties have been notified of the application. This option ensures transparency and allows the other party to be aware of the application for an interim measure. If the party is unable to notify all other parties, it must explain the steps taken in good faith to notify them.
2. Balance of Interests: Article 1.4 strikes a balance between the need for prompt action to secure an interim measure and the principle of providing the other party with notice and an opportunity to respond. Depending on the circumstances of the case, either the exceptional situation preventing notice or the ordinary notice certification process may apply.
3. Efficiency and Fairness: The purpose of this provision is to promote efficiency in the arbitration process while safeguarding the interests of both parties. By allowing for

exceptions to the notice requirement in certain cases, the article aims to ensure that the application for an interim measure can be promptly addressed without compromising the overall fairness of the proceedings.

In conclusion, Article 1.4 requires the party applying for an interim measure to either satisfy the Tribunal of reasons why providing notice to the other party may jeopardise the efficacy of the application or certify that all other parties have been notified of the application. This article ensures that the application process for an interim measure is conducted in a balanced and efficient manner, taking into account the need for immediate action while still upholding the principles of fairness and transparency in the arbitration proceedings.

1.5. With regard to a request for an interim measure under Article 1.2 (d) of Appendix II, the requirements of Article 1.3 of Appendix II shall apply only to the extent the Tribunal considers appropriate.

Article 1.5 pertains specifically to requests for interim measures under Article 1.2(d) of Appendix II. This article addresses the application of the requirements set out in Article 1.3 of Appendix II in the context of such requests. Let us analyse the key points of this article:

1. **Context of Interim Measures:** Article 1.2(d) of Appendix II identifies interim measures related to preserving evidence that may be relevant and material to the resolution of the dispute. Such measures are commonly referred to as “evidentiary preservation” measures and are intended to prevent the loss or destruction of evidence that could be crucial to the case.
2. **Applicability of Article 1.3:** Article 1.3 of Appendix II outlines the general requirements that the party seeking an interim measure must satisfy. These requirements include showing that harm not adequately reparable by damages is likely to result if the measure is not granted, and there is a reasonable possibility of success on the merits of the claim.
3. **Discretion of the Tribunal:** Article 1.5 clarifies that, concerning requests for interim measures under Article 1.2(d), the Tribunal has the discretion to apply the requirements of Article 1.3 only to the extent it deems appropriate. This means that the Tribunal may exercise flexibility in evaluating the need for the usual requirements in the context of evidentiary preservation measures.
4. **Balancing Interests:** The purpose of Article 1.5 is to recognise that evidentiary preservation measures serve a unique purpose, which is to safeguard relevant evidence during the arbitration process. The Tribunal may take into account the specific circumstances of the case when deciding whether to apply the full requirements of Article 1.3 or to modify them to better suit the nature of the requested interim measure.
5. **Procedural Efficiency:** By allowing the Tribunal to tailor the application of Article 1.3 to the specific context of evidentiary preservation measures, the article promotes procedural efficiency. This ensures that the Tribunal can address the urgency of preserving evidence promptly without requiring a strict adherence to all the usual requirements for interim measures.

In conclusion, Article 1.5 clarifies that, with regard to requests for evidentiary preservation measures under Article 1.2(d), the requirements of Article 1.3 may be applied by the Tribunal to the extent it considers appropriate. This provision gives the Tribunal discretion to balance the need for evidentiary preservation with the standard requirements for granting interim measures, ultimately contributing to a more efficient and effective arbitration process.

1.6. The Tribunal may modify, suspend or discharge a preliminary order that has been issued in support of an interim measure, upon an application by a party or, in exceptional circumstances and upon prior notice to the parties, on the Tribunal's own initiative.

Article 1.6 deals with the modification, suspension, or discharge of a preliminary order that has been issued in support of an interim measure. Let us analyse the key points of this article:

1. Preliminary Order: Article 1.6 refers to a preliminary order, which is an order issued by the Tribunal to support an interim measure. Preliminary orders are typically issued before the final award and serve to provide temporary relief to the party requesting the interim measure.
2. Grounds for Modification, Suspension, or Discharge: According to Article 1.6, the Tribunal has the authority to modify, suspend, or discharge a preliminary order under two circumstances:
 - a. Application by a Party: A party to the arbitration may apply to the Tribunal, requesting a modification, suspension, or discharge of the preliminary order. This application should be made by a formal request, explaining the reasons for seeking the change.
 - b. Exceptional Circumstances and Tribunal's Initiative: In exceptional circumstances, the Tribunal may take the initiative to modify, suspend, or discharge the preliminary order. However, this can only be done upon prior notice to the parties. The provision of prior notice is crucial to ensure procedural fairness and give the parties an opportunity to present their arguments or objections.
3. Flexibility and Adaptability: Article 1.6 provides the Tribunal with the flexibility to adjust its preliminary orders based on changing circumstances or the evolving needs of the arbitration. This flexibility allows the Tribunal to respond promptly and effectively to the parties' requests and to ensure the proper administration of justice.
4. Balancing Interests: The ability of the Tribunal to modify, suspend, or discharge a preliminary order is essential for maintaining a balance between the rights and interests of the parties. It prevents parties from being unduly burdened by an order that may no longer be necessary or appropriate given the developments in the arbitration.
5. Protection of the Arbitration Process: The provision that the Tribunal may act on its own initiative in exceptional circumstances, but with prior notice to the parties, ensures that the arbitration process remains transparent and fair. This way, parties are kept informed about any changes to the preliminary order and are provided an opportunity to respond.

In conclusion, Article 1.6 grants the Tribunal the authority to modify, suspend, or discharge a preliminary order issued in support of an interim measure. This provision ensures flexibility and adaptability in responding to the parties' needs during the arbitration process while also safeguarding the interests of all parties involved.

1.7. The Tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or ordered.

Article 1.7 addresses the Tribunal's authority to request prompt disclosure from any party regarding any material change in the circumstances on the basis of which an interim measure was requested or ordered. Let us analyse the key points of this article:

1. **Monitoring Changes in Circumstances:** Article 1.7 empowers the Tribunal to monitor the ongoing relevance and appropriateness of any interim measure that has been requested or ordered during the course of the arbitration. It requires the Tribunal to stay informed about any developments that could impact the necessity or validity of the interim measure.
2. **Ensuring Timely Disclosure:** The article emphasises the promptness of the disclosure required from the parties. When a material change in circumstances occurs that could affect the need for or the basis of an interim measure, the relevant party must disclose this information without delay.
3. **Material Change in Circumstances:** The phrase "material change in the circumstances" indicates that the change must be significant and capable of having a substantial impact on the interim measure in question. Minor or inconsequential changes may not trigger the obligation to disclose.
4. **Proactive Approach:** By empowering the Tribunal to require prompt disclosure, the DIAC Arbitration Rules adopt a proactive approach to ensure that the Tribunal has up-to-date and accurate information when making decisions on interim measures. This approach reflects the efficiency and effectiveness of the arbitral process.
5. **Balance of Interests:** This provision serves to maintain a balance between the interests of the parties and the efficient conduct of the arbitration. It prevents parties from relying on outdated or incorrect information and helps the Tribunal to make well-informed and fair decisions.
6. **Transparency and Fairness:** Requiring prompt disclosure of material changes in circumstances enhances the transparency and fairness of the arbitral process. Allowing the Tribunal to be fully informed ensures that interim measures remain justified and relevant throughout the arbitration.

In conclusion, Article 1.7 empowers the Tribunal to demand timely disclosure from any party concerning any material change in the circumstances on which an interim measure was requested or ordered. This provision helps the Tribunal to stay informed and ensures that interim measures remain relevant and effective during the arbitration. It contributes to a fair and efficient resolution of the dispute while safeguarding the interests of all parties involved.

1.8. The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the Tribunal later determines that, in the circumstances then existing, the preliminary order should not have been ordered. The Tribunal may award such costs and damages at any point during the arbitration.

Article 1.8 addresses the issue of potential liability for costs and damages in relation to interim measures. Let us analyse the key points of this article:

1. **Liability for Costs and Damages:** Article 1.8 states that the party requesting an interim measure may be held liable for any costs and damages caused to any other party if the Tribunal later determines that the preliminary order should not have been ordered based on the circumstances existing at that time.
2. **Discretionary Award:** The provision grants the Tribunal the authority to award costs and damages against the requesting party at any point during the arbitration. This means that the Tribunal is not bound to wait until the issuance of the final award to make a decision on this matter.
3. **Reassessment of Interim Measure:** The article contemplates a situation where the Tribunal, after reviewing the circumstances, concludes that the interim measure was not appropriate, necessary, or justified. If this happens, the requesting party may be held responsible for the consequences resulting from the implementation of the interim measure.
4. **Balance of Interests:** This provision helps to strike a balance between the need for parties to seek interim measures to protect their interests and the potential consequences of such measures if they are later found to be unjustified. It encourages parties to carefully consider the necessity and validity of the interim measures they request.
5. **Deterrent Effect:** The possibility of being held liable for costs and damages can serve as a deterrent against seeking frivolous or unjustified interim measures. Parties are incentivised to make well-founded and reasonable requests for such measures.
6. **Fairness and Efficiency:** Article 1.8 promotes fairness and efficiency in the arbitration process. It discourages parties from using interim measures as a tactic to gain advantage, while protecting the parties against unjustified actions that may cause them harm.

In conclusion, Article 1.8 establishes that a party requesting an interim measure may be liable for any costs and damages caused by the measure if the Tribunal later determines that the preliminary order should not have been ordered based on the circumstances at that time. The provision gives the Tribunal the discretion to award costs and damages against the requesting party at any stage of the arbitration. This article aims to balance the interests of parties and encourage them to make well-founded requests for interim measures, while also promoting fairness and efficiency in the arbitral process.

1.9. The Tribunal may require the party applying for an interim measure to provide appropriate security in connection with the measure.

Article 1.9 deals with the issue of providing security in connection with interim measures. Let us analyse the key points of this article:

1. **Requirement of Security:** Article 1.9 states that the Tribunal has the authority to request the party applying for an interim measure to provide appropriate security in connection with the measure. This security is typically in the form of a financial guarantee or collateral to ensure that the party seeking the interim measure will be able to compensate the other party if the measure is later found to have been unjustified.
2. **Protection Against Potential Abuse:** The requirement for providing security serves as a safeguard against potential abuse of the interim measures. By requesting security, the Tribunal ensures that the party seeking the measure has a genuine and legitimate reason for requesting it, as they will be financially accountable if the measure is later deemed unwarranted.
3. **Balanced Approach:** Article 1.9 strikes a balance between allowing parties to seek interim measures to protect their interests and protecting the other party from potential harm caused by the measure. It encourages parties to carefully consider the necessity and potential consequences of the interim measures they seek.
4. **Determination of the Amount:** The article does not specify the exact amount or form of security that should be provided, leaving it to the discretion of the Tribunal to determine what is appropriate based on the circumstances of each case.
5. **Flexibility:** The provision provides the Tribunal with flexibility to tailor the security requirement to the specific circumstances of the case, taking into account factors such as the nature of the interim measure, the potential harm to the other party, and the financial capacity of the requesting party.
6. **Ensuring Compliance:** Requiring security helps ensure compliance with any orders or directions issued by the Tribunal. It strengthens the enforceability of the interim measure and provides assurance that the requesting party will fulfil its obligations in connection with the measure.

In conclusion, Article 1.9 empowers the Tribunal to request the party applying for an interim measure to provide appropriate security in connection with the measure. The provision aims to protect against potential abuse of interim measures, ensures a balanced approach in addressing parties' interests, and enhances the enforceability of the interim measures by requiring the provision of security. The exact amount and form of security will be determined by the Tribunal based on the specific circumstances of each case.

1.10. Nothing in the Rules shall have the effect of creating (where it does not exist), or limiting (where it does exist), any right of a party to apply to the Tribunal, and any powers of the Tribunal, to order an interim measure and issue a preliminary order in support of such interim measure without prior notice to a party. For this purpose, the Tribunal shall consider its power to issue such

an order, having due regard to the seat of the arbitration and also any agreement reached by the parties in the agreement to arbitrate.

Article 1.10 addresses the Tribunal's power to order interim measures and issue preliminary orders without prior notice to a party. Let us analyse the key points of this article:

1. **Right to Apply for Interim Measures:** The article clarifies that nothing in the Rules shall create or limit any right of a party to apply to the Tribunal for interim measures. In other words, the parties retain the inherent right to seek interim relief in situations where it is warranted, regardless of the specific provisions in the Rules.
2. **Tribunal's Powers:** The provision also emphasises that the Tribunal has the authority to order an interim measure and issue a preliminary order in support of such measure without prior notice to a party. This grants the Tribunal the discretion to take swift action when circumstances require immediate relief and when giving prior notice may undermine the effectiveness of the interim measure.
3. **Exceptional Circumstances:** The ability to order interim measures without prior notice is contingent on exceptional circumstances that demand urgent action. The Tribunal is required to consider whether such circumstances exist, and its decision should be based on the specific facts of the case.
4. **Balancing Interests:** The article recognises that the Tribunal's power to issue orders without prior notice should be exercised with due regard to the seat of the arbitration and any agreement reached by the parties in the arbitration agreement. This is important for striking a balance between protecting the rights of the parties and allowing the Tribunal to take expedient action when necessary.
5. **Seat of Arbitration:** The seat of the arbitration plays a significant role in determining the extent of the Tribunal's powers. The laws and rules of the seat jurisdiction may impose certain limitations or requirements on the issuance of orders without prior notice.
6. **Consideration of Arbitration Agreement:** The Tribunal should also take into account any agreement the parties have reached in their arbitration agreement concerning the issuance of orders without prior notice. If the parties have expressly agreed on this matter, the Tribunal's discretion may be affected accordingly.

In conclusion, Article 1.10 clarifies that the Rules neither create nor limit the parties' right to apply for interim measures. It grants the Tribunal the power to issue orders without prior notice in exceptional circumstances when immediate action is necessary. However, the Tribunal must carefully consider the seat of the arbitration and any relevant agreements made by the parties to ensure a balanced approach in exercising this authority. The provision underscores the importance of considering the specific facts and context of each case when deciding on interim measures without prior notice.

1.11. Where a preliminary order in support of an interim measure is issued without prior notice to a party, the Tribunal shall make an appropriate direction that the party against whom the preliminary order is issued shall be notified by the applying party at the earliest opportunity. The party against whom the preliminary order is issued shall have the right to apply to set aside the preliminary order and a hearing shall be convened by the Tribunal for this purpose as soon as

reasonably practicable. On any such application, the burden shall be on the party in whose favour the preliminary order has been issued to satisfy the Tribunal that the requirements of Articles 1.3 and 1.4 of Appendix II, insofar as applicable, are satisfied, having due regard to any representations made by the party applying to have the preliminary order set aside.

Article 1.11 deals with the procedure when a preliminary order in support of an interim measure is issued without prior notice to a party. Let us analyse the key points of this article:

1. Notification Requirement: When the Tribunal issues a preliminary order without prior notice to a party, it must direct the applying party to notify the party against whom the order is issued at the earliest opportunity. This requirement ensures that the affected party is informed of the order and is aware of the actions being taken against them.
2. Right to Apply to Set Aside: The party against whom the preliminary order is issued has the right to apply to set it aside. This means that they can challenge the validity or appropriateness of the interim measure ordered by the Tribunal. The purpose of this provision is to safeguard the rights of the affected party and ensure fairness in the process.
3. Hearing for Setting Aside: The Tribunal is required to convene a hearing for the purpose of considering the application to set aside the preliminary order. This hearing should be scheduled as soon as reasonably practicable to address the matter promptly.
4. Burden of Proof: In the hearing to set aside the preliminary order, the burden of proof falls on the party in whose favour the preliminary order has been issued. They must satisfy the Tribunal that the requirements of Articles 1.3 and 1.4 of Appendix II (which address the conditions for granting interim measures) are met. This means that the party seeking to maintain the preliminary order must show that the harm not adequately reparable by damages outweighs any harm caused by the measure and that there is a reasonable possibility of success on the merits of the claim.
5. Consideration of Representations: The Tribunal is required to consider any representations made by the party applying to have the preliminary order set aside. This ensures that both parties have an opportunity to present their arguments and evidence before the Tribunal makes a final determination.

In summary, Article 1.11 outlines the procedure when a preliminary order in support of an interim measure is issued without prior notice to a party. It requires the applying party to notify the affected party promptly, gives the affected party the right to apply to set aside the order, and mandates a hearing for this purpose. The burden of proof lies on the party seeking to maintain the preliminary order, and the Tribunal must consider representations from both parties before making a decision. This article emphasises fairness and due process in dealing with interim measures issued without prior notice.

1.12. The provisions of Article 2.8 of Appendix II shall apply once the identity of the Emergency Arbitrator has become known to the notified party.

Article 1.12 refers to the application of Article 2.8 of Appendix II once the identity of the Emergency Arbitrator has become known to the notified party. Let us analyse the key aspects of this article:

1. Reference to Article 2.8: Article 1.12 makes a specific reference to Article 2.8 of Appendix II. This means that the procedures and provisions laid down in Article 2.8 will come into effect at a particular stage of the emergency arbitration process, namely after the identity of the Emergency Arbitrator has been disclosed to the notified party.
2. Emergency Arbitrator: The Emergency Arbitrator is a neutral third party appointed by the DIAC to handle emergency arbitration proceedings. These proceedings allow parties to seek urgent interim measures before the constitution of the full arbitral tribunal. The Emergency Arbitrator's role is to quickly address critical matters that cannot wait for the full arbitration to proceed.
3. Identity Disclosure: Once the DIAC has notified the parties about the appointment of the Emergency Arbitrator and the Arbitrator's identity has become known to the party against whom the application for emergency interim relief is made, Article 2.8 is triggered.
4. Application of Article 2.8: Article 2.8 of Appendix II contains specific provisions regarding the Emergency Arbitrator's powers and the conduct of the emergency arbitration proceedings. This includes matters related to the submission of the application for emergency interim relief, the expedited timetable for the proceedings, the form of the emergency award, and the Tribunal's power to modify, suspend, or terminate the emergency measures.

In summary, Article 1.12 states that once the identity of the Emergency Arbitrator has been disclosed to the party against whom the application for emergency interim relief is made, Article 2.8 of Appendix II shall apply. This ensures that the relevant provisions governing the emergency arbitration process, including the powers and procedures of the Emergency Arbitrator, come into effect at the appropriate stage of the proceedings.

1.13. A request for interim measures addressed by any party to a judicial authority or a request to a judicial authority to enforce an interim measure or a preliminary order issued by the Tribunal shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Article 1.13 deals with the issue of requesting interim measures from a judicial authority and its impact on the agreement to arbitrate. Let us analyse the key points of this article:

1. Interim Measures from Judicial Authorities: The article addresses situations where a party seeks interim measures from a judicial authority (e.g., a court) instead of or in addition to requesting such measures from the Tribunal during the arbitration proceedings.
2. Non-Incompatibility with Arbitration Agreement: Article 1.13 clarifies that making a request for interim measures from a judicial authority does not render the agreement to arbitrate incompatible or void. In other words, seeking interim measures from a court does not negate or waive the parties' obligation to resolve their dispute through arbitration, as per their arbitration agreement.
3. No Waiver of the Agreement to Arbitrate: Additionally, the article emphasises that requesting interim measures from a judicial authority does not amount to a waiver of the parties' right to resolve their dispute through arbitration. In other words, choosing to seek

interim measures from a court does not imply that the parties are abandoning or giving up on arbitration as a means of dispute resolution.

4. **Balancing Arbitration and Judicial Measures:** By permitting parties to seek interim measures from judicial authorities without compromising their arbitration agreement, the article acknowledges that certain urgent situations may require immediate relief, and obtaining interim measures from courts might be more practical in such cases. This provision allows parties to strike a balance between the need for swift and effective relief and their commitment to arbitration.

In summary, Article 1.13 clarifies that a party's request for interim measures from a judicial authority or seeking enforcement of interim measures or preliminary orders issued by the Tribunal from a court does not render the arbitration agreement incompatible or waived. It allows parties to seek necessary and urgent relief from courts without losing the right to proceed with arbitration to resolve the underlying dispute.

1.14. Any preliminary order issued under Articles 1 and 2 of Appendix II (including the continuation or modification of any such order) shall be binding on the parties and the parties undertake to comply in full with any such order immediately and without delay. A failure to comply with an order to provide or procure security for costs may result in the Tribunal staying the party's claim or, as the case may be, counterclaim.

Article 1.14 addresses the enforceability and compliance with preliminary orders issued under Appendix II. Here is an analysis of the key points of this article:

1. **Binding Nature of Preliminary Orders:** Article 1.14 states that any preliminary order issued under Articles 1 and 2 of Appendix II is legally binding on the parties. This means that once the Tribunal issues a preliminary order, the parties are obligated to comply with the order's terms and requirements.
2. **Immediate and Unconditional Compliance:** The article further emphasises that the parties must comply in full with the preliminary order without any delay. Immediate and unconditional compliance with the order is expected, demonstrating the seriousness and urgency attached to the Tribunal's decision.
3. **Consequences of Non-Compliance:** If a party fails to comply with the preliminary order, particularly regarding providing or procuring security for costs, the Tribunal has the authority to impose a sanction. Specifically, the Tribunal may choose to stay the non-compliant party's claim or counterclaim. A "stay" means that the Tribunal suspends the proceedings related to the non-compliant party's claim or counterclaim until the party complies with the order.
4. **Ensuring Efficacy of the Order:** By imposing potential sanctions for non-compliance, the article aims to ensure the efficacy of the preliminary order. Parties are encouraged to promptly comply with the order to preserve the efficiency and integrity of the arbitral process.
5. **Role of Preliminary Orders in Arbitration:** Preliminary orders are meant to address urgent and immediate issues during the arbitration process. They can help maintain the status

quo, protect parties from harm, preserve evidence, or ensure that the arbitral process proceeds smoothly. The enforceability and compliance with these orders are essential to achieving the intended purposes of granting interim measures.

In summary, Article 1.14 emphasises that any preliminary order issued under Appendix II is binding on the parties, and immediate and unconditional compliance is expected. Failure to comply with an order, especially concerning providing or procuring security for costs, may lead to the Tribunal staying the non-compliant party's claim or counterclaim. This provision ensures the effectiveness of preliminary orders in addressing urgent issues during the arbitration process.

1.15. For the purpose of this Article, reference to the Tribunal also means an Emergency Arbitrator.

Article 1.15 clarifies the scope of the term "Tribunal" by including the "Emergency Arbitrator". Here is an analysis of the key point of this article:

1. Incorporating the Emergency Arbitrator: Article 1.15 specifies that for the purpose of Article 1.14 (which deals with binding preliminary orders), the term "Tribunal" also encompasses the "Emergency Arbitrator". This means that any preliminary order issued by the Emergency Arbitrator under Appendix II will have the same binding nature as an order issued by the full Tribunal.
2. Role of the Emergency Arbitrator: The Emergency Arbitrator is a unique feature of the DIAC Arbitration Rules, providing parties with an avenue to seek urgent interim relief before the full arbitral tribunal is constituted. The Emergency Arbitrator is appointed promptly and has the authority to issue preliminary orders to address immediate and urgent issues that cannot wait for the full tribunal to be formed.
3. Expedited Relief: By including the Emergency Arbitrator within the scope of Article 1.14, the DIAC Arbitration Rules emphasise the importance of immediate compliance with preliminary orders issued during the emergency arbitration phase. This helps ensure that the relief granted by the Emergency Arbitrator is effective and that parties promptly comply with the measures ordered to avoid any prejudice to the arbitral process or parties' rights.
4. Coherency in the Rules: The inclusion of the Emergency Arbitrator within the definition of "Tribunal" in Article 1.15 maintains coherence between the rules governing the conduct of emergency arbitration and the overall arbitral process under the DIAC Arbitration Rules. It clarifies that the compliance requirements and consequences associated with preliminary orders apply equally to both the Emergency Arbitrator and the full arbitral tribunal.

In summary, Article 1.15 ensures that any preliminary order issued by the Emergency Arbitrator is treated similarly to orders issued by the full tribunal. Parties are expected to comply with the preliminary orders issued by the Emergency Arbitrator promptly and without delay to ensure the efficacy of the relief granted during the emergency arbitration phase. This provision underscores the importance of immediate compliance to maintain coherency and effectiveness in the DIAC's arbitration process.

ARTICLE (2) EMERGENCY ARBITRATOR

2.1. A party in need of emergency interim relief may, concurrently with or following the filing of a Request, but prior to the constitution of the Tribunal, submit an application for emergency interim relief to the Centre.

Article 2.1 addresses the procedure for seeking emergency interim relief during the early stages of an arbitration process. Here is an analysis of the key points of this article:

1. **Emergency Interim Relief:** Article 2.1 focuses on “emergency interim relief”, which refers to urgent and temporary measures that a party may seek to address pressing issues that require immediate attention. These measures are typically sought before the formal constitution of the arbitral tribunal, where the need for relief cannot wait for the full arbitral process to unfold.
2. **Timing of Application:** The article clarifies that a party may apply for emergency interim relief “concurrently with or following the filing of a Request”. The “Request” here refers to the formal notice of arbitration submitted by the claimant to the arbitral institution (in this case, the DIAC). This allows parties to seek interim relief at the early stages of the arbitration process, even before the full arbitral tribunal has been constituted.
3. **Application to the Centre:** The party seeking emergency interim relief submits the application directly to the DIAC, which acts as the arbitral institution administering the arbitration. The DIAC will handle the application for interim relief in accordance with its procedures, including appointing an Emergency Arbitrator to hear and decide on the application.
4. **Flexibility in Timing:** By allowing the application for emergency interim relief before the constitution of the Tribunal, Article 2.1 provides parties with greater flexibility in addressing urgent matters. This is particularly important in cases where immediate action is necessary to prevent irreparable harm or maintain the status quo pending the formation of the full tribunal.
5. **Timing of Interim Relief Decision:** Once the Emergency Arbitrator has been appointed, they will consider the application for emergency interim relief and issue a preliminary order. This decision is made expeditiously, usually within a short time frame to address the urgent nature of the matter.
6. **Complementing Regular Arbitration Process:** It is important to note that the application for emergency interim relief under Article 2.1 is separate from the regular arbitration process. The Emergency Arbitrator’s decision only addresses the immediate and urgent issues raised in the application, while the full arbitral tribunal, once constituted, will handle the substantive claims and defences in the arbitration.

In summary, Article 2.1 of the DIAC Arbitration Rules provides parties with the option to seek emergency interim relief promptly and efficiently even before the full arbitral tribunal is formed. This mechanism ensures that urgent issues are addressed promptly, allowing parties to obtain immediate relief to safeguard their rights and interests during the early stages of the arbitration process.

2.2. Concurrently with the submission of the application for emergency interim relief, the applying party shall send a copy of the application to all other parties, unless in doing so it reasonably believes that such notice may jeopardize the efficacy of the application for emergency interim relief and the procedural law applicable to the seat of the arbitration (as agreed by the parties or determined by the Emergency Arbitrator in accordance with Article 2.6 of Appendix II) permits such applications without notice to the other party or parties.

Article 2.2 complements Article 2.1 and addresses the requirement for notice to be given to the other parties when submitting an application for emergency interim relief. Here is an analysis of the key points of this article:

1. **Simultaneous Notice:** Article 2.2 stipulates that the applying party must send a copy of the application for emergency interim relief to all other parties involved in the arbitration. This requirement ensures that all parties are informed about the application and have an opportunity to respond to it or otherwise participate in the process.
2. **Exception for Efficacy:** However, the article provides an exception to the notice requirement. If the applying party reasonably believes that sending notice to the other parties may jeopardise the efficacy of the application for emergency interim relief, it is allowed to refrain from giving such notice.
3. **Consideration of Procedural Law:** Additionally, the article acknowledges that the procedural law applicable to the seat of the arbitration may also impact the notice requirement. If the procedural law allows for applications for emergency interim relief without notice to the other party or parties, the applying party may proceed without sending notice.
4. **Safeguarding the Efficacy of Relief:** The exception for not sending notice is intended to ensure that the effectiveness of the emergency interim relief is not compromised. In certain situations, immediate and confidential action may be necessary to avoid the risk of dissipation of assets, harm to the arbitral process, or other urgent concerns.
5. **Procedural Flexibility:** By allowing applications for emergency interim relief to be made without notice in specific circumstances, the DIAC Arbitration Rules provide a degree of procedural flexibility. This approach ensures that parties can address urgent matters promptly while still safeguarding due process and the rights of all parties involved.
6. **Role of the Emergency Arbitrator:** The Emergency Arbitrator, once appointed, will take into consideration the circumstances surrounding the application, including the decision on whether notice to the other parties is necessary. The Emergency Arbitrator's goal is to maintain fairness and balance in granting interim relief while preserving the integrity of the arbitration process.

In summary, Article 2.2 allows the applying party to submit an application for emergency interim relief without giving notice to the other parties under certain circumstances where notice could undermine the efficacy of the relief sought. This provision ensures that parties have the ability to address urgent issues promptly while respecting the need for fairness and procedural integrity in the arbitration process. The role of the Emergency Arbitrator is crucial in overseeing and managing these applications to strike an appropriate balance between the interests of the parties.

2.3. The application for emergency interim relief shall specify, together with all relevant documentation:

(a) the grounds for requiring the appointment of an Emergency Arbitrator; and

(b) the nature of the relief sought and the reasons why the applying party considers it is entitled to such relief.

Article 2.3 outlines the requirements and contents of the application for emergency interim relief. Here is an analysis of the key points of this article:

1. **Specificity of Application:** Article 2.3 mandates that the application for emergency interim relief must be specific and comprehensive. It should include all necessary details and supporting documentation related to the grounds and nature of the relief sought.
2. **Grounds for Emergency Arbitrator Appointment:** The applying party must clearly state the grounds that justify the appointment of an Emergency Arbitrator. These grounds are the compelling reasons why the applying party believes that immediate relief is necessary before the constitution of the full Tribunal.
3. **Nature of Relief Sought:** The application must also specify the nature of the relief sought. This means defining the type of interim measure or relief the applying party is requesting from the Emergency Arbitrator.
4. **Reasons for Entitlement to Relief:** The applying party is required to provide reasons supporting its belief that it is entitled to the requested interim relief. This could include explaining the urgency of the situation, the potential harm if relief is not granted, and any potential rights that may be violated without immediate action.
5. **Relevant Documentation:** Along with the grounds and reasons, the application must include all relevant documentation that supports the applying party's case. This documentation may include contracts, correspondence, evidence of potential harm, or any other relevant material.
6. **Focus on Urgency:** The essence of the application is to address urgent situations where immediate action is required to safeguard the interests of one or more parties. Therefore, the applying party must clearly highlight the urgency and time-sensitive nature of the situation.
7. **Preliminary Order:** Once the Emergency Arbitrator is appointed, they may issue a preliminary order in support of the interim relief requested. This preliminary order is designed to provide swift action while the full arbitration proceedings are being constituted.

In summary, Article 2.3 mandates that the application for emergency interim relief must be specific and detailed, including the grounds for appointing an Emergency Arbitrator and the reasons justifying the requested relief. The focus is on addressing urgent situations where immediate action is necessary to protect the parties' rights and interests. By providing the Emergency Arbitrator with comprehensive information, the applying party ensures that the Emergency Arbitrator can make an informed decision promptly.

2.4. The application for emergency interim relief shall be accompanied by the payment of a non-refundable registration fee in accordance with Article 1 of Appendix I.

Article 2.4 deals with the payment of a non-refundable registration fee when making an application for emergency interim relief. Here is an analysis of the key points of this article:

1. **Requirement of Registration Fee:** According to Article 2.4, when submitting an application for emergency interim relief, the applying party must pay a non-refundable registration fee. This fee is separate from the regular registration fee applicable to the arbitration proceedings as outlined in Article 1 of Appendix I.
2. **Application Processing:** The payment of the non-refundable registration fee is a prerequisite for the Centre to process and consider the application for emergency interim relief. Without this payment, the application may not be considered by the Centre, and the Emergency Arbitrator may not be appointed.
3. **Registration Fee Amount:** The specific amount of the non-refundable registration fee is determined by Article 1 of Appendix I. Parties are required to refer to the relevant fee table to identify the applicable fee based on the total sum(s) claimed and/or counterclaimed in the arbitration.
4. **Fee Purpose:** The purpose of the non-refundable registration fee is likely to cover administrative expenses related to processing the application for emergency interim relief and appointing the Emergency Arbitrator. It contributes to the efficient administration of the emergency interim relief procedure.
5. **Application Fee Distinct from Advance on Costs:** The non-refundable registration fee for emergency interim relief is distinct from the advance on costs of the arbitration, which is required to cover the fees and expenses of the full Tribunal and the Centre's administrative fees during the entire arbitration process.

In summary, Article 2.4 requires the applying party to pay a non-refundable registration fee when submitting an application for emergency interim relief. This fee ensures that the application is processed by the Centre and that an Emergency Arbitrator can be appointed promptly. The specific amount of the fee is determined based on the fee table in Article 1 of Appendix I.

2.5. If the Arbitration Court is prima facie satisfied that in view of the relevant circumstances it is reasonable to allow such proceeding, the Centre shall seek to appoint the Emergency Arbitrator within 1 day of receipt by the Centre of the application for emergency interim relief submitted in compliance with Articles 2.3 and 2.4 above.

Article 2.5 pertains to the appointment process of an Emergency Arbitrator when an application for emergency interim relief is submitted. Here is an analysis of the key points of this article:

1. **Prompt Appointment:** Article 2.5 emphasises the swift appointment of the Emergency Arbitrator. If the Arbitration Court is prima facie satisfied that the relevant circumstances

warrant allowing the emergency interim relief proceeding, the Centre is obligated to take immediate action.

2. **Centre's Responsibility:** The Centre, upon receipt of the application for emergency interim relief that complies with the requirements specified in Articles 2.3 and 2.4, has the responsibility to promptly seek the appointment of the Emergency Arbitrator.
3. **Timeframe for Appointment:** The Centre must aim to appoint the Emergency Arbitrator within one day of receiving the application. This strict time frame demonstrates the urgent nature of emergency interim relief proceedings and underscores the efficiency of the DIAC Arbitration Rules in addressing emergencies.
4. **Prima Facie Satisfaction:** The Arbitration Court's prima facie satisfaction refers to an initial assessment made by the Court based on the information provided in the application for emergency interim relief. If, upon review of this information, the Court deems that the circumstances support the need for emergency interim relief, the Centre will proceed with the appointment.
5. **Relevance of Relevant Circumstances:** The appointment process relies on the relevance and significance of the relevant circumstances surrounding the application. The nature of the relief sought, the grounds for requiring the appointment of the Emergency Arbitrator, and the reasons justifying the relief are all taken into account.

In summary, Article 2.5 sets a strict timeline for the appointment of an Emergency Arbitrator when an application for emergency interim relief is submitted. Once the Centre receives the application that complies with the necessary requirements, it is obligated to seek the appointment promptly, ideally within one day. This provision ensures that parties in need of urgent interim relief can have their applications addressed swiftly and efficiently.

2.6. The seat of the proceedings for emergency interim relief shall be determined by the Emergency Arbitrator in accordance with Article 20.1, without prejudice to the Tribunal's powers finally to determine the seat of the arbitration.

Article 2.6 deals with the determination of the seat of proceedings for emergency interim relief. Here is a detailed analysis of this article:

1. **Seat of Emergency Arbitration:** The article specifies that the seat of the proceedings for emergency interim relief will be determined by the Emergency Arbitrator. The seat refers to the legal jurisdiction that governs the procedural law and supervisory authority over the arbitration.
2. **Reference to Article 20.1:** The determination of the seat of the proceedings is made "in accordance with Article 20.1". Article 20.1 of the DIAC Arbitration Rules outlines the general provisions concerning the seat of the arbitration. This indicates that the rules and principles for determining the seat of arbitration also apply to the seat of proceedings for emergency interim relief.
3. **Tribunal's Powers:** The article clarifies that the Emergency Arbitrator's decision on the seat of proceedings does not prejudice the powers of the Tribunal (the main arbitral

tribunal appointed to hear the substantive dispute) to finally determine the seat of the arbitration. In other words, the Tribunal retains the authority to decide the seat of the main arbitration, even if the Emergency Arbitrator has determined the seat for the emergency relief proceedings.

4. Separation of Seats: By allowing the Emergency Arbitrator to determine the seat for the emergency proceedings, the DIAC Arbitration Rules potentially allow for a separation of seats between the emergency relief proceedings and the main arbitration. The seat of the main arbitration may be different from the seat where the Emergency Arbitrator conducts the interim relief proceedings.

In summary, Article 2.6 clarifies that the seat of the proceedings for emergency interim relief will be determined by the Emergency Arbitrator in accordance with Article 20.1 of the Rules. This determination is independent of the powers of the main arbitral Tribunal, which retains the authority to finally decide the seat of the main arbitration. This provision allows for flexibility and may result in the emergency proceedings being conducted in a different jurisdiction from the main arbitration.

2.7. The relevant provisions of Article 14 shall apply to the appointment of the Emergency Arbitrator. Unless agreed by all parties, the Emergency Arbitrator shall not act as an arbitrator in any arbitration related to the dispute, including the arbitration in which she/he is acting as an Emergency Arbitrator, or in respect of another dispute that has arisen from the same legal relationship(s).

Article 2.7 deals with the appointment and role of the Emergency Arbitrator. Here is a detailed analysis of this article:

1. Reference to Article 14: The article states that “the relevant provisions of Article 14 shall apply to the appointment of the Emergency Arbitrator”. Article 14 of the DIAC Arbitration Rules sets out the general provisions for the appointment of arbitrators in the main arbitration proceedings. This means that, to the extent applicable, the same procedures for the appointment of arbitrators under Article 14 will also be used for the appointment of the Emergency Arbitrator.
2. Restrictions on Multiple Roles: The article imposes a restriction on the Emergency Arbitrator from acting as an arbitrator in any arbitration related to the same dispute. It explicitly states that the Emergency Arbitrator shall not act as an arbitrator in the main arbitration that involves the same parties and dispute as the emergency relief proceedings. Additionally, the Emergency Arbitrator is barred from serving as an arbitrator in any other dispute arising from the same legal relationship(s) that gave rise to the emergency proceedings.
3. Avoiding Conflicts of Interest: The prohibition on the Emergency Arbitrator from acting in related arbitrations aims to prevent potential conflicts of interest and maintain impartiality in the arbitration process. By preventing the Emergency Arbitrator from having multiple roles in disputes related to the same legal relationship(s), the DIAC rules enhance the perception of fairness and neutrality in the emergency relief proceedings.
4. Party Agreement Exception: The article provides an exception wherein the parties can agree to permit the Emergency Arbitrator to act as an arbitrator in the main arbitration

or in related disputes. This means that if all parties agree to waive the restriction, the Emergency Arbitrator can take on additional roles as an arbitrator.

In summary, Article 2.7 states that the procedures for appointing the Emergency Arbitrator shall follow the relevant provisions of Article 14. It imposes a restriction on the Emergency Arbitrator, barring them from acting as an arbitrator in the main arbitration or in any other dispute arising from the same legal relationship(s) as the emergency relief proceedings. This restriction aims to ensure impartiality and avoid conflicts of interest. However, parties may agree to allow the Emergency Arbitrator to serve in other capacities if they mutually consent to do so.

2.8. Any challenge to the impartiality and independence of the Emergency Arbitrator must be made to the Centre within 2 business days of the notification by the Centre to the parties of her/his appointment and any circumstances disclosed, and the Arbitration Court shall render a decision on the challenge within 2 business days of receipt of such challenge. The requirement to notify all parties of the appointment of the Emergency Arbitrator does not apply when the application is submitted without notice to the other party or parties.

Article 2.8 addresses the procedure for challenging the impartiality and independence of the Emergency Arbitrator. Let us analyse the key points of this article:

1. **Timeframe for Challenging Impartiality:** The article sets a strict timeframe for challenging the impartiality and independence of the Emergency Arbitrator. Any challenge to the Emergency Arbitrator's impartiality must be made within 2 business days of the notification by the Centre to the parties of the Emergency Arbitrator's appointment and any circumstances disclosed. This provision ensures that any challenge is made promptly after the appointment, reducing delays in the emergency proceedings.
2. **Decision by the Arbitration Court:** Once a challenge to the impartiality and independence of the Emergency Arbitrator is received by the Centre, the Arbitration Court is responsible for rendering a decision on the challenge within 2 business days of receipt. The Arbitration Court is the authority that administers the arbitration process under DIAC rules, and its prompt decision on the challenge helps ensure a fair and efficient resolution of any issues related to the Emergency Arbitrator's neutrality.
3. **Exemption from Notification Requirement:** The article provides an exception to the requirement to notify all parties of the Emergency Arbitrator's appointment when the application for emergency interim relief is submitted without notice to the other party or parties. In such cases, the party applying for emergency relief may seek an Emergency Arbitrator's appointment without notifying the other party. This exemption is likely designed to allow for urgent and confidential applications for emergency relief when immediate notice to the other party could jeopardise the efficacy of the relief sought.

In summary, Article 2.8 establishes a time-bound process for challenging the impartiality and independence of the Emergency Arbitrator. The challenge must be made within 2 business days of the notification of the Emergency Arbitrator's appointment, and the Arbitration Court must render a decision on the challenge within the same timeframe. The article also allows for exemptions from the requirement to notify all parties of the Emergency Arbitrator's appointment in certain circumstances to accommodate urgent and confidential applications for emergency relief.

2.9. Unless the Emergency Arbitrator is appointed without notice to the other party or parties, the Emergency Arbitrator shall, as soon reasonably practicable but, in any event, no later than 2 business days from the date of transmission of the file to the Emergency Arbitrator, establish a timetable to decide the application for emergency interim relief. The timetable shall provide a reasonable opportunity to all parties to be heard, be it on written submissions, in person, by telephone or through any other appropriate means of virtual communication including video conferencing. The Emergency Arbitrator shall have the powers vested in the Tribunal under the Rules, including the authority to rule on her/his own jurisdiction.

Article 2.9 governs the procedures and timeline for the Emergency Arbitrator to decide on the application for emergency interim relief. Here is an analysis of the key points of this article:

1. **Timetable for Deciding the Application:** If the Emergency Arbitrator is appointed with notice to the other party or parties, the article requires the Emergency Arbitrator to establish a timetable to decide the application for emergency interim relief. This timetable must be set as soon as reasonably practicable, but it should not exceed 2 business days from the date of transmission of the file to the Emergency Arbitrator. The requirement for a swift timetable is consistent with the nature of emergency relief, which is meant to address urgent situations promptly.
2. **Opportunity for All Parties to be Heard:** The article emphasises that the timetable established by the Emergency Arbitrator should provide a reasonable opportunity for all parties to be heard. This means that parties should have a chance to present their arguments and evidence on the application for emergency relief. The communication methods for being heard can include written submissions, in-person meetings, telephone conferences, or any other appropriate virtual means, such as video conferencing. This ensures that all parties have an opportunity to present their case and that the proceedings are conducted in a fair and transparent manner.
3. **Authority of the Emergency Arbitrator:** The article explicitly states that the Emergency Arbitrator has the powers vested in the Tribunal under the DIAC Arbitration Rules. This includes the authority to rule on her/his own jurisdiction, meaning that the Emergency Arbitrator can decide whether they have the authority to hear the application for emergency interim relief. The Emergency Arbitrator's powers under the DIAC Rules help ensure that they can effectively and comprehensively address the parties' urgent needs for interim relief.

In summary, Article 2.9 outlines the procedures and timeline for the Emergency Arbitrator to decide on an application for emergency interim relief. The Emergency Arbitrator must establish a timetable to decide the application, ensuring a reasonable opportunity for all parties to be heard using various communication methods. The Emergency Arbitrator also possesses the same powers as the Tribunal under the DIAC Rules, including the authority to decide on their own jurisdiction. These provisions help ensure an efficient and fair resolution of applications for emergency interim relief.

2.10. The Emergency Arbitrator may order emergency interim relief in accordance with the provisions of Article 1 of Appendix II. The Emergency Arbitrator shall issue any preliminary order in support of such measures as soon as reasonably practicable, from the date of transmission of the

file to Emergency Arbitrator, having due regard to the nature of the relief sought, the timetable established for the determination of the application and whether or not the application is being made with notice. The Emergency Arbitrator may also decide to grant the relief sought on an extemporaneous basis with detailed reasoning to follow.

Article 2.10 deals with the authority and powers of the Emergency Arbitrator to order emergency interim relief. Here is an analysis of the key points of this article:

1. **Authority to Order Emergency Interim Relief:** The article explicitly states that the Emergency Arbitrator has the authority to order emergency interim relief, which includes the measures specified in Article 1 of Appendix II. These measures are temporary measures that the Emergency Arbitrator may order to protect the parties' rights and preserve the status quo pending the resolution of the dispute through arbitration.
2. **Timing of Issuing Preliminary Order:** The article requires the Emergency Arbitrator to issue any preliminary order in support of emergency interim relief as soon as reasonably practicable. The timing of issuing the preliminary order is crucial because emergency interim relief is sought to address urgent and time-sensitive situations. The Emergency Arbitrator must act promptly to ensure the effectiveness of the relief ordered.
3. **Consideration of Nature of Relief and Application:** The Emergency Arbitrator must have due regard to the nature of the relief sought and the specific circumstances of the application. The urgency and nature of the requested relief will be taken into account when deciding the timing of issuing the preliminary order. The Emergency Arbitrator's decision should align with the urgency and circumstances of the particular case.
4. **Extemporaneous Basis with Detailed Reasoning:** In certain situations, the Emergency Arbitrator may decide to grant the relief sought on an extemporaneous basis. In such cases, the Emergency Arbitrator will provide detailed reasoning for the decision at a later stage. This approach allows the Emergency Arbitrator to promptly address the parties' urgent needs for relief while ensuring that a comprehensive and reasoned decision is made subsequently.

In summary, Article 2.10 empowers the Emergency Arbitrator to order emergency interim relief as provided in Article 1 of Appendix II. The Emergency Arbitrator is required to act promptly when issuing any preliminary order in support of such measures, taking into consideration the nature of the relief sought, the application's timing, and whether it was made with or without notice to the other party. Additionally, in certain cases, the Emergency Arbitrator may grant relief on an extemporaneous basis with detailed reasoning to follow, ensuring both expediency and thoroughness in the decision-making process.

2.11. The Emergency Arbitrator shall issue any order in accordance with Article 34.6, which shall as soon as reasonably practicable be communicated to the parties by the Centre.

Article 2.11 addresses the issuance and communication of orders by the Emergency Arbitrator. Here is an analysis of this article:

1. **Issuance of Orders:** According to Article 2.11, the Emergency Arbitrator is authorised to issue orders to grant or deny emergency interim relief as provided in Article 1 of Appendix

II. These orders may include orders to maintain or restore the status quo, prevent harm, preserve assets, or secure the costs of the arbitration, among others.

2. Reference to Article 34.6: The article references Article 34.6, which pertains to the signing of awards in arbitration. By invoking Article 34.6, it indicates that the orders issued by the Emergency Arbitrator are to be treated in a manner similar to awards. This means that the orders should be in writing and signed by the Emergency Arbitrator, following the applicable procedural requirements.
3. Communication by the Centre: After the issuance of the order, the Centre, which is responsible for administering the arbitration proceedings, shall communicate the order to the parties as soon as reasonably practicable. The timely communication of the order is essential to ensure that the parties are promptly aware of the relief granted or denied and can take appropriate actions accordingly.
4. Role of the Centre: The Centre plays a crucial role in the administration of the arbitration, including the appointment of the Emergency Arbitrator and communication of orders. Its involvement ensures the efficient and orderly conduct of emergency arbitration proceedings.

In summary, Article 2.11 empowers the Emergency Arbitrator to issue orders for emergency interim relief as provided in Article 1 of Appendix II. These orders should be made in accordance with Article 34.6, and the Centre is responsible for promptly communicating the orders to the parties. The issuance and communication of such orders play a significant role in ensuring that emergency interim relief is granted or denied in a timely and efficient manner during the arbitration process.

2.12. The appointment of the Emergency Arbitrator shall be considered revoked and her/his powers shall cease following the constitution of the Tribunal.

Article 2.12 deals with the termination of the Emergency Arbitrator's appointment and powers. Here is an analysis of this article:

1. Appointment Revoked: The article states that the appointment of the Emergency Arbitrator shall be considered revoked. This means that the authority and role of the Emergency Arbitrator come to an end with the constitution of the main arbitral tribunal.
2. Cessation of Powers: Along with the revocation of the appointment, the powers of the Emergency Arbitrator also cease once the main arbitral tribunal is constituted. The Emergency Arbitrator's authority to make decisions and orders for emergency interim relief is limited to the period before the tribunal is formed.
3. Constitution of the Tribunal: The termination of the Emergency Arbitrator's appointment and powers is triggered by the constitution of the main arbitral tribunal. The main arbitral tribunal consists of the permanent arbitrators appointed to hear the case in its entirety.
4. Transition from Emergency Arbitration to Regular Arbitration: Once the main arbitral tribunal is constituted, the case transitions from emergency arbitration to regular arbitration proceedings. The tribunal will then assume full authority to hear and decide on all matters relating to the dispute.

In summary, Article 2.12 establishes that the appointment of the Emergency Arbitrator and their powers come to an end once the main arbitral tribunal is constituted. This provision ensures a smooth transition from emergency arbitration to regular arbitration proceedings, with the main tribunal taking over the case to hear and decide on all issues until a final award is rendered.

2.13. The preliminary order issued by the Emergency Arbitrator shall cease to be binding:

- (a) if the Tribunal discharges such order in accordance with Article 1.6 of Appendix II;**
- (b) if the underlying arbitration is terminated prior to the issuance of the Final Award; or**
- (c) if the Final Award issued by the Tribunal does not give permanent effect to such order.**

Article 2.13 addresses the circumstances under which the preliminary order issued by the Emergency Arbitrator ceases to be binding. Here is an analysis of this article:

1. **Discharge by the Tribunal:** The preliminary order issued by the Emergency Arbitrator may cease to be binding if the main arbitral tribunal, which is constituted after the Emergency Arbitrator’s appointment, decides to discharge such order. This means that the main tribunal has the authority to review and potentially modify or revoke the interim measures ordered by the Emergency Arbitrator.
2. **Termination of the Underlying Arbitration:** If the arbitration is terminated before the issuance of the Final Award, the preliminary order ceases to be binding. This may occur if the parties settle their dispute amicably, or if for any other reason the arbitration is brought to an end without a final decision on the merits.
3. **Non-Inclusion in Final Award:** The preliminary order ceases to be binding if the Final Award issued by the main arbitral tribunal does not give permanent effect to such order. This means that the Emergency Arbitrator’s interim measures may not be incorporated or reflected in the final decision on the merits issued by the main tribunal.

In summary, Article 2.13 outlines the situations in which the preliminary order issued by the Emergency Arbitrator ceases to be binding. It can happen if the main arbitral tribunal discharges the order, if the underlying arbitration is terminated before a final award, or if the final award does not give permanent effect to the Emergency Arbitrator’s interim measures. This article ensures that the Emergency Arbitrator’s powers are limited to the period before the constitution of the main tribunal and that the main tribunal has the authority to review and modify any interim measures if deemed appropriate.

2.14. The costs associated with the application pursuant to this Article may initially be apportioned by the Emergency Arbitrator in the preliminary order, subject to the powers of the Tribunal to make a final determination of the apportionment of such costs under Article 36.3.

Article 2.14 addresses the allocation of costs associated with the application for emergency interim relief. Here is an analysis of this article:

1. The article specifies that the costs related to the application for emergency interim relief may be initially apportioned by the Emergency Arbitrator in the preliminary order. In other words, the Emergency Arbitrator has the authority to decide how the costs of the emergency interim relief proceedings shall be divided between the parties at the outset.
2. However, this initial apportionment is subject to the final determination of the apportionment of such costs by the main arbitral tribunal. Once the main tribunal is constituted and the arbitration proceedings continue, the main tribunal has the power to reexamine and make a final determination on how the costs associated with the application for emergency interim relief should be shared between the parties.

In summary, Article 2.14 allows the Emergency Arbitrator to make an initial allocation of costs related to the emergency interim relief application in the preliminary order. However, the main arbitral tribunal, once constituted, retains the authority to review and make a final decision on the apportionment of costs during the full arbitration proceedings. This provision ensures that the allocation of costs can be reconsidered and adjusted by the main tribunal if deemed necessary or appropriate.

2.15. By agreeing to arbitration under the Rules, the parties are deemed to have expressly agreed to the appointment and the powers of the Emergency Arbitrator. The provisions of this Article shall not apply if the parties have agreed so in writing.

Article 2.15 deals with the parties' agreement to the appointment and powers of the Emergency Arbitrator. Here is an analysis of this article:

1. The article states that by agreeing to arbitration under the DIAC Arbitration Rules, the parties are deemed to have expressly agreed to the appointment and the powers of the Emergency Arbitrator. In other words, when parties opt for arbitration under these rules, they are implicitly accepting that, if necessary, an Emergency Arbitrator may be appointed to address urgent issues before the main arbitral tribunal is constituted.
2. This provision ensures that the parties are aware of and consent to the availability of emergency interim relief through the Emergency Arbitrator mechanism provided by the DIAC Arbitration Rules. It reinforces the importance of this mechanism for resolving urgent matters that may arise in the course of arbitration proceedings.
3. However, the second part of the article introduces an exception. It states that the provisions of this Article (referring to the appointment and powers of the Emergency Arbitrator) shall not apply if the parties have agreed otherwise in writing. In other words, if the parties, through a separate agreement or arbitration clause, explicitly exclude the application of the Emergency Arbitrator mechanism provided by Appendix II of the DIAC Arbitration Rules, then the Emergency Arbitrator provisions will not be binding on them.
4. This exception recognises the principle of party autonomy in arbitration, where the parties have the freedom to tailor their arbitration agreement to their specific needs and requirements. It allows parties to choose not to be bound by the Emergency Arbitrator mechanism if they do not consider it suitable for their dispute resolution needs.

In summary, Article 2.15 establishes that, by agreeing to arbitration under these rules, parties are deemed to have accepted the appointment and powers of the Emergency Arbitrator. However, this provision is subject to any explicit agreement to the contrary in writing between the parties. If the parties have expressly excluded the application of the Emergency Arbitrator mechanism in their arbitration agreement, then the provisions of this article will not apply.

ARTICLE (3) CONCILIATION PROCEEDINGS

3.1. Any party wishing to commence a conciliation under the Rules shall submit to the Centre an application for conciliation by email or in accordance with the terms of use of any electronic case management system implemented by the Centre.

Article 3.1 pertains to the initiation of conciliation proceedings under the Rules. Here is an analysis of this article:

1. The article outlines the procedure for a party to commence a conciliation under the DIAC Arbitration Rules. It states that any party wishing to initiate conciliation proceedings must submit an application for conciliation to the Centre. The application can be sent either by email or through any electronic case management system implemented by the Centre.
2. This provision underscores the importance of officially commencing the conciliation process by submitting a formal application to the DIAC Centre. The application serves as the starting point for the conciliation proceedings, and its submission triggers the involvement of the Centre in administering and overseeing the process.
3. The flexibility provided by allowing the application to be submitted by email or through an electronic case management system is in line with modern practices and technological advancements. It ensures that parties can initiate the process efficiently and expeditiously, making it convenient for them to comply with the requirements of the DIAC Arbitration Rules.
4. It is worth noting that conciliation is a voluntary, non-binding dispute resolution process where parties seek to reach an amicable settlement with the assistance of a neutral third party (the conciliator). The DIAC Arbitration Rules recognise this option and provide a structured framework for parties to engage in conciliation, should they choose this method of dispute resolution.

In conclusion, Article 3.1 specifies the method by which parties can initiate conciliation proceedings. By submitting an application for conciliation to the Centre, parties signal their intent to pursue conciliation as a means of resolving their dispute, and the Centre will then proceed to administer the process in accordance with the DIAC Arbitration Rules.

3.2. The application shall include the full names and complete contact details of the parties, a description of the facts and relevant circumstances of the dispute and an estimate of the sum claimed or in dispute, together with any supporting documents.

Article 3.2 outlines the specific requirements for the content of the application when initiating conciliation proceedings. Let us analyse this article:

1. The article stipulates the essential elements that must be included in the application for conciliation. When a party wishes to commence conciliation under the DIAC Arbitration Rules, the application submitted to the Centre must contain the following information:
 - a. Full Names and Complete Contact Details of the Parties: The application should clearly identify all the parties involved in the dispute, providing their full legal names and accurate contact details, such as addresses, email addresses, and telephone numbers. This information is crucial for effective communication and coordination throughout the conciliation process.
 - b. Description of Facts and Relevant Circumstances of the Dispute: The application must provide a comprehensive and detailed description of the facts and relevant circumstances that form the basis of the dispute. This description should help the Centre and the appointed conciliator to understand the nature and scope of the disagreement between the parties.
 - c. Estimate of the Sum Claimed or in Dispute: The application should include an estimation of the monetary value of the claims or disputes at issue. This estimate is essential for the Centre to determine the appropriate conciliation process and to facilitate the selection of a suitable conciliator with relevant expertise.
 - d. Supporting Documents: The application must be accompanied by any relevant supporting documents that substantiate the claims or disputes mentioned in the application. These documents could include contracts, agreements, invoices, correspondence, or any other evidence relevant to the dispute.
2. By specifying the necessary elements to be included in the application, this article ensures that parties provide the Centre with the essential information required to initiate and administer the conciliation proceedings effectively. A comprehensive application facilitates the smooth commencement of the conciliation process and helps the Centre and the conciliator to assess the case promptly and proceed with the conciliation in a structured manner.

In conclusion, Article 3.2 sets out the essential content that must be included in the application for conciliation. Parties seeking to commence conciliation under the DIAC Rules must provide complete and detailed information about the parties, the dispute, and relevant supporting documents to initiate the process properly and efficiently.

3.3. Together with the application, the party shall make payment of the registration fee specified in the Table in force on the date the application is submitted.

Article 3.3 outlines the requirement for the payment of a registration fee when submitting an application for conciliation. Let us analyse this article:

According to Article 3.3, a party seeking to initiate conciliation under the DIAC Arbitration Rules must make payment of the registration fee specified in the Table of Fees and Costs. The registration fee is applicable and payable at the time the application for conciliation is submitted to the Centre.

Key points to note from this article:

1. **Payment of Registration Fee:** The party initiating the conciliation process is responsible for paying the registration fee. This fee is a non-refundable charge and is applicable to cover administrative expenses and the costs associated with administering the conciliation proceedings.
2. **Table of Fees and Costs:** The specific amount of the registration fee is determined based on the Table of Fees and Costs in force on the date the application is submitted. The Table sets out the applicable fees for various stages and aspects of the conciliation process.
3. **Timing of Payment:** The registration fee must be paid together with the submission of the application. Parties should ensure that the required fee is remitted to the Centre at the time of initiating the conciliation.
4. **By requiring the payment of a registration fee, this article ensures that parties have a financial commitment to the conciliation process and helps cover the administrative expenses of the Centre in handling the case. It also serves as a measure to deter frivolous or unfounded claims, as parties need to bear the cost of initiating conciliation.**

In conclusion, Article 3.3 mandates the payment of a registration fee at the time of submitting an application for conciliation. This fee is non-refundable and is based on the Table of Fees and Costs applicable at the time of the application. By requiring the payment of the registration fee, the article ensures parties' financial commitment to the conciliation process and helps cover the administrative costs of the Centre.

3.4. The Centre shall notify the application for conciliation to the other party using the contact details provided in the application.

Article 3.4 pertains to the notification process in conciliation proceedings. Let us analyse this article:

According to Article 3.4, once a party submits an application for conciliation to the Centre, the Centre has a responsibility to notify the other party of the application. The notification shall be made using the contact details provided by the initiating party in their application.

Key points to note from this article:

1. **Notification Process:** The Centre plays a pivotal role in the notification process. It is tasked with ensuring that the other party is made aware of the application for conciliation. This

is a critical step to commence the conciliation proceedings and to provide the other party with an opportunity to participate in the process.

2. **Use of Contact Details:** The Centre relies on the contact details provided by the initiating party in their application to reach out to the other party. It is important for the initiating party to provide accurate and up-to-date contact information to ensure that the other party is promptly notified.
3. **Ensuring Communication:** Proper communication is essential in conciliation proceedings to ensure that all parties are aware of the process and can effectively participate. The notification allows the other party to respond to the application and participate in the conciliation process if they wish to do so.

Overall, Article 3.4 emphasises the importance of proper communication in the conciliation process. The Centre is responsible for notifying the other party about the application for conciliation, using the contact details provided in the initiating party's application. This notification ensures that all parties are informed and can participate effectively in the conciliation proceedings.

3.5. Should the other party agree to conciliation, it shall submit a reply to the application for conciliation by email or in accordance with the terms of use of any electronic case management system implemented by the Centre within 15 days following notification.

Article 3.5 deals with the response of the other party to an application for conciliation. Let us analyse this article:

According to Article 3.5, if the other party agrees to participate in the conciliation process, it must submit a reply to the application for conciliation within 15 days following notification. The reply should be sent to the Centre by email or through any electronic case management system that the Centre has implemented.

Key points to note from this article:

1. **Response Timeframe:** The article specifies a 15-day timeframe within which the other party must respond to the application for conciliation. This period starts from the date of notification received from the Centre.
2. **Agreement to Participate:** The provision assumes that the other party, upon receiving the notification of the application for conciliation, has the option to either agree or decline to participate in the conciliation process. If the other party agrees, they must submit a formal reply within the specified timeframe.
3. **Means of Communication:** The response is to be sent by email or through the electronic case management system, which indicates the Centre's adoption of modern communication methods to facilitate the conciliation process.
4. **Importance of Timely Response:** The 15-day timeframe underscores the significance of prompt communication and commitment to the conciliation process. A timely response enables the proceedings to move forward efficiently.

Overall, Article 3.5 emphasises the importance of prompt and clear communication in the conciliation process. It sets a specific timeframe within which the other party must respond to the application for conciliation if they wish to participate. This provision ensures that the parties engage in the conciliation proceedings in a timely manner, contributing to the efficiency and effectiveness of the process.

3.6. Following the submission of a reply, the matter shall be submitted to one conciliator, to be appointed by the Arbitration Court, unless the parties agree to a panel of three conciliators.

Article 3.6 pertains to the appointment of conciliators in the conciliation process. Let us analyse this article:

According to Article 3.6, after the other party submits a reply agreeing to conciliation, the matter shall be submitted to one conciliator, who will be appointed by the Arbitration Court. However, there is an exception to this default appointment process. The parties have the option to agree to a panel of three conciliators if they prefer this approach over the appointment of a single conciliator.

Key points to note from this article:

1. **Default Appointment:** By default, the conciliation process will proceed with the appointment of a single conciliator chosen by the Arbitration Court. This allows for a streamlined and efficient process, especially in cases where the parties agree on the choice of one conciliator.
2. **Panel of Three Conciliators:** The article offers an alternative approach, where the parties can choose a panel of three conciliators instead of a single conciliator. This option may be preferred when the parties believe that a three-member panel could bring diverse perspectives and expertise to the conciliation process.
3. **Arbitration Court's Role:** The appointment of the conciliator or the panel of conciliators is carried out by the Arbitration Court. The Arbitration Court plays a crucial role in the administrative aspects of the conciliation process.
4. **Flexibility:** The provision demonstrates flexibility in the conciliation process, allowing the parties to decide on the number of conciliators they prefer. This flexibility is conducive to tailoring the process to suit the specific needs and preferences of the parties involved.

Overall, Article 3.6 grants the parties the option to choose between a single conciliator appointed by the Arbitration Court and a panel of three conciliators. This flexibility allows the parties to select the approach they believe will be most effective in resolving their dispute through conciliation.

3.7. The relevant provisions of Article 14 shall apply to the appointment of the conciliator(s) with any changes that the Centre deems necessary. Unless agreed by all parties, neither conciliator appointed under this Article 3 shall act as an arbitrator in any arbitration related to the dispute

subject to the conciliation proceedings or in respect of another dispute that has arisen from the same legal relationship(s).

Article 3.7 pertains to the appointment of conciliators and the scope of their involvement in other proceedings. Let us analyse this article:

1. According to Article 3.7, the appointment of the conciliator(s) is subject to the relevant provisions of Article 14 of the DIAC Arbitration Rules. Article 14 deals with the appointment and challenge of arbitrators, and it applies to conciliators with any necessary modifications. This means that the same procedures and principles that govern the appointment and challenge of arbitrators will be adapted and applied to the appointment of conciliators.
2. Furthermore, the article imposes a restriction on the role of the appointed conciliator(s). Unless all parties agree, a conciliator appointed under Article 3.7 shall not act as an arbitrator in any arbitration related to the dispute subject to the conciliation proceedings or in respect of any other dispute that has arisen from the same legal relationship(s).

Key points to note from this article:

1. Application of Article 14: The procedures and principles outlined in Article 14 of the DIAC Arbitration Rules, which pertain to the appointment and challenge of arbitrators, will apply to the appointment of conciliators. However, necessary modifications may be made to adapt these provisions to the conciliation process.
2. Non-Arbitrator Role: The conciliator(s) appointed under Article 3.7 is restricted from acting as an arbitrator in any related arbitration arising from the same dispute or legal relationship(s) unless all parties agree otherwise. This limitation ensures that the conciliator's role is confined to the conciliation process and avoids any potential conflicts of interest.
3. Independence and Neutrality: The restriction on the conciliator(s) acting as an arbitrator in related proceedings enhances the independence and neutrality of the conciliation process. It prevents any potential bias that may arise if the same person were to serve as both conciliator and arbitrator in different stages of the dispute resolution process.

Overall, Article 3.7 ensures that the appointment of conciliators follows the principles outlined in Article 14, while also preserving the integrity and impartiality of the conciliation process by preventing conciliators from assuming an arbitrator role in related proceedings without the consent of all parties involved.

3.8. Either party may object to the conciliator appointed by the Arbitration Court within 7 days of the notification of such appointment. The Arbitration Court shall consider the objection and if it is upheld shall appoint a replacement conciliator.

Article 3.8 deals with the procedure for objecting to the appointment of a conciliator. Let us analyse this article:

1. According to Article 3.8, either party has the right to object to the conciliator appointed by the Arbitration Court within 7 days of receiving the notification of such appointment. This allows the parties to raise any concerns they may have regarding the conciliator's independence, impartiality, or any other relevant factors that could affect the effectiveness of the conciliation process.
2. Upon receiving an objection, the Arbitration Court will consider the grounds raised in the objection. If the court finds that the objection is valid and well-founded, it will uphold the objection. In such a case, the Arbitration Court will proceed to appoint a replacement conciliator who meets the necessary requirements and possesses the qualities desired by the parties.

Key points to note from this article:

1. **Right to Object:** The parties have the right to object to the appointment of a conciliator if they have reasonable grounds to do so. This ensures that the parties have confidence in the conciliation process and that any potential concerns about the conciliator's suitability are addressed.
2. **Time Limit:** The objection must be raised within 7 days from the notification of the conciliator's appointment. This time limit ensures that any objections are raised promptly and allows for the timely resolution of any disputes over the conciliator's appointment.
3. **Arbitration Court's Consideration:** The Arbitration Court is responsible for evaluating the validity and merit of the objection. The court's role is to impartially assess the objection and make a determination based on the information provided by the objecting party.
4. **Replacement Conciliator:** If the objection is upheld, the Arbitration Court will appoint a new conciliator to replace the objected conciliator. The replacement conciliator will be chosen in a manner that addresses the concerns raised in the objection and ensures the continuation of an effective and unbiased conciliation process.

Overall, Article 3.8 establishes a fair and transparent procedure for parties to raise objections to the appointed conciliator and ensures that any valid objections are addressed promptly to maintain the integrity and effectiveness of the conciliation proceedings.

3.9. A copy of the file shall be transmitted to the conciliator upon full payment of the Centre's administrative fees and the conciliator's fees and expenses, as fixed by the Arbitration Court.

Article 3.9 pertains to the transmission of the file to the appointed conciliator. Let us analyse this article:

1. Article 3.9 states that a copy of the file shall be transmitted to the conciliator once the following conditions are met:
 - a. **Full Payment:** The parties are required to make full payment of the Centre's administrative fees and the conciliator's fees and expenses before the file is transmitted. This ensures that the conciliator's services are adequately compensated and that the administrative costs incurred by the Centre are covered.

- b. **Fixed by Arbitration Court:** The fees and expenses of the conciliator are fixed by the Arbitration Court. This means that the court has the authority to determine the reasonable and appropriate compensation for the conciliator's services. The fees may be determined within the limits specified in the applicable DIAC rules or any other relevant guidelines.
2. Once the payment is completed and the fees are fixed by the Arbitration Court, the Centre will provide the appointed conciliator with a copy of the file relevant to the dispute. The file typically contains all the documents, evidence, and information related to the dispute, which the conciliator will need to review thoroughly to understand the issues and engage in the conciliation process effectively.

Key points to note from this article:

1. **Payment and Compensation:** The article emphasises the importance of timely payment and reasonable compensation for the conciliator's services. Adequate compensation ensures the conciliator's impartiality and commitment to the process.
2. **Role of Arbitration Court:** The Arbitration Court plays a crucial role in fixing the conciliator's fees and expenses. This role helps maintain transparency and ensures that the fees are determined fairly, taking into consideration the complexity and nature of the dispute.
3. **File Transmission:** Providing the appointed conciliator with a complete file allows them to be fully informed about the dispute's background, claims, and relevant details, enabling them to conduct the conciliation process effectively.

Overall, Article 3.9 ensures that the appointed conciliator has access to the necessary information to facilitate the conciliation process and establishes a clear framework for compensation and payment related to the conciliator's services.

3.10. The conciliator shall have absolute discretion to determine the procedure of the conciliation process, giving each party a reasonable opportunity to present their respective positions and having due regard to the relevant circumstances. The conciliator, at any stage of the conciliation proceedings, with the consent of the parties, may make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of reasons.

Article 3.10 pertains to the powers and discretion of the appointed conciliator during the conciliation process. Let us analyse this article:

1. **Discretion in Procedure:** The article provides the conciliator with absolute discretion to determine the procedure of the conciliation process. This means that the conciliator has the authority to decide how the conciliation will be conducted, including the sequence of meetings, the use of written communications, the examination of evidence, and other procedural matters. The conciliator is expected to ensure that each party is given a reasonable opportunity to present their respective positions.
2. **Settlement Proposals:** The conciliator is authorised to make proposals for a settlement of the dispute at any stage of the conciliation proceedings, subject to the consent of the

parties. These settlement proposals may be made orally and need not be accompanied by a written statement of reasons. This flexibility allows the conciliator to engage with the parties in an informal and creative manner to explore potential settlement options.

Key points to note from this article:

1. **Conciliator's Discretion:** The conciliator is vested with significant discretion in managing the conciliation process. This discretion allows the conciliator to tailor the proceedings to the specific needs and circumstances of the parties involved in the dispute.
2. **Informal Nature of Conciliation:** Conciliation is typically less formal and adversarial than arbitration or litigation. The article reflects this by allowing the conciliator to propose settlement options informally, without the need to provide detailed reasons for the proposals.
3. **Consensual Approach:** The conciliator's role is to facilitate communication between the parties and assist them in reaching an amicable resolution. The requirement for consent before making settlement proposals ensures that parties have the freedom to accept or reject such proposals without feeling compelled.

Overall, Article 3.10 underscores the flexibility and informality of the conciliation process under the DIAC rules. The conciliator is given substantial discretion in conducting the proceedings and may propose settlement options without adhering to strict formalities, all in pursuit of fostering an atmosphere conducive to reaching a mutually acceptable resolution to the dispute.

3.11. The conciliator shall in any event conclude the conciliation proceedings within 2 months from the date of the transmission of the file to the conciliator by the Centre, unless extended by the agreement of the parties.

Article 3.11 sets a timeframe for the conclusion of conciliation proceedings. Let us analyse this article:

1. **Timeframe for Conclusion:** According to this article, the conciliator is required to conclude the conciliation proceedings within two months from the date of the transmission of the case file to the conciliator by the Centre. This provision imposes a specific time limit for the conciliation process, aiming to promote efficiency and timely resolution of the dispute.
2. **Possibility of Extension:** The article allows for an extension of the two-month timeframe if all parties agree to such an extension. This provision recognises that certain disputes may be more complex or involve numerous issues that may require additional time for fruitful conciliation efforts. By permitting extensions through party agreement, the DIAC Rules allow for flexibility in cases where more time is necessary for a successful resolution.

Key points to note from this article:

1. **Efficient Resolution:** The DIAC Rules aim to facilitate the prompt resolution of disputes through conciliation. The two-month timeframe encourages the parties and the conciliator to actively engage in the process and work towards a timely resolution.

2. **Balancing Time and Flexibility:** While the article sets a clear timeframe for concluding the conciliation proceedings, it also recognises the need for flexibility. Parties may extend the time limit if they believe that additional time would be beneficial to reach an agreement.
3. **Party Autonomy:** The article emphasises the importance of party autonomy in the conciliation process. Parties have the power to extend the timeframe, ensuring that they have control over the duration of the conciliation proceedings.

Overall, Article 3.11 highlights the DIAC's commitment to efficient and timely dispute resolution through conciliation. By providing a default timeframe and allowing for extensions through party agreement, the DIAC Rules aim to strike a balance between efficiency and flexibility, encouraging parties to engage constructively and work towards resolving their disputes amicably within a reasonable period.

3.12. If the parties agree on a settlement of the dispute, the conciliator shall facilitate the preparation of a formal settlement agreement recording the settlement between the parties.

Article 3.12 deals with the role of the conciliator in facilitating the preparation of a formal settlement agreement when the parties reach an agreement during the conciliation process. Let us analyse this article:

1. **Settlement Facilitation:** This article emphasises the proactive role of the conciliator in helping the parties formalise their settlement agreement. When the parties successfully reach an agreement through conciliation, the conciliator is responsible for facilitating the preparation of a formal settlement agreement.
2. **Recording the Settlement:** The settlement agreement must be formal and in writing, recording the terms of the agreement reached between the parties during the conciliation proceedings. A written agreement helps ensure clarity, enforceability, and avoids potential future disputes over the terms of the settlement.

Key points to note from this article:

1. **Supportive Role of the Conciliator:** The DIAC Rules recognise that the conciliator plays an active and supportive role in the conciliation process. The conciliator's assistance in preparing the settlement agreement is crucial in formalising the parties' agreement and ensuring that it accurately reflects their intentions.
2. **Written and Formal Agreement:** The requirement for a formal written settlement agreement ensures that the terms of the settlement are documented clearly, avoiding any misunderstandings or ambiguities. A written agreement also enhances the enforceability of the settlement, as parties have a clear record of their commitments.
3. **Preserving Confidentiality:** While this article does not explicitly mention confidentiality, settlement agreements are often considered confidential in many jurisdictions. Therefore, the conciliator should take appropriate measures to protect the confidentiality of the settlement discussions and the terms agreed upon by the parties.

Overall, Article 3.12 highlights the importance of a well-drafted, written settlement agreement in the conciliation process. The conciliator's involvement in facilitating the preparation of the agreement adds value to the resolution process and helps ensure that the parties' settlement is appropriately documented and binding.

3.13. If the attempt at conciliation fails, the conciliator shall terminate the conciliation proceedings without prejudice to the merits of the dispute. In such case, at the request of either party, the Centre shall issue a certificate that the attempt at conciliation failed and the conciliation proceedings were terminated without any further comments or consideration of the merits.

Article 3.13 addresses the scenario when conciliation attempts fail and provides the procedural steps that follow. Let us analyse this article:

1. **Termination of Conciliation Proceedings:** This article states that if the attempt at conciliation fails, the conciliator shall terminate the conciliation proceedings. The termination is without prejudice to the merits of the underlying dispute. This means that the failure of conciliation does not affect the parties' substantive rights or their ability to pursue arbitration or other dispute resolution methods.
2. **Certificate of Failed Conciliation:** The article further states that upon the request of either party, the Centre (DIAC) shall issue a certificate confirming that the attempt at conciliation failed, and the conciliation proceedings were terminated. Importantly, the certificate will not include any comments or consideration of the merits of the dispute. This certificate serves as evidence of the parties' participation in conciliation and the subsequent failure of the process.

Key points to note from this article:

1. **Finality of Conciliation Attempt:** The termination of the conciliation proceedings, without prejudice to the merits, ensures that the parties can move on to pursue other forms of dispute resolution, such as arbitration, without any impediments resulting from the failed conciliation attempt.
2. **Neutrality of Certificate:** The certificate issued by the Centre is neutral and does not comment on the merits of the dispute or the reasons for the failure of conciliation. It simply confirms the unsuccessful attempt at conciliation, providing a factual record of the outcome.
3. **Preserving Confidentiality:** Although not explicitly mentioned, it is customary in many jurisdictions that conciliation proceedings are confidential. The certificate's content is limited to confirming the failure of conciliation and does not disclose any confidential information or discussions from the conciliation process.

Overall, Article 3.13 reflects the process to conclude conciliation proceedings in the event of a failure to reach a settlement. The article ensures that the termination of conciliation does not have adverse effects on the parties' substantive rights and provides them with a neutral certificate to proceed with alternative dispute resolution mechanisms if they wish to do so.

ARTICLE (4) APPOINTING AUTHORITY PROCEDURE

4.1. Where the parties have so agreed, the Centre shall, upon an application by a party, appoint adjudicator(s), arbitrator(s) and/or expert(s) or decide on challenges against such appointment(s) or any challenge in matters that are not otherwise subject to the Rules. In such cases, the procedure shall be governed by the relevant provisions of the Rules with any changes that the Centre deems necessary.

Article 4.1 deals with the appointment of adjudicators, arbitrators, and/or experts when the parties have agreed to such appointment or when there are challenges related to these appointments or other matters that are not otherwise subject to the Rules. Let us analyse this article:

1. **Agreement of the Parties:** This article applies when the parties have agreed to the appointment of adjudicators, arbitrators, and/or experts outside of the standard arbitration process governed by the DIAC Arbitration Rules. It allows parties to choose specialised experts or other neutrals to resolve specific issues that may arise during the course of arbitration.
2. **Application for Appointment or Challenges:** If the parties have agreed to such appointments, any party may submit an application to the Centre for the appointment of the relevant adjudicator(s), arbitrator(s), or expert(s). Similarly, if there are challenges to any existing appointment(s) made by the parties, the Centre shall decide on those challenges.
3. **Applicability of the Rules:** Despite the specific agreement between the parties, the procedure for appointing adjudicators, arbitrators, or experts and handling challenges related to such appointments is governed by the relevant provisions of the DIAC Arbitration Rules. However, the Centre may introduce necessary changes to the procedure as deemed appropriate for these specialised appointments.

Key points to note from this article:

1. **Flexibility in Appointments:** This article reflects the flexibility provided by the DIAC Arbitration Rules to the parties in appointing adjudicators, arbitrators, or experts as per their specific requirements. It allows parties to tailor the appointment process to suit their unique needs in cases where specialised expertise is necessary.
2. **Preservation of Fairness:** While the parties have agreed to specialised appointments, the DIAC Arbitration Rules ensure that the appointment process remains fair, transparent, and follows established procedural standards. The Centre's involvement helps maintain the integrity of the appointment process.
3. **Expertise and Efficiency:** By allowing parties to appoint specialised experts or neutrals for specific issues, the process can be more efficient and effective. This can lead to quicker resolutions of specific disputes or technical matters that do not require a full-fledged arbitration proceeding.

Overall, Article 4.1 provides parties with the flexibility to choose specialised experts or neutrals for specific issues while ensuring that the appointment process is conducted in a fair and efficient manner, guided by the DIAC Arbitration Rules.

4.2. If a challenge has not been raised within 15 days from receipt of the notification of an appointment made under Article 4.1 above, the parties shall be deemed to have expressly agreed to it and any subsequent challenge to a continued appointment shall be submitted as a new application.

Article 4.2 deals with the time frame for raising challenges against appointments made under Article 4.1. Let us analyse this article:

1. **Time Frame for Challenges:** Article 4.2 specifies a clear time frame within which challenges against appointments made under Article 4.1 must be raised. If a party wishes to challenge an appointment made under Article 4.1, it must do so within 15 days from the receipt of the notification of such appointment.
2. **Deemed Agreement:** If a party fails to raise a challenge within the prescribed 15-day period, the parties will be deemed to have expressly agreed to the appointment. In other words, their failure to raise an objection in a timely manner is treated as their acceptance of the appointment.
3. **New Challenge Procedure:** Importantly, Article 4.2 clarifies that any subsequent challenge to a continued appointment must be submitted as a new application. This means that if a party misses the initial 15-day period but later wishes to challenge the continued appointment, it cannot rely on the previous challenge procedure. Instead, it must follow a new application process.

Key points to note from this article:

1. **Promptness in Challenging Appointments:** The 15-day time frame encourages parties to promptly raise any objections they may have regarding the appointment of adjudicators, arbitrators, or experts made under Article 4.1. This helps ensure that challenges are addressed early in the process and avoids unnecessary delays.
2. **Finality of Appointments:** By deeming parties to have agreed to an appointment if no challenge is raised within the stipulated period, the article aims to promote the finality of appointments. This is important to maintain the efficiency and integrity of the arbitration process.
3. **Separate Challenge Process for Continued Appointments:** The article clarifies that if a party later wishes to challenge a continued appointment, it must follow a new application process. This is to avoid confusion and to ensure that challenges are treated as separate and distinct from the initial appointment challenge.

Overall, Article 4.2 establishes clear rules and time frames for raising challenges against appointments made under Article 4.1. It encourages parties to act promptly and ensures the efficiency and finality of the appointment process.

4.3. Together with the application, the party shall make payment of the registration fee specified in the Table in force on the date the application is submitted.

Article 4.3 pertains to the payment of registration fees in relation to applications made under Article 4.1. Let us analyse this article:

1. **Payment Requirement:** Article 4.3 stipulates that when a party submits an application under Article 4.1 (related to the appointment of adjudicators, arbitrators, or experts), it must make the payment of the applicable registration fee. This fee is specified in the Table that is in force on the date the application is submitted.
2. **Registration Fee:** The registration fee is a non-refundable amount that parties are required to pay when they apply for the appointment of adjudicators, arbitrators, or experts through the Centre. The specific amount of the fee is determined by the Centre and is subject to change based on the fee schedule or Table in force at the time of application.

Key points to note from this article:

1. **Fee Transparency:** The article ensures transparency in the fee requirement for applying for the appointment of adjudicators, arbitrators, or experts. The parties can refer to the Table to determine the applicable registration fee they need to pay at the time of submitting their application.
2. **Non-Refundable Fee:** The registration fee is explicitly stated to be non-refundable. This means that once paid, the fee will not be reimbursed even if the application is later withdrawn or the appointment is not granted. It underscores the seriousness of the application process and encourages parties to carefully consider their decision to apply.
3. **Dynamic Fee Schedule:** The fact that the applicable registration fee is linked to the Table in force on the date of submission suggests that the Centre may periodically update its fee schedule to reflect prevailing administrative costs and operational needs.

In summary, Article 4.3 ensures that parties who wish to apply for the appointment of adjudicators, arbitrators, or experts under Article 4.1 are aware of and fulfil the registration fee requirement. This contributes to the transparency and efficiency of the application process and the overall administration of arbitrations under the DIAC Arbitration Rules.



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